Witnessing the Making of History: The Trial of Slobodan Milosevic

Observing a trial for crimes against humanity and genocide

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For over twenty years I have studied, written about, and published essays and books on various facets of genocide. Not a day goes by that I don’t think about some aspect of genocide and its many and long-range ramifications. Indeed, the prevention of genocide is a driving passion of mine. It was this passion that prompted me to travel to the Netherlands recently in order to observe the trial of Slobodan Milosevic at the International Criminal Tribunal for the former Yugoslavia (ICTY) at The Hague.

Milosevic, the former president of the Federal Republic of Yugoslavia, supreme commander of the Yugoslav Army and president of the Supreme Defense Council of Yugoslavia, faces three indictments on a variety of charges related to incidents that occurred during the four wars that took place in the Yugoslav region between 1991 and 1999. The charges he faces are crimes against humanity, grave breaches of the Geneva Conventions, violations of the laws or customs of war, and genocide. His trial is a momentous occasion in the history of efforts to prosecute genocide because he is the first sitting head of state or government to be prosecuted by an international tribunal. Heads of state are now on notice that they can and will be tried for crimes against humanity that they commit while in office.

Following Milosevic’s military defeat in the spring of 1999—when NATO and the United States undertook a highly controversial bombing campaign against the Serb troops to bring an end to the “ethnic cleansing” in Kosovo—and his subsequent fall from power, the Yugoslav government turned Milosevic over to The Hague in June 2001. His trial formally began on February 12, 2002, and continues to this day. Milosevic has chosen to act as his own defense attorney. Attorneys at the ICTY estimate that the Milosevic trial will continue at least through December 2003.

The decision to establish the tribunal was made on February 23, 1993, by the UN Security Council. Concerned about brutality being perpetrated in the former Yugoslavia, the Security Council passed Resolution 808, which stated that the ICTY was being established “for the prosecution of persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991.” On May 25, 1993, the UN Security Council adopted Resolution 827, approving the statute for the ICTY. Scharf and Schabas argue that in many respects the ICTY is a vast improvement over Nuremberg. Its detailed rules of procedure, for example, represent a tremendous advancement over the scant set of
There are often two or three trials running concurrently. Each
The Hague takes about 50 minutes and is a pleasant journey through
capital, and adorned with large parks and winding streets. Its old
manicured grounds make up for their lack of historic style. The
The Hague itself is a quaint and graceful city, smaller than a typical
Hague ICTY rests in a plaza of non-descript buildings and has a pale blue
The United Nations flag fluttering overhead.

The Hague and the ICTY
The train trip from the Centraal Train Station in Amsterdam to The
ICTY’s jurisdiction is defined on the basis of the highest standards
of applicable law, [thus avoiding] any suggestion of post facto-
Defendants are granted a panoply of rights including the right
to counsel, the right to remain silent, the right to view
exculpatory evidence in the possession of the prosecutor, the
right to a speedy and public trial, the right to cross-examine
witnesses, and the right to appeal the judgment of the Trial
Chamber to the Tribunal’s Appeals Chamber.¹

The Hague trial itself is a huge rectangle. From the observer’s
perspective, the three judges hearing the trial sit at the back of the
room. Directly in front of and below the judges’ bench sit court
clerks, all in formal black robes. To the far left and toward the
middle of the room sits the defendant with a number of defense
attorneys adjacent to him. On the right, parallel to the defense attor-
nies, are the prosecuting attorneys. At the front is another judge. The
one I always saw wore a white powdered wig similar to those the
judges and attorneys wear at the Old Bailey in London. At the very
front and directly in the middle of the room is the witness box.

When I first arrived at the court, there were only three people
sitting in the 150 or so seats available for journalists, VIPs, and
guests. I thus had an excellent view of the courtroom. Immediately,
I looked for Milosevic, and there he was sitting, looking bored,
with a UN police officer off to his left. The scene conjured up a
series of thoughts and images: first, I thought about the fact that
this trial was the first international trial since the Nuremberg trials
to try defendants for crimes against humanity and, along with the
International Criminal Tribunal for Rwanda, the first tribunal to
try someone for the crime of genocide; second, with the partition
of glass in front of me, I thought of Eichmann’s trial in Israel and his
sitting in a glass box; third, as I stared at Milosevic, I had the odd
sense that he looked strangely like Archie Bunker, the crotchety
character played by Carroll O’Connor in the television sitcom, “All
in the Family”; and fourth, the latter thought brought up memories
of Hannah Arendt’s now famous phrase in observation of Eichmann
during his trial in Jerusalem, “the banality of evil.”

