

# The “Criminalisation” of International Criminal Justice

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Global Research, April 23, 2013

[Strategic Culture Foundation](#)

Theme: [Law and Justice](#), [United Nations](#)

On April 10 the United Nations General Assembly held its first ever and rather unique debate on the role of the international criminal justice system in fostering reconciliation. It summed up and assessed the twenty year experience of international criminal courts and tribunals activities. (1) The hearings were boycotted by some states, like, for instance, the United States of America, Canada and Jordan. Jordanian UN envoy said that the fact of holding the debates was, allegedly, an example of power abuse on the part of President of General Assembly.

This time the President of the Assembly session was Vuk Jeremić from Serbia, former Serbian Minister of Foreign Affairs...

So, why has the issue of reconciliation hit a snag in the form of boycott?

The answer is evident. The so-called international justice has totally failed. Today, there is no doubt left, the international justice system has no, whatsoever, relation neither to peace restoration, nor reconciliation after armed conflicts.

Even mentioning the interrelation evokes anxiety, or even anger of the key participants in the process of making the system of «justice» function. For instance, Prince Zeid, the Jordan’s Permanent Representative to the United Nations. He has served with UN peacekeeping contingent in Bosnia and has been the first President of the Assembly of State Parties to the Rome Statute of the International Criminal Court. He is the one to know really well what the interrelationship between international courts and reconciliation is like.

David Tolbert from the United States, who has served as Deputy Prosecutor of the International Criminal Tribunal for the former Yugoslavia (ICTY), was more candid than his Jordanian counterpart. He put it straight that, as to him, the international courts cannot and should not make a contribution into reconciliation process; it’s not what they are destined for. (2)

The statement totally distorts the mission set by the United Nations before the former Yugoslavia tribunal, which was the restoration of peace and assistance in reconciliation process. David Tolbert put forward another false thesis stating that the international criminal courts have achieved outstanding successes in the recent years and thanks to them «nobody is above law» now. Talking about the criminal courts achievements and successes, the American meant the usurpation of the rights to arrest and bring to justice the heads of states and governments.

In reality the appearance of criminal courts created a new caste of people standing beyond

and above any rights. They are the international prosecutors and judges. These people face no responsibility for what they do, neither according to interstate nor international law. No statutes of international tribunals or any other legislative acts envisage a procedure of making a judge or a prosecutor responsible for violating legal norms or power abuse. It is very uncommon. The laws of many states include such provisions.

The article 31 of the Russian Federation's Criminal Code is almost fully devoted to the crimes committed by officers of the law. The judges may be made face responsibility by the Supreme Qualifying Collegium of the Russian Federation. (3) The other states have similar laws. At the same time, no responsibility is envisaged for international judges and prosecutors for crimes committed. And they are numerous enough: conscientious handing down illegal verdicts, rigging evidence, violation of defendant's rights, non-use of existing norms of international law or their remaking, ignoring defendant's evidence, unsubstantiated rulings etc. Sometimes the violations are so massive, that the independence of judges is questioned, because their actions actually destroy the international legal system.

The immunity of heads of states and governments rejected, the caste of «untouchable» international judges and prosecutors created - all these things match the purpose set before the international criminal courts by global power. The goal is to get rid of the state leaders fallen out of favor in the name of the so-called «international community». The absence of any legal basis to make international judges and prosecutors face responsibility is not an oversight, it's the purposeful establishment of a striking potential to destroy the existing progressive legal system and create a new repressive and regressive international law.

No matter the boycott demarche, the United Nations hearings were of great significance. The representatives of a number of states lambasted the existing «system of justice» leaving no stone unturned. The address by Tomislav Nikolić stood out as bright and pithy.

