

CALLING FOR MILOSEVIC TO BE
HELD RESPONSIBLE FOR HIS AC-
TIONS

HON. CHRISTOPHER H. SMITH

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Tuesday, May 25, 1999

Mr. SMITH of New Jersey. Mr. Speaker, today I am joined by my friend and colleague, Representative BILL PASCRELL and 14 other cosponsors in introducing a resolution which declares the conviction of this Congress that Slobodan Milosevic is responsible for war crimes, crimes against humanity, and genocide in the former Yugoslavia. His actions in that region cannot be excused by anything which Serbia's neighbors or the international community has done. His victims demand justice. Unfortunately, the United States Government may not be doing all that it can to provide evidence to the International Criminal Tribunal in The Hague to have Milosevic publicly indicted.

In the 105th Congress, there was near unanimous support for H. Con. Res. 304 and its Senate companion, S. Con. Res. 105. But in the past year little has been done to advance the just cause of ascribing blame to this man. Instead, we have had to watch as more atrocities have been committed in Kosovo, but no evident attempts to hold Milosevic personally and fully responsible for his actions. This is the reason that this resolution, which updates those passed last Congress, must again be considered by this body.

During the Bosnian phase of the Yugoslav conflict, from 1992 to 1995, Slobodan Milosevic was able to incite extreme nationalist feelings among Serbs, and he used that as basis to commit acts of genocide against non-Serb civilians. From early 1998 to the present, the same thing has been happening in Kosovo. As the resolution points out, about 4 million people have been displaced during the Yugoslav conflicts, including 1.5 million Kosovar Albanians, most of the latter since late March. Hundreds of thousands have been killed, some by mass executions and others by reckless shelling of towns and villages. Tens of thousands have been raped and tortured, often in detention centers and concentration camps. Vestiges of a people's daily lives, from their mosques to their local registration papers, are destroyed. Read the definition of genocide from the Genocide Convention itself, and read what happened in Bosnia and what is happening today in Kosovo.

Clearly, this is genocide.

The Helsinki Commission, which I Chair, has heard testimony from many witnesses—including lawyers, doctors, humanitarian relief aid workers, and diplomats who have had extensive firsthand experience in the region—and they have testified to this fact. As a result, in addition to last year's resolution, I recently wrote to President Clinton urging that prosecution of war criminals not be placed on the negotiating table as a bargaining chip to be thrown away, and urging that the U.S. Government use the resources at its disposal to help the Tribunal issue an indictment of Milosevic. Just two weeks ago, the Commission held a hearing on a variety of legal actions stemming from the genocide in Bosnia-Herzegovina and Kosovo.

Many of us in this body have witnessed firsthand stories from ethnic Albanians who

escaped their homeland into Macedonia and Albania. These traumatized people now sit in refugee camps, their entire lives left behind, with an uncertain future.

Mr. Speaker, all those involved in war crimes, crimes against humanity and genocide in the former Yugoslavia must be held accountable for their roles. The evidence is overwhelming. As the head of his country, Milosevic must be among them. We must ask ourselves why he has done nothing other than give medals to those who have engaged in terrible crimes in Kosovo if he himself is not responsible for those crimes. He is at minimum responsible as Head of State for stopping these crimes from occurring. He is at least responsible for giving soldier the license to get away with raping, killing and cleansing the people of Kosovo. And he is likely responsible for directing his security forces and paramilitary associates to commit such acts.

Mr. Speaker, with this resolution we are putting the House on record as saying: The ethnic cleansing in Bosnia-Herzegovina and Kosovo was no accident but part of Belgrade's policy. There can be no true peace in the Balkans that excludes justice. It is in U.S. national interest to assist those who can provide justice, and that our government must therefore do more to help the Tribunal develop a case against Slobodan Milosevic.

As Mark Ellis of the American Bar Association's Coalition for International Justice, who provided testimony at one of our hearings on Kosovo, recently stated, "Inevitably, lasting peace will be linked to justice, and justice will depend on accountability. Failing to indict Milosevic in the hope that he can deliver a negotiated settlement makes a mockery of the words 'Never Again.'" Let's affirm that we really do mean "Never Again" by again passing a resolution which states our belief that Milosevic is responsible for war crimes, crimes against humanity and, yes, genocide.

