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## The Charges against Milosevic and His Attitude with the International Criminal Law

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### Abstract:

*On October 8, 2001, the prosecutor of international Criminal Court for the former Yugoslavia Mrs. Carla Del Ponte, submitted to the judge of international Criminal Court for the former Yugoslavia Mr. Richard May, the indictment against Slobodan Milosevic and his collaborators for Crimes against humanity and the violations on war laws and practices about the incidents in Kosovo.*

*The classification of the offense for these incidents is based on the criminal responsibility cited in articles 2, 3 and 5 of the statute of this court that affiliate with the relationship of the UN courts. The prosecutor Del Ponte has been very careful in the composition of this indictment according to the individual criminal responsibility, as it has been cited under article 25 of Statute of Rome. Based on all presented facts she proves the international crime performance from the individuals, despite the fact that Milosevic and his collaborators have acted under the quality of higher state representatives and protection of state sovereignty of Former Yugoslavia and Serbia. In the indictment principles of international rights are implemented that deal with failure to account official positions in crime classification or reason for exclusion from the criminal responsibility of the crime author due to the implantation of the superior orders (in case of other higher functionaries co-charged in the criminal actions). Taking into account that the problem is extended in time and space, I tried to summarize a heuristic opinion of what I want to treat in this topic.*

**Key words:** eviction; genocide against humanity; violent transfer; war laws; persecution.

## **1. Introduction**

On 12 November 2001, the Chief-prosecutor of the International Criminal Tribunal for Former-Yugoslavia, presented to the Judge of the Trial Chamber of this Tribunal, Mr. Richard May, an indictment against Slobodan MILOSEVIC and his accomplices, Milan MILUTINOVIC, Nikola SAINOVIC, Dragolub OJDANOVIC, Vljako STOJILKOVIC and other known and unknown individuals, on grounds of the criminal offence of crimes against humanity and Violation of the war laws and customs in the events of Kosovo.

This indictment was added to the one of 8 October 2001 presented by the Chief-prosecutor of the tribunal, Ms. Carla Del Ponte, to Judge Richard May, on the events taking place in Bosnia Herzegovina for the period between 1 August 1991 and 31 December 1995. It charges Milosevic with counts of participating in a joint criminal project, the purpose of which was “the forcible removal of the majority of the non-Serbian, mainly Muslim and Croatian population of Bosnia Herzegovina from the major areas of the Republic of Bosnia and Herzegovina.”

The indictment was presented against Milosevic and his accomplices, but for the purpose of this analysis, we will refer to Milosevic, as the main indicted, implying also his accomplices, who are subject to other additional indictments.

## **2. Historical overview**

The Former Federal Socialist Yugoslav Republic (RSFJ) was established as a federal state on 29 November 1943 and was composed of 6 republics, of which the Republic of Serbia, Croatia, Slovenia, Bosnia and Herzegovina, Macedonia and

Montenegro, including then-autonomous regions of Kosovo (currently, an independent state) and Vojvodina.

The dismantling of this Federative Republic started back on 25 June 1991, with the secession of the Republic of Croatia and Republic of Slovenia and finished on 8 June 2006, which marked the separation of the last federative republic, Montenegro.

On 28 September, 1990 Slobodan Milosevic was elected president of Serbia and, after staying at this office for two terms, he was elected as President of the Federal Republic of Yugoslavia (FRY), following pluralist elections of July 1997.

The autonomous region of Kosovo enjoyed that status from 1968, as a result of international changes and also of the Albanian unrest that started in Prishtina, on 28 November 1968. In 1991, 120 deputies of the Kosovo Assembly, led by Ibrahim Rugova, declared Kosovo as a sovereign and independent State, which the Serbian diplomacy did not recognize as such, upon the claim that it only had the support of 15 %. Regardless of the failure of this attempt, the longing of the Kosovo people to be free and build a State was kept alive. Thus, on 28 November 1997, the Kosovars started military actions led by commander Adem Jashari and were faced with an armed response by the Serbian troops. In the meantime, Milosevic engaged in a criminal act of ethnic cleansing, by killing civilians and deporting the population from Kosovo.

