

NOTICE OF THE EXISTENCE OF INFORMATION CONCERNING SERIOUS VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW WITHIN THE JURISDICTION OF THE TRIBUNAL;

REQUEST THAT THE PROSECUTOR INVESTIGATE NAMED INDIVIDUALS FOR VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW AND PREPARE INDICTMENTS AGAINST THEM PURSUANT TO ARTICLES 18.1 AND 18.4 OF THE TRIBUNAL STATUTE.

BACKGROUND

1. BRIEF HISTORY

1.1 The highlands of Kosovo have been the locus of tensions between Albanians and Serbs for centuries and like most of the Balkans, much blood has been shed over this territory. Albanians rely on their so-called ancient heritage to claim first rights to the region, whereas, Serbia focuses on the middle ages when Kosovo was the cradle of the Serb nation and the religious epicenter of the Serb Orthodox faith as evidenced by the approximately one thousand monasteries in the region. The mountains of Kosovo have determinative cultural and historical significance for the Serbs, as they staged the final battleground in 1389 between the Serbs and the Ottoman Turks. After the Serb defeat in Kosovo, the Ottoman continued their successful campaign into central Europe.

1.2 During the Ottoman occupation, the vast majority of Albanians readily converted to Islam and were thus afforded preferential treatment by the Turks. In the almost five centuries of Ottoman occupation of Kosovo, Muslim Albanians were encouraged to immigrate to Kosovo and settle in the area at the expense of the Serb population. The Serbs finally liberated Kosovo from the Ottoman Empire in 1912, and as expected, this liberation was accompanied by reprisals and the expulsion of the Albanian settlers who had been previously patronized by the Ottomans. The First World War presented the Albanians with an opportunity to exact reprisals, which the Serbs returned upon liberation in 1918. During the inter war period, the population in Kosovo was equally balanced between ethnic Albanians and Serbs.

1.3 During World War II, the majority of Kosovo was swallowed by a Greater Albania under Italian tutelage, while the remainder was occupied by Germany and Bulgaria. Over 300,000 Serbs were expelled from Kosovo during the Italian occupation, while Albanian immigration to Kosovo was encouraged by the occupation forces. Following Tito's liberation of Yugoslavia, Kosovo was absorbed into the Republic of Yugoslavia, much to the chagrin of the Albanian community who had hoped for union with Albania. The Tito regime, however, did not favor the Serbs in the area. Tito's communists did not allow the Serbs, expelled during the Italian occupation, to return and claim their property in Kosovo. In 1974, Tito granted Kosovo full autonomy. The period between 1975 and 1981 can be characterized as the 'Albanian Spring' in Kosovo. Due to an exploding birthrate amongst the Albanians and Serb emigration, encouraged by the Tito regime, the Albanian population was rapidly becoming a majority in the 1980s. Once the Serbs had emigrated from the area, they were frequently barred from returning by the Communist regime.

1.4 By 1987, Albanians represented a 90% majority in the region. Serb demonstrations against Albanian harassment began to escalate. In response, Milosevic stripped Kosovo of its autonomy in 1989. These chain of events resulted in strikes and violent clashes between the Serb Police Force and Albanian demonstrators. Milosevic sent the military into Kosovo to reestablish control. In 1991, Albanian separatist, prompted by neighboring Albania, declared Kosovo an independent nation, fueling tension further. The Kosovo Liberation Army (KLA) was forged in 1996, out of various armed, terrorist, Albanian groups and a wide-spread campaign of terror commenced against the Serb police forces and civilians.

1.5 In the fighting that ensued between Serb forces and the KLA, an increasing number of Albanians abandoned the non-violent policies of their elected leader Ibrahim Rugova and began to join the terrorist KLA. By 1998 the KLA is said to have assumed control of 40% of Kosovo and a full scale guerrilla war was in progress. The KLA was financed and accounted by outside sources with over 30,000 automatic rifles, antitank and other weaponry and sheltered by the indigenous Albanian community. The Government of the Federal Republic of Yugoslavia (FRY) ordered an offensive against the KLA in May of 1998. By August 1998, the FRY army had reestablished control over Kosovo and the KLA had retreated. The Yugoslav Government took measures against the Albanian civilians who had previously sheltered the KLA aimed to eradicate support for the terrorist organization. It must be noted that none of the parties involved in this Kosovo crisis demonstrated much regard for international humanitarian law. Civil rights and humanitarian concerns are usually the first casualties of

a civil war, and Kosovo was no exception.

1.6 The international community became concerned with the escalating violence in the area. The Security Council enacted Resolution 1160/98, condemning the excessive use of force by Serbian Police forces against civilians in Kosovo, as well as acts of terrorism by the Kosovo Liberation Army. Exercising its Chapter VII powers, the Security Council called upon the Federal Republic of Yugoslavia to withdraw its special police forces from Kosovo and enter into a constructive dialogue with the indigenous Albanian community to advance a greater degree of autonomy and self-determination for the Kosovar Albanians within the framework of the Yugoslav state. The Kosovo Albanian leadership was concurrently urged to condemn all terrorist activities and pursue their goals through peaceful means.

1.7 With Security Council Resolution 1199/98, the Security Council affirmed that the deterioration of the situation in Kosovo represented 'a threat to peace and security in the region.' Once again exercising its Chapter VII powers, the Security Council demanded a cease fire to enhance the prospect of constructive dialogue between the Kosovo Albanian leadership and the Federal Republic of Yugoslavia and avert a potential risk of humanitarian catastrophe. The resolution also contained a caveat that in the event that the parties failed to implement the measures demanded in Resolution 1160, further measures would be taken to maintain or restore peace and stability in the region.

1.8 Under the unlawful threat of NATO air strikes, Milosevic was persuaded by US envoy, Richard Holbrooke, to execute two agreements in October 1998. The October 16, 1998 agreement provided for the stationing of an Organization for Security and Cooperation in Europe (OSCE) civilian mission in Kosovo to verify Serb compliance with the above UN Resolutions, while the October 15, 1998 agreement stipulated that NATO would establish an air surveillance campaign over Kosovo to complement the OSCE verification mission.

1.9 With Resolution 1203/98, the Security Council endorsed and demanded the implementation of the verification missions provided by the October 1998 agreements as well as the measures called for by the previous resolutions. It also reaffirmed that the deterioration of the situation in Kosovo represented a threat to peace and security in the region.

1.10 In February, Ministers of the Contact Group met in Rambouillet with representatives of the Kosovo Albanians and the Government of the FRY to negotiate a political solution to the Kosovo crisis. The Contact Group presented the Kosovo Albanians and the Government of the FRY with a previously prepared draft agreement demanding a continued cease fire between the KLA and Serb forces, withdrawal of Serb forces and the grant of extensive autonomy for Kosovo within the framework of the Serbian state under a three year transitional period, with its future after that undetermined. The Contact Group proposed that this autonomy be monitored and secured through the stationing of a NATO 'peace force'. This 'peace' agreement was served on Milosovic as an ultimatum which he was asked to either accept or face the prospect of NATO air strikes. There were no negotiations involved, nor an actual peace proposed. Yugoslavia had made it patently clear from the outset that it could not accept such an infringement on its sovereignty and thus from their inception, the Rambouillet 'accord' was doomed to failure.

1.11 Although Milosevic was willing to agree to autonomy for Kosovo subject to a few amendments, he refused to sanction the stationing of NATO troops to monitor the agreement. The stationing of Nato's troops in Kosovo represented an impermissible infringement of Yugoslav sovereignty. Following the March 15 continuation of the Rambouillet talks in Paris, it became apparent that the parties had reached a stalemate and that no agreement would be reached.

1.12 On March 23, 1999, NATO Secretary General Javier Solana, upon instruction from the political leadership of NATO member nations, ordered air strikes against Yugoslavia, under the direction of Commander General Wesley Clark and other senior military NATO personnel. The justification offered for these air strikes was that the Federal Republic of Yugoslavia had failed to meet the international community demands, being the acceptance of the interim political settlement 'negotiated' in Rambouillet, full observance of limits on the Serb army and special police force agreed on October 25th, and 'an end to the excessive and disproportionate use of force in Kosovo.' Solana further stated that this military action was intended to 'support the political aims of the international community', 'by weakening the ability of the Serb forces', 'to cause further humanitarian catastrophes'

1.13 Thus started a NATO sponsored humanitarian catastrophe, aimed to prevent 'further humanitarian catastrophe.' To 'end the excessive and disproportionate use of force in Kosovo', Secretary General Javier Solana unleashed the far superior, collective, military might of NATO and ordered an excessive and disproportionate use of force against Yugoslavia intended to destroy the vastly inferior Serb military force as well as the civilian infrastructure and environment for generations to come. To end this local, internal humanitarian crisis and preserve 'international peace and security', NATO undermined the most fundamental tenets of international law founded on the cornerstones of non-intervention and sovereignty, as well as the prohibition against the unauthorized threat or use of force – principles which have served the international community well for the last fifty odd years, to preserve international peace and security and prevent global wars. The lessons drawn by the Kosovo crisis, is that secessionist groups all over the world may rattle their terrorist saber in one hand and wave the humanitarian banner in the other, to attack the sovereignty of nations. The abuse of these principles of international law threaten us all, for inherent is the threat of a redefinition of borders, which, more frequently than not, is accompanied by the outbreak of war.

