

How States Carry Out Acts of Terror: Wars, Strategies and Tactics in Bosnia and Herzegovina and Kosovo

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Abstract

Terrorism is a notoriously difficult concept that defies single universal definition. Terrorists intentionally employ violence in order to instill fear in their victims and the wider public. Terrorist movements aim to achieve their political, social and/or religious goals through use of violent acts (Hoffman, 1998: 43). In most cases terrorism is perpetrated by non-state actors and is "bottom up" challenge to the existing political order. However this article argues that the nature of the crime and not the perpetrator should determine whether some criminal act constitutes terrorism and acts of terror can also be committed by states and/or state actors. In this article, the author will examine the overall strategy and tactics used by the Milosevic and Karadzic regimes in BiH and Kosovo to fulfil their wartime ambitions of maintaining and consolidating control over Serb and Serb-occupied territory, relying primarily upon the indictments and judgments of the ICTY in which they and members of their armed forces acting under their authority have been charged and/or convicted of war crimes and terror, along with reports from international organizations such as the United Nations and other sources. Through an analysis of these tactics against leading definitions of terrorism, it will be demonstrated that rather than fighting against terrorists and insurgents, the Milosevic and Karadzic

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regimes carried out acts of terror during the wars in Kosovo and BiH, respectively, and furthermore Milosevic was sponsoring state-terrorism in BiH (Blakely, 2012: 3-4).

Key Words: War Crimes, Terrorism, Ethnic Cleansing, Political Violence, UNICTY, Bosnia and Herzegovina and Kosovo

1. Introduction

In their respective defences before the United Nations International Criminal for the former Yugoslavia (ICTY), both former President of Serbia and the Federal Republic of Yugoslavia (FRY), Slobodan Milosevic, and former President of the Serbian Republic (RS) of Bosnia and Herzegovina (BiH), Radovan Karadzic, justified their actions during the wars in Kosovo and BiH as legitimate responses against terrorism. (ICTY, Milosevic Transcript, Feb 14 2002: 253). On the opening day of his defence against charges for war crimes and crimes against humanity committed by military and paramilitary forces in Kosovo, Milosevic described the actions of the FRY army in Kosovo as 'a struggle against terrorism'. He claimed that:

'[t]he task of the military and of the police was to neutralise the actions of terrorists and to protect civilians at the same time, to protect citizens. All orders, all actions taken by commanders and individuals corroborate this' (ICTY, Milosevic Transcript, Feb 14 2002: 254).

He argued that rather than committing crimes, the army and the police 'defended their own country with honour and chivalry' (ICTY, Milosevic Transcript, Feb 14 2002: 253).

Similarly, on the opening day of his defence, Karadzic, who is charged with war crimes including sniping and shelling the civilian population of Sarajevo 'to spread terror among the civilian population' (ICTY, Karadzic Indictment, Oct 19 2009: 37), denied that he was guilty, describing a 'horrible course of events' against Bosnian Serb victims of 'state-sponsored terrorism' by Muslim authorities who sought independence from Yugoslavia and to draw international forces into the conflict (ICTY, Karadzic Transcript, 2 March 2010: 933). He asserted:

'What the young Muslims wanted can only be achieved through terror or by foreign intervention. The [Muslim leadership] failed to manage to achieve that through terror. They tried to maintain terror and to invite foreign intervention' (ICTY Karadzic Transcript, 2 March 2010: 958).

However, contrary to the claims of both Milosevic and Karadzic, as argued by the ICTY Prosecution and further demonstrated through the factual and legal findings of the ICTY in its judgements, rather than quelling a terrorist threat, both the Milosevic and Karadzic regimes used terror tactics to further their wartime aims of consolidating control over territory in Kosovo and BiH through a strategy of 'ethnic cleansing' of the non-Serb population (ICTY, Milosevic Indictment, Oct 16 2001: 3-8). The tactics they utilized to meet their aims, included murders of civilians and non-combatants; targeting and spreading fear amongst the civilian population; torture; destruction of property, cultural, religious symbols and monuments; rape and other forms of sexual violence; and publicising their acts in order to achieve a terror-inspiring effect (United Nations Security Council, 27 May 1994: 33). These tactics fit within definitions of terrorism used by States, international organizations, and scholars.

2. Definitions of Terrorism

The question of whether States can be terrorists remains a subject of considerable debate. Ganor argues that the term terrorism is redundant when describing State action because under the Geneva Conventions, deliberate attacks upon the civilian population by regular military forces during wartime constitute war crimes, while such attacks during peacetime constitute crimes against humanity (Ganor, 2002: 289). Kushner notes that many understand terrorism to exclude violence committed by governments, asserting that 'when nations engage in violence and killing as a means of reaching a particular political end, it should be called oppression, not terrorism' (Kushner, 2002: 344). Similarly, Wight notes that most people refer to terrorism as a form of non-state violence (Wight, 2012: 57).