The indictment against Milosevic and his accomplices is divided into parts for the events in Kosovo and Bosnia and Herzegovina, thus, I will follow the same order in this analysis.

### ***2.1 Classification of criminal offences in relation to events in Kosovo.***

Classification of the criminal offences in relation to Kosovo events is based on Article 5 of the Rome Statute, which provides that the Court shall have jurisdiction over the crimes mentioned in this indictment. The Prosecutor initiated a

proprio motu investigation, based on the information on the committed offences, which indicates that a criminal project had been started and implemented against the Albanian population in the region of Kosovo. This criminal project refers to the period between 1 January and 20 June 1999. During this period, Milosevic and the other indicted, together with their accomplices, staged a campaign of terror and violence directed at Kosovo Albanian civilians living in Kosovo. The campaign was carried out by the military, paramilitary and police forces of the Former Yugoslav Republic and Serbia. Milosevic and the other indicted held at the time high offices in the state structure and the army. He was the main instigator and head of this extremely violent campaign that resulted into a mass deportation of Kosovo Albanians from their territory, rapes and killings committed by the troops organized by Milosevic.

The indictment contains 5 main counts:

- Count 1 : DEPORTATION
- Count 2 : FORCIBLE DISPLACEMENT
- Count 3 : CRIMES AGAINST HUMANITY
- Count 4 : VIOLATION OF WAR LAWS AND CUSTOMS
- Count 5 : PERSECUTION

### ***2.2 Deportation and forcible displacement (Count 1 & 2)***

The indictment refers to the extended and systematic attack on the civil population, as provided for by Article 7 (d), crimes against humanity, “deportation or forcible removal of the population” that implies the forcible displacement of the individuals from the region where they legally live through deportation or other forcible actions. The indictment states in a clear and accurate manner that this was a planned, regular and well-organized purpose by Milosevic and his accomplices, as follows:

- In a systematic manner, forcibly expelled and internally displaced hundreds of thousands of Kosovo Albanians from their homes across the entire province of Kosovo by creating an atmosphere of fear and oppression through the use of force, threats of force, and acts of violence.
- They engaged in a systematic campaign of destruction of property owned by Kosovo Albanian civilians. This was accomplished through the widespread shelling of towns and villages; the burning of homes, farms, and businesses; and the destruction of personal property, including houses, farms, economic facilities, cultural monuments and religious object. As a result of these orchestrated actions, villages, towns, and entire regions were made uninhabitable for Kosovo Albanians.
- They created an atmosphere of fear and all-around chaos, by commission of acts of violence. They harassed, attacked and publicly killed Kosovo Albanians, in order to force their families or neighbours to move out. Sexual assaults and the raping episodes against Kosovo women added to the situation of terror in the region. Many Albanians were not subject to direct violence, were forced to leave their houses, because of such terror.
- Kosovo civilians were systematically displaced from Kosovo towards the border with the Republic of Albania and Former Yugoslav Republic of Macedonia. Thousands of Albanian families were forcibly displaced towards the borders in foot, by tractors or other means and en route to the border they were looted, beaten and ill-treated by Serbian troops, in order not to return anymore. Such deportation included also the organized transportation by Milosevic in trains and buses, so that the area were ethnically cleansed the sooner possible. As Kosovo Albanians were forced from their homes and directed towards Kosovo's borders, they were subjected to

demands to surrender identity in order to erase any record of the deported Kosovo Albanians' presence in Kosovo and to deny them the right to return to their homes.

- Kosovo Albanians were forced to abandon their houses and to seek for shelter for days, weeks and months in other villages or in the forests and mountains of the region, with thousands dying because they could not resist the weather conditions.

Between 1 January 1999 to 20 June 1999, as a result of the oppression and violence exerted on the civilian population of the Kosovo Albanians, around 800,000 were deported or expelled or forcible deported. The indictment contains 19 specific cases of such violence, by annotating dates, names of cities and villages from across the region.

This criminal strategic project was enacted through real military operations by the armed forces of the Serbian army that was directly led by Milosevic and the other indicted, as well as their accomplices.