1.14 *The political background of the accused is conducive to waging war against ethnical cleansing abroad to divert attention from themselves, for that policy is exactly what the social-democratic party (Partij van de Arbeid) of Mr Willem Kok and the party for freedom and democracy (VVD) of Mr J. van Aartsen and Mr F.H.G. de Grave have been implementing within the Netherlands by giving priority rights in the fields of apartment allocation and employment facilities to immigrants from Turkey and Marocco, whose gangs run the dutch narco-state import respectively distribution and forced tens of thousand of original dutch citizens to move out from city quarters no longer safe haven to them, abandoned to become orthodox moslim quarters, where imams have more authority than police. The submittant himself has been ethnically cleansed twice: From the Kinkerbuurt quarter of Amsterdam, because the dutch authorities refused to evict an illegal drugs-trading mosk underneath his apartment and from the Transvaal quarter here in The Hague, because the dutch government as the only one in the whole world obliges unprivileged neighbourhoods to tolerate among them apartments being on purpose allocated to heroine providers and users, so exposing citizens including children to this phenomenon of crime-infested addiction. This is the 'multicultural democratic society' which they proclaim and try to impose worldwide with the aid of NATO bombardments. Remember that 'apartheid' which the dutch so fiercely denounced only over the last decades has originally been a dutch societal concept for centuries and was equally exported to South-Africa.*

The Partij van de Arbeid, the accused Mr Willem Kok being one of its most prominent leaders during the period from 1980 on, did not refrain from undemocratic methods to keep the 'Centrumpartij', for which the submittant gained 135.000 votes during the 1984 elections for European Parliament, out from parliament. Their gangs did shoot on the submittant during its meeting held 14 may of 1984 at Boekel, the Netherlands and put into fire the very hotel where later on its successor 'the Centrumdemocrats' assembled 29 march of 1986 at Kedichem, the Netherlands, where the party's secretary had her leg amputated, the perpetrators of these crimes never being prosecuted.

2. JURISDICTION OF THE COURT

2.1 By virtue of Article 1 of its Statute, the ICT has the power to prosecute persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991. The Prosecutor of the International Tribunal for the Former Yugoslavia has advised the Contract Group that the situation in Kosovo represents an armed conflict within the mandate of the Tribunal and prompted by Security Council resolutions, the Prosecutor has commenced gathering evidence of such crimes. The crimes committed by NATO's political and military leadership and responsible NATO personnel, constitute serious violations of international humanitarian law and war crimes that fall within the ambit of the ICT's area of competence.

1. On 24 March 1999, the North Atlantic Treaty Organisation (NATO) commenced military operations against the Federal Republic of Yugoslavia, with the stated aim of deterring human rights violations in the Kosova region of Yugoslavia. Operations began at 8p.m. Manned aircraft were used from the start of the military mission, initially in concert with ship-launched cruise missiles. During the first few days of military operations, attacks were directed largely against the air-defence systems of the Federal Republic, including anti-aircraft missile batteries, radar and command-and-control facilities. By the end of March, NATO aircraft were mostly attacking wider military targets, including army headquarters, ammunition dumps, and airfields. However, as the Yugoslav government continued to refuse to accede to NATO's demands, the list of targets was enlarged to include fuel depots, oil refineries (specifically those in Novi Sad and Pancevo) and government offices; and by 4 April 1999, power stations and communications links, including roads, tunnels, bridges and railway links were openly targeted, including those not inside the region of, or in the vicinity of, Kosova. By 23 April, attacks were being launched against television studios and transmitters.

This shift from attacking military targets to attacking civilian infrastructure and objects is apparent in both announcements of the NATO spokesman and NATO Heads of Government on the one hand, and also in the

nature of the sites in the Federal Republic of Yugoslavia attacked on the other. NATO Ministers collectively agreed to certain categories of targets-- the first of which was, self-evidently, the Yugoslav air defences. They subsequently agreed to widen the range of targets to include strategic assets such as bridges, barracks and headquarters.

From the 20th of April at NATO Headquarters in Brussels till the 25 th of May, Prime Minister Wim Kok, speaking for dutch government stated publicly at several occasions, that no alternatives be to bombardments. It was only on the 25th of May that he proposed a temporary pauze in the NATO bombardments going on in former Yougoslavia. Remember that Mr Kok as Prime Minister and Mr van Aartsen at the time as Minister for Agriculture ordered the 'sanitary destruction' of 5 million of healthy pigs in the Netherlands, many of them not killed by electric anaesthesia, but squeezed among the cadavers of this hecatombe; it is not a step too far from this attitude to life to the destruction of a nation.

Dr James Shea, Spokesman of NATO and Deputy Director of Information and Press, made similar statements on attacking economic and telecommunications targets shortly afterwards. On 21 April 1999, also at NATO HQ in Brussels, Dr Shea said:

"[A]ny aspect of the power structure is considered as a legitimate target by NATO, the power structure, and of course in dictatorial societies it becomes progressively impossible to distinguish between the party and the state, as we all know, they become conflated with each other, and this is also the party headquarters which contains the propaganda too of the ruling socialist party and that is enough for us to consider that to be a wholly legitimate target."

More clearly, the increased volume of attacks on civilian infrastructure can be detected in the chronology of NATO attacks, which forms Annex I to this submission. A further stage in NATO's campaign can be seen on the night of 2 May 1999, when five major electricity stations were bombed, cutting off power to approximately 70% of the Yugoslav population. NATO spokesperson, James Shea, said:

"the fact that the lights went out across 70% of the country I think shows that NATO has its finger on the light switch in Yugoslavia now and we can turn the power off whenever we need to and whenever we want to." (Press Conference, NATO HQ, Brussels, 3 May 1999).

This admission that civilian targets are deliberately targeted by NATO was articulated even more explicitly by NATO's air-war commander, Lieut. Gen. Michael C. Short, in an interview with The New York Times on May 13, 1999. General Short indicated that NATO policy was guided by the hope that the

distress of the Yugoslav public would undermine support for the authorities in Belgrade. He said:

"I think no power to your refrigerator, no gas to your stove, you can't get to work because the bridge is down – the bridge on which you held your rock concerts – and you all stood with targets on your heads. That needs to disappear at 3 o'clock in the morning."

General Short added the following details about the targets he attacks in Yugoslavia:

"At the same time that I am executing Saceur's [NATO Supreme Allied Europe] No. 1 priority – killing the army in Kosovo – I also need to strike at the leadership and the people around Milosevic to compel them to change their behavior in Kosovo and accept the terms NATO has on the table."

He also gave an indication of NATO strategy on avoiding civilian casualties:

"I put out guidance saying that if you are working a target area and you're not sure call me, and I'll tell you whether to drop or not. Call me and describe the village and say, 'Boss, I see a village and I see tanks parked next to the houses in the village. What do you want me to do?' And I'll say 'Tell them to hit the tanks.' And if he hits a house by mistake, that's my responsibility. I need to take the monkey off the young captain's back. They're up there at 400 to 500 miles an hour, people shooting at them, dodging in and out of the weather. They don't need the additional responsibility of, 'What'll happen if I miss that tank? Will I be in trouble?'"

In summary, the NATO air commander acknowledged that civilian objects were deliberately targeted by NATO to cause civil unrest; that the civilian leadership is deliberately targeted; and that strikes will take place against military objects even if they are adjacent to civilian houses, and even if weather and situational conditions ensure that accurate targeting is impossible. There has been no indication that General Short has been reprimanded for these comments or for his strategy which appears to directly violate the cardinal precepts of international humanitarian law.

In addition to these deliberate attacks on civilian infrastructure and objects, there are a great number of attacks which caused direct physical harm and death to civilians, often with no associated military benefit, and which were subsequently claimed by NATO to be the result of mistaken targeting. Instances of this nature include the 29 March bombing of two refugee centres near Nis, managed by CARE Australia on behalf of the UN

High Commissioner for Refugees, killing 9 refugees; the 12 April bombing of a train travelling from Belgrade to Ristovac as it crossed the bridge spanning the Yuzhna Morava river at the Grdelica gorge, killing 10 passengers and wounding 16; the 15 April bombing of a refugee convoy in four separate locations along a 12 mile stretch of the road that runs from Prizren to Djakovica, killing approximately 74 individuals; the bombing of 2 buses in Kosova on 1 May and 3 May, killing approximately 40 and 17 people respectively; the bombing of Nis market square on 7 May, killing 15 people; and the bombardment of the village of Korisa on 14 May, which killed at least 81 people.