On the other hand, Riegler (2009: 2) claims that certain types of violence carried out by states can legitimately be categorized as 'terrorism'. He argues that "State terrorists imitate their enemies" and describes the "essence" of state terrorism as 'fighting designated "terrorists" in ways that

are themselves part of the terrorist arsenal'. He further explains that State terrorism is underpinned by a strong ideological foundation according to which 'the struggle against the subversive enemy can only end in the enemy's total annihilation' (Riegler, 2009: 2). Blakely further asserts that 'definitions of terrorism should be based on the nature of the act, and not the actor' and thus 'there is no reason why actions by the state cannot be labelled as terrorism, if those acts fit the definition' (Blakely, 2012: 2).

The debate regarding whether States can be terrorists is evident in the lack of agreement regarding the definition of terrorism. While some definitions explicitly recognize State terrorism, it is unclear whether the actions of States fall within others. The United Nations Security Council has defined terrorism in Resolution 1566 (2004), which refers to 'criminal acts, including against civilians, committed with the intent to cause death or serious bodily injury, or taking of hostages, with the purpose to provoke a state of terror in the general public or in a group of persons or particular persons, intimidate a population or compel a Government or an international organization to do or to abstain from doing any act'. (Security Council, Resolution 1566, 8 October 2004: 2). Additionally, negotiations have been ongoing since 2002 within the United Nations General Assembly for an international convention on terrorism, which includes a revised definition of terrorism (Office of the United Nations High Commissioner for Human Rights, July 2008: 6). The draft Comprehensive Convention on International Terrorism (Draft Terrorism Convention) states that:

1. 'Any person commits an offence within the meaning of this Convention if that person, by any means, unlawfully and intentionally, causes:

- (a) Death or serious bodily injury to any person; or
- (b) Serious damage to public or private property, including a place of public use, a State or government facility, a public transportation system, an infrastructure facility or the environment; or
- (c) Damage to property, places, facilities, or systems referred to in paragraph 1(b) of this article, resulting or likely to result in major economic loss, when the purpose of the conduct, by its nature or context, is to intimidate a population, or to compel a Government or an international organization to do or abstain from doing any act' (United Nations General Assembly, 28 Jan - 1 Feb 2002: 10).

While the definition set out in Resolution 1566 does not explicitly exclude States from responsibility for terrorist acts, the limitation in the Draft Terrorism Convention definition to 'any person' appears to exclude States, as well as groups generally.

Other definitions explicitly recognize that States can commit terrorist acts. For example, Schmid and Jongman have described terrorism as 'an anxiety – inspiring method of repeated violent action, employed by (semi-) clandestine individual group or state actors, for idiosyncratic, criminal or political reasons, whereby –in contrast to assassination –the direct targets of violence are not the main targets.' Schmid and Jongman explain that '[t]he immediate human victims of violence are generally chosen randomly (targets of opportunity) or selectively (representative or symbolic targets) from a target population, and serve as message generators' (Schmid and Jongman, 1988: 28).

Ruth Blakeley defines the key elements of state terrorism as follows:

'1) There must be deliberate violence against individuals that the state has the duty to protect, or a threat of such an act if a climate of fear has already been established through preceding acts of state violence; 2) The act must be perpetrated by actors on behalf of or in conjunction with the state, including paramilitaries and private security agents; 3) The act of threat of violence is intended to induce extreme fear in some target observers who identify with that victim; and 4) The target audience is forced to consider changing their behaviour in some way' (Blakeley, 2012: 3-4).

3. Strategies and Tactics of Parties to the Wars in the former Yugoslavia

The charges brought by the Prosecution against ICTY accused and the factual findings of the Trial Chambers demonstrate the aims, strategies and tactics employed by the parties in the wars in the former Yugoslavia (ICTY, Milosevic Indictment, Oct 16 2001: 3-8). This article will set out charges and findings in relation to relevant cases to demonstrate the manner in which the Serbian State carried out terrorist acts in Kosovo and sponsored terrorism in BiH.

4. Strategies and tactics of the Milosevic regime in Kosovo

The ICTY Prosecutor indicted Slobodan Milosevic for war crimes, crimes against humanity and genocide committed in BiH, Croatia and Kosovo.¹ (ICTY Case Information Sheet) Although due to his death in ICTY detention, the Trial Chamber was unable to deliver a judgment in relation to these charges, the indictment provides insight into the strategies and tactics used by the Milosevic regime to reach its aim of consolidating control over Kosovo, as well as Serb populated areas of BiH.

