

<http://www.guardian.co.uk/comment/story/0,3604,690678,00.html>

Why Milosevic, but not Kissinger?

If Slobodan Milosevic can be put on trial for war crimes, why can't Henry Kissinger, asks human rights campaigner Peter Tatchell

Thursday April 25, 2002

I lost my bid to have the former US secretary of state, Henry Kissinger, prosecuted on charges of war crimes in Indochina, but there is good reason to hope that a future, better prepared attempt might succeed.

Refusing my application for an arrest warrant at Bow Street magistrates' court, Judge Nicholas Evans said he was not "presently" able to draft a "suitably precise charge" based on the evidence "of generalised allegations" that I had submitted.

Judge Evans doubted whether I could produce more specific, admissible evidence. But his comments leave open the possibility that he might issue a warrant in the future - if I can produce stronger evidence of Kissinger's culpability in the killing, maiming, torture and forced relocation of civilian populations in Vietnam, Laos and Cambodia in the late 60s and early 70s.

It is now my intention to liaise with human rights lawyers and organisations in the United States, in order to obtain further evidence and witnesses. If I can get these, I hope to come back to court in a few months time and make a new application for Kissinger's arrest.

I brought this case because the director of public prosecutions, David Calvert-Smith, has refused to prosecute Kissinger.

If I went out and murdered my neighbour, the DPP would use all his resources to bring me to trial. Yet Henry Kissinger organised indiscriminate B-52 bombing raids that killed hundreds of thousands of people and Mr Calvert-Smith does nothing. I believe that these are comparable crimes.

As national security advisor to President Nixon from 1969-73, and later as US secretary of state from 1973-77, Henry Kissinger was the chief architect of US war policy in Vietnam, Laos and Cambodia.

In his own memoirs, *White House Years*, he boasts of his huge power and influence over the President, claiming that nothing happened in Indochina that he did not know about and authorise.

According to the US Senate sub-committee on refugees, from March 1968 to March 1972, in excess of three million civilians were killed, wounded or made homeless.

During this same period, most of which coincides with Kissinger's role as NSA to the President, the US dropped nearly 4.5m tonnes of high explosive on Vietnam, Laos and Cambodia - more than double the tonnage dropped during the whole of the second world war.

What the US did in Indochina involved the mass killing of civilians and the premeditated, wholesale destruction of the environment using chemical defoliants such as Agent Orange. These are war crimes under the 1957 Geneva Conventions Act.

I am merely seeking to have the law enforced, without fear or favour. No one should be above the law, not even Henry Kissinger. He may have escaped arrest this time, but my bid to have him prosecuted continues. Three million civilians are crying out for justice.

Even Judge Evans, in his verdict, acknowledged the seriousness of my case:

"Mr Tatchell has made his application courteously and with obvious sincerity. I do not doubt the strength of feeling in him and many others that justice requires that Mr Kissinger should face the allegations made against him in a court of law", he concluded.

Much of the damning evidence against Kissinger is set out in the book, *The Trial of Henry Kissinger*, by Christopher Hitchens (Verso, London, 2001).

Hitchens demonstrates that Kissinger proposed, authorised, supervised and monitored the key elements of US war policy in Vietnam, Laos and Cambodia, and was involved in day to day war management, including planning and approving major military operations.

He also cites sources indicating that Kissinger approved bombing runs that were not limited to military targets and were likely to result in widespread civilian casualties.

Kissinger was a senior party - second only to the president - to the secret, illegal invasion and bombing of two neutral countries, Laos and Cambodia, without a declaration war or any warning to the civilian population.

In his biographical account, *White House Years*, Kissinger admits that on Air Force One on February 24 1969, together with HR Halerman, Alexander Haig and Colonel Ray Smitton, he conspired to work out "the guidelines for the [secret and illegal] bombing of the enemy's sanctuaries" in Cambodia and Laos.

US General Telford Taylor, the former chief prosecuting counsel at the Nuremberg trials, condemned the Kissinger-Nixon policy of air strikes against hamlets suspected of harbouring Vietnamese guerrillas as "flagrant violations of the Geneva convention on civilian protection".

The following examples, documented by Christopher Hitchens, are evidence of indiscriminate US attacks overseen by Kissinger which caused mass civilian casualties:

Writing in *Newsweek* on June 19 1972, Kevin Buckley revealed that one US official admitted that "as many as 5,000" civilians were killed by US firepower in the military operation *Speedy Express* in Kien Hoa province in 1969: "The enormous discrepancy between the body count (11,000) and the number of captured weapons (748) is hard to explain - except by the conclusion that many victims were unarmed innocent civilians."

In one village alone, an elder recalled: "The Americans destroyed every house with artillery, air strikes or by burning them down with cigarette lighters.

"About 100 people were killed by bombing, others were wounded and others became refugees."

US raids were mostly conducted by B-52 bombers. They flew at such a high altitude that they could not be seen from the ground, and gave no warning to civilians of their approach.

Moreover, they were incapable of accuracy or discrimination in their targeting - on account of both their extreme altitude and the sheer volume of their bomb load. Between March 1969 and May 1970, there were 3,630 such US bombing raids on Cambodia alone.

A memorandum by the joint chiefs of staff concerning these raids, forwarded to the defence department and the White House, and almost certainly seen by Kissinger, warned that "some Cambodian casualties would be sustained in the operation" and "the surprise effect of the attack could tend to increase casualties".

The memo stated that the target areas were populated, albeit sparsely. Mr Kissinger later told the US Senate foreign relations committee that the targeted areas were "unpopulated".

From July to November 1973, there was a 21% increase in the bombing of Cambodia. Air Force maps of the targeted areas list them as being, or having been, densely populated by civilians. In other words, it was known there was a serious risk that non-combatants would be killed.

Freelance investigator Fred Branfman secretly taped US pilots on bombing missions over Cambodia in the early 70s. At no point did any pilots check before or during the raids that they were not bombing civilians. His exposé that no precautions were taken to protect civilians was later written up in the New York Times by Sydney Schanberg; offering compelling evidence of the indiscriminate nature of US aerial attacks.

US bombing is calculated to have killed 350,000 civilians in Laos and 600,000 in Cambodia. Several times more civilians were wounded and made refugees.

During the first 30 months of the Nixon-Kissinger administration, the US counter-insurgency "Phoenix Programme" was responsible for the murder or abduction of 35,708 Vietnamese civilians.

Kissinger's role in formulating and implementing US war policy coincided with the systematic use of chemical defoliants and pesticides, including Agent Orange.

These caused birth defects and rendered significant areas of Vietnam, Laos and Cambodia too toxic for people to live in or farm - creating an environmental disaster that will continue to affect many generations to come.

Intimately involved in military decision making, Kissinger chaired a number of hands-on posts, including the Vietnam special studies group, which supervised the daily conduct of the war. Colonel Ray Smitton, the joint chiefs of staff expert on air tactics, noted that by late 1969 Kissinger was overruling his office on target selection: "Not only was Henry carefully screening the raids, he was reading the raw intelligence".

Later, he began to intervene to dictate mission patterns and bombing runs.

It is implausible to suggest that Kissinger was unaware of US violations of the Geneva conventions. He planned, sanctioned and monitored many of the operations which resulted in these violations.

For all these reasons, and many more, I believe a prosecution is justified and necessary. If Slobodan Milosevic can stand trial for war crimes, why not Henry Kissinger?