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**EDWARD S. HERMAN & DAVID PETERSON**

**THE NEW YORK TIMES ON THE  
YUGOSLAVIA  
TRIBUNAL**

A STUDY IN TOTAL PROPAGANDA SERVICE

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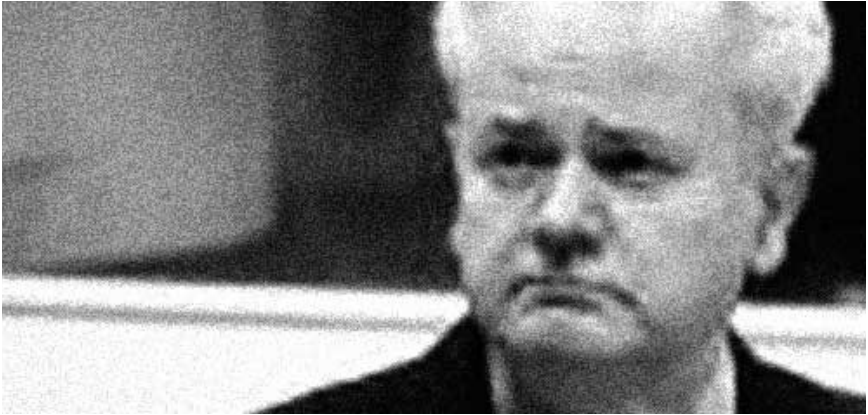
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## **The Authors**

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While the concept of a “party line” is usually associated with totalitarian parties and their offshoots, controlled by a state that imposes a politically serviceable version of history on its underlings and agents, it is very common for something like a party line to emerge in the U.S. mainstream media as they deal with a demonized target accused of misbehavior. In such cases the media quickly jump onto a bandwagon that takes the official and politically convenient view as obvious truth, and they then devote their efforts to elaborating on that truth.

This was the case in the years 1981-1986, following the shooting of Pope John Paul II in Rome in May 1981 by the rightwing Turk, Mehmet Ali Agca. These were years in which the Reagan administration was attempting to portray the Soviet Union as an “evil empire,” and it welcomed anything helpful in Soviet denigration. It was soon charged in the *Readers’ Digest*, NBC News, and elsewhere that the Bulgarians and KGB were behind the shooting, and this theme was latched onto and became a *de facto* party line with great speed. There was virtually complete closure on questions of the validity of the charge, and the media devoted all their efforts to filling in details and obtaining speculations on why the KGB did this and its political ramifications. The charge was in fact untrue, as came out in a Rome trial against the Bulgarians that ended in 1986, in CIA officer disclosures in 1990, and in the absence of any supportive evidence from the newly opened secret service files of the now allied Bulgaria. The mainstream media quietly crept away from the story in which their performance had been outlandish in terms of adherence to theoretical news values—with the *New York Times* among the most outlandish – but outstanding in terms of propaganda service to ongoing state policy. (1)

A very similar process can be seen in the media’s treatment of the Balkan conflicts in the years 1990-2004. Here also a party line that conformed to the political aims of the governing

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elite gradually emerged and eventually hardened into unchallengeable truth. In a broad sketch of the official line – also the standard media version – there was a bad man, a Communist holdover and dictator, who used nationalist appeals to mobilize his people, who were “willing executioners.” (2) This bad man strove for a “Greater Serbia” and in the process committed major crimes of ethnic cleansing and genocide that were initiated and mainly carried out by him and his forces. The West, led by the United States, belatedly entered this fray, eventually bombing the bad man’s proxy forces in Bosnia, forcing the Dayton Agreement on him, but with the West still eventually compelled to war against him to protect the Kosovo Albanians. The West organized a Tribunal in 1993 to deal with his and others’ crimes, and that Tribunal, though hampered by sluggish cooperation from the West and more serious obstruction by the Serbs, has done yeoman service in the cause of justice and reconciliation. (3)

This party line, which is contestable on each facet of its claims, (4) entered into the premises of journalists and editors at the *New York Times*, just as the line on the Bulgarian-KGB link to the Papal shooting gripped them for many years (followed by silence, without apology), with closure imposed in both cases. The *Times* reporter who was most familiar with Yugoslavia, but who failed to adhere to the party line, David Binder, was removed from the region in favor of less knowledgeable but more accommodating journalists, just as Raymond Bonner was removed from reporting on Central America in the 1980s for his failure to adhere to the party line evolving there. (5)

We will illustrate this party line treatment in the Balkans wars by examining the work of Marlise Simons in her coverage of the International Criminal Tribunal for the Former Yugoslavia (ICTY, or simply Tribunal) for the *New York Times*. Simons has been the paper’s principal reporter on the Tribunal and one of the paper’s leading reporters on the Balkans in general, and as we would expect, and as we will show, she has been an undeviating adherent to the party line. Our analysis is based on the study of her entire output of 120 articles dealing with the Tribunal, extending from December 7, 1994 to December 14, 2003 (excluding only her articles with fewer than 200 words). (6)

### SOURCING

A party line commonly takes its cues and information from official sources. The accompanying table shows how much Marlise Simons has depended on Tribunal and NATO officials for her information and as a guide to what was relevant (rows 1-6). These account for almost half of her sources (48.6 percent); and if we include the human rights group officials cited by Simons, all of whom were entirely sympathetic with the Tribunal’s work, (7) and indictees who had agreed to plead guilty and cooperate with the Tribunal, we are over half (53.8 percent). If we remove the category “other,” most of whose members were supportive of the Tribunal, the ratio rises to 60.1 percent. Virtually all of the sources cited by Simons that contest the party line are indictees and defense counsel (lines 8B and 9). She cites only a single witness for the defense, as compared with 32 witnesses for the prosecution and four prosecution experts.

**TABLE 1****SOURCES USED BY MARLISE SIMONS IN REPORTING ON THE TRIBUNAL (8)**

| SOURCES                          | NUMBER OF ARTICLES | PERCENT OF ARTICLES   | PERCENT OF TOTAL LESS "OTHER" |
|----------------------------------|--------------------|-----------------------|-------------------------------|
| 1. ICTY Personnel                | 125                | 30.9                  | 34.9                          |
| 2. Prosecution Witnesses         | 32                 | 7.9                   | 8.9                           |
| 3. Prosecution Experts           | 4                  | 1.0                   | 1.1                           |
| 4. Indictments                   | 11                 | 2.7                   | 3.1                           |
| 5. ICTY Court Judgments          | 7                  | 1.7                   | 2.0                           |
| 6. NATO Country Officials        | 19                 | 4.7                   | 5.3                           |
| 7. Human Rights Group Officials  | 14                 | 3.4                   | 3.9                           |
| 8. Indictees                     | 41                 | 10.1                  | 11.5                          |
| A) Class A                       | 6                  | 1.4                   | 1.7                           |
| B) Class B                       | 35                 | 8.6                   | 9.8                           |
| B-1 Milosevic alone              | 26                 | 6.4                   | 7.3                           |
| 9. Defense Counsel               | 37                 | 9.1                   | 10.3                          |
| 10 Defense Witnesses             | 1                  | 0.2                   | 0.3                           |
| 11. Defense Experts              | 0                  | —                     | —                             |
| 12. Experts With Dissident Views | 0                  | —                     | —                             |
| 13. Other                        | 49                 | 12.0                  | 13.7                          |
| * Totals:                        | 407                | 100                   | 100                           |
| ** Totals minus "other"          | 358                |                       |                               |
| ***Tabulations of interest       |                    | Percentages of totals |                               |
| A. 1-6                           | 198                | 48.6                  | 55.3                          |
| B. 7 + 8A                        | 20                 | 4.9                   | 5.6                           |
| C. A +B – 8A                     | 218                | 53.6                  | 60.1                          |
| D. 8B + 9 and 10                 | 73                 | 17.9                  | 20.4                          |
| E. D – Milosevic                 | 47                 | 11.5                  | 13.1                          |

These numbers understate the bias, because the prosecution is given more prominence, more space, and more friendly treatment. Indictee and defense counsel statements are briefer, more often paraphrased, come deeper in the articles, and often give the appearance of a token inclusion designed to provide a nominal balance. Their words are sometimes in satire-intended quote marks highlighting their implausibility; and they are imbedded in articles in which

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Simons' sympathy and identification with the prosecution is readily apparent. (See **Language and Tone**, below.)

The most telling evidence of Simons' overwhelming bias in sourcing is the fact that in 120 articles she never cites a single independent expert who might have raised questions about the Tribunal's purpose, methods, or evidence. Among the informed critics ignored were: Charles Boyd, David Chandler, Phillip Corwin, Tiphaine Dickson, Fiona Fox, Robert Hayden, Jon Holbrook, Diana Johnstone, George Kenney, Raymond Kent, Hans Koechler, John Laughland, Michael Mandel, General Lewis Mackenzie, General Satish Nambiar, Jan Oberg, Walter Rockler, Alfred Rubin, Kirsten Sellars and Cedric Thornberry. One of these excluded experts, Robert Hayden, actually gave lengthy testimony during the Tribunal hearings on the case of Dusko Tadic on September 10-11, 1996. Hayden was contesting the views of James Gow, a prosecution witness. Simons cited at length Gow's testimony for the prosecution, and noted that Gow provided the courtroom a "history lesson" in the wars that consumed Yugoslavia, portraying these wars as the result of a "plan conceived in Belgrade." But Simons never cited Hayden's testimony for the defense. (9) We see here in miniature a pattern that has repeated itself throughout not only Marlise Simons' reporting on the affairs of the Tribunal for the *Times* – but throughout the *Times* coverage of the breakup of Yugoslavia overall.

### FRAMING

Framing and sourcing are closely linked, as the use of a particular source allows that source to define the issues and to fix the frames of reference, presumably those acceptable to or preferred by the journalist. Thus in the case of the Papal assassination attempt of 1981, the Italian government and prosecutors took as their frame the certainty that the KGB and Bulgarians had hired Agca to shoot the Pope – and after 17 months in an Italian prison, and numerous indications by his interrogators that they would be pleased to find a KGB-Bulgarian connection, along with a variety of inducements, Agca, while also periodically claiming to be Jesus Christ, had "confessed" to the connection. The U.S. media took this as a truth around which the story was framed. Similarly, in Moscow in 1936, the prosecutor's claim that Leon Trotsky had organized a conspiracy to overthrow the Soviet government, supported by documents and confessions, was the frame used by the Soviet media as well as the prosecutor. In each of these cases there were alternative frames, but the media ignored them.

The frame within which the Tribunal worked was in effect a morality tale, with a clear cut delineation of good and bad players, as described in the third paragraph above. As regards the Tribunal itself, in the Tribunal, NATO official, and establishment media frame (which are identical) the Tribunal was obviously good – independent, without political bias and simply seeking justice, adhering to Western judicial standards, and working under difficult conditions because of imperfect cooperation from the West and more severe obstructionism from Yugoslavia. This was Marlise Simons' frame and she never once departed from or questioned it. She repeatedly made contestable assertions about recent Balkan history as unarguable truths, such as that Milosevic was "the man whom the world has seen stoke a decade of war

and bloodshed in the Balkans,” a claim that she usually offers in the form of the charges by the prosecution – “chief architect,” “most responsible” – a simple-minded view that Lenard Cohen has described as the “paradise lost/loathsome leaders” perspective. (10) Not once in 120 articles does Simons provide an analysis or discussion of the litany of prosecution charges and party line claims about the Balkan wars that she regurgitates like a press officer of the Tribunal. For Simons the Tribunal is the agent of justice in the morality tale, so that she accepts its claims as assuredly true and its self-appraisal as independent and virtuous and feels no obligation to ask any hard questions or probe into areas that might suggest doubts about its role or methods.

There were alternative frames, however, among which we may distinguish: (1) the Tribunal as a planned and effective political and public relations arm of NATO; and (2) the Tribunal as a “rogue court,” without legal standing, that has violated numerous Western judicial principles in its eagerness to achieve its assigned political goals. These alternative frames have been employed by most of the 20 independent experts named above, so that their exclusion was obviously linked to the fact that the alternative frames were unwelcome to Simons and the *New York Times*. The alternative frames were allowed only in statements by Slobodan Milosevic, who did denounce his incarceration and trial, and the work of the Tribunal in general, as strictly and unjustly political. This is a fine illustration of a standard ploy in propaganda service: Confine the unwanted line of argument to the mouth of somebody who has little credibility with the target audience, making it easy to dismiss without confronting serious argument and facts.

With the prosecution as her guide and almost exclusive source of information, Simons’ articles largely repeat prosecution charges, transmit the gist of evidence of the scores of witnesses produced by the prosecution, and, absent any critical and independent counter-evidence and analyses, confirm and reinforce the prosecution case and public acceptance of the morality tale. This replicates the performance of the *New York Times* in the case of the attempted Papal assassination, where the reporters’ tacit assumption of the truth of the Bulgarian-KGB involvement, “news” featuring confidently stated official claims and purported corroborating evidence – e.g., “we have the evidence that Agca worked in close collaboration with the Bulgarians;” and “all the evidence suggests” (11) – and blacking out of inconvenient facts and dissident analysis, strengthened common belief in the “Bulgarian connection.”

