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Simjanoski, Dushko

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DEVELOPMENT OF PRINCIPLES FOR PROSECUTION OF CRIMES IN THE INTERNATIONAL TRIBUNALS: THE CASE OF REPUBLIC OF MACEDONIA

Dushko Simjanoski, PhD Candidate

Law Faculty, University St. Clement of Ohrid – Bitola, Macedonia

Abstract

This paper is about development of investigative activity procedures and prosecutions in the international tribunals since the Nuremberg Charter, with special reference to the International Criminal Tribunal for the former Yugoslavia and cases involving the Republic of Macedonia. According to that, the paper firstly indicates the International Court of Justice and Statute of ICTY where the tribunal has jurisdiction over four crimes: grave breaches of the Geneva Conventions, violations of laws or customs of war, crimes against humanity and genocide committed on the territory of the former Yugoslavia from the start of the war in 1991 until to a date to be determined by the Security Council upon the restoration of peace.

Key words: prosecution; criminal investigation; trial; ICTY; appeal.

INTRODUCTION

This paper explains the Geneva Convention, because of the relation to the grave breaches and the UN Charter and its power from Chapter VII for establishment of the International Criminal Tribunal Yugoslavia (ICTY). In detail, the paper elaborates the way of making indictments, procedures of investigative activities, the admission of evidence, the protection of victims and witnesses and the trials where it leads to reaching a verdict. The aim of this research is to have an in-depth look into the investigative activity, procedures and prosecution of the International Criminal Tribunal for the former Yugoslavia, to see what exactly they are, to see the purpose of its establishment, powers and responsibilities and rules of investigation and procedures and how the work is being carried over by the Residual Mechanism. The research will identify how the rules of procedure came to be adopted by previous international tribunals. This thesis is of paramount importance since it explains the actions and procedures of prosecution and thus one can get a clearer image of the International Court of Justice and the tribunal for former Yugoslavia in particular. The function and responsibility of this body is of great importance for the peace and stability in the region and the Balkans. The manner of its functioning and powers of abstraction, the framework in which authority derives its roots from the Charter of the United Nations proves its legitimacy and proper international functioning. On 27 May 1999 the ICTY became the first international court to indict a sitting head of state for war crimes and crimes against humanity. Slobodan Milosevic was indicted by the tribunal at the height of the war in Kosovo for the deportation and murder of Kosovo Albanians. These charges were subsequently extended to include genocide, crimes against humanity, and

grave breaches of the Geneva conventions and violations of the laws or customs of war in Bosnia and Croatia as well as Kosovo. The second example is from Macedonia - Ljube Boskovski - Macedonian Minister of Interior Affairs.

The International Court of Justice

Like every organ of the United Nations, the International Court of Justice was established by the Charter of the United Nations in June and began its work in April 1946. This is the principal judicial organ and the seat is at the Peace Palace in The Hague (Netherlands). The General Assembly and the Security Council elect the 15 judges for a mandate of nine years. The administrative organ that assists the judges is the Registry. The official working languages are English and French. The conception of the court arises from the need for making settlement of international disputes. (United Nations Charter Art. 33).

The origins

John Jay's Treaty (1794) between United States of America and Great Britain is the so called Treaty of Amity, Commerce and Navigation, and it represents the beginning of the international arbitration and its task was to settle the questions between the countries which cannot be resolved by negotiation and are extended to a tribunal. Second phase started in 1872 between these two countries. Third phase was initiated by the Russian Czar Nicholas II at the Hague Peace Conference of 1899. At this conference, the participant discussed for peace and disarmament. And finally, they adopted the Convention on the Pacific Settlement of International Disputes (1907) whose main task was arbitration and other good offices and mediation. The Permanent Court of Arbitration has jurists elected from each country and Bureau that has the same responsibility like the Court registry or Secretariat and makes set of rules to govern the conduct of arbitration. The Second Hague Peace Conference held in 1907 developed the rules governing the arbitral proceedings. Some fundamental ideas from this court were a source of inspiration for drafting the Statute of the Permanent Court of International Justice some years later. All of the ideas that were inspired by the two Hague Peace Conferences were good not only for the Central the Central American Court of Justice which operated from 1908-1918 but for the Permanent Court of International Justice and its framework that was set up after the end of First World War as well. The Council of the League established this Permanent Court of International Justice under Article 14 of the Covenant of the League. The main responsibility was to hear and determine any dispute of international character and to give an advisory opinion. The statistics tell that PCIJ dealt with 29 cases between states and have 27 advisory opinions between 1922 and 1940.