### ***2.3 Crimes against humanity (murder), violation of war laws or customs (Counts 3 & 4)***

With reference to the above facts presented in count 1 & 2, forcible deportation and displacement, and by including new evidence, the indictment proves that the military forces of FRY and Serbia, led, instigated and headed into concrete operations by Milosevic and his accomplices, have committed systematic killings across Kosovo region, causing the death of many victims from the civilian population of the region.

The murder offence is punishable under Article 5 (c) war crimes and Article 7 (a), crimes against humanity, murder, which considers as such every attack directed against any civilian populations through multiple actions, regardless of

whether they such attacks are in line with or help the state politics or organizations.

Point 4, Violation of the laws and customs of war, is punishable under Article 3 of the Statute of the Tribunal and recognized as such under Article 3 (1)(a) – (murder) of Geneva Conventions. The indictment provided evidence to corroborate the state crime committed by FRY and its armed forces, led and inspired by Milosevic and his accomplices against the civilian population of Kosovo Albanians.

The indictment quotes the names of killed individuals according to the dates of killing and places of residence. In brief, it was proved that in the inhabited areas of Reçak, Bellaçerke, Krushe e Vogel and Krushe e Madhe, Gjakova, Padalishte, Izbice, Vushtri, Meje, Burgu i Dubraves, Suhareke, Kaçanik, Sllatinje, Stagove and Lisnaje, 606 civilians were killed, as identified and quoted by name, of whom 534 males and 72 females.

#### **2.4 Persecution (Count 5)**

This offence is additionally punishable by Article 7(h) of the Statute, Crimes against Humanity, which foresees persecutions on political, racial and religious grounds. The aggression by FRY and Serb forces in function of a *criminal apartheid policy* caused the forcible removal and deportation of 800 thousand civilians from Kosovo Albanians, while hundreds and thousands of identified and unknown civilians were killed and slaughtered. Albanian women and girls of Kosovo were subjected to sexual assaults by the militaries, whereas business, religious, monumental and cultural facilities were destroyed, etc. All these counts come under crimes against humanity, which are subject of review by this tribunal.

### **3. Classification of criminal offences in relation to events in Bosnia-Herzegovina**

The standard of the criminal offences established in this indictment for the events in Bosnia and Herzegovina shall be the same as that applied for the indictment in relation to the events in Kosovo. Likewise, the indictment focuses on the commission of war crimes, according to Articles 2, 3, 5 and 7(1) of the Tribunal Statute. Milosevic is accused of having committed the criminal offence of participating in the joint criminal enterprise, the purpose of which was the violent and final removal of the majority of the non-Serb population, principally the Muslim and Croatian population in Bosnia and Herzegovina for the period of 1992-1995.

The indictment on the events of Bosnia and Herzegovina is more extended and includes other crimes provided for under the Tribunal Statute. Further, we will enlist in brief the counts and criminal charges against Milosevic in relation to these events.

#### ***3.1 Genocide and complicity in genocide***

Milosevic and his accomplices planned and committed the whole or partial destruction of the ethnic groups of Bosnia Muslims and Bosnian Croats by means of:

- The widespread killing of thousands of Bosnian Muslims and Bosnian Croats, during and after the take-over of territories within Bosnia and Herzegovina.
- In many of the territories, educated and leading members of these groups were specifically targeted for execution, often in accordance with pre-prepared lists. After the fall of Srebrenica in July 1995, almost all captured Bosnian Muslim men and boys, altogether several thousands, were executed at the places where they had been captured or at sites to which they had been transported for execution.

- The killing of thousands of Bosnian Muslims and Bosnian Croats in detention facilities within Bosnia and Herzegovina, where they had been detained due to their disobedience to Milosevic regime
- Subjection to physical and psychological torture of the detainees who were not executed in the detention facilities of Bosnia and Herzegovina.

Because of these actions and omissions, Slobodan Milosevic committed the crime of Genocide and Complicity in Genocide, which classified as CRIME AGAINST HUMANITY by Rome Statute and is punishable under Articles 4 (3)(a)(e), 7(1) and 7(3) thereof.