In all of these stated cases, NATO claimed that the civilian deaths were the result of accidents, even apologising in many of the cases for "collateral damage". However, as will be argued below, adequate care was not taken to distinguish military from civilian targets. For example, in certain cases the pilot was not able to determine what the site targeted consisted of but fired missiles nevertheless.

Moreover, NATO's operational doctrine did not change at any point, despite the clear and disproportionate danger to civilians that arose from that doctrine. The Dutch government did not request such an alteration at any moment. This was revealed at a NATO press conference on 21 May 1999, when it was put to NATO spokespersons that the German Foreign Minister had argued that NATO was using too heavy explosives against targets in highly populated areas, such as central Belgrade. NATO spokesperson James Shea said:

"there is no change in NATO's strategy, you know that, it continues [...] Of course we listen - and I want to make that clear - to what allied governments tell us, the allied governments of NATO, and obviously we listen to all of their views but no ally so far has requested a change in the strategy, all allies have made it clear that they want to continue that strategy and that is what we are going to do"

No disciplinary action was taken against those pilots who had inaccurately targeted civilian sites due to a failure of diligence. In such cases, it is clear that a superior had reason to know that his subordinates were about to commit acts in which all feasible measures were not being taken to prevent civilian casualties, but failed to take necessary and reasonable measures to prevent these acts; or knew that his subordinates had committed such acts and failed to punish the perpetrators thereof. In fact, as General Short indicated in the quote above, NATO instructed its pilots that they were absolved of all responsibility when non-military objects are hit as a result of a failure of due diligence. Such acts constitute a serious violation of the laws and customs of war, and the superior may be held to be criminal responsible for them.

Finally, sites with a subordinate military component to them were targeted by NATO, even though a large civilian presence was in place; this is a breach of the principle of proportionality. This is most apparent when NATO

continued to claim that they had hit a legitimate military target even though large civilian casualties had ensued from the attack.

GENERAL ALLEGATIONS

3. As the three individuals in the government of the United Kingdom with primary responsibility for NATO's actions in Yugoslavia, *Mr Willem Kok, Mr J. van Aartsen and Mr F.H.G. de Grave* have committed serious violations of the laws and customs of war, and are thus liable under Article 3 of the Statute of the International Criminal Tribunal for the former Yugoslavia for breaches thereof. As persons who have planned, instigated and ordered the execution of violations of the laws and customs of war, they hold individual criminal responsibility under Article 7(1) of the Statute. Moreover, as persons who, knowing that their subordinates both were about to commit such acts, and subsequently had done so, failed to take necessary and reasonable measures to prevent such acts and to punish the perpetrators thereof, they hold "command responsibility" under the Statute Art. 7(3).

GENERAL ISSUES

4. Unlike previous cases brought to the attention of the International Criminal Tribunal for the Former Yugoslavia, this submission deals with certain individuals who are not physically on the territory of the Former Yugoslavia, and who are not and have never been citizens of one of the States which were constituent republics of the Socialist Federal Republic of Yugoslavia before its dissolution. However, these factors do not bear upon the jurisdiction of the International Criminal Tribunal. Neither the Statute of the International Criminal Tribunal, nor the Security Council resolutions which established the Tribunal, place restrictions of nationality or physical proximity on the jurisdiction of the Tribunal.

Security Council Resolution 808 (1993) of 22 February 1993, which decided that an international criminal tribunal would be established, indicated its mandate in paragraph 1:

"The Security Council [...]

1. Decides that an international tribunal shall be established for the prosecution of persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991"

Security Council Resolution 827 (1993) of 25 May 1993, which established the tribunal, makes this point at greater length:

"The Security Council [...]

Acting under Chapter VII of the Charter of the United Nations, [...]

2. Decides hereby to establish an international tribunal for the sole purpose of prosecuting persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia between 1 January 1991 and a date to be determined by the Security Council upon the restoration of peace and to this end to adopt the

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Statute of the International Tribunal annexed to the above-mentioned report."

The Statute of the International Criminal Tribunal itself, in detailing the competence of the International Tribunal, states:

"The International Tribunal shall have the power to prosecute persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991 in accordance with the provisions of the present Statute." (Article 1).

The next issue concerns what is meant by the "territory of the former Yugoslavia". Statute Article 8 provides the answer:

"The territorial jurisdiction of the International Tribunal shall extend to the territory of the former Socialist Federal Republic of Yugoslavia, including its land surface, airspace and territorial waters."

However, this does not entail that the individual whose responsibility for offences is being alleged must himself or herself be stationed on that territory, but solely that the acts which constitute the violation must be in that territory. Articles 7(1) and 7(3) of the Statute provide two distinct potential situations where physical proximity is not required for the exercise of the Tribunal's jurisdiction: the individual "planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime" or was in a position of superiority (under certain specified circumstances to be detailed in paragraph 6, below) respectively. There is no indication in the discussions of the Security Council or in the past jurisprudence of the Tribunal that the Tribunal's jurisdiction *ratione personae* does not stretch to individuals who plan, instigate, order, aid or abet, or are in a position of command responsibility, with regard to violations of international humanitarian law within the former Yugoslavia, and who are not themselves within the territory of the former Yugoslavia.

5. Article 7(1) responsibility. Article 7(1) of the Statute states:

"A person who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in articles 2 to 5 of the present Statute, shall be individually responsible for the crime."

To show that these individuals committed violations of Article 3, and have responsibility for these acts under Article 7(1) of the Statute, three conditions must be shown (see Prosecutor v. Tadic, Case No. IT-94-1-T, Trial Chamber, 7 May 1997, paragraphs 674-80; and Prosecutor v. Delacic, Mucic, Delic and Landzo, Trial Chamber, Case No. IT-96-21-T, 16 November 1998, paragraphs 326-27):

- i) that specific attacks constitute a violation of Article 3.**
- ii) that *Mr Willem Kok, Mr J. van Aertsen and Mr F.H.G. de Grave* participated in jointly ordering these attacks.**
- iii) that these individuals performed these acts with knowledge that it would assist in the commission of a criminal act.**

i) the attacks constitute a violations of Article 3.

Article 3 states:

"Violations of the laws or customs of war.

The International Tribunal shall have the power to prosecute persons violating the laws or customs of war. Such violations shall include, but not be limited to:

- [...] (b) wanton destruction of cities, towns or villages, or devastation not justified by military necessity;**
- (c) attack, or bombardment, by whatever means, of undefended towns, villages, dwellings, or buildings;**
- (d) seizure of, destruction or wilful damage done to institutions dedicated to religion, charity and education, the arts and sciences, historic monuments and works of art and science; [...]"**

In Prosecutor v. Tadic, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction (Case No.IT-94-1-AR72, Appeals Chamber, 2 Oct. 1995, paragraph 94), the Appeals Chamber of the International Criminal Tribunal gave four conditions for an act to fall within the scope of Article 3:

- "(i) the violation must constitute an infringement of a rule of international humanitarian law;**
- (ii) the rule must be customary in nature or, if it belongs to treaty law, the required conditions must be met [...];**
- (iii) the violation must be "serious", that is to say, it must constitute a breach of a rule protecting important values, and the breach must involve grave consequences for the victim [...];**
- (iv) the violation of the rule must entail, under customary or conventional law, the individual criminal responsibility of the person breaching the rule."**

The Appeals Chamber argued that Article 3 was a "residual" clause, conferring "on the International Tribunal jurisdiction over any serious offence against international humanitarian law not covered by Articles 2, 4 or 5" (paragraph 91). Therefore, the list of violations in Article 3 is, in accordance with a literal reading, non-exhaustive. As the Appeals Chamber stated, "the primary purpose of the establishment of the International Tribunal [was] not to leave unpunished any person guilty of any such serious violation, whatever the context within which it may have been committed" (paragraph 92).

In each case where a violation of Article 3 is being alleged in this submission, each of these four conditions will be demonstrated.

ii) actus reus.

In *Prosecutor v. Delalic, Mucic, Delic and Landzo* (Trial Chamber, Case No. IT-96-21-T, 16 November 1998, paragraph 327), the Trial Chamber of the International Criminal Tribunal stated that the relevant act:

"includes all acts of assistance that lend encouragement or support to the perpetration of an offence [...] the relevant act of assistance may be removed both in time and place from the actual commission of the offence. Furthermore, such assistance may consist not only of physical acts, but may also manifest itself in the form of psychological support given to the commission of an illegal act through words [...]"

NATO policy is determined through the North Atlantic Council, established by Article 9 of the North Atlantic Treaty signed in Washington D.C. on 4 April 1949, at which the governments of all NATO States are represented. Under the North Atlantic Treaty, a joint decision-making process based on consensus and common consent was instituted, and decisions represent the common determination of all the countries. In actual reality, the Netherlands as a permanent member of the Security Council, and substantial provider of aircraft to NATO has a greater weight in NATO decision-making than other State parties.