The ICTY Structure

Three main pillars or components compose the structure of the International Criminal Tribunal for the former Yugoslavia (ICTY). These are the Chambers, the Office of the Prosecutor and the Registry. The president of the Tribunal is elected with a majority of votes from the permanent judges. The president performs two year term and may once be re-elected. Theodor Meron is the current president who runs his second mandate. Vice-president is also elected by the same procedures. There are three trial chambers and an

appeal chamber. Every trial chamber is composed of three permanent judges. The number with *ad litem* judges may increase to 6. Mainly, trial chambers task is to hear the case and provide fair trial procedures. Trial chambers also impose the decisions for the individual cases. The appeals chamber has 5 permanent members of the ICTY. Appeal chamber listens and decides on appeals by the sentenced individuals. The task of the Office of the Prosecutor is to investigate, explore, observe and prosecute individuals that performed crimes. The Office is led by a Prosecutor. He also presents crime cases in front of the trial chambers or the appeal chamber. The Prosecutor service lasts four years and his/her mandate may be renewed. He is appointed by the UN Security Council. The most important principle is the independence of the Prosecutor in order to provide righteous investigation. The Prosecutor must not be determined by the opinions and suggestions from governmental institutions and the other two organs of the ICTY. The Office is divided in three branches: Prosecutor Division, The Immediate Office and the Appeals Division. The Registry also includes three sectors, i.e. the Judicial Support Division, the Immediate Office and the Administration Division. Basically, it is an UN administrative organ. Its functions are wide-ranged, diverse and complex. Its duties may be compared to those of the ministers in domestic systems. The Registry is obliged to find witnesses and provide them necessary protection. Sometimes the Registry performs diplomatic function, communicates and coordinates with various bodies in the international community. The UN Secretary-General appoints Registrar who heads the Registry. The goal of the Tribunal was to finish all of the trials until 2012 and all of the appeals until 2015, but the Karadzic, Mladic and Hadzic cases may postpone that scenario. From 1 July 2013 the jurisdiction of ICTY in terms of supervision of sentenced cases was passed on the United Nations Mechanism for International Criminal Tribunals.

The ICTY Cases

According to the official information, up to 12 February 2014, 161 people were indicted by the ITCY. There are ongoing procedures for 20 accused individuals. Sixteen of them are in front of the Appeals Chambers and four of them and probably the most important ones are currently on trial. The cases that provoked so much attention and controversies were the cases of Karadzic, Mladic, Hadzic and Seselj. The processes for the rest 141 people are finished (according to the official website report of the ITCY). Many of them have been convicted and already served their penalties. Among the indicted ones we can find Presidents, Prime Ministers, Ministers, Generals and many other government officials. More than half of the indicted individuals are ethnic Serbs from Serbia and Republika Srpska. The percent of convicted individuals with Serbian nationality is very high. Among the others indicted are Croats, Muslims, Albanians, Montenegrins and Macedonians. Two Macedonians were accused, arrested and preceded to Hague. One of them is Ljube Boskovski, the former Macedonian minister of Internal Affairs who was declared innocent, but Johan Tarculovski, Macedonian army general, was found guilty and recently finished serving his sentence. In general, the Hague Tribunal deals with war and crimes committed among Croats, Serbs and Muslims in Bosnia, it deals with Croats and Serbs in parts of Croatia, but also with Serbs and Albanians from Kosovo in Kosovo and Macedonian and Albanians in Macedonia. Srebrenica massacre is one of the most brutal massacres in recent history, so it is obvious why the biggest list of convicted individuals is that one connected with people who performed actions in Srebrenica. Many of those

individuals were sentenced to 20 years while several people were punished to life imprisonment. Bearing in mind that the memories of wars treated by the Hague Tribunal are still fresh, it is clear why almost every decision caused so many controversies. Although one of the aims of the ICTY is to help the reconciliation with fair and righteous decisions, unfortunately, in some cases it provoked opposite effects.