In her reporting on the Tribunal, Simons repeatedly refers to prosecution “momentum,” confidence and exhilaration, claims that they have “solid” evidence, with hints that if they don’t have enough it is because of effective cover-up by the bad man. (12) Scores of times she mentions the numbers allegedly killed in Bosnia and at Srebrenica and charges of Milosevic’s and Serb responsibility, with conflicting evidence, context that brings in the shared NATO-power and Bosnian Muslim and Croatian responsibility for the violence, and alternative analyses, blacked out. (13) She reports in detail numerous witness accounts of alleged violence suffered at the hands of the Serb army and paramilitaries, extracting maximum emotional leverage from these testimonials. (14)

Apart from her uncritical treatment of these witness accounts, Simons never once suggests



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that this kind of mistreatment of civilians occurs in every civil conflict and war, and that the Serbs could produce a very large number of civilian witnesses to similar abuses inflicted on them by Bosnian Muslims, Croats, and the U.S. Air Force. (15) Early in his trial Milosevic spent two days showing slides that gave graphic detail on numerous civilian victims of the U.S. bombing of Serbia, and he suggested that a formidable case could be built against the United States and NATO by a Tribunal that had different political ends. Simons mentioned his evidence briefly, but she did not pause to reflect on his case or bring in an expert who might expand on it. (16) When the issue of NATO culpability in its deliberate bombing of civilian facilities came up during and after the 78-day bombing, Simons and her paper evaded the issue and provided only NATO-Tribunal apologetics, as described below.

### LANGUAGE AND TONE

Marlise Simons' language and tone clearly reflected her belief that the Yugoslavia conflict was a simple case involving "loathsome leaders" and their victims, now seeking justice, with NATO and the Tribunal the forces for justice. In this frame, the Tribunal, its prosecutors and judges, and its NATO supporters were good; Milosevic and his associates and Bosnian Serb leaders were evil. With this "journalism of attachment" (17) the use of neutral or positive language – "purr words" – in describing the good people, and negative language – "snarl words" – in describing the villains comes easily and appears completely natural to the biased journalist. Conflicts between Good and Evil seem entirely obvious; and editors similarly biased do not complain.

The result can be childish and comical in the implausible manner in which the villains are regularly derogated and the heroes lauded. **Table 2** illustrates this with a comparison of Simons' language used to describe Milosevic, on the one hand, and the two prosecutors, Louise Arbour and Carla Del Ponte, and Judge Richard May, on the other hand. This tabulation is not biased, as Simons uses *no* positive language for Milosevic and *no* negative language in reference to Arbour, Del Ponte and May in any of the 120 sample articles. The negative language Simons used as regards Milosevic is far from exhausted with the items included in this table (*next page*).

### TABLE 2

**MARLISE SIMONS' WORD USAGE****Slobodan Milosevic**

Infamous  
 Sniped  
 Scoffed  
 Smirk on his face  
 Speechmaking  
 Badgers the simple conscripts  
 Carping  
 Blustery defense  
 Loud and aggressive  
 Notorious  
 Defiant  
 Reverted to sarcasm  
 Contemptuous  
 Outbursts  
 Face often distorted with anger

**Prosecutors Louise Arbour and Carla Del Ponte; Judge Richard May**

Forceful (Arbour)  
 Resolute (Arbour)  
 New assertiveness (Arbour)  
 Very capable (Arbour)  
 No-nonsense style (Arbour)  
 Tough crime fighter (Del Ponte)  
 Unswerving prosecutor (Del Ponte)  
 Natural fighter (Del Ponte)  
 Unrelenting hunter (Del Ponte)  
 Finding the truth (Del Ponte)  
 Keeping tight control (May)  
 Patiently repeated questions (May)  
 Sober, polite and tough (May)  
 Expert on evidence (May)  
 Among the best suited (May)

This differential usage cannot be explained on the grounds that Arbour, but not Milosevic, was “resolute” and “forceful,” and that May was only “sober, polite and tough,” whereas Milosevic was “contemptuous” and “carping.” Milosevic was frequently as resolute and forceful as Arbour, but Simons reserves such positive language for people she approves and always finds Milosevic to be defiant, loud, aggressive, and blustering. The noted Toronto lawyer Edward L. Greenspan, attending the opening of the Milosevic trial, was immediately impressed with the fact that May “clearly reviles Milosevic” and that he “doesn’t even feign impartiality, or indeed, interest.” (18) But Simons would never call this attitude, so obvious to Greenspan, “contemptuous.” Numerous trial observers have noted how May continuously interferes with Milosevic’s cross-examinations in a manner that could reasonably be called “carping” or far worse, as we discuss below. Simons reserves such a word for the bad man.

Simons several times describes Carla Del Ponte interacting with one of her allies in the court room at something Milosevic says – “Del Ponte...occasionally shot a smile at other prosecutors in apparent incredulity” (19) – a journalistic device reinforcing the overall tone of good and reasonable on the prosecution’s side and evil and foolishness on the side of the defendant. As we will also see below, “unrelenting hunter” Carla Del Ponte turned somersaults of evasion to deny petitions to pursue an investigation of possible war crimes by NATO – she has been “relentless” only in pursuing NATO-approved villains. But when Simons interviewed Del Ponte and described her as the “unrelenting hunter,” she failed to ask Del Ponte about the

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Tribunal's deflection of charges against NATO – and in fact, in the 120 articles that comprise this study, Simons never asked any Tribunal official a challenging question or raised one for somebody else to answer. In short, Simons has been on the Tribunal-NATO “team” from the start of her coverage of its work in late 1994, reflected in sourcing, framing, word usage, and tone. The result has been deeply corrupt journalism that is *de facto* propaganda service.

### THE NEGLECTED POLITICAL MODEL: THE TRIBUNAL AS THE PSEUDO-JUDICIAL PUBLIC RELATIONS ARM OF NATO

By avoiding the alternative frames, Marlise Simons has been able to bypass or deflect inconvenient facts that interfered with her morality tale and that would put the Tribunal's work in a less favorable light. Let us take a closer look at each of the alternative frames, and see how Simons dealt with some of the facts that lend those frames salience.

The first alternative frame – the Tribunal as the pseudo-judicial public relations arm of NATO – rests on structural facts, admissions by some of the principals, and, most importantly, on the Tribunal's performance record. The Tribunal was a creation of the U.N. Security Council, (20) with the United States, Britain and Germany playing lead roles, the United States most prominently and increasingly so. It is of interest that the United States has refused any cooperation with the new International Criminal Court because of the alleged threat that charges might be leveled against U.S. citizens based on a “politically motivated” ICC agenda. (21) The United States has never feared this of the ICTY, however, because of the crucial U.S. role in organizing the Tribunal, financing it (along with other close NATO allies), staffing it, vetting its judges and prosecutors, supplying it with its police force, providing it with information, and giving it political support.

During the 78-day bombing war, when moves were made by dissident legal experts and others to persuade the ICTY to investigate the NATO leadership for crimes related to their war, NATO public relations spokesman Jamie Shea responded to a question on the Tribunal's jurisdiction over NATO's conduct as follows:

I believe that when Justice Arbour starts her investigation, she will because we will allow her to...NATO are the people who have been detaining indicted war criminals for the Tribunal in Bosnia...NATO countries are those that have provided the finance to set up the Tribunal, we are amongst the majority financiers...we want to see war criminals brought to justice and I am certain that when Justice Arbour goes to Kosovo and looks at the facts she will be indicting people of Yugoslavia nationality and I don't anticipate any others at this stage. (22)

Neither Marlise Simons nor any other *New York Times* reporter has ever quoted Shea's statement, which suggests NATO control of the Tribunal – that “he who pays the piper calls the tune” (Kirsten Sellars) (23) – and which Shea indicates will surely exempt NATO officials from prosecution, as in fact it did. Nor have Simons or her *Times* colleagues ever mentioned

the hyperlink to the NATO web site conveniently placed on the ICTY home page throughout the period when it was supposedly considering a petition charging NATO with war crimes. (24) It should be noted that the Tribunal's mandate does not limit its reach to Yugoslavs for prosecution for war crimes in Yugoslavia, a point never discussed by Simons (or other *Times* reporters). Evasions such as this have been helped along by ignoring statements like Shea's.

Simons also has never discussed the U.S.-dominant staffing and vetting of ICTY staff, and she has never mentioned the May 9, 1996 NATO-Tribunal "memo of understanding" that gave NATO the task of serving as the Tribunal's police force. She has acknowledged U.S. funding only in passing, without addressing its possible impact on Tribunal policy. Article 16 of the Tribunal's charter states that the prosecutor shall act independently and shall not seek or receive instruction from any government. But can the prosecutor act independently if dependent on specific governments for funding, personnel, information, and police service? Simons never raises the question. Even within the establishment it is sometimes acknowledged that the ICTY was organized to serve NATO political aims. As Michael Scharf, the man who wrote the Tribunal's charter for Secretary of State Madeleine Albright, once explained, the Tribunal was "widely perceived within the government as little more than a public relations device and...useful policy tool...Indictments...would serve to isolate offending leaders diplomatically...and fortify the international political will to employ economic sanctions or use force." (25)

There have been other statements by Western officials that imply that the Tribunal will do what they want it to do. Thus, the *New York Times* reported in July, 1999 that "Washington has threatened Mr. Draskovic with indictment by the international war crimes tribunal in the Hague for the activities of his short-lived Serbian Guard, a paramilitary group, in Croatia in 1991." (26) An U.S. government fact sheet stated that "We will make a decision on whether Yugoslav actions against ethnic Albanians constitute genocide...The ICTY will indict those responsible for crimes against humanity and genocide." British officials have also made similar statements implying they possess the power to bring the ICTY into action. (27)

Simons gets around the structural and other evidence of the external control and associated political bias of the Tribunal by confining the discussion of this issue to ICTY prosecutors. Her complete exclusion of dissident experts is important here – most of these experts have featured the Tribunal as a "political court" (Edward Greenspan) and "means of effecting policy" (Christopher Black), an "instrument of revenge rather than justice" (Jon Holbrook) whose indictments are of a "purely political nature" (Hans Koechler), at once the "judicial arm of NATO" (Kirsten Sellars) and the "propaganda arm of NATO" too (Michael Mandel), politics flowing from the purpose, organization, funding and staffing of the Tribunal. Not surprisingly, the ICTY prosecutors claim to be completely independent, with no agenda but pure justice, and they complain about how hard it is get cooperation from their organizers, funders, information- and staff-providers, and police agents in their unbiased search for justice. (28) It never occurs to Simons that this claim of foot-dragging might be a self-serving and disingenuous effort to obscure the high degree of Tribunal dependence and *de facto* agency function, a claim and effort advantageous to both the ICTY and its principals. She has never discussed

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the difference between the U.S. treatment of the ICTY and International Criminal Court, which suggests an inordinate U.S. fear of judicial independence and would raise questions about ICTY independence that Simons steadily evades. For Simons and the *New York Times*, the official view simply is the truth and enters the “news” as such. Thus, in a summary on the “Tribunal: How It Works,” the paper affirmed that “The Office of the Prosecutor operates independently of the Security Council, of any state or international organization and of other organs of the tribunal.” (29) And that was the end of it. The ICTY’s truth is the whole truth, and nothing but the truth.

Perhaps even more important, Simons avoids mention or the slightest hint of critical analysis of the many manifestations of political service rendered to NATO by the Tribunal. As early as June, 1998, NATO began planning for its springtime 1999 war over Kosovo to coincide with the Alliance’s 50<sup>th</sup> Anniversary celebration, scheduled to be held in Washington, D.C., in April, 1999. Almost immediately, the Tribunal followed in NATO’s wake with an intensified focus on the Serbs, and a steady stream of press releases on Serb conduct in the province. Thus, for example, Marlise Simons reported in August 1998 that “The United Nations war crimes tribunal is stepping up its investigations of war crimes in the Serbian province of Kosovo,” notwithstanding “Serbian claims that events in the province . . . are an internal affair.” (30) The propaganda barrage escalated immediately following the claim of a Serb massacre in the ethnic Albanian village of Racak in January 1999, an incident which Arbour declared, on the basis of unverified information supplied her by U.S. official William Walker, was “a massacre of civilians,” one that therefore “falls squarely within the mandate of the ICTY” (31); Arbour also generated considerable publicity by rushing to the scene of the alleged crime with Western cameramen in tow. This massacre claim was welcomed by U.S. officials, providing them with the eagerly sought pretext for the bombing war. When the U.S. Secretary of State Madeleine Albright first learned of Walker’s allegations about the Racak incident, the *Washington Post* reported, she phoned National Security Adviser Sandy Berger. “Spring has come early to Kosovo,” she told him. (32) Arbour’s performance here was in serious violation of prosecutorial ethics, and her own claim that “we certainly will not be advancing a case against anybody on the basis of unsubstantiated, unverifiable, *uncorroborated* allegation” (33), but it was beautifully geared to NATO propaganda service.