Mr Willem Kok as Prime Minister, Mr J. van Aartsen as Secretary of State for Foreign Affairs, and Mr F.H.G. de Grave as Secretary of State for Defence, all actively participated in NATO decision-making in the North Atlantic Council, and at the Heads of Government Summit in Washington D.C. from 23 April to 25 April 1999. There can be little doubt that these three individuals were of crucial importance in determining all aspects of NATO policy towards Yugoslavia in and before the period of the bombardment, including the determination of the nature of the sites to be targeted.

iii) mens rea.

In *Prosecutor v. Delalic, Mucic, Delic and Landzo* (Trial Chamber, Case No. IT-96-21-T, 16 November 1998, paragraph 326), the Trial Chamber of the International Criminal Tribunal defined the mental element by stating that the act must have been "performed with knowledge that it will assist the principal in the commission of the criminal act". However, this element need not have been directly expressed, but can be inferred from circumstances (infra, paragraph 328). As Prime Minister, Secretary of State for Foreign and Commonwealth Affairs, and Secretary of State for Defence, these three individuals would have received descriptions of the relevant provisions of international humanitarian law from their subordinate officials. In addition, a number of prominent sources, including a prominent Professor in International Public Law of the University of Amsterdam, Mr Paul de Waart defending the Government of Yugoslavia before the International Court of Justice in The Hague, frequently alleged that NATO was committing violations of international humanitarian law on

the territory of the Federal Republic of Yugoslavia. These factors appear to constitute a sufficient condition that the individuals had the knowledge that their acts could be assessed in terms of international humanitarian law.

**6. Article 7(3) responsibility. Article 7(3) of the Statute states:
"The fact that any of the acts referred to in articles 2 to 5 of the present Statute was committed by a subordinate does not relieve his superior of criminal responsibility if he knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof."**

The form of individual criminal responsibility that arises from the basis of alleged positions as superiors to the perpetrators of the crimes alleged is commonly known as "command responsibility". In the case of Prosecutor v. Delalic, Mucic, Delic and Landzo (Trial Chamber, Case No. IT-96-21-T, 16 November 1998), command responsibility was explained as follows:

"a superior may be held criminally responsible not only for ordering, instigating or planning criminal acts carried out by his subordinates, but also for failing to take measures to prevent or repress the unlawful conduct of his subordinates." (paragraph 333).

This concept was formulated in Article 87 of the First Additional Protocol to the Geneva Conventions of 1949, and is now part of customary international law (ibid, paragraphs 340, 343).

In the case of Delalic et al., the Trial Chamber formulated 3 elements of command responsibility:

**"(i) the existence of a superior-subordinate relationship;
(ii) the superior knew or had reason to know that the criminal act was about to be or had been committed; and
(iii) the superior failed to take the necessary and reasonable measures to prevent the criminal act or punish the perpetrator thereof." (paragraph 346).**

Each of these three elements will be considered separately, with regard to the circumstances under examination in this submission.

i) The superior-subordinate relationship.

In the Commentary to Additional Protocol I, the superior-subordinate relationship is seen "in terms of a hierarchy encompassing the concept of control" (Commentary to the Additional Protocols, para.3544). In the Delalic case, it was stated that this concept of control must involve real political control over the actions of another, and not just formal structures of authority without substance: "it is necessary that the

superior have effective control over the persons committing the underlying violations of international humanitarian law, in the sense of having the material ability to prevent and punish the commission of these offences." (Prosecutor v. Delalic et al., paragraph 378). In addition, the superior need not be a military commander, as implied in Article 7(2) of the Statute.

NATO is closely controlled by civilian heads of government. The authority to launch airstrikes had to be given to the Secretary-General of NATO by the political leaders of the individual States, and the governments are continually consulted by NATO throughout military operations. *Mr. Willem Kok, Mr J.van Aartsen and Mr F.H.G. de Grave* could at any stage have requested an alteration in policy, or specific acts to be committed or abstained from.

Therefore, the superior-subordinate relationship clearly holds with regard to the position of the accused individuals in relation to the military operations conducted.

ii) Knowledge of act or imminence of act.

In the Delalic case, the principle of knowledge was formulated as follows:

"a superior may possess the mens rea required to incur criminal liability where: (1) he had actual knowledge, established through direct or circumstantial evidence, that his subordinates were committing or about to commit crimes referred to under Article 2 to 5 of the Statute, or (2) where he had in his possession information of a nature, which at the least, would put him on notice of the risk of such offences by indicating the need for additional investigation in order to ascertain whether such crimes were committed or were about to be committed by his subordinates." (paragraph 383).

It will be argued in paragraphs 7 to 10 below that a series of crimes occurred in and through the NATO bombardment of the Federal Republic of Yugoslavia, and that no action was taken by the political leaders named to prevent future offences of this nature. The nature of the earlier offences was public knowledge, and was not discussed throughout the political arena in the Netherlands, certainly not by the three individuals themselves. By taking no action to prevent future offences, whilst fully aware that similar offences had taken place in the past in highly similar circumstances, the second form of mens rea is certainly established with regard to future offences. With regard to past acts, knowledge of their nature was widespread throughout society at large, and often given by NATO spokespersons themselves. In such circumstances, the first form of mens rea - an imputation of holding actual knowledge of past crimes - can be ascertained.

iii) The taking of necessary and reasonable measures.

This element of command responsibility was elaborated upon in the Delalic case:

"The legal duty which rests upon all individuals in positions of superior authority requires them to take all necessary and reasonable measures to prevent the commission of offences by their subordinates or, if such crimes have been committed, to punish the perpetrators thereof" (paragraph 394). In the cases to be examined, no measures at all were taken by *Mr Willem Kok, Mr J. van Aertsen and Mr F.H.G. de Grave* to either prevent a certain category of future violations or to take punitive actions against those individual subordinates who had committed past acts which constitute a serious violation of the laws and customs of war.

WHEREAS the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 was established by the UN Security Council with "the power to prosecute persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991 in accordance with the provisions of" its Statute (Article 1);

AND WHEREAS by Article 3 of the said Statute, "the International Tribunal shall have the power to prosecute persons violating the laws or customs of war. Such violations shall include, but not be limited to:

- (a) employment of poisonous weapons or other weapons to cause unnecessary suffering;**
- (b) wanton destruction of cities, towns or villages, or devastation not justified by military necessity;**
- (c) attack, or bombardment, by whatever means, of undefended towns, villages, dwellings, or buildings;**
- (d) seizure of, destruction or wilful damage done to institutions dedicated to religion, charity and education, the arts and sciences, historic monuments and works of art and science.**

AND WHEREAS by Article 6 of the said Statute "the International Tribunal shall have jurisdiction over natural persons pursuant to the provisions of the present Statute;"

AND WHEREAS Article 7 of the said Statute provides for individual

criminal responsibility thus:

- 1. A person who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in articles 2 to 5 of the present Statute, shall be individually responsible for the crime.**
- 2. The official position of any accused person, whether as Head of State or Government or as a responsible Government official, shall not relieve such person of criminal responsibility or mitigate punishment.**
- 3. The fact that any of the acts referred to in articles 2 to 5 of the present Statute was committed by a subordinate does not relieve his superior of criminal responsibility if he knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.**
- 4. The fact that an accused person acted pursuant to an order of a Government or of a superior shall not relieve him of criminal responsibility, but may be considered in mitigation of punishment if the International Tribunal determines that justice so requires.**

AND WHEREAS Article 8 of the said Statute provides that the territorial and temporal jurisdiction of the Tribunal "shall extend to the territory of the former Socialist Federal Republic of Yugoslavia, including its land surface, airspace and territorial waters. The temporal jurisdiction of the International Tribunal shall extend to a period beginning on 1 January 1991;"

AND WHEREAS by Article 9 of the said Statute "the International Tribunal and national courts shall have concurrent jurisdiction to prosecute persons for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1 January 1991" but the International Tribunal "shall have primacy over national courts;"

AND WHEREAS Article 18 of the said Statute provides inter alia that:

- 1. The Prosecutor shall initiate investigations ex-officio or on the basis of information obtained from any source, particularly from Governments, United Nations organs, intergovernmental and non-governmental**

organizations. The Prosecutor shall assess the information received or obtained and decide whether there is sufficient basis to proceed.

2. The Prosecutor shall have the power to question suspects, victims and witnesses, to collect evidence and to conduct on-site investigations. In carrying out these tasks, the Prosecutor may, as appropriate, seek the assistance of the State authorities concerned.

4. Upon a determination that a prima facie case exists, the Prosecutor shall prepare an indictment containing a concise statement of the facts and the crime or crimes with which the accused is charged under the Statute. The indictment shall be transmitted to a judge of the Trial Chamber.

AND WHEREAS the President of the Tribunal, Judge Gabrielle Kirk McDonald, in a press release of April 8, 1999, urged that:

All States and organisations in possession of information pertaining to the alleged commission of crimes within the jurisdiction of the Tribunal should make such information available without delay to the Prosecutor.

AND WHEREAS on April 30 in Geneva the United Nations High Commissioner for Human Rights Mary Robinson in a speech to the Commission cited a letter from the Prosecutor in which the Prosecutor stated:

The actions of individuals belonging to Serb forces, the Kosovo Liberation Army (KLA), or NATO may come under scrutiny, if it appears that serious violations of international humanitarian law have occurred.