For the RECORD, Mr. Speaker, I want to submit an article by Mark Ellis from the May 9, 1999, Washington Post and the letter I sent to President Clinton which further illustrate the culpability of Slobodan Milosevic.

COMMISSION ON SECURITY
AND COOPERATION IN EUROPE

Washington, DC, March 31, 1999.

HON. WILLIAM JEFFERSON CLINTON,
*President of the United States, The White
House, Washington, DC.*

DEAR MR. PRESIDENT: I request that you direct all federal agencies that may hold information relevant to a possible indictment of Slobodan Milosevic, President of Serbia and Montenegro, to provide the evidence of war crimes, crimes against humanity, and genocide to the International Criminal Tribunal for the Former Yugoslavia (ICTY) in The Hague. The United States should make it a high priority to assemble this information, review and where necessary declassify it, and provide the documentation in the most expeditious manner possible to the prosecutor's office at the Tribunal. I respectfully suggest that you should include in your directive instructions to agency heads to reprogram funds and reassign personnel as necessary to permit immediate and effective implementation of this requested directive.

As the sponsor of H. Con. Res. 304, expressing the sense of the Congress regarding the culpability of Slobodan Milosevic for war crimes, crimes against humanity, and genocide in the former Yugoslavia, that was adopted by the House by a record vote of 369 to 1 on September 14, 1998, I was startled and

surprised to learn that the United States has not made an effort to gather information on Milosevic as the House and Senate requested. The attached article entitled "CONFLICT IN THE BALKANS: THE TRIBUNAL; Tactics Were Barrier To Top Serb's Indictment," by Raymond Bonner, appeared in the March 29, 1999, edition of The New York Times. The article notes:

The Clinton administration could hardly have taken the initiative to build a case against Milosevic, one senior administration official explained Sunday, after it adopted the policy in late 1994 of working with the Serbian leader to bring about an end to the war in Bosnia. "We, the United States government, have been the largest source of information for the tribunal, but we have never compiled dossiers with the aim of indicting Milosevic, or any specific individual," said this official, who spoke on condition of anonymity. "The indictment of Milosevic would require a policy change by the United States," he added.

If this report is accurate, it is past time for U.S. policy to include the pursuit of a public indictment of Milosevic by the ICTY. Issuance of a Presidential directive establishing such a policy, supported by adequate resources to assure its immediate and effective implementation, is clearly justified by the reports of the Helsinki Commission has received about actions by Yugoslav Army, paramilitary, and police forces under Milosevic's command in Kosovo that probably constitute war crimes, crimes against humanity, and genocide. Congress has already expressed its overwhelming support for such a course of action by adopting both H. Con. Res. 304 and S. Con. Res. 105 (copy attached) last year.

I look forward to learning what direction you have given the policy-level officers of the United States government concerning this issue.

Sincerely,

CHRISTOPHER H. SMITH,
Chairman.

[From the Washington Post, May 9, 1999]
WAR CRIMINALS BELONG IN THE DOCK, NOT AT
THE TABLE

(By Mark S. Ellis)

Just a few weeks ago, I stood among a sea of 20,000 desperate people on a dirt airfield outside Skopje, Macedonia, listening to one harrowing story after another. I had come to the Stenkovec refugee camp to record those stories and to help set up a system for documenting atrocities in Kosovo.

As I collected their accounts of rape, torture and executions at the hands of Serbian troops, I was struck by the refugees' common yearning for justice. They wanted those responsible for their suffering to be held accountable. Their anger was not only directed at the people they had watched committing such savagery, but at the political leaders—and Yugoslav President Slobodan Milosevic in particular—who had orchestrated the misery and continue to act with impunity.

The means exist to hold Milosevic and his underlings accountable. In recent weeks, there have been calls from members of Congress for his indictment by the International Criminal Tribunal for the Former Yugoslavia, and Undersecretary of State Thomas Pickering has said that the United States is gathering evidence that could lead to his indictment. And there is plenty of evidence. In the Kosovo town of Djalovica, for example, residents carefully documented the Serbian barbarity for investigators, recording the details of each murder, each rape, each act of violence, before they fled the city. The time has come to act on the testimony of these and other witnesses.