The same was true two months later, when Arbour announced an indictment of Serb paramilitary leader Zeljko Raznjatovic (Arkan), prepared in September, 1997, but not released until March 31, 1999, one week after the beginning of NATO’s bombing war, and giving the war a further propaganda boost. Arbour’s alleged reason for releasing this information at this particular time was that she wanted to put on notice anyone who “might retain his [Arkan’s] services or obey his orders,” and who “will be tainted by their association with an indicted war criminal.” (34)

Then in April, as described by Kirsten Sellars, “midway through the Kosovo conflict, Arbour made a whistle-stop tour of NATO capitals, collecting promises of assistance wherever she went.” Her trip to London “seemed to be expressly designed to highlight the tribunal’s support for one side of the war. She joined Robin Cook and chief of staff General Sir Charles

Guthrie at a press conference held at the Ministry of Defence, the department responsible for Britain's attacks on Serbia." At this press conference Arbour was publicly promised a major release of British intelligence material featuring alleged Serb atrocities. "Answering a question put to her at the press conference, Louise Arbour stated that it was 'inconceivable' that the tribunal was 'servicing a political agenda.' Yet her presence at this publicity stunt, designed to add to the swelling tide of atrocity stories already doing the rounds in the British media, belied her words." (35) Marcus McGee, writing in the Toronto *Globe and Mail*, pointed out that "It is part of NATO's war strategy to portray the leaders of Yugoslavia as war criminals who must be stopped. By accepting the documents, critics say, Judge Arbour risked becoming part of that strategy and losing her impartiality." (36)

But Arbour's maximal performance as a NATO public relations agent took place in the midst of the bombing war, on May 22, 1999, when NATO, in order to hasten a Yugoslav surrender, began to bomb Serb civilian facilities, including bridges, factories, electric power and water facilities, and even schools and hospitals. This elicited growing criticism even in the NATO countries. At that juncture, Arbour rushed into action with an indictment of Milosevic (as well as four of his closest aides) for crimes against humanity and violations of the laws or customs of war, all based, once again, on unverified information provided her by U.S. and British officials. U.S. Secretary of State Albright and State Department public relations boss James Rubin quickly cited this latest indictment as a justification for the bombing campaign (37) – an example of the Tribunal's propaganda service that was not only crude, but in defense of NATO actions which themselves were clearly war crimes. (38)

At the same time that U.S. Government officials were citing the Tribunal's indictment of Milosevic as evidence of the justness of NATO's war, Arbour herself was explaining that, while individuals are "entitled to the presumption of innocence until convicted," the indictments of the Serb leadership "raise serious questions about their suitability to be guarantors of any deal, let alone a peace agreement." (39) In addition to contradicting herself by undertaking an action that presumed guilt, based on information as yet unverified by the Tribunal, Arbour took on the role of "surrogate politician," in Hans Koehler's words, announcing her personal political determination that Milosevic was to be ruled out as a negotiator. (40) On many other occasions, indictments were used by the Tribunal to criminalize and effectively remove individuals from the negotiating process. Milosevic had to depend on the Russians to negotiate on Yugoslavia's behalf to end the bombing war, and Bosnian Serb leaders Radovan Karadzic and Ratko Mladic were also removed from any diplomatic process in Bosnia by indictments. Former Tribunal president Antonio Cassese acknowledged this purposeful exclusion by indictment with pride. (41) By this route, also, all were effectively demonized before trial and conviction, and any NATO violence was justified in the media and public consciousness by Tribunal indictments.

On the other hand, in earlier years, when Milosevic was deemed useful to NATO as a negotiator in Bosnia, neither he nor Croatian leader Tudjman were indicted by the Tribunal for any crimes, although Milosevic was already well demonized, and in the ongoing Milosevic trial his alleged responsibility for crimes in those earlier years are a key focus of the prosecution case.

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U.N. diplomat Cedric Thornberry noted this politically based exemption of Milosevic and Tudjman, “wooded diplomatically lest they pull the rug out from under the peace process,” and he objected that “no political offer should be made that would suggest that any leader, credibly implicated in grave criminal activity, be immune from judicial prosecution.” (42) In effect, Thornberry was criticizing the Tribunal back in 1996 for serving as a political arm of NATO.

Another huge political act carried out by Arbour, as well as her successor, Carla Del Ponte, was exempting NATO from any war crimes charges. The Security Council conveniently excluded from the war crimes subject to Tribunal jurisdiction what the Nuremberg tribunal had declared to be the “supreme crime” – waging a war of aggression. (43) NATO could therefore attack Yugoslavia in violation of the U.N. Charter without thereby automatically committing a crime subject to Tribunal authority. Nevertheless, Article 5 of the Tribunal’s Charter did make illegal “crimes against humanity,” which includes “murder” and “other inhumane acts;” and Article 3 includes “employment of poisonous weapons or other weapons calculated to cause unnecessary suffering,” and “attack, or bombardment, by whatever means, of undefended towns, villages, dwellings, or buildings.” Articles 1 and 16 of the Tribunal’s governing statute oblige it to prosecute any such illegal actions. (44)

How Arbour and Del Ponte wriggled out of even investigating NATO’s war crimes, and the contrast with their rapid service for NATO, is amusing in the grossness of the difference between the two. Canadian law professor Michael Mandel describes how in May, 1999, he and a group of lawyers from North and South America filed a well-documented war crimes complaint against 68 NATO leaders, and traveled to The Hague to make the case to Arbour and then Del Ponte. (45) “[L]ike literally thousands around the world,” he said, “we demanded that Arbour and Del Ponte enforce the law against NATO.” But Mandel says he eventually gave up when it became clear that, in his words, “the tribunal was a hoax.” (46)

It took Del Ponte more than a year to announce, on June 2, 2000, that NATO was guilty of no crimes, “and that (rather illogically) she was not opening an investigation into whether they had committed any.” (47) At that point she released a pre-investigation report of her Office of the Prosecutor (OTP), openly based on the belief that “NATO and NATO countries’ press statements are generally reliable and that explanations have been honestly given.” However, the OTP did acknowledge that NATO sometimes refused to answer questions – “failed to address the specific incidents,” as they put it. (48) In which case, NATO not wanting an investigation, the OTP chose to not look any further, and simply dropped the subject. How is that for an independent judicial assessment?

In the indictment of Milosevic, Arbour used evidence about events that took place only six weeks earlier from a war zone, provided by an interested party (NATO), unverified by Tribunal personnel, and in conflict with her claim that she would never proceed on the basis of “uncorroborated” evidence. But neither she nor Del Ponte could even “open an investigation” into NATO’s conduct during the war, after a year, with overwhelming evidence in the public domain pertaining to NATO actions that had killed many more than the numbers presented in the initial indictment of Milosevic (May 22, 1999). That indictment and the charge of “crimes against humanity” were based on an alleged 385 killings for which Milosevic is said to have

borne “command responsibility;” but the *OTP Report* found that the 500 deaths attributable to NATO’s actions were too few to rate – “there is simply no evidence of the necessary crime base for charges of genocide or crimes against humanity.” (49) (It should also be noted that the first chief prosecutor of the ICTY, the sainted Richard Goldstone, vigorously defended the Tribunal’s handling of the NATO charges in a debate with John Laughland, saying that the Tribunal simply “held that there was not sufficient evidence against individuals to warrant further investigation,” when as we have indicated there was no serious initial investigation and the 500 deaths conceded by the OTP exceeded the total charged to Milosevic.) (50)

In examining possible NATO war crimes, time after time the OTP investigators would consider the evidence and then choose an interpretation favorable to NATO, as in the bombing of Serbian broadcasting facilities, or simply decide arbitrarily that since “another interpretation is equally available” no investigation is needed (here in reference to NATO’s April 12, 1999 bombing of a train crossing a bridge over the Grdelica Gorge, south of Belgrade). (51). Michael Mandel gives a number of illustrations of this mode of exoneration, which, he says, “comes as close as possible to being an actual NATO press release that might have been issued by Jamie Shea or James Rubin.” (52)

After Del Ponte took over from Arbour in mid-September 1999, she announced that the “primary focus of the Office of the Prosecutor *must be* the investigation and prosecution of the five leaders of the Federal Republic of Yugoslavia who have already been indicted,” implicitly conceding that she didn’t have enough evidence, but once again making clear her NATO-service priorities. (53) Despite the furious claims of “genocide” in Kosovo by the NATO/Tribunal/media collective during the 78-day bombing war, the fewer than 5,000 bodies (from all causes and on all sides) found after the historically unprecedented postwar forensic search would hardly sustain a genocide charge against Milosevic. (54) Therefore, after his June 28, 2001 seizure and transport to The Hague, Del Ponte announced that charges against Milosevic would be expanded to his command responsibility for deaths in Croatia and Bosnia. The search was then on for evidence of deaths and, especially, proof of Milosevic’s “master plan.” This was a common Tribunal formula: Indict; flamboyantly publicize the charges; and then look for the evidence.

Further evidence of the Tribunal’s service on behalf of NATO has been the fact that, from the very first, the Serbs were NATO’s target, hence, the Tribunal’s target as well. As early as the summer of 1992, German Foreign Minister Klaus Kinkel began accusing the Serbs of “genocide;” (55) and in December 1992, just as the Tribunal was in process of formation, Acting U.S. Secretary of State Lawrence Eagleburger publicly named four Serb leaders – Milosevic, Karadzic, Mladic and Arkan – as targets of the imminent Tribunal, even invoking the need for a “second Nuremberg.” (56) Tribunal President Gabrielle Kirk McDonald referred to Serbia as a “rogue state,” and another Tribunal President Antonio Cassese expressed gratification that “indictments” had made it impossible for Serb leaders to participate in negotiations. Cassese was not bothered by the Tribunal’s abuse of indictments as a political instrument, and even Kosovo war supporter Geoffrey Robertson has observed that Cassese’s “presumption of their guilt, and agitation for their arrest, would have disqualified him for bias in many domestic



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legal systems.” (57)

The double standard in the Tribunal's dealing with the Serbs and others has been blatant. Serb paramilitary leader Arkan's indictment was made public in March 1999, but his Bosnian Muslim counterpart Naser Oric, who had bragged to the media about his killing of Serb civilians, (58) was not indicted until 2003, with only modest charges levied and its timing suggesting an attempt to create the appearance of balance. (59) The Republic of Serbian Krajina President Milan Martić was indicted as early as July 25, 1995 for – among other charges – a rocket-launched cluster-bomb attack on military targets in Zagreb in May 1995, on the ground that the rocket was “not designed to hit military targets but to terrorize the civilians of Zagreb.” In Martić's case, the Tribunal went to some pains to investigate the nature, effects and anti-civilian character of cluster bombs, concluding that their use was inherently criminal – “an anti-personnel weapon designed only to kill people.” (60) But NATO's cluster-bombing of Nis on May 7, 1999, which repeatedly hit a market and hospital far from any military target, killing at least 15 civilians in the process, produced no indictments.

Bosnian Serb General Stanislav Galic was found guilty by the Tribunal of “inflicting terror on a civilian population,” (61) but the numerous admissions by NATO leaders that their bombing of Serbia in April and May 1999 was to inflict pain on – that is, to *terrorize* – that population and force surrender, carried out on a much larger scale than Galic's operations around Sarajevo, was of no interest to the Tribunal. And the massive ethnic cleansing of the Krajina by U.S.-advised Croatian forces in August, 1995, with many hundreds killed, led to no indictments until May 21, 2001 (though announced only in late July), when Del Ponte, aggressively pursuing the new Yugoslav government to extradite Milosevic and other Serb indictees, and apparently feeling a need to demonstrate her even-handedness, belatedly indicted a single Croatian military officer for his role in Operation Storm, General Ante Gotovina, along with General Rahim Ademi, an ethnic Albanian who served in the Croatian military and was involved in the slaughter of Serbs at Medak back in 1993 (62). (Before these indictments, no Croatian with command responsibility for Operation Storm had ever been indicted, and only Serbs had been indicted for their actions in Croatia's Krajina region.)

In the same mode of political bias, only Serb leaders have been charged with “genocide” and the kind of top-down criminal responsibility for the acts of subordinates that we see in the Tribunal's charge that Milosevic masterminded a “joint criminal enterprise” to ethnically cleanse non-Serbs from large areas of Croatia and Bosnia. Numerous mass killings by Bosnian Muslims – including imported Mujahedin whose specialty was beheading civilian victims (63) – and by the Croatian army and paramilitaries never caused the Tribunal to use the word ‘genocide’ or to attribute responsibility to, or indict, the late Croatian President Franjo Tudjman or his Bosnian Muslim counterpart Alija Izetbegovic. (64) And during her pretended look at NATO crimes, Del Ponte considered only the responsibility of NATO pilots and their immediate commanders, not the NATO decision-makers who decided to target the civilian infrastructure and population. The double standard here is dramatic.

How did Marlise Simons treat these manifestations of a Tribunal political agenda closely geared to U.S. and NATO public relations needs? Simons did not report on the Racak inci-

dent, but she did have an article on Arbour's March 31, 1999 announcement of the indictment of Arkan. (65) She transmitted Arbour's explanation for the belated release of the indictment – to warn those who might “retain his services or obey his orders” and thus be “tainted by their association with an indicted war criminal.” But Simons did not question this explanation, which is not compelling, and which treats an indicted but not-yet-convicted person as a “criminal.” Nor did Simons mention that the release of the indictment was a public relations gift to NATO. Simons failed to call attention to the absence of any indictment of Naser Oric, Arkan's paramilitary counterpart serving the Bosnian Muslim side, and in fact she never mentioned Oric's name in any of the 120 articles that form the basis for this study. (66)

This convenient naïveté was even more dramatically evident in Simons' treatment of the May 22, 1999 indictment of Milosevic. (67) Here again, Simons gives Arbour's explanation of the rush to indict – the fear that “we might miss out” on getting him as a result of a peace deal – which she passes along without raising any question. Simons does not mention the Tribunal's failure to indict Milosevic in 1994-1995, when as Thornberry noted, Milosevic was seen by the leading NATO powers as a useful partner in a “peace deal.” This allows her to suggest that “only now do... American and European politicians... use the tribunal as a political weapon, threatening to hold perpetrators of atrocities accountable in The Hague,” which also makes it sound as if the Tribunal is an autonomous body being used by alien parties! The sheer injudicial character of rushing to indict, with a presumption of guilt even before the evidence is in, doesn't strike Simons.

