

The Yugoslavian Fairy Tale

By George Szamuely | May 28, 2004

It is always fascinating to watch the eagerness with which so-called progressives unquestioningly accept an official history full of virtuous U.S. officials and villainous savages trying the patience of the peaceful, law-abiding Great Powers. Case in point: the wars in the former Yugoslavia, and Stacy Sullivan's recent account of them in Foreign Policy In Focus (<http://www.fpif.org/commentary/2004/0402milosevic.html>). The actual sequence of events that caused those wars is very different from the reporting of the establishment media and, unfortunately, much of the progressive media. According to this story, the wars of the past decade were all started by the Serbs, who sought to destroy Yugoslavia and turn it into a mono-ethnic Greater Serbia.

The West, well-meaning and indecisive as ever, stood by unwilling to intervene as the Serbs went on their rampage to carve out lands belonging to the other nations of Yugoslavia and drive out all non-Serbs. Not until the United States was finally moved to act to bring the Serbs to heel was peace and independence possible. And, thanks to the efforts of the United States, the International Criminal Tribunal for the Former Yugoslavia came into being to ensure that there would be no impunity for Serb leaders and their campaign of genocide and ethnic cleansing. Today, tribunal judges supposedly toil away on behalf of the war crimes' victims, painstakingly trying to balance judicial fairness against the need to ensure that such things never happen again.

The problem is that not one part of this fairy tale is true. The wars in Yugoslavia started with the electoral triumph of anti-Communist nationalists in Bosnia, Croatia and Slovenia in the country's first multiparty elections in 1990. Slovenia and Croatia, with encouragement from abroad, particularly Germany and the United States, pushed for independence right away, in violation of the constitution of Yugoslavia. Serbia's position, in accord both with the Yugoslav constitution and with democratic aspirations, was that the constituent nations of Yugoslavia could neither be forced to stay nor forced to leave Yugoslavia against their will.

Deconstructing Yugoslav History

The so-called international community's unseemly and irresponsible recognition of independent Slovenia and

Croatia in 1991 was not only flagrant interference in Yugoslav internal affairs, it violated innumerable international treaties such as the Helsinki Final Act, the Montevideo Convention and the United Nations Charter.

Sabotage of peace plans, bad faith negotiations and a yearning to resort to force characterized U.S. policy in Yugoslavia throughout the 1990s. On May 30, 1992, U.N. Secretary General Boutros Boutros-Ghali issued a report commending the government of Yugoslavia for the withdrawal of its armed forces from Bosnia and criticizing

Croatia for its refusal to withdraw its armed forces, the U.S. sought to suppress this report and to push the United Nations to impose sanctions against Yugoslavia, though not Croatia. Every proposal put forward by the E.U., like the Vance-Owen plan and the Owen-Stoltenberg plan was sabotaged by Washington as it egged on its proxies, Bosnia's Muslims, to reject everything on the table in favor of the

absurd and unrealistic option of a unitary state of the three ethnic groups—something that the United States had insisted couldn't possibly work at the Yugoslav federal level.

During this time, the United States was secretly arranging air drops of weapons to Bosnia's Muslims, in violation of the United Nations arms embargo, as well as facilitating the flow of arms and mujahedin fanatics into Bosnia from Iran and Saudi Arabia. In addition, the United States, Great Britain and Germany were arming and training the Kosovo Liberation Army. The objective was to instigate terror and mayhem so as to provoke a reaction from the

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Yugoslav authorities that could then be designated a humanitarian crisis and used as a pretext for the armed attack that the Clinton administration had been seeking to launch for years. However, the Serbs were no fools and they refused to be provoked. Consequently, two further frauds were needed. First, there were the alleged killings at Racak. And then there were the bogus settlement negotiations at Rambouillet.

On Jan. 15, 1999, following a military operation by Yugoslav armed forces against a KLA stronghold at Racak, KLA leaders led OSCE observers to a gully where 45 bodies were piled on top of each other. Without waiting for any investigation, the United States, through Ambassador William Walker, immediately announced that the Serbs had carried out a massacre of unarmed Kosovo Albanian civilians. As we learn more about Racak, the story of the massacre is becoming increasingly hard to sustain. On March 17, 1999, a week before its onslaught on Yugoslavia, NATO organized a press conference at which Helena Ranta, the leader of the Finnish forensic team hired by the OSCE to investigate Racak, announced her findings. Though the Finnish team's report was never published, the U.S. government, with the *New York Times* in tow, touted her inconclusive findings as confirmation of William Walker's initial statement that a massacre had taken place at Racak.

Recently, Ranta revealed the pressure she was under to make her findings conform with NATO requirements. In an interview with *Berliner Zeitung*, she declared that she knew at the time of her investigation that there were:

"KLA-fighters buried around Racak...At that time I received information that proved that several Serb soldiers had been killed as well. Unfortunately, we will never know the exact number of Serb soldiers that died that night...When Ambassador Walker said that there was a massacre at Racak, this statement had no legal value. I declared at that time that the OSCE-observers forgot to take all steps necessary to secure a crime scene: isolating the area, refusing admission to all unauthorized persons and collecting all material evidence...[It was clear] that a bunch of governments were interested in a version of Racak that blamed only the Serb side. But I could not provide this version."