Testimony of Two Protected Witnesses
On the morning of May 29, 2003, I attended a session at which a
protected witness was providing testimony. Since the witness was
protected, neither his name nor his face could be heard or seen by
those in the observation gallery. As a result, blinds were lowered over
the glass window separating the viewing gallery from the courtroom
until the witness (who was referred to only as B-1775) entered the
courtroom and made his way to the witness box. When the blinds
were lifted, those of us in the observation area could see nothing
of the witness because his chair had been totally cordoned from
view by a series of long, wide panels.

The testimony focused on the fact that Witness B-1775 had
been forced by one of Arkan’s men (“Arkan” is the sobriquet of the
Serb para-military leader Zeljko Raznatovic) to collect corpses in
the municipality of Zvornik. He had simply been trying to cross the
border from Serbia to Bosnia-Herzegovina when he was directed
to “collect the dead bodies in town and in the surrounding villages
and to drive to a particular spot, that is, to Alhos.” Witness B-1775
went on to state, “during the first few days, [I] collected about 10
to 15 [bodies]. And in—over a period of days, we collected about
100 bodies and dropped them off at Alhos.”

Early on during the testimony, the following exchange took
place between the prosecutor, Mr. Groome, and the witness:

Groome: Sir, out of the—of the hundred bodies that you
were involved—in collecting, can I ask for you to describe
for us or estimate for us the—approximately how many were
men, how many were women, as well as approximate for
us the different ages or age ranges of the people who had
been killed.

Witness B-1775: They were all men, and they were between
25 to 65 years of age.
Groome: And of these hundred or so men, approximately how many were in—dressed in military uniforms or had any evidence of having been armed?

Witness B-1775: About one half were in civilian clothes and the other half in military uniform.

Groome: Can I ask you to briefly describe how many times you were called to collect bodies at the Karakaj Technical School?

Witness B-1775: I can’t tell you exactly, but roughly it was about fifteen times. Perhaps less, perhaps more. Because there was a couple of other groups or teams for picking up the bodies.

The trial continued all morning with the prosecutor continuing to question Witness B-1775, followed by Milosevic’s cross-examination of the witness.

On the afternoon of May 29, the prosecution introduced a new protected witness. This witness was referred to throughout as Witness B-1455. The witness was a survivor of a massacre carried out in a cultural center in Drinjaca on May 30, 1992. “On that same day, units of the reserve force of the JNA [the Yugoslav National Army, also known as the Yugoslav People’s Army], together with local Serbs, came to our village and rounded up all the population they found there.... There were gathered ninety-one men, and I don’t know the exact number of women and children. I think there were another 150 of them.”

Groome: ...What was the ethnicity of the people that were gathered in the cultural center?

Witness B-1455: All the people gathered in the cultural center in Drinjaca were [of the] Muslim faith and Bosniak [Bosnian] nationality.”

Groome: The lieutenant [who was there], did he address the group? And if so, what did he say?

Witness B-1455: ... He first greeted us, and he said, “People, I know that you’ve done nothing wrong. I heard that from many people who are Serbs and who lived here together with you. You had good neighborly relations. And I can guarantee that nothing will happen to you. Nevertheless, we will have to move you from your places of residence in Kostijerevo and Drinjaca, and you will probably be exchanged for Serbs living in Zenica,” who, according to what he said, were having problems with the Muslim population over there, “and that they will come to your houses, to your homes, and inherit your property and you will go over there to inherit their homes and their property. I believe that will be better for both peoples.”

Witness B-1455: They were armed with pistols hanging at the side, of the Skorpion brand. They had Rambo-type knives as we called them. They had black gloves with the fingers cut off, black caps rolled up.... Most likely they were members of Arkan’s unit.

After forcing the Muslim men to sing some Chetnik songs, the six men began selecting various Muslim men to step onto a stage where the latter were beaten. After the beatings, which lasted several hours, a new unit arrived that was dressed in uniforms similar to those that were worn by the Chetniks during the Second World War.

Witness B-1455: I noticed that among them there were some that seemed to be rather tipsy. They were cracking jokes ... and used all kinds of derogatory terms in addressing us.... Then someone—one of them was saying, “We need ten volunteers.” I didn’t dare volunteer. And no one did; no one volunteered. [They began counting the men off by tens and taking them outside.] I heard them hitting them and beating them, and we heard bursts of fire coming from there. So I knew immediately that there were executions going on....