To do so, of course, flies in the face of last week's much ballyhooed optimism about reaching a negotiated settlement with Milosevic. However eager the Clinton administration might be to reach a political and diplomatic solution, we should remember that those who have recently suffered under Serbian attacks reject outright the notion that justice must sometimes be forfeited for the sake of diplomatic expediency. During the Bosnian conflict, accountability was sacrificed on the dubious premise that negotiating with someone who is widely regarded as a war criminal is a legitimate exercise in peace-making. We shouldn't make that mistake a second time around. Milosevic's broken promises still echo among the charred ruins and forsaken mass grave sites that defile the landscape of Bosnia.

If Milosevic had been indicted for the mass killings and summary executions that the Bosnian Serbs—with backing from Serbia—are accused of carrying out, would he have acted so brazenly to "cleanse" Kosovo of its ethnic Albanians? Nobody knows. At the very least an indictment would probably have deterred him; and apprehension and a trial would have stopped him. But there should be no uncertainty about what occurs when Milosevic is allowed to act unencumbered. The time has come for the international war crimes tribunal to help put an end to that.

Inaugurated by the United Nations on May 25, 1993, and based in The Hague, the Yugoslav war crimes tribunal has, to date, tried just 16 defendants. With a staff of more than 750 and an annual budget of more than \$94 million, it has the resources—and the authority—to indict Milosevic. Indeed, failure to indict would reveal the tribunal's impotence in the face of political controversy, and prove that this institution of international law and justice is merely an expensive and irrelevant relic.

How difficult would it be to indict Milosevic? Not difficult at all. Under the tribunal's statute, the office of the prosecutor need only determine "that a prima facie case exists," that's to say that the prosecutor must gather evidence sufficient to prove reasonable grounds that Milosevic committed a single crime under the tribunal's extensive jurisdiction.

With this in mind, the chances of Milosevic being held accountable increase with the arrival of each new group of refugees driven from their homes in Kosovo. Their remarkably consistent testimony is providing crucial information—now being gathered by representatives of the tribunal as well as by human rights organizations—about what has actually taken place in Kosovo. These first-hand accounts are indispensable in building a case against Milosevic—and the refugees I interviewed during the days I was there are willing to testify about what they saw.

But with refugees flooding out of Kosovo and some being relocated in distant countries, the prosecutor's office must ensure that testimony is taken swiftly, legally and professionally. The lack of access to Kosovo by independent journalists and human rights monitors and the extreme instability of refugee life heighten the importance of collecting these accounts while they are still fresh in people's minds. Yet the prosecutor's office was slow to act. A full five weeks went by before the tribunal sent a corps of investigators to the region.

What crimes should the Yugoslav president be indicted for? The tribunal's statute provides jurisdiction over "serious violations of international humanitarian law" including both "crimes against humanity" and "geno-

cide," the most abhorrent of all. Milosevic should be indicted for both.

Crimes against humanity are defined as "systematic and widespread" and directed at any civilian population; they include murder, extermination, imprisonment, rape and deportation. They are distinguished from other acts of communal violence because civilians are victimized according to a systematic plan that usually emanates from the highest levels of government.

In Kosovo, the forced deportation of ethnic Albanians by the Yugoslav army and the Serbian Interior Ministry police force is an obvious manifestation of such crimes. The refugees with whom I spoke described being robbed, beaten, herded together and forced to flee their villages with nothing but the clothes they were wearing. By confiscating all evidence of the ethnic Albanians' identity—passports, birth certificates, employment records, driver's licenses, marriage licenses—the Serbian forces also severed the refugees' links with their communities and land in Kosovo. This attempt to make each ethnic Albanian a non-person is itself a crime against humanity. Emerging evidence of mass killings, summary executions and gang rape lends further credence to the widespread and systematic nature of these crimes.