As President of Serbia, Milosevic was indicted for planning and participating in a criminal plan, together with others, with the aim of 'the expulsion of a substantial portion of the Kosovo Albanian population from the territory of ... Kosovo in an effort to ensure continued control over the province' (ICTY, Milosevic Indictment, Oct 16 2001: 3). The strategy used to fulfil this aim included 'a deliberate and widespread and systematic campaign of terror and violence directed at Kosovo Albanian civilians living in Kosovo and the [Federal Republic of Yugoslavia]' (ICTY, Milosevic Indictment, Oct 16 2001: 8). In terms of tactics used to implement this strategy, the accused 'engaged in well-planned and coordinated operations' that included the commission of various crimes by military forces acting under Milosevic's direction and support (ICTY, Milosevic Indictment, Oct 16 2001: 8-9).

Specifically, crimes included forcible expulsions and the internal displacement of 'hundreds of thousands of Kosovo Albanians from their homes', facilitated by 'an atmosphere of fear and oppression' created by the military forces 'through the use of force, threats of force and acts of violence (ICTY, Milosevic Indictment, Oct 16 2001: 9)'. Tactics included 'widespread and systematic' destruction of the property of Kosovo Albanian civilians through 'widespread shelling of towns and villages' and the burning of property, 'including homes, farms, businesses, cultural monuments and religious sites'. Tactics also included 'acts of brutality and violence against Kosovo Albanian civilians in order to perpetuate the climate of fear, create chaos and a pervading fear for life'. In this regard, Kosovo Albanians were said to have been 'intimidated, assaulted or killed in public view to enforce the departure of their families and neighbours (ICTY, Milosevic Indictment, Oct 16 2001: 9)'. Civilians who were not

¹ This article will only address crimes committed in Kosovo and BiH.

forcibly expelled allegedly fled 'as a result of the climate of terror created by the widespread or systematic beatings, harassment, sexual assaults, unlawful arrests, killings, shelling and looting carried out across the province (ICTY, Milosevic Indictment, Oct 16 2001: 9).

5. Strategies and tactics of the Milosevic and Karadzic regimes in BiH

Similarly, with regard to BiH, Milosevic was alleged to have planned and participated, as a co-perpetrator, in a criminal plan with the aim of consolidating control over Serb-populated areas through a strategy of 'forcible and permanent removal of the majority of non-Serbs, principally Bosnian Muslims and Bosnian Croats, from large areas of [BiH]'. He allegedly controlled elements of the Yugoslav People's Army (JNA) and its successor, the Yugoslav Army (VJ), which participated in the planning, preparation, facilitation and execution of this plan (ICTY, Milosevic Indictment, Nov 22 2002: 5). He was also accused of exercising substantial influence over and assisting the political leadership of the self-proclaimed Bosnian Serb Republic (RS), including Radovan Karadzic and his vice President, Biljana Plavsic, in the planning, preparation, facilitation and execution of the plan. He was further alleged to have provided financial, logistical and political support to the VRS, participating in the formation, financing, supply, support and direction of special forces in the RS Ministry of Internal Affairs and also providing such support to Serbian irregular forces and paramilitaries, all who participated in the execution of the plan (ICTY, Milosevic Indictment, Nov 22 2002: 5). Finally, he was believed to have 'controlled, manipulated or otherwise utilized Serbian state-run media to spread exaggerated and false messages of ethnically based attacks by Bosnian Muslims and Croats against Serb people intended to create an atmosphere of fear and hatred among Serbs ... which contributed to the forcible removal' of non-Serbs (ICTY, Milosevic Indictment, Nov 22 2002: 5).

To implement this strategy, the military employed tactics including 'the widespread killing of thousands of Bosnian Muslims, including during and after the take-over of territories within Bosnia and Herzegovina' and 'in detention facilities'; 'causing serious bodily and mental harm to ... Bosnian Muslims during their confinement in detention facilities', including subjecting them to or forcing them to witness during interrogations acts

including 'murder, sexual violence, torture and beatings' (ICTY, Milosevic Indictment, Nov 22 2002: 5-12).

Tactics also included forcible transfers of non-Serbs, carried out through attacks to force civilians to flee, rounding up remaining non-Serb civilians and forcibly removing them, or 'impos[ing] restrictive and discriminatory measures on the non-Serb population and engag[ing] in a campaign of terror designed to drive them out of the territory'. Further tactics included 'the wanton destruction and plunder' of the property of non-Serbs and of their religious and cultural buildings (ICTY, Milosevic Indictment, Nov 22 2002: 10-12).

6. Additional ICTY findings regarding strategies and tactics in Kosovo and BiH

Although no final determination was made regarding Milosevic's guilt for the crimes set forth above, the Trial Chamber delivered judgments in the case against Milan Milutinovic and others for crimes by Serb forces in Kosovo and in the case against Stanislav Galic for crimes committed in BiH by the VRS to which, as noted above (ICTY, Galic Judgement, Dec 5 2003: 117, 251, 302). Milosevic was accused of providing financial, logistical and political support. These findings provide further insight into the aims, strategies and tactics of the Milosevic regime in Kosovo and BiH.