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Five minutes later or maybe ten ... they reentered the hall, and again they were looking for ten men.... This was repeated four times, until they came for the fifth time, and a soldier hit me with the—with his gun and he said, “Get up. It’s your turn.” And when I got up, and they ordered me to go towards the exit, I saw that my father was waiting with me for the execution and some neighbors that I recognized. And then I saw [one of my] brothers sitting in a row in front of me, and I noticed that already half the people in the hall were missing.... When we got close to the spot, they opened fire at us. I got a bullet in my left side here, and I fell on my stomach straight away.... I could hear continued bursts of fire, people were falling. And when this was over, then they examined the people to see whether anyone may have survived. A soldier came up to me and kicked me in the behind, and he said, “I think this one is still alive.” And the other one said, “Well, what are you waiting for. Fire a couple of more bullets at him.” And then the first fired a burst in my back. So I got one bullet here in the right shoulder blade.... The pain was so strong that I only just managed to remain conscious.... I could hear them talking as the blood streamed down my body. They started screaming, shooting into the air. And then one said, “What are we going to do? We don’t have any more ammunition.” And the other one said, “What do you mean? There’s several more boxes in the center down there.” And then they left.

When I was quite certain that there was no one left next to me ... I slowly got up on my feet, and ... and ran.... I saw another group of people lying dead.... And one man was still crying out in pain.... He was crying out for help, but I just ran on to save my own life.... While I was running, I heard the gunshots being fired....

Later, he found out that both his father and two brothers had been slain during the massacre from which he had narrowly escaped.

**Milosevic: Defendant and Defense Attorney**

While Milosevic is a trained attorney, he never served as a trial attorney, and, as a result of that, he is prone to making both procedural as well as legal errors. Milosevic refuses to acknowledge that the ICTY has provided him with defense attorneys and has chosen, instead, to serve as his own defense counsel, though periodically he does rely on the court to provide him with key references and articles. He not only looks askance at the proceedings and indictments he faces, but considers his arrest and trial to be bogus. So much so, that he refuses to stand when the judges enter and depart from the courtroom; he refuses to follow proper courtroom etiquette and address the judges as “judge,” instead referring to them as Mr. (as all three judges are male); and he makes frequent and acerbic comments about the unfairness of the proceedings and what he sees as their spurious nature, including inferences that the trial constitutes a classic case of “victor’s justice.”

Even in the short amount of time that I observed the trial proceedings (some 24 hours over a three-day period), it was obvious that Milosevic followed the proceedings very closely, despite his body language, which suggested that he was bored and inattentive. Though he took few notes, each time he had an opportunity to cross-examine witnesses he went right to the heart of the testimony and attempted to call into question the witness’s memory, and the accuracy of his comments in regard to dates, times, places, personalities, and events, hoping to prove that the veracity of the testimony was suspect. Frequently, he was prone to giving speeches, and with noticeable exasperation, Judge Richard May, a distinguished looking British barrister with slate gray hair, spectacles and a stern countenance, would pointedly ask and then assert: “Do you have a question Mr. Milosevic? If so, ask it.” Milosevic would answer, “Fine, Mr. May, I will.”

Milosevic had a propensity for relating convoluted history lessons to the witnesses he was cross-examining as well as to the court, and again he ran afoul of Justice May over such long-winded orations. When he was obviously not able to stand it any longer, Justice May would say something along the lines of, “Mr. Milosevic, how many times do I need to tell you, you need to ask a question!” And again, Milosevic would answer, “Fine, Mr. May, I will.”

The following excerpt provides an example of Milosevic’s style of questioning as well as his tendency to present history lessons when he can get away with doing so. This cross-examination took place on May 29th during the proceedings at which Witness B-1455 was testifying:

Milosevic: Mr. 1455, I shall do my best not to ask you questions which might upset you in any way in view of the fact that you have lost members of your family, but I would like us to clarify some points.

... From all the descriptions you’ve given us ..., is it clear that there was no JNA unit which participated in all those events, nor was in the area at all at that time? Is that right?

Witness B-1455: It was clear to us that a reserve unit of the Yugoslav People’s Army [the JNA] was present there....

Milosevic: ... As far as I was able to gather, from what you said here orally during your testimony and from what you wrote in your statement, all the people that you enumerate did not have any JNA insignia but various other insignia that could not have belonged to the JNA, isn’t that right?

Witness B-1455: Sir, I said that the persons who were wearing uniforms, uniforms of the reservist formation of Yugoslavia, were there when the population was rallied up and when they stood guard over them in Drinjaca, in the cultural center. It was only later that the paramilitaries turned up wearing different uniforms, the Chetnik uniforms and others, those who beat up the people and ultimately shot them.
Milosevic: The whole reserve complement [in each locality] throughout Yugoslavia, the Territorial Defense, all had the same uniforms, just like the JNA. There wasn’t any difference. Isn’t that right?