As to the crime of genocide, the tribunal's statute rests on the 1948 Convention on the Prevention and Punishment of Genocide, which defines genocide as "acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group." Arising as it did from the extermination of the Jews in Nazi Germany, the convention invites comparison with the Holocaust and is intended to prevent such heinous crimes from happening again. This tragedy has not reached that perverse level of brutality but, like earlier efforts to eliminate an entire people—whether the Jews, the Armenians or the Tutsis—it should be prosecuted as a crime of genocide.

The convention addresses intent, and stipulates that acts designed to eliminate a people—in whole or in part—constitute genocide. Among other acts covered by the convention, crimes of genocide include "(a) killing members of the group; (b) causing serious bodily or mental harm to members of the group; (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part."

In the former Yugoslavia, acts of genocide have been perpetrated through the abhorrent policy of ethnic cleansing—that is, making areas ethnically homogenous by expelling entire segments of the Kosovar population and destroying the very fabric of a people.

Ethnic cleansing does not require the elimination of all ethnic Albanians: it may target specific elements of the community that make the group—as a group—sustainable. The abduction the execution of the intelligentsia, including public officials, lawyers, doctors and political leaders, for example, is part of a pattern of ethnic cleansing and could constitute genocide, as could targeting a particular segment of the population such as young men. It is clear from the refugees who have been interviewed that these acts are being systematically committed in Kosovo.

An often overlooked but important element of the 1948 convention is that an individual can be indicated not only for committing genocide, but also for conspiring to commit genocide, inciting the public to commit genocide, attempting to commit genocide or for complicity in genocide. The Point

is that criminal responsibility extends far beyond those who actually perform the physical acts resulting in genocide. In short, the political architects such as Milosevic are no less responsible than the forces that carry out this butchery. There is no immunity from genocide.

Prosecuting Milosevic will require relying on a legal strategy based on the concept of "imputed command responsibility." Under this theory, Milosevic can be held responsible for crimes committed by his subordinates if he knew or had reason to know that crimes were about to be committed and he failed to take preventive measures of to punish those who had already committed crimes.

Since it is unlikely that Milosevic has allowed documentary evidence to be preserved that would link him to atrocities in Kosovo, the prosecutor's office will have to rely heavily on circumstantial evidence to build its case. This means identifying a consistent "pattern of conduct" that links Milosevic to similar illegal acts, to the officers and staff involved, or to the logistics involved in carrying out atrocities. The very fact that atrocities have been so widespread, flagrant, grotesque and similar in nature makes it near certain that Milosevic knew of them; despite his recent protestations to the contrary, it defies logic to suggest that he could be unaware of what his forces are doing.

What will the consequences be if the Yugoslav president is indicted? First an indictment would send a clear message that the international community will not negotiate or have contact with a war criminal. It is current U.S. policy not to negotiate with indicted war crimes suspects. And so it should be. Milosevic would be stripped of international statute except as a fugitive from justice. This might, in turn, open an avenue for Serbians to once again distance themselves from their leader's regime. Second, an indictment would likely result in an ex parte hearing in which the prosecutor's office could present its case in open court—without Milosevic being there. By establishing a public record of Milosevic's role in the crimes committed, such a hearing would be cathartic for both victims and witnesses, and also for citizens long denied access to the truth. Finally, the tribunal would issue an international arrest warrant making it unlikely that Milosevic would venture outside his country's borders.

When I watched the bus loads of new arrivals enter the Stenkovec camp, I saw a small girl's face pressed against the window. Her hollow eyes seemed to stare at no one. History was being repeated. In his opening statement at the Nuremberg trials in 1945, U.S. chief prosecutor Robert H. Jackson said, "The wrongs which we seek to condemn and punish have been so calculated, so malignant, and so devastating that civilization cannot tolerate their being ignored, because it cannot survive their being repeated." Jackson was expressing the hope that law would somehow redeem the next generation and that similar atrocities would never again be allowed. Today, we must hold personally liable those individuals who commit atrocities in the former Yugoslavia. To negotiate with the perpetrators of these crimes not only demands the suffering of countless civilian victims, it sends a clear message that justice is expendable, that war crimes can go unpunished. Inevitably, lasting peace will be linked to justice, and justice will depend on accountability. Failing to indict Milosevic in the hope that he can deliver a negotiated settlement makes a mockery of the words "Never Again."