Simons quotes Arbour acknowledging that NATO's aims here meshed with her own (“a coincidence of interests,” Arbour calls it), and this aura of independence is maintained and never challenged by Simons. She asserts that “The indictment is now seen as a tribute to the tribunal's firmness,” without telling us who it is that has this vision and offers this tribute. Simons never hints that the timing of the indictment might be regarded as public relations service to NATO, although she mentions that U.S. and NATO officials welcomed Arbour's action. This was just a coincidence, as Arbour explained to her. As with Arbour's exploitation of the Racak incident to perform a public relations service on behalf of NATO, or Arbour's unsealing of the indictment of Arkan right after the start of the war, or Arbour's appearance with Robin Cook at a London press conference later in the war, or Arbour's rush to indict Milosevic as the war dragged on and began to go sour for NATO – Simons treats each as an isolated event, because connecting the dots between them, or performing any kind of serious analysis, would prove incompatible with peddling the official line.

Simons never deals with the Tribunal's exemption of NATO, and her colleagues at the *New York Times* treat that exemption with extreme brevity, featuring U.S. “impatience” with this challenge, which never even reached the investigatory state. The *Times* reporters ignored the charges themselves and never referred to the comical Del Ponte and *OTP Report's* basis for rejecting even an investigation of NATO war crimes. (68) Only once does Simons approach the substance of the charges of NATO war crimes, when she says that NATO bombs “hit the Chinese Embassy, a few bridges, a train full of civilian passengers, and a TV station.” (69) But no mention of the electrical and water facilities, marketplaces, nine hospitals, and over 300

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schools damaged or destroyed. No mention of the innumerable factories producing civilian goods, museums, religious buildings, including early Christian and medieval churches. And no mention of the 500-3000 civilians killed during the bombing war. Simons' bias displayed in this aborted listing is dramatic, but her editors clearly didn't object.

Simons several times reported Tribunal developments that could be interpreted as showing that the Tribunal was not a political arm of NATO. (70) But she never once allowed this interpretation to be challenged or the neglected political model to be expounded, aside from a few phrases attributed to Slobodan Milosevic.

### ALTERNATIVE MODEL OF THE TRIBUNAL AS A "ROGUE COURT"

The ICTY was established by the Security Council under Security Council Resolution 827 on May 25, 1993, under the claimed authority of Chapter VII of the U.N. Charter. But the Charter's Chapter VII gives the Security Council authority only on matters of *security*, and the argument that violations of humanitarian law "constitute a threat to international peace and security" fails to provide a legally defensible basis for taking on a judicial function. (71) Ironically, Chapter VII requires all countries to cooperate with any ruling made under it, although it was only voted on by the Security Council. Meanwhile, the U.S. Congress, explaining why it was refusing to cooperate with the International Criminal Court, asserted that "it is a fundamental principle of international law that a treaty is binding upon its parties only and that it does not create obligations for nonparties without their consent to be bound. The United States is not a party to the Rome statute and will not be bound by any of its terms." (72) But no problem in binding countries to aiding the (illegally constituted) ICTY because it was under U.S. control and it was others who were coerced to cooperate without their assent. Marlise Simons and the *New York Times* have never addressed these issues.

It is an even more spectacular irony that the Tribunal was established in 1993, just after Eagleburger's public naming of Serb leaders to be brought to trial and during a period in which the United States had begun "the destruction of every single chance of peace, from the Vance-Owen in Bosnia to the farce of Rambouillet, to the bombing campaign itself." (73) That is, the role of the Tribunal was to help the United States and its allies employ a purported "bringing justice" as part of the propaganda apparatus to fend off peace, help dismantle Yugoslavia, and put Serbia in its place by war. Most of the deaths in Bosnia, Croatia and Kosovo occurred *after* the decisions were made to pursue "justice" instead of peace. Recognition of the Tribunal's role in a policy relying ultimately on force was implicit in the statement of former Tribunal President Antonio Cassese, who noted that "The political and diplomatic response [to the Balkans conflict] takes into account the exigencies and the tempo of the international community. The military response will come at the appropriate time." (74) As Robert Hayden later observed, "Instead of being victor's justice after the conflict, it [the Tribunal] is a tool meant to ensure victory during it." (75) In fact, in the postwar phase, the Tribunal is serving to provide victors' justice – and a final apologetic for the war – as well.

Marlise Simons has never mentioned the Eagleburger statement of December, 1993, and, of

course, she has never hinted at the possibility that the Tribunal's role was to facilitate war in the name of "justice," although she repeatedly transmits the prosecution and other prosecution-friendly statements about the importance of justice to the victims. She fails to mention that the alleged "justice" objective is apparently not high on the priority lists of the populations in question, in contrast with U.S., NATO, Tribunal officials, as well as the media establishment. (76) And she consistently fails to address the matter of justice to victims outside the orbit of NATO interests, such as the ethnically-cleansed Serbs of the Krajina and Western Bosnian regions, the ethnically-cleansed Serbs and Roma from NATO-controlled Kosovo, and the refugees and beggared population of Serbia itself.

Most of the Tribunal prosecutors and judges have been drawn from the NATO countries, and all the important ones have been vetted by U.S. officials. (77) As the NATO powers are parties to the conflict, and even committed chargeable war crimes as well as engaging in the "supreme crime" in the 78-day bombing war, there is a major conflict of interest built into the judicial structure of the Tribunal. As Hans Koechler stated, "If the 'Tribunal' would have taken general legal standards of impartiality seriously, it would have been obliged to determine that there is a conflict of interest for 'judges' from countries waging an undeclared war against Yugoslavia to sit on such a panel initiating 'judicial' action against the Head of State of the country under attack." (78) Marlise Simons has never considered this an issue or problem.

We have already mentioned the bias problems that follow from the Tribunal's source of funding, and the likelihood that Tribunal activity will be directed toward areas politically serviceable to the United States and other NATO powers. But another feature of funding bias is that the prosecution is likely to be given ample resources and political support while the defense is scanted. As Sellars points out, "The defence is very much the poor relation at The Hague... the prosecution has been set up with a coordinating office and budget, the defence does not enjoy equivalent resources. It does not get much support from governments either." (79)

As regards the judicial process more narrowly conceived, the Tribunal has violated Western judicial standards on a massive scale, as it has been free to create its own rules as it went along. Thus, its 1994 *Yearbook* states that "The tribunal does not need to shackle itself with restrictive rules which have developed out of the ancient trial-by-jury system" (80); and for Louise Arbour, "The law, to me, should be creative and used to make things right." (81) Yes, due process and other "ancient" protections are inconvenient to aggressive prosecutors. John Laughland notes that "the Tribunal dips into a potpourri of different legal systems from around the world. In one case, the tribunal defended itself against charges that it had illegally seized documents from the Bosnian government by saying that its procedures were compatible with the law in Paraguay." (82)

Before examining some of the Tribunal's abuses, and Marlise Simons' (non)-treatment of them, in more detail, let us enumerate Laughland's non-exhaustive list of "rogue court" procedures: (1) no right to bail or speedy trial; (2) defendants may be tried twice for the same crime [Article 25 of the Tribunal's statute]; (3) no right to a jury trial; (4) no independent appeal body; (5) admission of hearsay evidence; (6) confessions to be presumed free and voluntary unless

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the contrary is established by the prisoner [Article 92]; and (7) no definition of the burden of proof needed for a conviction, such as “beyond reasonable doubt.” (83) Nowhere in her 120 articles does Marlise Simons mention, let alone challenge, these procedures – all of which are in violation of long-established principles of Western jurisprudence.

Another very important feature of Tribunal practice has been the use of the indictment as a political tool. In the “ancient trial-by-jury” and due process systems of the West an indicted person is not by that fact a criminal but rather one for whom the evidence seems to justify a trial to determine guilt or innocence. For the Tribunal the indictment has been used to criminalize without trial, to remove the indictee from effective authority, and to discredit and demonize. As noted, Arbour used this weapon regularly as a political and propaganda tool, while piously claiming a belief that indictees are innocent till proven guilty. Even Geoffrey Robertson, a vocal supporter of NATO’s 1999 war, has recognized that “war required [Milosevic’s] criminalisation, so The Hague prosecutor, Louise Arbour, was summoned to London to be handed by UK Foreign Secretary Robin Cook some NSA/GCHQ intercepts she had long requested.” (84) Milosevic was indicted shortly thereafter. Back in 1995, Arbour’s predecessor, Richard Goldstone, admitted to purposefully indicting Karadzic and Mladic to exclude them from the imminent Dayton talks, (85) but not Milosevic, now under indictment as the alleged “architect” of the events for which Karadzic and Mladic were indicted. Marlise Simons has never acknowledged the ICTY’s politicization of indictments, nor has she expressed the slightest concern over their use for advance criminalization.

The Tribunal’s prosecutors have been very media oriented, with the criminalizing indictments central to their effort to mobilize the media in support of the Tribunal. Among other incidents, in June, 2001, Del Ponte announced that Milosevic would soon be indicted for additional crimes (86), an action that had no function except to keep Tribunal business in the public eye and create a public and moral environment biased against the defendant. Cassese openly employed the same tactic of going to the public about the “indicted criminals” in order to force political action. (87) Similarly, Richard Goldstone frankly acknowledged that journalists “responded to my calls for positive and supportive coverage” of the Tribunal. (88) Again, the violations of judicial principles in this call and mobilization were notorious, but entirely consistent with Tribunal procedures. Marlise Simons almost certainly didn’t need Goldstone’s call to follow the Tribunal party line, and she has never noticed any anomalies or departures from honorable judicial practice in publicity mongering or courtroom procedures. In fact, as far as she is aware, everyone working for the Tribunal bends over backwards to avoid publicity and the appearance of a conflict of interest! (89)

The first case tried by the Tribunal, involving the Bosnian Serb Dusko Tadic, affords us an excellent illustration of both the Tribunal’s unjudicial practices and Marlise Simons’ extreme bias. Only one witness ever testified to having actually seen Tadic commit an atrocity, an anonymous Bosnian Serb sent to the Tribunal after his seizure by the Bosnian Muslims. The defense was able to show that the witness lied, at which point he confessed that he had been forced to lie, and was trained on his testimony, by his Bosnian Muslim captors. The prosecutor withdrew the witness’s testimony, but the Trial Chamber never asked why the prosecutor

had failed to discover the basic facts about the witness; Robert Hayden, who was an expert witness in this case, claims that “some parts of the witness’s story seem to indicate the Prosecutor’s office might also have been involved in training him to give false testimony.” (90) The Tribunal then denied the witness’ appeal for refuge and sent him back to the Bosnian Muslim government, where he was given a ten-year sentence for “genocide” based on a confession he says was extracted by torture.

The Tadic case involved charges under Article 2 of the ICTY statute, which applies only to persons “caught up in an international armed conflict.” In a preliminary hearing, the ICTY Appeals Chamber found the Bosnian conflict to be both internal *and* external, and argued that if it was found to be solely “international” (i.e., external), an “absurd” conclusion would follow: That only Bosnian Muslims, not Bosnian Serbs, could be “protected persons” under the statute. The Trial Chamber, following the reasoning in the International Court of Justice in its 1986 decision *Nicaragua v. United States of America.*, found that the Bosnian Serbs were not *de facto* organs or agents of Belgrade. The prosecutor appealed the decision, and won, with the Appeals Chamber now accepting precisely the conclusion that it had earlier found “absurd,” and arguing that mere “participation” in planning and supervising military operations constitutes “overall control.” It justified this position on the grounds of the need to protect civilians and “realism... which disregards legal formalities.” Apart from the brazenness of this self-contradiction and rewriting of legal rules, “The ICTY Appeals Chamber has thus clearly indicated that fairness of the proceedings for defendants is not high in its concerns,” Robert Hayden concludes. (91)

Hayden also points out that this ICTY ruling and disregard of “legal formalities” would not only make the United States responsible for all the crimes of the Nicaraguan contras, it would also make it responsible for its “*de facto* agents” in the Croatian army’s Operation Storm, the assault on the Krajina Serbs in August, 1995, carried out with the approval and participation of U.S. officials and closely affiliated “private” firms. (92) Naturally, the Tribunal, which couldn’t even open an investigation into NATO’s direct war crimes, would never make this connection involving mere *de facto* agents killing the wrong victims.

In her reports on the Tadic trial, Simons devoted a great deal of space to summarizing the prosecution’s charges and description of the Omarska prison camp as a “concentration camp.” (93) But reading Simons, one would never be aware of the fact that Tadic was sentenced to 20 years, although acquitted of personal responsibility for any murders. There is no mention of the fact that the one witness who claimed to actually *see* Tadic kill was eventually withdrawn by the prosecution after having been found to be fabricating evidence, and after confessing to having been coerced and trained on what to say. Reporting this would throw unfavorable light on Tribunal processes, and Simons regularly ignores such negatives.

On the issue of whether Tadic would be subject to Article 2 charges based on the finding of the conflict in Bosnia as internal or external, Simons does not evaluate the arguments on the difference between “control” and “participation,” nor does she discuss the facts about the relation between the Yugoslav and Bosnian armed forces. The struggles between Milosevic and the Bosnian Serbs and their conflicting interests in the peace efforts in the years 1992-1995

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– as described, for example, in Lord David Owen’s *Balkan Odyssey* (94) – are of no interest to Simons. She doesn’t mention the arguments given by the Tribunal judges who at first disputed the control claim, and there is no evidence that she ever bothered to hear or read them or the testimony of Robert Hayden. (95) She just takes it for granted that the NATO-friendly position is correct: She says that “most Western governments” would claim that the Bosnian Serb warfare was “orchestrated from Belgrade.” (96) So any contrary findings brought before the Tribunal are *ipso facto* wrong and perverse.