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As for the negotiations at Rambouillet, U.S. bad faith was nicely summarized by a State Department official who boasted later: "We intentionally set the bar too high for the Serbs to comply. They need some bombing, and that's what they are going to get." If the Serbs rejected a deal, they would get bombed; if the KLA rejected a deal, the U.S. would simply shrug its shoulders. Thus, the United States insisted on including Appendix B in any accord knowing full well that Serbia, like any other sovereign state, would reject a proposal to allow NATO forces to enjoy unrestricted movement throughout the country as well as complete criminal and civil immunity.

Except for Appendix B, Slobodan Milosevic is on record as having supported every single peace plan the so-called international community proposed. Yet Stacy Sullivan worries that he might escape a conviction for genocide. That all the evidence points to the opposite conclusion, that his government, unlike that of the United States, sought peace even if it entailed the loss of the historic achievement of the state of Yugoslavia, does not matter in the slightest. The U.S. got its bombing of Yugoslavia that was not justified by any Security Council resolution, any imminent threat of attack on a NATO power, any threat to any of Yugoslavia's neighbors or indeed any humanitarian crisis since the refugee flow out of Kosovo began after the bombing.

The Illegitimacy of the Court

U.S. policy in the Balkans was cynical and war-mongering. It seems strange that a journal of progressive opinion should unquestioningly accept the doctrine that small nations should simply accept the diktats of great powers. Nor should it unquestioningly accept its claims about humanitarian crises when even the most superficial survey of the historical record will show that it was the policies of the Great Powers that caused these crises. Finally, it is surprising that it unquestioningly accepts that a court largely funded and staffed by the very great powers that had caused so much havoc in Yugoslavia (\$17 million in 2003 from the U.S. alone) should act as a disinterested impartial judicial body.

To prove that day is night a very peculiar kind of court had to be created, one that falls outside of the two chief

sources of international criminal law, treaty law and international customary law. The Security Council possesses neither legislative nor judicial functions. It can neither create new international law nor make binding interpretations of existing international law. The UN has no jurisdiction or authority to try, punish or imprison individuals, not even those who have violated international law. Nor is punishment of individuals for international crimes among the Security Council's enumerated powers listed in the UN Charter. The 1948 Genocide Convention explicitly states that national courts are the appropriate venue to try individuals accused of genocide.

According to the ICTY's statute, the waging of aggressive war is not a crime that falls within its domain. This is a curious omission. The most important war crimes court since Nuremberg has decided to dispense with the most important crime under the Nuremberg standard. This is scarcely surprising. Under its rubric, NATO would undoubtedly have been guilty of a crime. Every jurisdiction in the world plainly recognizes the difference between violence committed while acting in self-defense and violence committed while acting aggressively.

Given this, it is hardly shocking that the court violates every judicial norm whether in the civil law or common law tradition. Indictments are often kept secret and suddenly sprung on the court's victims. Bail is rarely granted, and detainees can wait years in prison before their cases come to trial. Prosecutor and court are one and the same. There is no jury. Appellate court and trial court are also one and the same. The court is answerable to no one. There is no jury. The court is financed by interested parties like the U.S., assorted NATO governments, U.S. corporations and, of course, the ubiquitous George Soros—this in fact violates the tribunal's own statute that funding can only come from the United Nations.

The ICTY's procedures would be unacceptable in any serious jurisdiction. Hearsay (essentially rumor and gossip) is admissible. Testimony presented at one trial can be introduced as evidence in another trial, without any cross-examination. Prosecutors can present pretrial witness statements as witness trial testimony. Since statements made

to, and prepared by, the prosecutor, are essentially prosecutor statements, it means prosecutorial assertions are treated as evidence in chief. Prosecutors can introduce illegal wiretaps whose authenticity has not been established and whose provenance is kept secret. As evidence in a trial of one of the most serious charges known—genocide—any self-respecting court would throw them out.

Witnesses can testify anonymously or even by videotape. Moreover, the same judges preside over a number of trials

at one and the same time in which the same issues are being presented and argued over, which is clearly prejudicial to all of the defendants. Another innovation is the giving of multiple statements, to enable witnesses to remember more and more and thereby to ensure that their statements get closer and closer to the prosecutorial or official version of events. Prosecutorial misconduct is rampant. Witnesses are blackmailed using the

threat of indictment to compel them to come up with the right version of the events. Much of the proceedings take place in closed session, ostensibly to protect witnesses but, more likely, to protect the court from serious scrutiny. The tribunal can alter its procedures and rules of evidence as it goes along and apply it ex post facto to ongoing cases. Prosecutors, unlike defense attorneys, take part in this rule-changing process.

With so many rules rigged in favor of prosecutors, much of what takes place at the ICTY has the character of something out of Alice in Wonderland: "Alice laughed: "There's no use trying," she said, "one can't believe impossible things." "I daresay you haven't had much practice," said the Queen. "When I was younger, I always did it for half an hour a day. Why, sometimes I've believed as many as six impossible things before breakfast." Stacy Sullivan appears to be a devotee of the Queen.

George Szamuely, a writer based in New York City, was born in Hungary and educated in England. He has served as an associate at the Manhattan Institute, editor at Freedom House, film critic for Insight, research consultant at the Hudson Institute, and as a weekly columnist for the New York Press.

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Writer: George Szamuely

Editor: Erik Leaver, IPS

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