Statistics indicate that the genocide exercised in this area led to the forced deportation from their habitation 268,050 non-Serb individuals.

### ***3.2 Persecution***

Criminal offence classified under crimes against humanity and punishable under Articles 5 and 7 of the Statute. From March 1992 to 31 December 1995, Serb forces, which included also operative local paramilitary TO troops and police forces of Serbia and Montenegro, attacked and took over the villages of Bosnia and Herzegovina. After taking control, in concert with local Serb authorities, they established a regime of persecution, aimed at cleansing the occupied territories on grounds of ethnicity, race and political affiliation, by means of:

- Execution, imprisonment and inhuman treatment, creating an unbearable situation of persecution against the local inhabitants
- Forced labour of detainees, mainly to open the graves of their friends
- Cruel and inhuman treatment of the inhabitants of the communes of the area, including sexual violence, torture and forced inhuman living conditions.

- Imposition of restrictive measures on the inhabitants in these areas, such as restriction of their freedom of movement, dismissals from jobs and removal from positions of authority, arbitrary searches of their homes, negation of the right to fair trial and denial of the right to equal access to services, including health care.
- Beating and robbing, appropriation and plunder of the properties of Muslim and Croatian population of Bosnia and other non-Serb civilians. Intentional destruction of houses and other private and public property, their cultural and religious institutions or other historic and sacred sites.

By these acts and omissions, Slobodan Milosevic committed the offence of persecutions on political, racial or religious grounds, a CRIME AGAINST HUMANITY, punishable under Articles 5(h) and 7(1) and 7(3) of the Statute of the Tribunal.

### ***3.3 Extermination, murder and wilful killing***

With reference to the same period, Slobodan Milosevic is charged with extermination, murder and wilful killing of the above-mentioned groups, effected by:

- The killing of Bosnian Muslims, Bosnian Croats and other non-Serbs in their towns and villages, during and after the take-over of their territories
- Their killing in detention facilities or their places of residence.

In regard to this count, Slobodan Milosevic is charged with extermination, murder and wilful killing, classified as CRIME AGAINST HUMANITY by Rome Statute, and which is punishable under Articles 2(a), 5(a) (b), 7(1) and 7(3) of this Statute.

### ***3.4 Unlawful confinement, imprisonment, torture, wilfully causing great suffering, other inhumane acts.***

- Imprisonment, Crime against humanity, punishable under Articles 5(e) and 7(1) and 7(3) of the Statute of the Tribunal.
- Torture, Crime against humanity, punishable under Articles 5(f) and 7(1) and 7(3) of the Statute ; grave breach of the Geneva Conventions of 1949, punishable under Articles 2(b), 7(1) and 7(3) of the statute; Breach of the laws of customs of war, punishable under Articles 3 ,7(1) and 7(3) of the Statute.
- Unlawful confinement, a grave breach of Geneva Conventions of 1949, punishable under Articles 2(g), 7(1) and 7(3) of the Statute
- Wilfully causing great suffering, a grave breach of Geneva Conventions of 1949, punishable under Articles 3, 7(1) and 7(3) of the Statute
- Cruel treatment, a grave breach of Geneva Conventions of 1949, punishable under Article 3, 7(1) and 7(3) of the Statute.

### ***3.5 Deportation and inhumane (forcible) acts.***

The above crimes are classified as below:

- Unlawful deportation or transfer, a Crime against humanity, punishable under Articles 5(d) and 7(1) and 7(3) of the Statute of the Tribunal; a grave breach of Geneva Conventions of 1949, punishable under Articles 2(g), 7(1) and 7(3) of the Statute.
- Inhumane actions (forcible transfer), a Crime against humanity, punishable under Articles 5(i) and 7(1) and 7(3) of the Statute.

#### **4. Legal analysis**

The indictment is formulated pursuant to the right conferred to this Tribunal by virtue of the Statute, known as the Rome Statute and endorsed in 17 July 1998 in Rome. Article 15 of the statute acknowledges the right of the prosecutor to start an investigation based on the information obtained on the crimes falling within the jurisdiction of the Court.