And in a remarkable and stupid *ad hominem* attack, Simons smears the dissident judges as tools of Milosevic, claiming that their finding of only participation rather than control was a Milosevic “stratagem” and “victory”: “Mr. Milosevic has now by some accounts hoodwinked two of the tribunal’s judges.” For these “some accounts” she seems to be relying on “diplomats” and an unnamed “international lawyer.” The heroine in her morality tale here is Judge Gabrielle Kirk McDonald, the Clinton State Department’s contribution to international justice, and former (and post-Tribunal) director and counsel of the notorious human rights violator Freeport-McMoRan Copper & Gold Inc., who stood firmly by the NATO position in this voting. Simons also quotes Gow, who is NATO-friendly, but completely ignores Hayden’s extensive arguments supporting the position of the “hoodwinked” judges.

We might also note that the argument accepted by McDonald and Simons, that the participation of the Yugoslav government with the Bosnian Serbs in the form of funding support and occasional joint operations was proof of Yugoslav control, would point to U.S. and NATO-power control of the Tribunal itself. Not surprisingly Marlise Simons has never made this analogy or drawn this inference.

Over the course of the prosecution’s seemingly endless parade of witnesses, which totaled 296 in all before it rested its case on February 25, 2004, almost 25 months after the case opened, the prosecution frequently cultivated a sense of anticipation that this witness, or that, would be the one to serve up the coup-de-grace for Milosevic. One such witness was the three-time President of an independent Slovenia, Milan Kucan – the man who “led the Slovene delegation out of a Communist Party congress in 1990,” Simons notes, and declared independence from Yugoslavia the summer of the following year. (97) Simons’ relatively brief coverage of Kucan’s single day before the Tribunal (98) touched on a key moment of Milosevic’s cross-examination, when Milosevic asked Kucan, “Why did you need this war? You opted for violence. . . .” But such a question Simons balanced with Kucan’s testimony that Slovenia was acting in response to Milosevic’s threats that “borders might be redrawn by force,” along with her own gloss on Kucan’s testimony that “it had become clear to him that Mr. Milosevic would use every means, even violence, to keep all Serbs in a Yugoslav state.” Simons failed to report the one question to which Milosevic returned, over and over again: “Why did you attack the JNA in Slovenia?” (99) That is, why did the Kucan Government’s forces attack the forces of the Federal Government, given the latter’s constitutional responsibility to defend the territorial integrity of Yugoslavia, and ensure domestic order? (100) Simons also failed to report the extensive documentation that Milosevic tried to present on the violence that the Slovene Territorial Defense Units and paramilitaries had perpetrated against the regulars of the JNA

and family members after the declaration of Slovenian independence, (101) or Milosevic's claim that the Yugoslav Constitutional Court had ruled no less than 27 times that the route adopted by Slovenia's political leadership towards independence was incompatible with the Federal Constitution. (102) Nor did Simons mention Milosevic's contention that before and after Slovenia's so-called Ten Day War, the Kucan Government was involved in the shipment of arms to the far more hotly contested breakaway republics of Croatia and Bosnia-Herzegovina, and the Serbian province of Kosovo. (103) Indeed, as far as Simons was concerned, each of the antagonists accused the "other of warmongering as they relived their fight of more than a decade ago" – and that was it. In keeping with her standard practice, however, Simons did remind *Times* readers that Milosevic "is widely held to be most responsible for leading the Serbs into conflicts in Croatia and Bosnia that took more than 200,000 lives." (104)

Zoran Lilic and Borisav Jovic, two ethnic Serbs and former close colleagues of Milosevic whose appearances as prosecution witnesses received the same kind of promotion as Kucan's, also gave testimonies that proved equally deflating. Indeed, Lilic's three days before the Tribunal happened to coincide with what appears to have been a maneuver by the increasingly desperate Office of the Prosecution to divert attention away from Lilic's actual testimony, in which the former Yugoslav President (1993-1997) rejected the core of the prosecution's contention that Milosevic's guilt for "genocide" in Bosnia-Herzegovina rests with his "command responsibility" for the alleged massacre of some 7,000 Bosnian Muslims following the evacuation of the Srebrenica "safe area" in July 1995. "I am sure he could not have issued an order of that kind," Lilic said during his extensive first day's testimony. "I am quite certain [Milosevic] didn't have influence on a decision of that kind." (105) But Simons reduced the whole of Lilic's three days of testimony to a total of 16 quoted words spread over two short paragraphs at the very end of her article. Instead, Simons swallowed the Office of the Prosecutor's bait, its revelation of a document that "may prove to be crucial evidence in support of their case that the former Yugoslav president is guilty of genocide." First published on the webpage of the highly-compromised Institute for War & Peace Reporting, the alleged document "not only puts Serbian special police at the massacre site but also provides a direct link to Mr. Milosevic," Simons reported. "[T]his is the first such document relating to the July 1995 massacre," an anonymous "official in the prosecutor's office" told her. (106) In this manner Simons and the *New York Times* helped the prosecution salvage the Lilic bust by rushing to print news about an alleged secret document proving Serb perfidy, a document whose shelf life proved to be exceedingly short, once its real purpose had been served.

As for Borisav Jovic, the former Serbian representative on the collective Federal Presidency for Yugoslavia during the period the Federation dissolved into wars, neither Simons nor any of her colleagues with the *New York Times* reported his three-days of testimony before the Tribunal in November 2003, which also hurt the prosecution case by denying Milosevic command responsibility for Bosnian killings but which also scoffed at the crucial prosecution claim of a plan for a "Greater Serbia." (107) Jovic also discussed the matter of "ethnic cleansing," agreeing that the practice existed, but denying that Milosevic's policies ever supported it. (108) Jovic gave his testimony despite the fact that in its indictments of Milosevic, Jovic's name



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appears right alongside those “individuals participating in [the] joint criminal enterprise.” (109) This should make Jovic “clearly wary of incriminating himself,” in the view of one observer, (110) with the Tribunal holding the threat of his potential indictment over his head, actionable at any time. (111) But as with Lilić’s earlier testimony, this was not news fit to print on the pages of the *New York Times*.

In one of the most remarkable moments in the trial of Milosevic, the prosecution brought on as a witness Radomir Markovic, the former head of State Security of Yugoslavia, who came to the Hague after having been held for 17 months in a Serb jail. On cross-examination, he completely repudiated the testimony he had made to his jailers, contending that Milosevic had not only had nothing to do with any crimes committed in Kosovo but had tried to curb them and punish any violators. Most interesting, he testified that he had been threatened with criminal prosecution unless he agreed to testify against Milosevic, and was offered bribes for cooperation. Marlise Simons mentions that Markovic was a prosecution witness in her first article on his testimony, (112) but when in cross-examination he exonerated Milosevic from criminal activity and described the bribe-threat combination that he had faced, Simons’s follow-up article is very short and evasive. (113) She no longer mentions that he was a prosecution witness, and she completely suppresses his bribe-threat claims. He is now portrayed as a friend of Milosevic who “has sided with his boss.” In both articles dealing with Markovic’s testimony, Simons gets in sentences on “shocking details about atrocities against ethnic Albanians” that have no connection with the main topics of the articles.

In many cases the bribe-threat combination that Markovic describes and Simons cannot acknowledge in his case has been effective. The threat was increasingly effective as targets became aware of the fact that the deck was stacked against them – that Tribunal rules were flexible, that traditional rules against hearsay, double-jeopardy and rights of appeal were inoperative, that NATO-agent judges and prosecutors were free to pursue and punish Serbs without constraint as “the fix was on.” (114) Under these conditions, and with the post-Milosevic Serbian government now both cooperative and under intense pressure to cooperate without limit, resistance to the blandishments of “confessions” and “plea-bargaining” weakened. A major problem, however, has been whether the confessions might be false and the newly-minted claims of the (almost invariably) Serb villain were true or whether he was saying what he felt would diminish his sentence. In the Bulgarian Connection case, Agca confessed to Bulgarian and KGB guilt, after many months of interrogations and disclosure of the desired line of confession. It is now clear that he was lying, but the *New York Times* and its colleagues lapped up the lies with uncritical zeal.

And now, with a new problematic on confessions, it is notable how similarly uncritical Simons and her *Times* colleagues are on plea-bargaining. Not once in 120 articles does she suggest the possibility of coaching and systematic false witness based on the plea-bargaining process. She treats it as a purely innocent and excellent innovation designed to speed things up a bit, and she asserts that the new cooperation on the part of the indictees is based above all on their new sense that the Tribunal is fair! (115) Any other possible explanation is unmentioned.

The issue was posed once again in the case of Bosnian Serb intelligence officer Momir

Nikolic, who confessed to Serb crimes at Srebrenica in exactly the form desired by the prosecution: “with cool precision,” as Simons described, quoting directives that “the life of the enemy must be made unbearable,” and describing the actions taken in preparation for mass executions, although it turns out that Nikolic himself didn’t witness any executions. (116) He and a colleague helped organize digging mass graves, and later digging up bodies and reburying them in secret sites – though no explanation is offered as to why they didn’t bury them in secret sites in the first place, or how a site is made “secret.”

A problem arose in Nikolic’s testimony, however, when on cross-examination it was demonstrated, and he himself acknowledged, that he had lied in claiming his presence at a particular massacre. Simons mentions this incongruous fact, very briefly, placing it near the end of a long article that paraphrased Nikolic as saying that “he accepted more guilt, fearing that the plea agreement might fall through.” (117) This might suggest the possibility that Nikolic’s other claims could have been equally untrue and dictated by the demands of those offering him his plea bargain. But this, along with the possibility of witness coaching, are not discussed by Simons, as she hastened on to more important matters.

Prosecution witness protection was one of the specialties of Milosevic trial judge Richard May. From the beginning, instead of leaning over backward to help the unrepresented accused, May not only displayed open hostility toward him, he limited and interfered with his cross-examination, while giving great freedom and protection to the prosecution and its witnesses. The experienced Canadian trial lawyer Edward Greenspan was outraged at the fact that May violated “the well-known principle that no judge can arbitrarily set a time limit on, or interfere with, a cross examination.” Within an hour-and-a-half of the beginning of Milosevic’s first cross-examination, “May impatiently asks: ‘How much longer do you think you’re going to be with this witness?’...The first witness of what is to be a lengthy trial, and the judge is putting time limits on the accused. May doesn’t even feign impartiality, or, indeed, interest.” Greenspan is also shocked at May’s admonition to Milosevic not to cross-examine “as a way of harassing or intimidating witnesses.” Brutality is “calculated to unnerve, confuse, but ultimately to expose. Cross-examination is a duel between counsel and the witness. The only weapon the defendant has is the right to ask questions.” (118)

One observer of Judge May’s methods in the first week of June 2002, the British paralegal Ian Johnson, noted that “at no time during this process did the judge... stipulate a time limit on the prosecution. Yet when it was the turn of Mr. Milosevic to cross-examine the witness, Judge May would instruct that a time limit be put on the proceedings.” Johnson reports that when the prosecution witness Mr. Buyo, a KLA commander in the Racak area, was put under pressure by Milosevic, who caught him in a contradiction and with the witness clearly in trouble, Judge May instructed: “Move on Mr Milosevic, you have laboured this point enough.” As Johnson points out, “Mr Buyo was off the hook.” In the cross-examination of another claimed eyewitness to a massacre of civilians, who said that the Serb forces had separated the women and children from the men and then proceeded to execute all of them, Milosevic asked him why they bothered to do the separation if they were going to kill them all. But Judge May interjected: “I don’t think you can expect the witness to know that,” when of course Milosevic

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was probing possible false testimony. This probe was terminated by the judge.

With another witness, who claimed to have overheard threatening conversations by Serb commanders from his position hidden in an attic, Milosevic got him into difficulties based on noise and distance, in the midst of which Judge May says: “Move on Mr. Milosevic, the witness has told you his position,” protecting the witness from serious embarrassment and from being discredited.

In another case, where the witness claimed her town had been hit by Yugoslavia airplanes, and displayed a knowledge of technical names of weaponry that was implausible and suggested coaching, when Milosevic tried to press this point, May simply cut him off: “She has answered your question [about who told her to say what she did]. She said nobody did and that is what she saw, and that’s her evidence. No point arguing about it.” (119)

Even more dramatic was Judge May’s handling of the testimony of William Walker on June 11-12, 2002. Although Walker ranged far and wide, even covering his estimate of Milosevic’s “general attitude,” May never interrupted him once in nearly two hours of testimony. Although the “Racak massacre” claim was the basis of 45 charges of murder against Milosevic in the indictment for Kosovo, and although Walker’s credibility as the main driver of that claim was important and relevant, May announced in advance a limit of three hours to cross-examination, and then proceeded to interrupt Milosevic’s questioning *over 70 times*. His deference to “Ambassador” Walker, as May called him, was striking, as May actively prevented a serious cross-examination that might have challenged Walker’s credibility and exposed his lies. If Walker simply dodged a question with “I don’t recall,” May protected him from any further questions. May refused to allow Milosevic to contrast Walker’s immediate conclusion that the finding of the bodies at Racak constituted a massacre with Walker’s foot-dragging in the case of murders in El Salvador, when he served as the U.S. Ambassador to the country in 1989: “Your attempt to discredit this witness with events so long ago the Trial Chamber has ruled as irrelevant,” May insisted. (120) In short, this episode of witness protection and judicial abuse would by itself provide very strong grounds for throwing out the trial as unfair in a court system of integrity.