The case of Macedonia

Macedonia declared its independence on 25 September 1991 by a referendum where 95,26% of the people voted for independence. The population mainly consists of ethnic Macedonian majority and large Albanian minority. The ethnic tensions in 2001 started in January when the Albanian National Liberation Army fought for equal rights and later gained autonomy or independence in the Albanian populated areas. In May 1991, a national Government was formed; with all Macedonian parties, governed by Ljupco Georgievski. All acts of violence, armed protests and ethnic desolation were settled down with the Ohrid framework agreement in August when the peace agreement was signed and greater right in handing over the arms to NATO peace forces was recognized. Afterwards, the Operation Harvest was NATO's main operation in order to collect 3,300 pieces of weapons, thereby granting amnesty to the former members of the Albanian National Liberation Army. In November, the Government voted for additional constitutional rights in all areas that have 20% Albanian minority. That would concern the official language, the number of Albanians working in the state and the public institutions including the police as Macedonians too. Regarding the ICTY and the Macedonian cases, there are two cases: Ljube Boskovski and Johan Tarculovski. In addition, this paper elaborates the case of Ljube Boskovski and one of the main cases regarding Yugoslavia – the case of Slobodan Milosevich. Ljube Boskovski was charged on the basis of superior criminal responsibility ("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." Article 7 (3), Statute of the ICTY) with:

- Murder, wanton destruction of cities, towns or villages and cruel treatment (violation of laws or customs of war, Article 3).

Tarculovski was charged on the basis of individual criminal responsibility ("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." Article 7(1), Statute of the ICTY) with:

- Murder, wanton destruction of cities, towns or villages and cruel treatment (violations of laws or customs of war, Article 3)

The case of Ljube Boskovski

Following the parliamentary elections in 1998 and the victory of VMRO-DPMNE, he was appointed Deputy Director of the Directorate of Intelligence (DDI) in the Ministry of Interior of the Republic of Macedonia. On 31 January 2001, he was appointed State Secretary in the Ministry of Interior. On 15 May 2001, the ruling Government appointed him a Minister of Internal Affairs of the Republic of Macedonia. After the parliamentary elections on 15th of September 2002, he was dismissed from the post of minister and became a deputy in the Parliament.

In April 2004, Boskovski collected 10,000 signatures and submitted a candidature for the presidential elections, but, his candidacy was rejected by the State Election Commission because he did not meet the requirement of 15 years of continuous residence in the country. In 2008, i.e. after the return of Boskovski from Scheveningen, he founded the party United for Macedonia and became its president. At the parliamentary elections in 2011, Boskovski and his party won 1,52% votes. After the elections, on 6 June 2011, Boskovski was arrested by members of the mobile police unit “Alfa”, on suspicion of illegal campaign financing.

Charges

In terms of charges, Boskovski’s defense supported the view that Boskovski was neither de facto nor de jure in charge of the police units that entered in the village Ljuboten and the units that were at the checkpoints as well as backup. However, prosecutors found that Ljube Boskovski, as Minister of Internal Affairs of the Republic of Macedonia, has the power to direct and control the police and every other task force. OJ applies in sectors in the Ministry of Interior and is responsible for internal investigation and aiding and assisting all the processes undertaken by the public prosecutor. This refers to the power and authority over Tarculovski who at the time was employed in the Ministry of Interior. Prosecutors found that Boskovski was not in Ljuboten on August 12, and later on, an expanded operation under the orders of the President of the Republic of Macedonia he went to Ljuboten. At that time the operation was near a completion, so, during his visit he could not know that the operation included cruel treatments, killings and destruction of villages and places. Two days after the police received reports on hearsay and non-governmental organizations and diplomatic channels, Boskovski learned about serious police violations in Ljuboten and events that happened 12 days after.

In addition, Boskovski ordered an investigation to punish the people who were responsible for these events according to the jurisdiction of the Republic of Macedonia. This investigation will be according to Article 7 (3) of the Statute if the criminal investigation is appropriate under criminal authorities. Actually two statements were made, one by the Ministry of Interior and the other by the public prosecutor. These reports of his officers were not accurate and did not accurately describe the criminal conduct. In fact, according to the existing laws, a formal investigation should take that the prosecutor and an investigative judge must consider the death of the victims and misconduct off the shelf, including the destruction of villages and cruel treatment. Actually, there was not investigation by authorities in Macedonia against the police. Boskovski has no authority over judicial authorities to launch an investigation and about the failure of the police to

carry out its mandate. So, the failure of the police operation and the responsibility of the Macedonian authorities proved that Boskovski was not responsible and that under Article 7 (3) he should take the necessary measures to punish the police.

The Statute of the International Residual Mechanism for Criminal Tribunals

Regarding the *Statute of the International Residual Mechanism for Criminal Tribunals*, it is established on 22 December 2010, SC/10141, and it is composed of two annex resolutions. The first one is the Statute of the International Residual Mechanism for Criminal Tribunals and it has 32 Articles and the Resolution Annex 2 concerns Transitional Arrangements and has 7 Articles. In the Preamble, the UN Security Council is acting under Chapter VII of the UN Charter:

Having been established by the Security Council acting under Chapter VII of the Charter of the United Nations to carry out residual functions of 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 (hereinafter: ICTY) and the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan citizens responsible for genocide and other such violations committed in the territory of neighboring States, between 1 January 1994 and 31 December 1994 (hereinafter: ICTR), the International Residual Mechanism for Criminal Tribunals (hereinafter: the Mechanism) shall function in accordance with the provisions of the present Statute (...)