On the other hand, the Tribunal has admitted the presentation of the indictment, based on Article 18 of the Statute, providing the preliminary actions in relation to the admissibility of the indictment.

Presentation and admission of this indictment by the Tribunal marked the beginning of what is known as the “Trial of the Century”.

The Prosecutor Carla Del Ponte started investigations proprio motu, based on the information obtained on the committed crimes, and stating that similar crimes pose a threat to the peace and security in the region and beyond. Impunity of the perpetrators of these crimes would result into the precedent of infringing the UN Charter in relation to the territorial integrity or political independence of every State. At the same time, she was careful so that the indictment would not be considered as the authorization of one State to intervene in an armed conflict or the internal affairs of another State.

The analysis of the criminal responsibility for the events in Kosovo and Bosnia and Herzegovina shall take into account certain fundamental elements required to determine the criminal responsibility of the implicated individuals, such as:

##### ***4.1 Individual criminal responsibility***

The indictment presented by the Prosecutor is based on the individual criminal responsibility, provided in Articles 2, 3, 5 and 20 of the Statute of this Court, which dwell on the relationship of the Court with the United Nations and the

crimes that fall within the jurisdiction of this Court, respectively. More specifically, Article 5 of the Statute determines the jurisdiction of the court in adjudicating the cases related to

- Crime of Genocide
- Crimes against humanity
- War crimes
- Crime of aggression.

In this context, the indictment fully complies with its object to be adjudicated by the Hague Tribunal, as referred to in Article 17 of this statute. The indicted shall be held individually responsible of the crimes of which he is accused in this indictment, in accordance with the above-mentioned articles, and in particular, on Article 7(1) of the Statute “Crimes against Humanity.”

After engaging in the joint criminal enterprise, in concert with his accomplices, Slobodan Milosevic planned, instigated, ordered, committed, or in whose planning, preparation, or execution he otherwise aided and abetted a campaign of terror and willful broad or systematic violence directed against the Albanian civilians of Kosovo, with residence in Kosovo, in the Federal Republic of Yugoslavia.

By using the word "committed" in this indictment, the Prosecutor does not intend to suggest that the accused physically committed any of the crimes charged personally, but she refers to participation in a joint criminal enterprise as a co-perpetrator among others of the deportation of a considerable part of the Albanian population of Kosovo from the territory of the Kosovo region, in order to keep forcible under control such region (currently, the State of Kosovo).

The individual responsibility in this indictment has been proved, as Milosevic is mentioned to having directly participated in the enforcement of the criminal plan in the following ways:

- As the head of State, he instructed the authorities of the Republic of Serbia to establish armed forces that would engage in fights outside the territory of the Republic of Serbia, in particular in the territories of Kosovo and Croatia.
- He provided financial, logistical and political support to the regular and non-regular troops and subsequently had them forcibly enter these territories, exert violence and deport the non-Serbian population from there.
- He prepared the criminal plan of takeover and promised to distribute to the Serbian population the property released as a result of the deportation of the population.

#### ***4.2 Criminal responsibility for the actions or omissions of his subordinates***

Pursuant to Article 7 (3) of the Statute of the Tribunal, A superior is responsible for the criminal acts of his subordinates if he knew or had reason to know that his subordinates were about to commit such acts or had done so. Additionally, upon finding out that such actions or omissions had been committed, he should have taken the necessary and reasonable measures to prevent such acts or to punish the perpetrators.

The arguments presented by the case prosecutor in this indictment are related to the exercise of powers by Slobodan Milosevic with regard to:

- Exercise of the authority as the President of FR of Yugoslavia
- The office of the Chair of the Supreme Defence Council, which establishes the plan of defence and takes decisions in relation to the armed forces
- The office of the Commander of the armed forces in case of war or immediate war threat. In relation to the latter, He, on 23 March 1999, declared an immediate threat to war and on 24 March 1999 declared the state of war with Kosovo.