May frequently allowed prosecution witnesses to testify at length about personal experiences, and to attack Milosevic, usually without supportive and verifiable evidence, and to recite hearsay experiences. In Mahmut Bakali’s testimony on February 18, 2002, the witness cited what a local Serb official claimed to have heard Milosevic might have said about Kosovo – twice-removed hearsay – without judicial interference. (121). By contrast, Judge May would not allow Milosevic to cite articles from *Le Monde* and *Le Figaro* that raised serious doubts about the nature of the Racak incident in his cross-examination of William Walker – our meticulous judge insisted that the reporters themselves would have to be brought to testify, rather than the articles they had written. Because of the absence of any ban on hearsay, and judicial bias, it has been estimated that “over ninety percent” of the evidence cited in the Tribunal proceedings is from hearsay sources. (122) The Tribunal has also decided that in cases of rape or sex crimes, “no corroboration of the victim’s testimony shall be required.” (123)

We should also mention that Judge May repeatedly told witnesses that they should not

communicate with others during the period when they were testifying, as in the hearing on November 13, 2003: "Lieutenant Colonel, could I remind you, please, as we remind all witnesses, not to speak to anybody about your evidence until it's over." But with General Wesley Clark, he allowed the U.S. government to force a closed session and to redact the testimony before release, and Clark was permitted to speak to others during the course of his testimony. Clark could even phone Bill Clinton in the midst of his testimony, get him to send a fax letter, and read that letter in court. As noted, May would not allow Milosevic to introduce articles from *Le Monde* and *Le Figaro*, requiring from him the physical presence of the reporters. In response to one simple question by Milosevic on a statement about Clark by his superior General Henry Shelton, Clark launched into a ten minute monologue of self adulation, without any interruption by Judge May. May would also not allow Milosevic to ask questions about NATO's intervention, whether the attack on Yugoslavia was legal, or whether it was a war. He could not ask questions challenging Clark's credibility, or anything not directly responsive to Clark verbal claims. Again, as with the William Walker testimony, this would be the basis for declaration of an unfair trial in an honest judicial system. But Marlise Simons and her *Times* colleague Elaine Sciolino never noticed, (124) and never sought comment from anybody who would challenge this almost humorous travesty of the judicial process. (125)

Marlise Simons' treatment of Judge May and his courtroom practice was entirely favorable and without a single note of criticism. Sober, polite, patient, giving Milosevic more time than the prosecution. Simons found that "a consensus is growing that Mr. Milosevic is being treated fairly in the courtroom," although once again she provides no source or evidence for the alleged consensus. (126) The idea that, as Edward Greenspan indicated, it was outrageous to arbitrarily limit cross-examination time, never struck Simons, nor did she ever mention the failure of May to interrupt Walker once while doing it incessantly with Milosevic. She never once found his protection of witnesses or acceptance of hearsay from them, but much harsher treatment of Milosevic, problematic. Milosevic, on the other hand, is repeatedly criticized by Simons for "filibustering," "stalling," "playing to an audience," "often trying to bend the rules" and even for "demanding as much time to question a witness as the prosecution" – a display of profound ignorance about the judicial process. (127) Given the facts, even in the summary form presented here, this apologetic for May, along with steady carping at Milosevic's courtroom performance, reflects deep bias.

## **CONCLUDING NOTE**

In February, 2004, it was reported that the United States and other NATO powers were now pressing the Tribunal to remove the authority to initiate prosecutions from prosecutor Carla Del Ponte, and transfer this authority to the Tribunal judges; and that in the interim, the judges were not giving approval to Del Ponte's requests to commence further prosecutions. It was alleged that Del Ponte had been too aggressive in seeking indictees, whereas the United States was eager to scale down Tribunal operations and would be satisfied to just dispose of Milosevic, along with the Bosnian Serb wartime leader Radovan Karadzic and General Ratko

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Mladic, and close the Tribunal down. (128) Does this mini-struggle and need to constrain Del Ponte demonstrate Tribunal autonomy? No, it does not. Puppets frequently get an inflated view of their importance, and have to be slapped down by their principals. (129) Moreover, it is clear in this case that the principals are well on their way to revamping the decision-making structure of the Tribunal to meet their latest priorities.

Anybody reading *Not Guilty: Report of the Commission of Inquiry Into the Charges Made Against Leon Trotsky in the Moscow Trials* (1937), written by a group chaired by John Dewey, (130) can only be struck by the frequent parallels between Soviet and ICTY principles and court procedure. The Dewey Commission stressed the political and public relations function of the Moscow trials, (131) and the “prearranged scheme” and plan to prove that a single bad man (Trotsky) was guilty. (132) The Commission argued that there was no real effort to establish truth, but merely to prove guilt. (133) It stressed the self-interest of the accusers. (134)

We have tried to show that the International Criminal Tribunal for the Former Yugoslavia has been a thorough-going servant of NATO, and that the political model of the ICTY fits its history and record very closely. We have also tried to show that its judicial practice has continuously violated traditional Western standards almost across the board, even apart from its selective and politicized (and hyper-publicized) indictments and trials.

The *New York Times*’s Marlise Simons, however, has portrayed the Tribunal as a marvel of Western justice, by denying or (mainly) evading the evidence of its political role and judicial malpractice. We find it hard to believe that the Soviet media at the time of the Moscow show trials in 1936 could have done a better job on behalf of the Soviet prosecutor than Simons has done for the ICTY’s prosecutors. In fact, Simons has almost surely done the better job, because she does quote Milosevic, even if briefly and with derisive comments; and while hugely biased, she is not frenzied and hysterical in her abuse of the villains. There is even a very small trickle of inconvenient facts within the overwhelming barrage of Tribunal-supportive propaganda. But this is effective propaganda – not propaganda that ordinary people will easily see through. As evidence gradually breaks through the “coercive consensus” that now prevails, and upsets claims of the Tribunal that have been conducted by Simons (though she is far from alone), we believe that, as with the Bulgarian Connection, Simons and the *New York Times* will not rush to straighten out their brain-washed readers.

## FOOTNOTES

1. For details, see Edward S. Herman and Noam Chomsky, *Manufacturing Consent: The Political Economy of the Mass Media* (New York: Pantheon, 1988 and 2002), Ch. 4 and Introduction to 2002 revised edition, pp. 143-167; and pp. xxvii-xxix.
2. Stacy Sullivan, "Milosevic's Willing Executioners," *New Republic*, May 10, 1999. Remaining faithful to this vision of the Serbs' ultimate responsibility for the wars, the next issue of the *New Republic* followed with Harvard academic Daniel Jonah Goldhagen's defense of NATO's war against, and eventual occupation of, Serbia, on the grounds that "by supporting or condoning Milosevic's eliminationist politics, [the majority of the Serbian people] have rendered themselves both legally and morally incompetent to conduct their own affairs..." "A New Serbia," May 17, 1999.
3. For two examples of the "party line" or standard media version: First, the journalist Christopher Hitchens asserts that these were wars "between all those who favor ethnic and religious partition and all those who oppose it." ("Ethnic cleansing in Bosnia," *The Nation*, October 23, 1995.) This is a comic strip version of recent Balkan history. A second comes from the Tribunal's indictment of Milosevic for the wars that consumed the former Republic of Bosnia-Herzegovina, in which the Tribunal charges him with having begun to participate in a "joint criminal enterprise" no later than August 1, 1991 (i.e., at least seven months before the Muslim-led government in Sarajevo declared the Republic's independence from Yugoslavia), the explicit purpose of which was the "forcible and permanent removal of the majority of non-Serbs, principally Bosnian Muslims and Bosnian Croats, from large areas of the Republic of Bosnia and Herzegovina." (*The Prosecutor of the Tribunal Against Slobodan Milosevic, Indictment [for Bosnia-Herzegovina]*, Case No. IT-01-51-I, November 22, 2001, pars. 5-9, < <http://www.un.org/icty/indictment/english/mil-ii011122e.htm>>.)
4. Among the most helpful contesting sources on the breakup of Yugoslavia are: Tariq Ali, ed., *Masters of the Universe: NATO's Balkan Crusade* (New York: Verso, 2000); Steven L. Burg and Paul S. Shoup, *The War in Bosnia-Herzegovina: Ethnic Conflict and International Intervention* (Armonk, New York: M. E. Sharp, 1999); David Chandler, *Bosnia: Faking Democracy After Dayton* (Sterling, Virginia: Pluto Press, 1999); Noam Chomsky, *The New Military Humanism: Lessons from Kosovo* (Monroe, Maine: Common Courage Press, 1999); Lenard J. Cohen, *Broken Bonds: Yugoslavia's Disintegration and Balkan Politics in Transition*, 2<sup>nd</sup> Ed. (Boulder, Colorado: Westview Press, 1995); Lenard J. Cohen, *Serpent in the Bosom: The Rise and Fall of Slobodan Milosevic* (Boulder, Colorado: Westview Press, 2001); Philip Hammond and Edward S. Herman, eds., *Degraded Capability: The Media and the Kosovo Crisis* (Sterling, Virginia: Pluto Press, 2000); Robert M. Hayden, *Blueprints for a House Divided: The Constitutional Logic of the Yugoslav Conflicts* (Ann Arbor, Michigan: University of Michigan Press, 1999); Robert M. Hayden, "Biased 'Justice': Humanrightsism and the International Criminal Tribunal for the Former Yugoslavia," *Cleveland State Law Review*,

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1999; Edward S. Herman and David Peterson, "Morality's Avenging Angels," in David Chandler, ed., *Rethinking Human Rights: Critical Approaches to International Politics* (London: Palgrave Macmillan, 2002), pp. 196-216; Diana Johnstone, *Fools' Crusade: Yugoslavia, NATO and Western Delusions* (New York: Monthly Review Press, 2002); Michael Mandel, "Politics and Human Rights In International Criminal Law: Our Case Against NATO And The Lessons To Be Learned From It," *Fordham International Law Journal*, 25: 95-128 (November, 2001); Michael Mandel, *How America Gets Away With Murder: Illegal Wars, Collateral Damage and Crimes Against Humanity* (London: Pluto, June 2004); Kirsten Sellars, *The Rise and Rise of Human Rights* (London: Sutton Publishing, 2002); and Susan L. Woodward, *Balkan Tragedy: Chaos and Dissolution After the Cold War* (Washington, D.C.: The Brookings Institution, 1995).

5. Raymond Bonner, *Weakness and Deceit: U.S. Policy and El Salvador* (New York: Times Books, 1984), Ch. 16; Edward Herman and Peter Rothberg, "Media Thugs Slug It Out," *Lies of Our Times*, June 1993, pp. 3-4. As for the dramatic drop off in the appearance of David Binder's byline in reports about the former Yugoslavia in the *New York Times*, a search of the Nexis database shows that for the years 1990-1993, the *Times* ran Binder's reports on Yugoslavia a total of 146 times, 51 of these having appeared during 1993 alone; and yet after 1993, Binder's reporting on Yugoslavia fell to only three times in 1994, and never more than twice during any subsequent year.

6. Several of Simons' articles were co-authored with other *Times* reporters, and we will refer occasionally to articles by these other reporters to show that on the points with which they deal, they also adhere to the party line, virtually without exception.

7. On the role of human rights organizations – most notably the U.S.-based Human Rights Watch – and their moral advocacy on behalf of NATO's military intervention in Yugoslavia and the proceedings of the Tribunal, see Sellars, op. cit., Ch. 9.

8. The 120 articles that comprise our Simons universe were extracted from the Nexis database by performing a "Power" search of the *New York Times* through December 31, 2003. In the terminology of the Nexis database, we used the following search parameters:

\* *Byline(Marlise w/3 Simons) and Tribunal or The Hague and Yugoslavia or Serbia or Slovenia or Croatia or Bosnia or Kosovo and date bef 2004*

9. Marlise Simons, "War Crimes Trial Seeks to Define the Balkan Conflicts," *New York Times*, May 12, 1996. – We discuss below Simons' hugely biased treatment of the issue.

10. Cohen, *Serpent in the Bosom*, p. 380. Among other establishment truths that Simons repeats uncritically and frequently is the claim that Milosevic was driven by his desire for a "Greater Serbia," even a living space entirely freed of non-Serbs. That he was being pressed by Serb minorities who found themselves stranded within the newly independent states of Croatia and Bosnia-Herzegovina to help them stay within a "Shrinking Yugoslavia" never

occurs to Simons. See Johnstone, op. cit., pp. 32ff.

11. For illustrations of these confident assertions that “we have the evidence,” which they most assuredly did *not* have, see Herman and Chomsky, op. cit., pp. 154-157.

12. For example, “Prosecutors said their cases against the most senior Serb leaders... were solid” (Simons, May 18, 1997); “the changes have engendered a rare sense of excitement in the sober high-security building” (Simons, April 10, 2000); and “Milosevic, insiders say, has taken great pains to avoid written orders” (Simons, June 20, 2003).