AND WHEREAS High Commissioner Robinson also stated in her speech:

In the NATO bombing of the Federal Republic of Yugoslavia, large numbers of civilians have incontestably been killed, civilian installations targeted on the grounds that they are or could be of military application and NATO remains sole judge of what is or is not acceptable to bomb. In this situation, the principle of proportionality must be adhered to by those carrying out the bombing campaign. It surely must be right to ask those carrying out the bombing campaign

to weigh the consequences of their campaign for civilians in the Federal Republic of Yugoslavia.

AND WHEREAS NATO has carried out between 5,000 and 10,000 bombing missions over the territories of the former Yugoslavia since March 24, 1999;

AND WHEREAS NATO leaders have openly admitted targeting civilian infrastructure as well as military targets;

AND WHEREAS the list of targets has included fuel depots, oil refineries, government offices, power stations and communications links, such as roads, tunnels, bridges and railway links, including those not inside the region of, or in the vicinity of, Kosovo;

AND WHEREAS in addition to these deliberate attacks on civilian infrastructure and objects, there have been a great number of attacks which have caused direct physical harm and death to civilians;

AND WHEREAS it appears that these bombing missions have directly caused the death of approximately 1,000 civilian men, women and children and serious injury to 4,500 more;

AND WHEREAS instances of this nature include the 12 April bombing of a train travelling from Belgrade to Ristovac as it crossed the bridge spanning the Yuzhna Morava river at the Grdelica gorge, killing at least 10 passengers and wounding 16; the 15 April bombing of a refugee convoy in four separate locations along a 12 mile stretch of the road that runs from Prizren to Djakovica, killing approximately 74 people; the 23 April bombing of Serbian Television editorial offices, killing approximately 15 people; the 27 April bombing of a residential district in Surdulica, killing 16 people including 12 children; and the May 1 bombing of a bus on the Luzan bridge in Kosovo killing at least 34 people including 15 children;

AND WHEREAS, though the above-named NATO leaders have claimed that these incidents were accidents, they have also admitted that they were an inevitable result of their bombing strategy, a strategy which they appear to have continued unmodified and even to have intensified throughout these incidents;

AND WHEREAS there is ample evidence in the public statements of NATO leaders that these attacks on civilian targets are part of a deliberate attempt to terrorize the population to turn it against its leadership;

AND WHEREAS the NATO bombing has done an estimated \$100 billion dollars in property damage and completely destroyed or seriously damaged dozens of bridges, railways and railway stations, major roads, airports, including civilian airports, hospitals and health care centres, television transmitters, medieval monasteries and religious shrines, cultural-historical monuments and museums, hundreds of schools, faculties and facilities for students and children, thousands of dwellings and civilian industrial and agricultural facilities;

AND WHEREAS refineries and warehouses storing liquid raw materials and chemicals have been hit causing environmental contamination and exposing the civilian population to the emission of poisonous gases;

AND WHEREAS the NATO bombings have also made use of weapons banned by international convention, including cruise missiles utilizing depleted uranium highly toxic to human beings;

AND WHEREAS credible detailed reports of the civilian death and destruction inflicted by the NATO bombing are attached as an Annex to this Notice;

AND WHEREAS THEREFORE there is abundant evidence that many instances of serious violations of international humanitarian law within the jurisdiction of the Tribunal have been committed by NATO forces in the attack on Yugoslavia commencing March 24 and continuing to this day;

AND WHEREAS this evidence is readily available to the Prosecutor in eyewitness, videotaped, televised and publicly broadcast reports, in press reports and on the Internet, and in the evidence presented by the Federal Republic of Yugoslavia in its current complaint against the NATO countries before the International Court of Justice;

AND WHEREAS all of the above-named persons, Heads of State and Government of the 19 NATO countries, their Foreign Ministers and Ministers of Defence, and officials and military leaders of NATO, have admitted publicly to having agreed upon and ordered these

actions, being fully aware of their nature and effects;

AND WHEREAS the above-named persons have acted in open violation of the United Nations Charter, which provides in so far as is relevant:

Article 2

3. All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.

4. All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.

Article 33

1. The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.

Article 37

1. Should the parties to a dispute of the nature referred to in Article 33 fail to settle it by the means indicated in that Article, they shall refer it to the Security Council.

2. If the Security Council deems that the continuance of the dispute is in fact likely to endanger the maintenance of international peace and security, it shall decide whether to take action under Article 36 or to recommend such terms of settlement as it may consider appropriate.

Article 39

The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.

Article 41

The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.

Article 42

Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations.

Article 51

Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security;

AND WHEREAS the International Court of Justice has stated in ruling against United States intervention in Nicaragua:

In any event, while the United States might form its own appraisal of the situation as to respect for human rights in Nicaragua, the use of force could not be the appropriate method to monitor or ensure such respect. With regard to the steps actually taken, the protection of human rights, a strictly humanitarian objective, cannot be compatible with de mining of ports, the destruction of oil installations, or again with de training, arming and equipping of the contras.

(CASE CONCERNING THE MILITARY AND PARAMILITARY ACTIVITIES IN AND AGAINST NICARAGUA (NICARAGUA v. UNITED STATES OF AMERICA) (MERITS) Judgment of 27 June 1986, I.C.J. Reports, 1986, p.134-135, paragraphs 267 and 268)

AND WHEREAS the above-named persons, Heads of State and Government of the 19 NATO countries, their Foreign Ministers and Ministers of Defence, and officials and military leaders of NATO have acted in open violation of the NATO Treaty which provides in so far as is relevant:

Article 1

The Parties undertake, as set forth in the Charter of the United Nations, to settle any international dispute in which they may be involved by peaceful means in such a manner that international peace and security and justice are not endangered, and to refrain in their international relations from the threat or use of force in any manner inconsistent with the purposes of the United Nations.

Article 7

This Treaty does not affect, and shall not be interpreted as affecting in any way the rights and obligations under the Charter of the Parties which are members of the United Nations, or the primary responsibility of the Security Council for the maintenance of international peace and security;

AND WHEREAS the above-named persons have acted in open violation of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International

Armed Conflicts (Protocol I), 8 June 1977, which provides as follows:

Art 51. - Protection of the civilian population

1. The civilian population and individual civilians shall enjoy general protection against dangers arising from military operations. To give effect to this protection, the following rules, which are additional to other applicable rules of international law, shall be observed in all circumstances.

2. The civilian population as such, as well as individual civilians, shall not be the object of attack. Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited.

3. Civilians shall enjoy the protection afforded by this section, unless and for such time as they take a direct part in hostilities.

**4. Indiscriminate attacks are prohibited.
Indiscriminate attacks are:**

(a) those which are not directed at a specific military objective;

(b) those which employ a method or means of combat which cannot be directed at a specific military objective; or

(c) those which employ a method or means of combat the effects of which cannot be limited as required by this Protocol;

and consequently, in each such case, are of a nature to strike military objectives and civilians or civilian objects without distinction.

5. Among others, the following types of attacks are to be considered as indiscriminate:

(a) an attack by bombardment by any methods or means which treats as a single military objective a number of clearly separated and distinct military objectives located in a city, town, village or other area containing a similar concentration of civilians or civilian objects;

and

(b) an attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated.

Art 79. Measures or protection for journalists

1. Journalists engaged in dangerous professional missions in areas of armed conflict shall be considered as civilians within the meaning of Article 50, paragraph 1.

Article 85 - Repression of breaches of this Protocol

3. In addition to the grave breaches defined in Article 11, the following acts shall be regarded as grave breaches of this Protocol, when committed wilfully, in violation of the relevant provisions of this Protocol, and causing death or serious injury to body or health:

(a) making the civilian population or individual civilians the object of attack;

(b) launching an indiscriminate attack affecting the civilian population or civilian objects in the knowledge that such attack will cause excessive loss of life, injury to civilians or damage to civilian objects, as defined in Article 57, paragraph 2 (a)(iii);

5. Without prejudice to the application of the Conventions and of this Protocol, grave breaches of these instruments shall be regarded as war crimes.

AND WHEREAS the above-named persons have acted in open violation of the Principles of International Law Recognized in the Charter of the Nürnberg Tribunal and in the Judgment of the Tribunal, as adopted by the General Assembly of the United Nations (1950), which provide in so far as is relevant:

Principle III

The fact that a person who committed an act which constitutes a crime under international law acted as Head of State or responsible Government official does not relieve him from responsibility under international law.

Principle IV

The fact that a person acted pursuant to order of his Government or of a superior does not relieve him from responsibility under international law, provided a moral choice was in fact possible to him.

Principle VI

The crimes hereinafter set out are punishable as crimes under international law:

(a) Crimes against peace:

(i) Planning, preparation, initiation or waging of a war of aggression or a war in violation of international treaties, agreements or assurances;

(ii) Participation in a common plan or conspiracy for the accomplishment of any of the acts mentioned under (i).