### ***4.3 Individual responsibility related to de facto exercise of authorities involved in crime***

For the period of war staged by the FRY militaries in the former Yugoslav republics, especially in Kosovo, he involved in his criminal platform which he drafted, led and executed, all the constitutional bodies over which Slobodan Milosevic and his accomplices exercised an absolute power de facto. Thus, He exercised his absolute power over:

- The institutions which were under the control of Serbia and autonomous regions, such as the police, the political life and information means. For the period established in this indictment, He controlled the representation of the autonomous regions in the federal bodies
- On the Ministry of Interior
- On the territorial military units, civil protection units and other armed groups, which committed the crimes presented in this indictment.

All the elements contained in this indictment have been categorized under the standards which qualify them as international crimes.

- a) Thus, the count of genocide contains all the required elements to categorize it as a subject of the International Criminal Law. The murder of the members of a group, causing of bodily and mental harm, physical annihilation and prevention of births within the group, etc., meet all the required parameters to fall in this category.
- b) Additionally, the crimes against humanity have been analyzed and corroborated based on all the standards provided by the international criminal law. Thus, in this indictment

- Murder has been categorized as an offence which is committed wilfully and with/without premeditation
  - Extermination meets all the criteria of mass killings or deprivation of the right to such living conditions that lead to the destruction of a group
  - Deportation (removal from the territory of a State) or forcible transfer (removal from the area in which they are living and placement into another area within the State) of the population are inherent throughout the indictment.
  - Imprisonment or other acts of severe deprivation of freedom have been proved to be present, in breach of all the provisions of the international law.
  - Sexual violence is present in this indictment in all its classical forms, such as rape, enforced sterilization or forced pregnancy.
  - Apartheid appears in its most classical form of systematic domination of the Serbian minority over the Albanian civilian population of Kosovo.
  - Enforced disappearance of persons, with a purpose to avoid legal protection from elements supported by the state.
- c) The war crimes appear in this indictment as a severe breach of the international rules deriving from international treaties in relation to armed conflicts. From the objective perspective, the indictment has proved that such crimes were committed against persons who did not participate in armed confrontations and who, moreover, were from the unprotected civilian population. They were shaped

through killings, ill-treatments, unlawful destruction of property, deprivation from legal defence or unlawful punishment, etc. All the above elements were proved to have been committed both deliberately and wilfully by completing the legal framework to be treated as war crimes.

## **5. Legal facts**

During the time where Milosevic was president of the Former Republic of Yugoslavia, he was the main representative in the agreements reached between FRY and the International Community. He was part of the talks and signatory of crucial agreements, such as the Hague Conference of 1991, Paris negotiations of March 1993, the International Conference on the Former Yugoslavia January 1993, negotiations for the Vens-Owen peace plan that continued from January to May 1993, peace talks in Geneva, negotiations for a truce in Bosnia and Herzegovina, Dayton peace negotiations, etc. The violation committed against the agreements produced by these negotiations through criminal actions is one of the reasons that led to the inevitable conclusion of the wilful execution of the criminal platform of the crimes against humanity and breach of the war laws.

From a legal perspective, all the actions and omissions referred to in this indictment have taken place in the territory of former Yugoslavia. During the entire period where the events in question took place, the involved countries have experienced a state of war, a state of international armed conflict and of partial occupation of their territories. The crimes committed by the indicted were inter alia breach of the rights and were directed against the persons protected by the Geneva Conventions of 1949. All the actions and omissions related to the charges property destruction, which constitute a severe breach of the Geneva Conventions of 1949, were directed to a

“protected property”, as provided for by the respective provisions of Geneva Conventions. Any behaviour that constitutes grounds for Crimes against Humanity was part of a wide or systematic attack against the civilian population of these countries.

Under these conditions, for the entire period relevant to this indictment, Slobodan Milosevic had the obligation to observe the laws and customs governing armed conflicts, including the Geneva Conventions of 1949 and Additional Protocols thereof.

This is why Milosevic should have been fully held accountable. We use the term “should have”, as upon the finalization of all the international legal practices and the beginning of the trial against him, in conformity with the legal procedures established by the Statute of the Tribunal, the process was terminated because of the sudden death of Slobodan Milosevic.

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