According to Article 1 to 8 of the ICTY Statute and Article 1 to 7 of ICTR Statute concerning the competence to the Mechanism, the jurisdiction of the ICTY and ICTR will continue (See: Articles 1 to 8 ICTY Statute (S/RES/827 (1993); Annex to S/25704 and Add.1 (1993); Articles 1 to 7 ICTR Statute, Annex to S/RES/955 (1994)). In Article 3, in the Statute it is underlined that this Mechanism has two branches, one for ICTY and one for ICTR. Article 4 is for Organization of the Mechanism, where it is stated:

The Mechanism shall consist of the following organs:

- (a) The Chambers, comprising a Trial Chamber for each branch of the Mechanism and an Appeals Chamber common to both branches of the Mechanism;
- (b) The Prosecutor common to both branches of the Mechanism;
- (c) The Registry, common to both branches of the Mechanism, to provide administrative services for the Mechanism, including the Chambers and the Prosecutor.

From 8 to 12, the roster and qualification of the judges is explained. Article 13 concerns the Rules of Procedures and Evidence. There it is set that the judges must adopt the Rules of Procedures and Evidence for the conduct of all three phases: pre-trial, trial and appeals. These Amendments may be decided by the judges of the Mechanism in written procedures. Also all of the amendments must be consistent with the Statute. All the proceedings from the indictment of the Prosecutor to the trial, Rights of the Accused, Protection of Victims and Witnesses, Judgments, Penalties, Appellate Proceedings,

Enforcement of Sentences to Pardon or Commutation of Sentences are explained till Article 26. The second annex refers to Trial Appeals and Review proceedings. The ICTY and ICTR shall have competence to complete all trial or referral proceedings which are pending with them as of the commencement date of the respective branch of the Mechanism. (Resolution 1966 (2010), Article 1 Annex 2). The ICTY and ICTR shall have competence to conduct and complete all appellate proceedings for which the notice of appeal against the judgment or sentence is filed prior to the commencement date of the respective branch of the Mechanism. (Resolution 1966 (2010), Article 1 Annex 2). The ICTY and ICTR shall have competence to conduct and complete all reviewed proceedings for which the application for review of the judgment is filed prior to the commencement date of the respective branch of the Mechanism. This Annex has 7 Article and other are for Contempt of Court and False Testimony, Protection of Victims and Witnesses, Coordinated Transition of other Functions, Transitional Arrangements for the President, Judges, Prosecutor, Registrar and Staff.

CONCLUSION

The ICTY is a legitimate international body created by the United Nations concerning the states of the former Yugoslavia. With the dissolution of Yugoslavia and the wars in Croatia, Bosnia and Kosovo, heads of state, ministers and others undertaking vital functions have been charged and taken to The Hague to be tried for acts against humanity, genocide etc. In this paper the parts regarding charges that are related to the investigation and prosecution procedures are developed. The prosecutor's office and investigations which require hard work, collection and consideration of documents, identification of witnesses, gathering statements exhumation of mass graves and collecting other physical evidence are crucial elements in this master thesis. These are crucial elements in the process and it depends on them, whether charges will be brought successfully in this Tribunal. All of these actions are legal under the Statute of the Tribunal and the resulting cooperation of the states with the tribunal. The importance of this thesis is of paramount importance, because it explains the actions and procedures of prosecution and thus one can get a clearer image of the International Court of Justice and the tribunal for former Yugoslavia in particular. Here are emerging powers of tribunals which are different from courts in sovereign countries where the tribunal may only require states to cooperate voluntarily and in good faith, and that means cooperation often depends on the political criteria and especially the political interests of those who manage these countries. Furthermore, there are indictments against Slobodan Milosevic and Ljube Boskovski, the former Minister of Interior of the Republic of Macedonia, charged in the case "Rashtanski Lozja". Ljube Boskoski was the highest authority in the Ministry of Interior and thus had overall authority and responsibility for the functioning of the police forces within Macedonia, both regular and reserve. The function of the *Residual Mechanism* is of crucial importance and this is temporary and functional body that keeps the rights and obligations of the tribunals until their final and complete termination of their functions by maintaining the legacy of both institutions. Mechanism for ICTR functions from 1 July 2012 and for ICTY from 1 July 2013.

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