(b) War crimes:

Violations of the laws or customs of war include, but are not limited to, murder wanton destruction of cities, towns, or villages, or devastation not justified by military necessity.

Principle VII

Complicity in the commission of a crime against peace, a war crime, or a crime against humanity as set forth in Principle VI is a crime under international law;

We like to reemphasise, in addition, the

1. ILLEGALITY OF THE NATO AIR STRIKES

3.1 The NATO Air Strikes are unlawful because they were not authorized by the Security Council of the UN.

3.1.1 Article 2 paragraph 4 of the UN Charter requires its members to refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state. This prohibition is jus cogens. It is binding on states both individually and as members of international organizations like NATO. Armed force against other nations is permissible under the UN Charter only where such force is required for the self defense of a nation or its allies (Article 51), or when military action is authorized by the Security Council (Chapter VII). The UN Security Council has primary responsibility for maintaining international peace and security and, absent self-defense, only the Security Council may sanction the use of force against a nation.

3.1.2 NATO's spokespeople claim that the bombing is justified under Security Council resolutions 1160/98, 1199/98 and 1203/98. In particular, the US, through its spokesman, PJ Crowley, contends that such authority is inherent in resolutions 1199 and 1203 because they affirm that the deterioration of the situation in Kosovo constitutes a threat to peace and security in the region. This argument is untenable. The aforementioned Security Council Resolutions do not authorize the use of force implicitly or explicitly. When the Security Council intends to sanction the use of force, it has always done so in its resolutions, in a clear and unequivocal fashion. The Security Council had no intention to authorize the use of force, since it was clear that such a resolution would raise vetoes from China and Russia who have been vocal in their opposition to the exercise of force against Yugoslavia. It is for this very reason, that the use of force was not resolved by the Security Council, and instead NATO's political and military leadership, unilaterally and unlawfully, decided to circumvent the UN and take matters into its own hands. NATO's actions undermine the authority and the credibility of the Security Council and constitute a flagrant violation of the UN Charter.

3.1.3 Let it also be noted that both the Milosevic-Holbrook October 1998 agreements and the Rambouillet accord were brokered under the unlawful, illegal threat of the use of force. Basic contract law universally hold that agreements executed under duress are null and void. There can be no constructive dialogue under the threat of violence.

3.2 The NATO air strikes are unlawful because they may not be justified as an action taken in self-defense.

3.2.1 Self defense and anticipatory self defense are principles provided for by the UN Charter. The precondition for self-defense, however, is that an armed attack must have already occurred. The FRY is a sovereign nation. It did not engage in an armed attack against another sovereign state and it is therefore clearly entitled to the protections provided in Article 2.4 of the UN Charter. The situation in Kosovo can not be interpreted to threaten the territorial integrity of any NATO member, by any stretch of the imagination. President Clinton's absurd argument that the conflict in Kosovo could potentially spill over to a war between NATO members, Greece and Turkey, so as to lay the foundation for an anticipatory self-defense is untenable. Tensions between Greece and Turkey have absolutely nothing to do with the repression or ethnic cleansing of the Kosovo Albanians, but conversely such tensions are more likely to escalate if there is a re-definition of territorial boundaries in the Balkans. A hostile, re-definition of Balkan borders is more likely to ensue as a result of the NATO bombings than the continued repression and ethnic cleansing of the Kosovo Albanians.

3.3 The NATO air strikes are unlawful because they are in violation of Nato's own Charter.

3.3.1 The NATO Charter is a self-defense charter authorizing the use of force in mutual self-defense when one of its member states is attacked. NATO may resort to force either in self defense of a member state, or of a non-member state, so long as the government of that state requests NATO assistance. As provided by Article 2 in conjunction with Article 52 of the UN Charter, NATO cannot use force against another UN member state without its government's consent, if the action is not itself in defense of another UN member state, unless the action is specifically authorized by the UN Security Council.

3.3.2 No NATO member nation is directly or indirectly threatened by the situation in Kosovo. Yugoslavia not only did not request the assistance of NATO, but quite explicitly rejected the stationing of NATO troops on its soil. There is nothing in the NATO treaty that authorizes NATO to initiate a war against a sovereign nation.

3.3.3 NATO's new mission statements and desire to broaden its objectives as international military enforcers independent of the U.N. can not and do

not legitimize the Kosovo action. NATO is free to re-define or re-draft its Charter or objectives upon the mutual consent of its member states, however it may only permissibly do so within the context of preemptory international law, which places limitations on all states, including NATO member states. The UN Charter, including the prohibitions on the threat or use of force inherent in the Charter, constitutes preemptory international law -jus cogens- which NATO, like its member states, must respect. Article 103 of the UN Charter provides that in the event of a conflict between the obligations of a member state under the Charter and any other international agreement, obligations under the Charter prevail. Therefore, irrespective of any new orientation or definition of NATO's mission and strategy, the use or threat of force may only be employed in self defense or in those cases mandated by the Security Council.

3.4 International Law does not provide for a humanitarian intervention exception for the use or threat of force

3.4.1 As it is stated above, international law clearly precludes the threat or use of force against a sovereign nation except in the case of self-defense or where authorized by the Security Council. The UN Charter and modern international law, confirmed by the practice of nations for over two centuries, does not include an separate right for humanitarian intervention that would justify the threat or use of force. The soundness of this principle can not be disputed. The most persuasive argument to justify the preclusion of such a right, is the temptation to abuse it to bypass the cornerstone principles of non intervention and sovereignty. Carving out a humanitarian intervention exception to circumvent the well-founded principles of international law, undermines the already fragile credibility of international law which is aimed to preserve peace and stability within the framework of the status quo.

3.4.2 Uncomfortable parallels may readily be drawn between the rhetoric justifying NATO's air strikes on the Federal Republic of Yugoslavia and that of Japan's invasion of Manchuria, Mussolini's attack on Ethiopia, Hitler's 1938 crusade into Czechoslovakia, or Turkey's invasion of Cyprus. The latter attacks were all predicated on the lofty principals of humanitarian intervention, and all have been subsequently condemned by the international community and judged by history to have been blatant violations of international law. The same is applicable for NATO's air strikes on the FRY.

3.4.3 UN high ranking officials as well as legal scholars have all questioned the prudence of allowing a state or group of states to unilaterally judge their own right, or duty, to intervene in another's internal conflict. The creation of such a right begs the question of who should be entitled to decide when such humanitarian interventions are justifiable in good faith, and when they are not, or the question of why such a right should be selectively applied in accordance to the interests of the intervening parties. There can be no humanitarian intervention exception. Humanitarian intervention involving the threat or use of force and implemented without Security Council authorization, remains, as a matter of law, a breach of international law that threatens peace and order.

3.5 The NATO attacks conducive to massive killings, infliction of injuries and erosion of health of a large number of citizens of the Republic of Yugoslavia and Serbia, are thus violating international humanitarian law such as

3.5.1. the right to life, freedom and personal security as stipulated in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (art.1,5,10,15), in the International Covenant on Economic, Social and Cultural Rights (art.3,10,12,13,14,15,16), as well as in the European Convention of Human Rights and Liberties,

3.5.2. The NATO attacks are violating the The 1990 Paris Charter for New Europe, regarding human rights, democracy, the rights of states, friendly relations among states, security, human dimension, environmental and cultural issues,

3.5.3. The NATO attacks are violating the war laws, stipulated in the 11899-1907 The Hague and Geneva Conventions on the Protection of Victims of War (art.50,51,130, 147).

4. CHARGES

4.1 From the inception of the NATO air strikes on March 24th, 1999 until May 1st, 1999, NATO has conducted over 10,000 bombing raids on the sovereign nation of the Federal Republic of Yugoslavia. In this period, NATO has launched over 2,500 cruise missiles and dropped more than 7,000 tons of explosives. In particular, all types of F-16, F-15, Mirage 2000, B-52, B-2A, F-117A, Harriers and Tornado bombers have been put on loan to NATO from the U.S.A, United Kingdom, France, Germany, Italy, *the Netherlands: dutch F-16 bombers flew during this operation 'Allied Force' 1300 missions and discharged more than 800 bombs and missiles*, Spain, Portugal, Belgium, Denmark, Norway and Turkey to perform the air strikes on the Federal Republic of Yugoslavia. Missile attacks have also been launched from a number of ships and submarines stationed in the Adriatic, including the USS Norfolk, USS Miami, USS Philippines, USS Gonzalez, USS Nicholson, HMS Splendid, USS Thorn, etc. The damages inflicted by the NATO bombing raids, and sustained by the civilian population of the FRY, are extensive and are not justified by military

necessity.

4.1.1 As predicated above, these air strikes are by definition unlawful, as they have been performed in flagrant violation of international law. NATO's unlawful conduct is willful and wanton, as the raids have been knowingly ordered by NATO's political and military leaders, and performed by responsible NATO personnel, with a reckless disregard for the rights and safety of the Yugoslav people. The brutality inflicted on the Yugoslav civilian population by NATO forces rises to the level of war crimes and crimes against humanity actionable under the Statute of the International Tribunal.