In the case of Milutinovic and others, the Trial Chamber convicted the Deputy Prime Minister of Serbia, the Chief of Staff of the VJ, two commanders of army corps in Kosovo and the Head of the Ministry of Internal Affairs Staff for Kosovo of participating in a criminal plan to 'modify the ethnic balance in Kosovo in order to ensure continued control by the FRY and Serbian authorities over the province'. The strategy to achieve this aim was 'a widespread or systematic campaign of terror or violence, and the tactics employed within this strategy included deportation, forcible transfer, murder, and persecutions (ICTY, Milutinovic Judgement Vol 1, Feb 26 2009: 8-9). The Defence had unsuccessfully argued that the FRY and Serbian authorities were engaged in legitimate anti-terrorist actions against the Kosovo Liberation Army (ICTY, Milutinovic Judgement Vol 1, Feb 26 2009: 325-326).

In BiH, according to the ICTY Trial Chamber, the overall strategy of the Milosevic regime was implemented by actors including Stanislav Galic, the Commander of the 'Sarajevo Romanija Corps' of the VRS. Galic was found

guilty of conducting a campaign of sniping and shelling attacks on the city of Sarajevo, resulting in the killing and wounding of thousands of civilians. For this act he was convicted of war crimes including 'acts of violence the primary purpose of which is to spread terror among the civilian population' (ICTY, Galic Judgement, Dec 5 2003 : 117, 251, 302).

7. Milosevic Regime Tactics as Terror Tactics

An examination of the strategies and tactics used by the Milosevic regime to achieve its wartime aims in Kosovo and BiH against the definitions of terrorism set forth above shows that these strategies and tactics had hallmarks of terror. For example, as Riegler (2009: 2) describes, in both cases, the regime's struggle against the enemy aimed for its 'total annihilation'. Furthermore, in terms of the elements of state terrorism described by Blakely, the Milosevic regime: (1) deliberately committed violence against its citizens in Kosovo, whom it had a duty to protect, and sponsored such violence against the Muslim population in BiH; (2) these acts were committed by State institutions, including the JNA, VJ, VRS, and police forces, as well as paramilitaries; (3) as concluded by the ICTY Trial Chamber in both the Milutinovic and Galic cases, the acts of violence were part of a strategy with a primary purpose of inducing extreme fear into the civilian population; and (4) the targeted civilian populations in both Kosovo and BiH were 'forced to consider changing their behavior in some way', namely, to flee from their homes.

The strategies and tactics also fit well within the United Nations definitions of terrorism. Regarding the Resolution 1566 definition, as noted above, the tactics included the commission of crimes against civilians, including death, serious bodily injury and unlawful detention. A purpose of these crimes was to 'provoke a state of terror ... in a group of persons', namely, Kosovo Albanians and Bosnian Muslim civilians. They also meet the three elements of the Draft Terrorism Convention definition, as the strategies employed and tactics caused death, serious injury, and property damage. Furthermore, these acts were conducted in part to intimidate the population.

As noted above, it appears that acts committed by States are not meant to fall within the Draft Terrorism Convention definition of terrorism. However, as has been demonstrated, the acts committed by and sponsored by the Milosevic regime fit precisely within the elements of this definition.

Although Ganor (2002: 289-290) argues that such acts committed by States should not fall within the definition of terrorism because they are considered war crimes during wartime or crimes against humanity during peacetime, a counterargument is that acts by non-State actors under such circumstances may also constitute war crimes and crimes against humanity. If non-state actors commit these crimes they fall under the definition of terrorism, and there is no reason for the same standard not to be applied when states are the perpetrators.

8. Conclusion

In conclusion, some authors consider that States cannot commit acts of terror and that such acts by States would rather constitute war crimes and crimes against humanity. However, this article demonstrates that these crimes can also be regarded as State terrorism. It is important that the definition of terrorism set forth in the final version of the Terrorism Convention and other definitions encompass terrorist acts by States so that effective international action can be taken to counter terrorism in all its forms (Security Council, Resolution 1566, 8 October 2004: 2).

In Kosovo and BiH, there is a case to be made that State and State-sponsored terror took place, since the majority of the victims of the Milosevic regime were civilians. The civilians were indiscriminately targeted and attacked by the State, which had a duty to protect them, and those attacks were perpetrated in a manner that created a climate of fear and terror in the general population. The regime used these tactics and this strategy in order to maintain control over and gain new territory. This is consistent with the views expressed by Blakely that 'definitions of terrorism should be based on the nature of the act, and not the actor' (Blakely, 2012: 2).

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