Actually it was the report of an expert, offering a legal assessment going far beyond general lines and offering all the details of the problem. (4) The issues elucidated in the report included: the concept of instituting legal proceedings (the principle of division of powers and independent judiciary is violated); the assessment of the way the equality of the parties was observed, the control by Tribunal over financial activities persecution and defense, the issue of conscientious curtailing of the Tribunal's temporary jurisdiction, the violation of the principle of equality while handing down sentences to those, who represent different ethnic groups etc. (5)

The President's United Nations address convincingly demonstrated that the International Criminal Tribunal for the former Yugoslavia has never brought reconciliation to the Balkans; to the contrary, its activities have aggravated the schism in the society.

The other speeches are worth to mention too. Nebojša Radmanović, President of Bosnia and Herzegovina, noted that not a single ethnic group, populating his country, holds an opinion that the International Criminal Tribunal for the former Yugoslavia has made any contribution into the national reconciliation process. The Justice Minister of Rwanda said the International Criminal Tribunal for Rwanda was to blame for no peace in his country.

The Tribunal came under harsh criticism in other speeches too. Actually, the criticism was not aimed at the International Criminal Tribunal for the former Yugoslavia only, but rather

the whole system of international justice. The Justice Minister of Namibia said that this kind of 'justice' is selective and pointed the finger at the real culprit – the United Nations Security Council. John Laughland, Director of Studies at the Institute of Democracy and Cooperation in Paris, has hit the nail right on the head while summing up the results of the international courts activities. According to him, the very idea of international justice has failed.

Vitaly Churkin, the Permanent Representative (Ambassador) of the Russian Federation to the United Nations, commenting on how some considered justice critical for victims and an important element in efforts to prevent threats to peace and security, said that he could not accept the principle of retribution «at any cost».

Prosecutions could only be successfully achieved if the process was impartial and depoliticized. Although there were both positive and negative examples in that regard, he pointed out that the International Criminal Tribunal for the former Yugoslavia was a negative one, with a legacy that could not be seen as a success story, and whose existence had been unjustly extended «for an absurd length of time». Such extensions had resulted in a number of key officials dying before they could be prosecuted. The question was whether such a judicial body — whose very existence seemed to cultivate the notion of guilt on one side of the conflict — could really bring about peace and justice. The Security Council must take decisive steps to help that body extricate itself from the «systemic dead end» in which it was entrenched.

\* \* \*

Serbia has made a breakthrough in fair assessment of what is called «international justice». It has attracted the attention of many countries to the problem. For the first time the international criminal courts were not just criticized, but rather lambasted at the session of the United Nations General Assembly. Russia has supported the «Serbian step forward». There is ground to believe the common legal position taken in the United Nations by Russia and Serbia would yield results...

## Notes

(1) Letter of the President of the General Assembly to all Permanent Representatives and Permanent Observers to the United Nations, 11 February 2013.

(2) Tolbert D., Can international justice foster reconciliation? Reconciliation should focus on what it takes to restore the trust of citizens in each other – and in the state itself, //

<http://www.aljazeera.com/indepth/opinion/2013/04/20134107435444190.html>

(3) Article 21 (the disciplinary responsibility of judges), the law of Russian Federation, June 26, 1992 N 3132// the Federal Law on the Status of Judges in the Russian Federation.

(4) Normally it's speechwriters who prepare the addresses. This time I'd take a risk to conjecture Tomislav Nikolić did it himself. He has headed the team of professor Vojislav Šešelj defendants for a long time. Sheshel was one of core figures among those accused by the International Criminal Tribunal for the former Yugoslavia. Nikolić knows all the ins and outs related to the Tribunal's functioning. I met him in 2007 as the head of the team to discuss further details related to the line of defense. Though Nikolić is not a professional lawyer, he is the one who is dry behind the ears when it comes to the way the International Criminal Tribunal for the former Yugoslavia functions.

(5) The official website of the President of Serbia: <http://www.predsednik.rs/node/653> (in Serbian language). The English version is posted on the website of Serbian Permanent Representative to the United Nations: [Statement by H.E. Mr. Tomislav Nikolić, President of the Republic of Serbia] <http://www.un.int/serbia/Statements/155.pdf>.

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