4.2 NATO'S POLITICAL AND MILITARY LEADERS AND RESPONSIBLE NATO PERSONNEL HAVE ENGAGED IN THE WILLFUL KILLING OF CIVILIANS AND HAVE WILLFULLY INFLICTED GREAT SUFFERING AND SERIOUS INJURY TO BODY AND HEALTH OF CIVILIANS. These actions comprise grave breaches of the Geneva Convention of 1949 recognized by Article 2 (a) and (c) of the ICTY Statute.

4.2.1 By and through the air strikes, NATO'S political and military leadership and personnel have engaged in the willful killing of civilians and the willful infliction of suffering and serious injury to the health and bodies of civilians in violation of Article 2(a) and (c) of the ICT Statute. A willful act may be defined as one done knowingly without justifiable excuse or with indifference to the natural consequences. When NATO's political and military leaders initiated this aggression, and NATO's personnel implemented it, they knew that the unlawful conduct ordered and performed would, with practical certainty, result in civilian death, injury and suffering.

4.2.2 Since cruise missiles opened the campaign, NATO officials have acknowledged that civilian casualties have become more, rather than less likely. NATO's political and military leaders have the luxury of choosing from a wide and varied arsenal. NATO's leadership may elect what weapons it will use in the exercise of force, how discriminating these weapons will be, and what targets will be selected. Despite the rhetoric that purportedly stringent precautions have been taken to avoid civilian casualties, NATO's political and military leadership and its responsible personnel have demonstrated a marked disregard for civilians casualties, both with respect to the selection and bombing of targets, and with respect to the weaponry chosen to strike these targets. NATO's political and military leadership has shown no reluctance to use weaponry and select

targets that enhances the likelihood of civilian casualties and NATO's personnel has not hesitated to hit those target with a complete disregard for the lives and safety of civilians.

4.2.3 From March 24th, 1999 until May 1st, 1999, NATO's political and military leadership and its personnel have willfully killed and injured the following civilians:

! In the village of Doganovici, near Urosevac, 5 killed (Edon Kodza, Fisnik Kodza, Osman Kodza, Burim Kodza and Vajdet Kodza), and 6 children were wounded

^a In Kursumilja: 13 dead (among them Veroljub Stevanovic) and 25 wounded. (including Dobrivoje Grcic, Milan Jankovic and Milovan Ognjenovic)

^a In Pancevo: 2 dead (Dusan Bogosavljev and Mirko Dmitrovic) and 4 wounded

^a In Cacak: 1 dead (Milan Kuveljic) and 7 wounded

^a In Kragujevac: over 120 wounded during the attack on the Zastava plant

^a In Vranje: 2 dead (Goran Eminovic and Milica Grujic) and 23 wounded.

^a In Aleksinac : 12 dead (including Jovan Radojicic, Sofija Radojicic, Vojislav Jovanovic, Dragomir Miladinovic, Snezana Miladinovic and Velimir Stankovic) and over 40 wounded (including Ljubica Miladinovic, Slobodan Mladenovic, Bogomir Arsic, Gvozden Milivojevic, Dragoljub Todorovic, Branislava Stevanovic, Veroljub Milutinovic, Vukica Miladinovic, Marko Miladinovic, Dijana Miladinovic, Dragica Milivojevic, Branko Stevanovic, Verica Miletic, Slavimir Miletic, Dusan Miletic, Stefan Miletic, Ruica Sljivic, Zagorka Marinkovic, Srbislav Stefanovic, Natasa Stefanovic, Vesna Stefanovic, Radmila Projovic, Ljiljana Milutinovic, Nadezda Zivainovic, Dragoljub Milosevic, Desanka Rakocevic, Slavoljub Rakocevic, Bratislav Zivadinovic, Zagorka Todorovic, Vukasin Djokic, Vladimir Jankovic, Jorgovan Bankovic, Goran Stojkovic and Todor Petric.

^a In the village of Nagavac, Orahovac: 11 dead (among them Cazim Krasnici, Mahmut Krsnici, Hisen Zunici and Hisni Eljsani) and 5 wounded (Zade Eljsani, Valentina Krasnici, Siresa Rasnici, Ridvan Berisa and Edonis Gasi)

^a In Pristina: 10 dead (including Adem Berisa, Radovan Aleksic, Dejan Vitkovic, Mesud, Dijana, Dea, Rea and Denis Gash) and 8 wounded

* **In the Gredelicka gorge: 55 dead (among them Zoran Jovanovic, Petar Mladenovic, Verka Mladenovic and Jasmina Veljkovic) and 16 wounded**

* **On the Djakovica-Prizren road: 75 dead (including Martin Hasanaj, Lek Hasanaj, Salji Djokaj, Skeni Djokaj, Razija Pajaziti, Vjolca Pajaziti, Vileta Pajaziti, Nevrija Pajaziti, Hastar Pajaziti, Fljora Pajaziti, Ram Maljoku, Arton Maljoku, Fikrija Sulja, Imer Celja, Ferat Bajrami, Nerdjivane Zajciri and Bersad Smailji) and 100 wounded (including Dzafer Mazreku, Sokolj Bajrami, Sahe Smailji, Zoja Cuni, Semsije Smajli, Skumbin Sulja, Teuta Sulja, Isljan Cuni, Ljabinot Sulja, Ardijan Sulja, Zoje Tahiraj)**

* **In the village of Srbica: 10 killed, seven of which were children**

* **In Batajnica: 1 killed (three year old Milica Rakic), 5 wounded**

| **In Nis: 1 killed, 11 wounded**

| **In Grmija, Pristina 1 civilian killed (six year old Arta Lagic), 3 wounded (Egzon and Nero Lagic both eight years old and Arijeta Lagic seven years old)**

| **In Djakovica: 10 killed, 16 wounded**

| **In Belgrade: 15 killed (amongst them Milovan Jankovic, Jelica Muntilak, Dragan Tasic, Dejan Mrkovic, Milan Joksimovic, Slobodan Jontic) and 17 wounded.**

| **In Surdulica: 50 dead 11 wounded**

| **In Luzane - 40 dead**

| **In Murino - 5 dead 8 injured**

The listing is far from comprehensive. Serb officials estimate that the NATO air strikes have killed a total of 1000 civilians, including over twenty children, where as approximately 4,500 have sustained serious injuries.

4.2.4 Despite NATO's rhetoric, there can be no doubt that these killings and injuries were perpetrated willfully. These civilian attacks were either ordered intentionally by NATO's political and military leadership and termed 'legitimate military targets' or subsequently rationalized as unintended missile/bomb misses and dismissed as 'collateral damage'. There can be no question, however, that the attacks were willful

as they were performed knowingly, with a reckless disregard for civilian safety, that rises to the mens rea level of willful action.

4.2.4.1 The April 6th, 1999 RAF Harriers cluster bomb attack on the city of Aleksinac marked a severe disregard for civilian safety. An expected and accepted outcome of bombing a residential area of a city with indiscriminate cluster bombs, is civilian casualties. This raid obliterated a block of civilian flats, killed 12 and wounded over 40 civilians. The same applies for the April 7th, 1999, NATO air raid one of the oldest neighborhoods of Pristina killing eleven. The NATO raid reduced a number of homes to rubble including the home of Mesut Gash on Zanatska Street, killing Gash, his wife and three children. Shrapnel from this bombing landed as much as two blocks away from the intended targets which were of questionable military significance. The thirteen dead and twenty five seriously injured during the April 8th, 1999 NATO strike in Kursumilja, could not have come as an unexpected surprise to NATO's political and military leadership, nor its personnel, since the air strikes were ordered on targets in the residential center of the town. The raids destroyed an entire residential block and left 400,000 people homeless. This was the inevitable, obvious criminal outcome. The same applies for the Easter morning, NATO leveling of the village of Kosanik in Merdare on April 11, 1999 which destroyed twenty homes and killed five civilians, including an eleven month old little girl, Bojana Tosovic, her father, Bujin Tosovic, Srdjan Cvetkovic, Goran Djukic and Dragan Bubalo. Eight civilians including Zoran Maksic, Veljko Jovanovic, Nenad Vukovic were also seriously injured in this attack

4.2.4.2 The April 12th NATO bombing of the Belgrade-Skopje-Salonika passenger train was deliberate and resulted in the murder and injury of a number of civilians. At first, NATO's command avoided claiming responsibility for the hit. It later stated that the bridge the train was passing over, was the intended target, and although regrettable, the civilian casualties, were 'unavoidable'. The train's schedule, however, was a matter of common knowledge, and its path, had no doubt been recorded by NATO reconnaissance and satellites. Even if we are to assume that the bridge was, indeed, a vital military target, could it not have been bombed a minute earlier, or a minute later so as to avoid civilian casualties? Is this an example of the 'deliberate efforts' promised by President Clinton to minimize harm to innocent people?