13. Cedric Thornberry, a U.N. official with long experience in Bosnia, wrote in 1996 that the consensus evolving “in parts of the international liberal media” that the Serbs were “the only villains... did not correspond to the perceptions of successive senior U.N. personnel in touch with daily events throughout the area.” “Saving the war crimes tribunal,” *Foreign Policy*, Fall, 1996, p. 78. Among many other documents making the same point on the basis of very strong evidence, see Raymond K. Kent, “Contextualizing Hate: The Hague Tribunal, the Clinton Administration and the Serbs,” 1996, <<http://emperors-clothes.com/misc/kent.htm>>.

14. For example, Simons writes that Milosevic “faces a succession of witnesses, many of them humble villagers, who have traveled from Kosovo to The Hague to confront him and accuse him of destroying their lives.” “Revising Memories Of Yet Another Evil,” *New York Times*, September 22, 2002.

15. Just considering here Bosnia and Croatia, on May 24, 1993, the Yugoslav government submitted a Letter to the U.N. on “War Crimes and Crimes and Genocide in Eastern Bosnia... Committed Against the Serb Population from April 1992 to April 1993.” This document describes the “almost complete ethnic cleansing of Serbs” from Srebrenica before the autumn of 1992, and lists 12 settlements and 39 villages destroyed and burnt down by Bosnian Muslim forces, with about 1,200 killed and between 2,800 and 3,200 injured. The almost complete ethnic cleansing of Serbs from Srebrenica described in this document is supported by the monthly reports of the U.N. High Commissioner for Refugees, which also show that all the so-called “safe areas” (i.e., rendered safe for Bosnian Muslims) had been substantially cleansed of Serbs before July 1995. Half of the Serb population of the overall area around Srebrenica had been driven out by this time. This report includes scores of affidavits from Serb victims, who were often able to name the Bosnian Muslims who attacked them.

An even more extensive document produced by the Serbian Council Information Center was titled, “Persecution of Serbs and Ethnic Cleansing in Croatia 1991-1998.” This document provided massive data on killings, destruction of homes, and enforced flight, similar in character to the data put forward by the Tribunal in its focus on the persecution of Bosnian Muslims. These documents have never been mentioned in the *New York Times*, and the perpetrators of these crimes have never been indicted by the Tribunal.



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16. Ian Fisher and Marlise Simons, "Defiant, Milosevic Begins His Defense By Assailing NATO," *New York Times*, February 15, 2002.
17. See Philip Hammond, "Moral Combat: Advocacy Journalists and the New Humanitarianism," in Chandler, ed., *Rethinking Human Rights*, pp. 176-195.
18. Edward L. Greenspan, "This is a lynching," *National Post*, March 13, 2002.
19. Fisher and Simons, op. cit.
20. See U.N. Security Council Resolution 827, May 25, 1993, <<http://www1.umn.edu/humanrts/peace/docs/scres827.html>>.
21. David J. Scheffer, Congressional Testimony on the Establishment of a Permanent International Criminal Court before the Committee on Foreign Relations of the U.S. Senate, Federal Document Clearing House, July 23, 1998. Scheffer was then serving as the liberal Democratic Clinton Administration's Ambassador-at-Large for War Crimes Issues.
22. Jamie Shea, "Daily NATO Briefing," NATO Headquarters, Brussels, Belgium, Federal News Service, May 17, 1999.
23. Sellars, op. cit., p. 184.
24. This hyperlink was removed shortly after Del Ponte issued a report explaining the Tribunal's exoneration of NATO of any criminal conduct during the war, even before the Tribunal had conducted an investigation of possible criminal conduct, perhaps in reaction to the harsh criticism with which this hyperlink was met. See Mandel, "Politics and Human Rights. . .," op. cit., pp. 98-99.
25. Michael Scharf, "Indicted For War Crimes, Then What?," *Washington Post*, October 3, 1999.
26. Quoted in Hayden, "Biased 'Justice'," pp. 560-561.
27. Quoted in Miriam Skoco and William Woodger, "War Crimes," in *Degraded Capability*, p. 35.
28. Former Chief Prosecutor Louise Arbour's complaints were aired by Simons in "Proud but Concerned, Tribunal Prosecutor Leaves," *New York Times*, September 15, 1999.
29. "Tribunal: How It Works," *New York Times*, February 12, 2002.
30. Marlise Simons, "U.N. War Crimes Tribunal Steps Up Its Inquiry Into Kosovo," *New York Times*, August 26, 1998.
31. "War crimes court opens inquiry into Kosovo massacre," Agence France Presse, January 17, 1999.

32. Barton Gellman, "The Path to Crisis: How the United States and Its Allies Went to War," *Washington Post*, April 18, 1999; and Allan Little, "How NATO was sucked into the Kosovo conflict," *Sunday Telegraph* (London), February 27, 2000.

33. Quoted in Skoco and Woodger, *op. cit.*, p. 35. Of course, it may be true that Arbour considered the information "corroborated" by the simple fact that NATO offered it to her. But if true, Arbour's independence dissipates into nothing.

34. Marlise Simons, "Militia Leader Arkan Is Indicted For War Crimes," *New York Times*, April 1, 1999.

35. Sellars, *op. cit.*, pp. 183-184.

36. Marcus Gee, "Doubts Raised Over Impartiality of Prosecutor," *Globe and Mail*, April 21, 1999.

37. As U.S. Secretary of State Madeleine Albright explained the significance of the Tribunal's indictment of Milosevic for Kosovo at a news conference on May 27, 1999: "[T]his is an important step forward and it will, one, make very clear to the world and the publics in our countries that this is justified because of the crimes committed, and I think also will enable us to keep moving all these processes forward, as I have said now, the idea of continuing with the air campaign, dealing with the humanitarian situation and also following through on various diplomatic ideas." "Madeleine Albright Holds Media Availability with Canadian Minister of Foreign Affairs Axworthy," FDCH Political Transcripts, May 27, 1999.

The Tribunal's indictment of Milosevic *et al.* for alleged crimes committed in the Serbian province of Kosovo is remarkable for another little acknowledged reason: With the exception of the charges that pertain to the alleged massacre of 40-45 ethnic Albanians in and around the village of Racak, all of the other alleged crimes covered by the indictment occurred *after* the start of NATO's war on March 24, 1999. In essence, this meant that the Tribunal tried thereby to grant the NATO powers not only the *de jure* pretext for waging a non-U.N.-approved, and aggressive, war against another sovereign state, but that the target of this war, the rump Yugoslavia, would be uniquely charged with a litany of crimes for which NATO leaders were exempt by virtue of politically-based selectivity. See *The Prosecutor of the Tribunal Against Slobodan Milosevic et al., Initial Indictment [for Kosovo]*, Case No. IT-99-37, May 22, 1999, <<http://www.un.org/icty/indictment/english/mil-ij990524e.htm>>, as well as both subsequent *Amended Indictments*.

38. Hedging its conclusion, Human Rights Watch declared NATO guilty of violations of international humanitarian law, while Amnesty International charged NATO with crimes of war for its bombing of civilian targets. See Human Rights Watch, *Civilian Deaths in the NATO Air Campaign*, February 6, 2000, <<http://www.hrw.org/reports/2000/nato/>>; Amnesty International, "Collateral Damage" or Unlawful Killings?, June 6, 2000, <<http://web.amnesty.org/library/index/ENGEUR700182000>>. For an analysis of NATO's

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“humanitarian” intervention as a war of aggression, see the *Memorandum submitted by Professor Ian Brownlie CBE, QC to the Foreign Affairs Committee of the British House of Commons*, May 23, 2000, <<http://www.parliament.the-stationery-office.co.uk/pa/cm199900/cmselect/cmaff/28/28ap03.htm>>.

39. “CRISIS IN THE BALKANS; Prosecutor’s Statement: ‘Sufficient Evidence,’” *New York Times*, May 28, 1999.

40. “By her statement, the ‘chief prosecutor’ has tried to act as a surrogate politician and to influence political events in the interest of the NATO countries presently waging war against Yugoslavia.” Hans Koechler, “Illegal Tribunal – Illegal Indictment,” April 23, 2001, <<http://emperors-clothes.com/docs/prog2.htm>>. Koechler has served as the President of the International Progress Organization, an NGO that has worked with the United Nations for many years.

41. As Tribunal President Antonio Cassese once explained, “The indictment means that these gentlemen will not be able to participate in peace negotiations.... The politicians may not give a damn, but I’m relying on the pressure of public opinion.” Quoted in “Karadzic A Pariah, Says War Crimes Tribunal Chief,” ANP English News Bulletin, July 27, 1995.

42. Thornberry, op. cit., p. 74.

43. As John Laughland observes: “We now think of Nuremberg mainly as the trial of the Holocaust. This is not how the architects of Nuremberg saw matters. Exhausted by up to six years of all-engulfing war, the allies were mainly preoccupied with the fact that Nazi Germany had plunged the whole world into conflict.... For the judges at Nuremberg, the primordial war crime was to start a war in the first place. All other war crimes flowed from this. Although naked aggression has always been illegal under customary international law - as is attested by the numerous and no doubt spurious legal justifications made throughout history by belligerent states for their actions - Nuremberg was innovatory in its clear legal formulation that the planning and execution of a war of aggression constituted a criminal act in international law. It was for this crime, and not for crimes against humanity, that all the Nazis at Nuremberg were judged.” “This is not justice: The Hague has replaced Nuremberg’s jurisprudence of peace with a licence to the west to kill,” *The Guardian* (London), February 16, 2002.

44. For a copy of the *Updated Statute of the International Criminal Tribunal for the Former Yugoslavia* (November, 2003), see <<http://www.un.org/icty/legaldoc/index.htm>>.

45. For a copy of the document filed by Michael Mandel et al. before the ICTY, requesting that the Prosecution investigate NATO-bloc officials for serious violations of international humanitarian law that fall within the jurisdiction of the Tribunal, May 6, 1999, see <<http://jurist.law.pitt.edu/icty.htm>>.

46. Mandel, "Politics and Human Rights..." op. cit., p. 95.
47. Ibid, p. 95.
48. *Final Report to the Prosecutor by the Committee Established to Review the NATO Bombing Campaign Against the Federal Republic of Yugoslavia*, U.N Doc. PR/P.I.S./510-E [2000], <<http://www.un.org/icty/pressreal/nato061300.htm>>. (OTP Report hereinafter.)
49. Ibid, par. 53.
50. BBC Newsnight, February 12, 2002.
51. *OTP Report*, op. cit., pars. 59-61.
52. Mandel, op. cit., pp. 117-118.
53. "UN war crimes tribunal focusing on commanders and leaders Kosovo," Agence France Press, September 29, 1999, italics added.
54. Announcing that its "forensic program has been successfully completed," Carla Del Ponte stated that investigators had "found the remains of some 4,000 victims." "Statement to the Press by Carla Del Ponte," *FH/P.I.S./550-E*, December 20, 2000, <<http://www.un.org/icty/latest/index.htm>>.
55. Kinkel's charge that the Serbs were the "main source of the evil" in the conflict, that their "ruthless war aimed at creating an ethnically cleansed greater Serbia," and that they were committing "genocide" in the process, first surfaced in late August, 1992, in the days leading up to the International Conference on Yugoslavia in London. See Patrick Moser, "Peace conference on Yugoslavia opens in London," United Press International, August 26, 1992.
56. Elaine Sciolino, "U.S. Names Figures It Wants Charged with War Crimes," *New York Times*, December 17, 1992. See also Johnstone, op. cit., pp. 73-74.
57. Geoffrey Robertson, *Crimes Against Humanity: The Struggle for Global Justice* (New York: The New Press, 2000), p. 301. "Frustrating as it was for the judges to wait for suspects to fall into a net that NATO was not prepared to cast," Robertson adds, "it was inappropriate for [Cassese] to demand their arrest in language which suggested he had made up his mind about their guilt."
58. "Nasir Oric's war trophies don't line the wall of his comfortable apartment," the *Washington Post's* John Pomfret once reported. "They're on a videocassette tape: burned Serb houses and headless Serb men, their bodies crumpled in a pathetic heap." "Weapons, Cash and Chaos Lend Clout to Srebrenica's Tough Guy," February 16, 1994.
59. Oric was not indicted until March 28, 2003, and then only on charges related to "violations of the laws and customs of war," the least grave among the hierarchy of violations for

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which the ICTY can bring charges – but not “crimes against humanity,” and certainly not “genocide.” See *The Prosecutor of the Tribunal Against Naser Oric, Amended Indictment*, Case No. IT-03-68-PT, July 16, 2003, <<http://www.un.org/icty/indictment/english/ori-ii030328e.htm>>.

60. *The Prosecutor of the Tribunal Against Milan Martić, Initial Indictment*, Case No. IT-95-11, July 25, 1995, par. 7; pars. 15-18, <<http://www.un.org/icty/indictment/english/mar-ii950725e.htm>>; and Hayden, “Biased ‘Justice’,” pp. 573-575.

61. Marlise Simons, “General Gets 20 Years for Sarajevo Atrocities,” *New York Times*, December 6, 2003.

62. *The Prosecutor of the Tribunal Against Ante Gotovina*, Case No. IT-01/45-I, <<http://www.un.org/icty/indictment/english/got-ii010608e.htm>>.

63. On the presence of the Mujahedin as well as mercenary and other forces tied to (largely American) military-related corporations in Bosnia, see Cees Wiebes, *Intelligence and the War in Bosnia 1992-1995* (London: Lit Verlag, 2003), Ch. 4, “Secret Arms Supplies and Other Covert Operations,” esp. pp. 207-208.