Witness B-1455: It is right that the reserve units of the JNA didn’t have different uniforms; that is to say, their uniforms were not different from the regular JNA army, Mr. Milosevic, the reserve force from the regular Yugoslav army. So they had the same uniforms....

Milosevic: ... So when you say, for example, referring to the six men who were—the six men who beat up the people in the hall, and you say they had Skorpions, knives, et cetera, and that this commander of theirs had a beard, these were all things that you stated, are they not? You know that the JNA didn’t allow anybody to wear beards and that the JNA members had to be well turned out and that the issued weapons did not include Skorpions in the JNA. What was used was exclusively domestically produced weapons by the Cronovo Zastavo or Red Star company.... I assume you know that, in view of the fact that you did your regular military service.

Witness B-1455: Yes, Mr. Milosevic. I understand what you are saying. But you must understand me too. That particular unit of the reservists—of the JNA—really did not have beards and they didn’t have Skorpions and they didn’t have knives in their hands. They had weapons that were manufactured in Yugoslavia and the uniforms you mentioned.

Milosevic: All right. Now, to link all this up. What date are you referring to?...

Witness B-1455: I’m talking about the date, which was the 30th of May, 1992.

Milosevic: Do you know that already on the 30th of May the JNA had withdrawn from the territory of Bosnia-Herzegovina by that date? Do you know when the Army of the Republika Srpska [Serbian Republic] was established and when those reservists that you talk about ceased to be a component part of the JNA, the Yugoslav People’s Army, and when all these changes took place? Are you aware of that? Do you know about that?

Witness B-1455: Mr. Milosevic, I have not come here to speak about when the Serbian army within Bosnia-Herzegovina was established and when the JNA withdrew from Bosnia-Herzegovina. I’m sure the competent authorities have all those facts and figures. They know about it better than me. But it was a coincidence that they withdrew on the 30th of May, that the JNA withdrew from the territory precisely on that date. It ceased to exist as of that date and then the Serbian army began to be formed, I assume. I know nothing about those dates. All I’m testifying about are things that I saw myself. What I’m not sure about and the things I don’t know about, I don’t want to talk about because I don’t know about those other facts and dates.

Milosevic: Yes, I fully respect that. But I just wanted us to clarify that it couldn’t have been the JNA or any units of the regular army at all. And the fact that this went on in Bosnia-Herzegovina was a tragedy, of course, for all three ethnic groups, for all three nations. There’s no challenging that.

Judge May: You shouldn’t have a general discussion of these matters. Now, what specific questions have you for the witness?

Milosevic: Well, I do have specific questions, Mr. May, with respect to the witness’s testimony and statement.
And thus it went all afternoon. The interesting and heartening aspect of the testimony by Witness B-1455 was that, unlike many other witnesses I observed, he was not at all intimidated by Milosevic’s presence or his mode of questioning. In fact, time and again Witness B-1455 set Milosevic straight in regard to what he had personally witnessed and experienced. He did not allow Milosevic to bully him or prod him into agreeing with something that he either was not conversant with or that he knew was incorrect.

Conclusion
Viewing the trial of Slobodan Milosevic was a remarkable experience. It provided me with unique and powerful insights into the mind of a purported perpetrator of genocide. I was able to observe the procedural operations of a remarkable judicial process resulting from the relatively new human rights regime that has evolved from the United Nations. It was a rare bird’s eye view of a body that can serve as a major brake on those who might consider genocide in the future, because they will know full well that “genocidaries” are no longer likely to walk away from their murderous deeds with impunity.

Notes
1. I arranged the visit through the assistance of the very gracious Alexander Zahar, an attorney for the ICTY, with whom I initially corresponded when he was an attorney at the International Criminal Tribunal for Rwanda (ICTR) in Arusha, Tanzania. A U.S. citizen whose current home base is in Australia, Zahar is the son of a former U.S. diplomat who served in various posts in The Hague, Afghanistan and elsewhere. Zahar provided me with a slew of information via e-mail, ranging from the mundane (e.g., how to get to The Hague from Amsterdam and from the Centraal Station in The Hague to the ICTY headquarters) to more technical concerns (e.g., the times and days of the trials of specific defendants, as well as the manner in which the trials are conducted and why).
3. Ibid., 55.
4. The Chetniks were Serbian irregular forces in World War II. They sought to restore the monarchy in Serbia.

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