4.2.4.3 The April 14th NATO massacre of 75 Kosovo Albanian civilians

and injury of 100 more on convoys traveling on the Prizren to Djakovica road in Kosovo was also willful. The bombing was deliberate and was not the result of one errant missile as NATO spokespeople would have us believe. Survivors speak of jets dive bombing, circling and then re-bombing the convoys. Shrapnel and crater patterns left behind, support refugee accounts that they were hit several times by the same NATO planes. Yugoslav television aired the conversation between the pilot of one of the F-16 that bombed one of the convoys, and the AWAC pilot guiding the strike plane.

From the conversation, it is clear that the bombing of civilians was deliberate. The F-16 pilot clearly and repeatedly advised that he saw no military vehicles and that the convey was comprised solely of tractors and civilians. Despite the pilot's requests for clarification, the AWACS pilot instructed the F-16 to fire on the tractors and civilians stating that the convoy was a "legitimate military target". There is evidence to suggest that the F-16 pilot had already been advised by a UK Harrier pilot that the convoy was comprised of civilians. Is this what NATO terms taking every precaution to avoid civilian casualties? NATO has refused to come clean on this incident. It's shameful cover up was exposed by the Yugoslav press and is documented in the world media. It requires no further elucidation. To facilitate future cover-ups, NATO bombed Yugoslav television and radio stations and transmitters throughout the country.

4.2.4.4 The April 23rd, 1999 bombing of the Serb radio and television headquarters in Belgrade is perhaps the most obvious example of willful killing and injury of civilians perpetrated by NATO forces. This massacre has been condemned by the Vienna based international journalist organization and the world wide media community. NATO has acknowledged that the radio and television headquarter was its intended target. The pretext for bombing the station was that it was spreading anti-NATO 'propaganda' and must thus be considered a legitimate military target. By selecting this target, NATO's political and military leaders acted with reckless disregard for the safety of the over one hundred people in the building. NATO leaders knew that the facility was in use and occupied by civilians at the time of the bombing, since the station was broadcasting at the time it was hit. These casualties were not soldiers but innocent civilians - journalists, technicians, television crews, etc. The mechanic Milovan Jankovic (1940), the make-up artist Jelica Muntlak (1971), the technician Dragan Tasic (1968), the security guards Dejan Mrkovic (1959) and Milan Joksimovic (1952), and the set decorator Slobodan Jontic (1945) were amongst those killed. This particular raid made it clear that NATO's political and military leaders, and NATO personnel performing the strike, consider any innocent Yugoslav civilian a 'legitimate' target, and that the term 'legitimate military target' can be stretched and distorted to include just about anyone and anything physically present in the FRY.

4.2.4.4.1 By bombing the Serb national television and radio headquarters, as well as the TV RTS studio in Pristina and radio/television transmitters in Jastrebac (Prokuplje), Gucevo (Loznica), Cot (Fruska Gora), Grmija (Pristina), Bogotovac (Pristina), Mt. Goles (Pristina), Mokra Gora (Pristina), Kutlovac (Stari Trg), Cigota (Uzice), Tornik (Uzice), Crni Vrh (Jagodina), Yugoslavia satellite station (Prlike), Novi Sad, Mt. Ovcara (Cacak), Kijevo (Belgrade), Mt. Cer, Mt. Jagodnji (Krupanj), 'Iriski Venac' (Fruska Gora), Mt. Bukulja, Gazimestan (Pristina), Krnjaca, Mt. Kopaonik (Belgrade), Mt. Gobelj (Mt. Kopaonik), Vrsac and Usce, NATO's goal is to cut off both the Yugoslav people and the international community from access to any reports and information other than that NATO cares to provide. Over 25 broadcasting facilities have been heavily damaged or destroyed by NATO forces. This strategy is intended to allow NATO's cover-ups to go unchallenged in the future, as by destroying the Serb broadcasting system, NATO will monopolize the supply of information.

4.2.4.5 NATO's bombing of the small village of Surdelica near the Bulgarian border, deserves separate mention. Not one or two, but sixteen NATO missiles were launched against the small village, destroying three hundred homes and turning fifty civilians, including ten children, literally, into minced meat. There was no military presence in the village, only village families, huddled together in the basements of their homes, seeking refuge from NATO's bombs. The nearest military site to Surdelica is an abandoned base around 3 kilometers away which had been evacuated as of March 15. The slaughter of these innocents by NATO's political and military leaders and responsible NATO personnel, was devoid of any possible military significance and constitutes willful murder.

4.2.4.6 The May 1st, 1999 NATO bombing of a civilian bus performing its regular passenger service, claimed the life of forty people, mostly elderly and children. A second NATO bomb hit an ambulance on route to assist the injured bus passengers, wounding one physician. Once again NATO spokespeople apologized for the civilian casualties, claiming the road bridge the bus was crossing was a 'legitimate,' secondary, military target and that the bus was inadvertently hit. General Naufmann, Chairman of NATO's military committee, in his subsequent press statement stated, 'We regret every loss of life, but this happens in military operations and so far weà(have done) a good job in avoiding civilian casualties.' The death toll recorded above documents the falsehood of this statement. If this air raid was intended to avoid civilian casualties, why did NATO's command ignore publicized, bus schedules and routes and order the bombing of the bridge at the precise time that a civilian passenger bus was scheduled to perform its route over the bridge? Why did NATO's pilots not take the necessary precautions to ensure that the bridge was unoccupied at the time of the strike? If the Luzane road bridge was such a vital military target to justify its destruction regardless of the civilian cost, why was the bridge a secondary target?

4.3 NATO'S POLITICAL AND MILITARY LEADERS AND RESPONSIBLE PERSONNEL HAVE UNLAWFULLY AND WANTONLY ENGAGED IN THE EXTENSIVE DESTRUCTION OF PROPERTY NOT JUSTIFIED BY MILITARY NECESSITY - A grave breach of the Geneva Convention of 1949 recognized by Article 2(d) of the ICT Statute - AND THE WANTON DESTRUCTION OF CITIES TOWNS OR VILLAGES AND DEVASTATION NOT JUSTIFIED BY MILITARY NECESSITY - Violation of the law and customs of War recognized by Article 3(b) of the ICT statute.

4.3.1 The NATO air raids have obliterated a vast number of civilian dwelling particularly in Pristina, Novi Sad, Aleksinac, Djakovica, Prokuplje, Gracanica, Cuprilja, Cacak, Surdelica as well as the suburbs of Belgrade. Tens of thousands of Yugoslavs have been left homeless as a result of these attacks. The level of destruction sustained by these towns and cities is not justified by military necessity. In addition to the countless civilian dwelling destroyed, a number of public building that serviced civilians, including the post offices in Nis and Pristina, refugee centers in Pristina, Djakovica and Paracin, the local government building in Novi Sad, federal buildings in Belgrade, meteorological stations in Bukulja and Mt. Kopaonik, and a business center in Usce have all been knocked out without legitimate justification. The power supply transmitters in Batajnica, Bogutovac, Resnik and Zemun, the power plants in Krusevac, Pristina and Belgrade on May 1st, 1999, the water supply system in Zemun, the Bistrica hydroelectric power plant in Polinje and telephone lines in Bogutovac have all been damaged as a result of the NATO raids causing needless damage to the civilian infrastructure and great suffering to the civilian population. The bombing is intended to exact as much damage as possible to the civilian populace and in doing so incite the Yugoslav people against Milosevic, punish the Yugoslav leader, and force a surrender.

THEREFORE we respectfully request that the Prosecutor immediately investigate and indict for serious crimes against international humanitarian law:

THE FOLLOWING:

**Willem Kok, Prime Minister of the Netherlands;
J. van Aartsen, Minister of Foreign Affairs of the Netherlands;
F.H.G. de Grave., Minister of Defence of the Netherlands.**

AND WHOEVER ELSE shall be determined by the Prosecutor's

AND WHOEVER ELSE shall be determined by the Prosecutor's investigations to have committed crimes in the NATO attack on Yugoslavia commencing March 24, 1999.

Submission by

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**Drs. AL.FRED VIERLING
vierling@hotmail.com**

on the ^{Oct} 12 day of July 1999, The Hague

Subscriptum:

On the 7 th day of June 1999, NATO decided to continue and intensify its bombardments and killed on the verge of imminent peace agreements hundreds of Serbian conscripts in the name of a 'humanitarian' Europe, just because Yougoslavia and Russia wanted according to international law a UN Resolution preluding and a bombing stop enabling the withdrawal of Servian military from their own territory, whereas NATO stubbornly claimed supremacy over post-war intervention force.

On 17 june 1999 NATO General Clark, failing disarmament of KLA preceding KFOR entrance into Kosovo, stated in an interview by BBC and dutch Network television, that ' he wasn't sure Serbian citizens were escaping from KLA (UCK) troopers, rather their bad consciousness propelling theme on the move.' He confessed that already 30.000 Serbian citizens escaped from Kosovo, one third of the Serbian population in Kosovo. NATO officials state, that 5000 Serbian military have been killed by NATO operations.