64. Following the deaths of Franjo Tudjman (December 10, 1999) and Alija Izetbegovic (October 19, 2003), the Office of the Prosecutor claimed that both men had been under investigation for possible indictment for actions taken during their wartime leaderships. Of course, in neither case was an indictment ever produced; and in both instances, the deaths of these two figures permanently closed their cases. On Tudjman, see “Tudjman buried Monday,” Agence France Presse, December 13, 1999; and Beth Potter, “Court: Tudjman indictment was discussed,” United Press International, December 14, 1999; and on Izetbegovic, see “U.N. prosecutors were investigating former Bosnian president Izetbegovic,” Associated Press, October 22, 2003; and Stephen Castle, “Bosnian Leader Was Suspected of War Crimes,” *The Independent* (London), October 23, 2003.

65. Marlise Simons, “Militia Leader Arkan Is Indicted for War Crimes,” *New York Times*, April 1, 1999.

66. In only one bylined article has Marlise Simons ever mentioned the name ‘Naser Oric’: Namely, on April 12, 2003, a 124-word blurb in the World Briefing Europe section titled, “The Netherlands: Bosnian Muslim To U.N. Tribunal.” Because of its brevity, this article failed to make the Simons Universe. See n. 6, above.

67. Although Simons published no article on the subject at the time of the May 22 indictment, she did take up the matter in a retrospective profile of Louise Arbour, “Proud But Concerned, Tribunal Prosecutor Leaves,” *New York Times*, September 15, 1999.

68. Stephen Lee Myers, “Kosovo Inquiry Confirms U.S. Fears of War Crimes Court,” *New York Times*, January 3, 2000.

69. Marlise Simons, "General Clark to Testify for the Prosecution at Milosevic Trial," *New York Times*, December 14, 2003.
70. Marlise Simons, "An Unexpected Reversal Of War Crimes Convictions: U.N. Panel Shows It's Not a Rubber Stamp," *New York Times*, October 29, 2001.
71. See the analysis in Koechler, op. cit.
72. Quoted in George Szamuely, "US Hypocrisy on Those IKCs – You Guessed It, International Kangaroo Courts," *CounterPunch*, September 24, 2002, <<http://www.counter-punch.com.szamuely0924.html>>.
73. Michael Mandel, "Milosevic Has a Point," *Toronto Globe and Mail*, July 6, 2001, <<http://www.commondreams.org/views01/0706-05.htm>>.
74. Statement by Antonio Cassese to the Secretary General of the United Nations on January 21, 1994; quoted in Christopher Black, "An Impartial Tribunal? Really?," November 21, 1999, <<http://emperors-clothes.com/analysis/Impartial.htm>>.
75. Hayden, "Biased 'Justice'," p. 569.
76. "When asked by U.S. Information Agency pollsters what they feel are the most urgent issues facing their country," Charles Boyd reports, "Croats, Muslims, and Serbs have consistently ranked bringing war criminals to justice near the bottom. No more than six percent of the members of any faction regarded the issue as important." "Making Bosnia Work," *Foreign Affairs*, January/February, 1998, p. 51. Boyd is a retired U.S. Air Force General with experience in the Balkans.
77. On the vetting process for the judges who have served on the ICTY's bench, see Mandel, *How America Gets Away With Murder*, Ch. 4; and Carol Off, *The Lion, the Fox and the Eagle* (Canada: Random House Canada, 2000), p. 279ff.
78. Koechler, op. cit.
79. Sellars, op. cit., p. 186.
80. Quoted in Black, op. cit.
81. Quoted in John Laughland, "The anomalies of the International Criminal Tribunal are legion...," *The Times* (London), June 17, 1999.
82. Ibid.
83. Ibid.
84. Robertson, op. cit., p. 418. He adds that although Arbour was surely "grateful" for the help, she was "unwise to take photo opportunities with Mr. Cook and the belligerent NATO general, Wesley Clark, which cast a shadow over her impartiality" – neglecting the fact that

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there was no other reason for Arbour to have made this trip in the first place, but to enhance the public image of the NATO-ICTY partnership, and the justness of NATO's "bombing for humanity" (Robertson's phrase).

85. "Another achievement of the tribunals has been to marginalize indicted war criminals who have not yet been arrested," Richard J. Goldstone explains, citing as prime examples the July 1995 indictments of Radovan Karadzic and Ratko Mladic, and the May 1999 indictment of Slobodan Milosevic. *For Humanity: Reflections of a War Crimes Investigator* (New Haven: Yale University Press, 2000), p. 126.

86. Marlise Simons, "War Crimes Tribunal Expands Milosevic Indictment," *New York Times*, June 30, 2001. The *Times* later reported that in an interview that the French daily newspaper *Le Monde* published on the morning of Milosevic's first appearance before the Tribunal, July 3, 2001, to hear the charges against him for alleged crimes in Kosovo, Del Ponte announced that "she envisages bringing charges of genocide against Milosevic for Serbian crimes in the Bosnian and Croatian wars." Roger Cohen and Marlise Simons, "At Arraignment, Milosevic Scorns His U.N. Accusers," July 4, 2001.

87. ANP English News Bulletin, op. cit.

88. Quoted in Skoco and Woodger, op. cit., p. 37.

89. According to Simons, "Investigators at the Hague are notoriously discreet about their inquiries and rarely allow their names to be used." "Case Against Milosevic Is Not Simple to Prove," *New York Times*, July 2, 2001.

90. Hayden, "Biased 'Justice'," p. 562.

91. *Ibid.*, p. 567.

92. *Ibid.*, p. 568.

93. Marlise Simons, "Far From Former Yugoslavia, First War Crimes Trial Opens," *New York Times*, May 8, 1996.

94. David Owen, *Balkan Odyssey* (New York: Harcourt Brace, 1995).

95. For Robert Hayden's testimony, see *The Prosecutor of the Tribunal Against Dusko Tadic a/k/a "Dule" a/k/a/ "Dusan" [and] Goran Borovnica*, Case No. IT-94-1-T, Transcripts, September 10, 1996, pp. 5590-5648, <<http://www.un.org/icty/transel/960910ed.htm>>; and September 11, 1996, pp. 5649-5792, <<http://www.un.org/icty/transel/960911IT.htm>>.

96. Marlise Simons, "Civil, It Wasn't; Defining a War to Determine the Crime," *New York Times*, May 18, 1997.

97. Marlise Simons, "Balkan Rivals Revive Past in Icy Face-Off At U.N. Trial," *New York Times*, May 22, 2003.

98. As one of the courtroom *amicus* lawyers for Milosevic, Branislav Tapuskovic, complained before the start of Milosevic's cross-examination of Kucan, "to bring in a key witness of this nature for only one day is not sufficient." But just as clearly, this judgment depends on what the prosecution intended Kucan's single-day's worth of testimony to be sufficient for. See "Kosovo, Croatia and Bosnia," Case IT-02-54, May 21, 2003, p. 20904, <<http://www.un.org/icty/transe54/030521ED.htm>>.

99. Op cit., p. 20915 and *passim*.

100. See Woodward, op. cit., pp. 134-143. Woodward also notes that "whatever the army did was automatically labeled as pro-Serb" (p. 137). The level distrust and violence directed against the JNA in the period before and after Slovenia's and Croatia's declarations of independence is seldom appreciated.

101. "Kosovo, Croatia and Bosnia," op cit., p. 20923ff.

102. Op cit., p. 20947.

103. Op cit., p. 20948ff.

104. Simons, "Balkan Rivals. . . ." Evidently, Kucan fared far worse in the judgment of the Office of the Prosecutor. One little known fact, also unreported by the *New York Times*, was the prosecution's last-minute rush to call the Slovenian legal expert and former member of the Yugoslav Constitutional Court, Ivan Kristan, to testify just two days after Kucan, hopefully to counter the damage stemming from Kucan's appearance. BBC Monitoring International Reports, May 22, 2003, reproducing a report by the STA News Agency, Ljubljana, May 22, 2003. (Logistic delays would prevent Kristan from testifying until September 1, 2003.)

105. Anthony Deutsch, "Ex-Yugoslav President Backs Milosevic," Associated Press, June 17, 2003; Stephanie Van Den Berg, "Milosevic not linked to Srebrenica massacre: former Yugo President," Agence France Presse, June 17, 2003.

106. Marlise Simons, "Prosecutors Say Documents Link Milosevic to Genocide," *New York Times*, June 20, 2003.

107. "Kosovo, Croatia and Bosnia," Case IT-02-54, November 19, 2003, p. 29215ff; pp. 29314-29315, <<http://www.un.org/icty/transe54/031119ED.htm>>.

108. "Kosovo, Croatia and Bosnia," Case IT-02-54, November 20, 2003, pp. 29341-19343, <<http://www.un.org/icty/transe54/031120IT.htm>>.

109. See the *Initial Indictment [for Bosnia-Herzegovina]*, Case No. IT-01-51-I, November 22,



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2001, par. 7; *First Amended Indictment of Milosevic [for Croatia]*, Case No. IT-02-54-T, October 27, 2002, par. 7.

110. Toby Sterling, "Milosevic gives foretaste of defense in cross-examination of former ally," *Associated Press Worldstream*, November 19, 2003.

111. Note that through the date of this writing, the Tribunal in fact has never announced any indictment of Borisav Jovic.

112. Marlise Simons, "Milosevic Is Ill; Trial May Slow," *New York Times*, July 26, 2002.

113. Marlise Simons, "Milosevic Finds a Friendly Face In the Witness Stand at His Trial," *New York Times*, July 27, 2002.

114. Cedric Thornberry, wondering at the overwhelming and selective focus on Serb crimes, says that "a kindly soul at U.N. headquarters in New York, ear to the diplomatic grapevine, warned me in the spring of 1993, 'Take cover – the fix is on.'" *Op. cit.*, pp. 78-79.

115. Marlise Simons, "Plea Deals Being Used to Clear Balkan War Tribunal's Docket," *New York Times*, November 18, 2003.

116. Marlise Simons, "Officers Say Bosnian Massacre Was Deliberate," *New York Times*, October 12, 2003.

117. *Ibid.*

118. Greenspan, *op. cit.*

119. Ian Johnson, "The Judge As Prosecutor: Two Days At The 'Trial' of Slobodan Milosevic," June 19, 2002, <<http://www.icdsm.org/more/days-i.htm>>.

120. See Mandel, *How America Gets Away With Murder*, Ch. 5.

121. See "Kosovo, Croatia and Bosnia," Case IT-02-54, February 18, 2002, p. 523, <<http://www.un.org/icty/transe54/020218IT.htm>>.

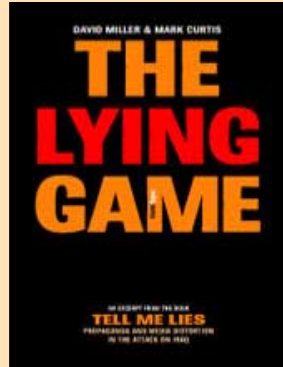
122. The estimate is Michael Scharf's, as quoted in Sellars, *op. cit.*, p. 187.

123. *Rules of Procedure and Evidence*, Rule 96, Evidence in Cases of Sexual Assault, December 17, 2003, <[www.un.org/icty/basic/rpe/IT32\\_rev19.htm#Rule96](http://www.un.org/icty/basic/rpe/IT32_rev19.htm#Rule96)>.

124. When Wesley Clark testified in the Milosevic trial, the *Times's* editors turned their paper's coverage over to Simons' colleague, Elaine Sciolino, who filed three reports on the testimony: "Clark Testifies Against Milosevic at Hague Tribunal," December 16, 2003; "Milosevic Trial Helps Clark Try To Gain Notice," December 17, 2003; "Clark Testimony Links Milosevic Directly to '95 Massacre," December 19, 2003. Like Simons, Sciolino's reports never once deviated from the party-line.

125. Tiphaine Dickson, "Protesting Wesley Clark: As Saddam Faces War Crimes Trial, Milosevic's Kangaroo Court Hops to US Orders," *Counterpunch*, December 1-15, 2003; Paul Mitchell, "Milosevic trial sets precedent: US granted right to censor," December 31, 2003, <[http://www.wsws.org/articles/2003/dec2003/cens-d31\\_prn.shtml](http://www.wsws.org/articles/2003/dec2003/cens-d31_prn.shtml)>.
126. Marlise Simons, "Judges at War Crimes Trial Rein in Milosevic," *New York Times*, September 22, 2003.
127. Marlise Simons, "Milosevic Trial Settles Into Slow But Judicious Routine," *New York Times*, March 3, 2003.
128. Ian Traynor, "War Crimes Suspects May Avoid Trial," *The Guardian* (London), February 11, 2004.
129. For example, it was regularly acknowledged during the Vietnam war that the successive rulers of South Vietnam, from Ngo Dinh Diem in 1954 to Nugen Van Thieu in 1974, all of whom were imposed (and some removed) by U.S. officials, could not possibly compete with the Communists on a purely political basis, and were wholly dependent on U.S. support. Nevertheless, these same Saigon puppets were often annoyed that U.S. officials failed to treat them with the respect due independent rulers, although the U.S. media came close to doing that.
130. John Dewey *et al.*, *Not Guilty: Report of the Commission of Inquiry Into the Charges Made Against Leon Trotsky in the Moscow Trials*, 2<sup>nd</sup> Ed. (New York: Monad Press, 1972).
131. *Ibid.*, p. 393.
132. *Ibid.*, p. 19; p. 388.
133. *Ibid.*, p. xxi; p. 21.
134. *Ibid.*, p. 25.

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