

International Politics standing in the way of International Justice (ICTY and ICTR experiences)

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Main Goals (tendencies)

- **1. International Justice (Jurisprudence):**

- *to pursue justice, end impunity and personalize guilt*



idealistic approach / universal

- **2. International Politics:**

- *to maintain peace and order; retain sovereignty*



pragmatic approach / particular

- Theoretically: sometimes might sound complementary
- Practically: questionable / often stand in collision

- **Content:**

- 1. Questionable Independence**
- 2. Financial Limits (Pressure)**
- 3. Time Pressure (Completion Strategy)**
- 4. States and International Institutions –
Question of Cooperation**
- 5. National Courts – Limited Reach (Problems with Governments that harbor suspects or withhold evidence)**

Questionable independence

STATUTE OF THE ICTY:

- Article 12

“1. The Chambers shall be composed of a maximum of sixteen permanent **independent judges**, no two of whom may be nationals of the same State, and a maximum at any one time of twelve ***ad litem* independent judges**, etc.”

- Article 16

“2. **The Prosecutor shall act independently as a separate organ of the International Tribunal. He or she shall not seek or receive instructions from any Government or from any other source.**”

1993 – ICTY was being used by international politics merely as:

- **weapon which would force political leaders to continue peace negotiations**
- **offering impunity in exchange for peace**

Unallowable statements

- **Former ICTR President Navanthem Pillay** stated (without apparent irony):

“Yes, justice can be selective, it can be political. But if you ask me if justice is being done here (at the ICTR), I can say, YES!”

- any concept of “justice” worthy of the name can be ***neither selective nor political***
- Judge Pillay’s statement demonstrates the distortion of fundamental concepts of equality before the law
- the conflation of *legal* decision-making with political expediency – that has been accepted as “normal” by the current incarnation of international tribunals.

Problems Within the ICTY Prosecution

- **Sir Geoffrey Nice**, ICTY Prosecutor since 1998
- **stated to have worked for British spy agency MI6, before his ICTY career**
(source: Azem Vllasi, “*Dani*”, nr. 516, Sarajevo; May 4, 2007)



- Tried to persuade Ms Carla del Ponte, ICTY Chief Prosecutor to remove the genocide in Srebrenica and the Sarajevo siege from Slobodan Milošević’s indictment.
- He insisted that there was not enough evidence to include Srebrenica in the indictment. In the end, he did not succeed.

Financial limits (pressure)

- **ICTY STATUTE - Article 32**

“The expenses of the International Tribunal shall be borne by the regular budget of the United Nations, etc.”

- **Security Council RESOLUTION 1534 (2004):**

“...commending them on their efforts so far to give effect to the Completion Strategies and **calling on them to ensure effective and efficient use of their budgets, with accountability, etc.**”

- November, 2004: Statement by Permanent mission of The Kingdom of the Netherlands to the U.N., **on behalf of the European Union - General Assembly:**

“The EU has expressed its concerns on many previous occasions about the consistently rising budgets of both the ICTY and ICTR and the slow progress of the important work of these institutions.”

Time pressure (Completion Strategy)

The ICTY and ICTR have been put under an enormous time pressure to comply with the deadlines scheduled by the so-called **Completion Strategy**

- announced by the U.N. Security Council in its Resolutions 1503 and 1534.
- This strategy called upon the two ad hoc Tribunals to: **focus on the trials of the most senior leaders and transfer intermediary- and lower-level accused to competent national jurisdictions in order to complete all trial activities** at first instance by 2008 and all of its work by 2010.
- ICTY and ICTR **Rules of Procedure and Evidence** were consequently amended to provide for the referral of indictments to national courts.

- *RESOLUTION 1329 - Security Council, on 30 November 2000:*
- **“Requests the Secretary-General to submit to the Security Council, as soon as possible, a report containing an assessment and proposals regarding the date ending the temporal jurisdiction of the ICTY;”**

- *RESOLUTION 1581 - Security Council, on 18 January 2005:*
- **“Takes note in this regard of the intention of the International Tribunal to finish the *Hadžihasanović* case before the end of September 2005, the *Halilović* before the end of October 2005, the *Orić* and *Limaj* cases before the end of November 2005 and the *Krajišnik* case before the end of April 2006.”**

- *RESOLUTION 1837 - Security Council, on 29 September 2008:*
- **“Expressing its determination to support the efforts made by the Tribunal toward the completion of its trial work at the earliest date, etc.”**

- *RESOLUTION 1877 - Security Council, on 7 July 2009:*
- **“Urging the International Tribunal to take all possible measures to complete its work expeditiously,”**

Unanswered Questions (1):

Is the independence of ad hoc tribunals (and their prosecutors) even possible?

- Considering:
 1. how the international community (The U.N. and states on their own) is forcing tribunals to finish the proceedings faster than it is possible;
 2. how the political and financial pressure is increasing;
 3. how some of the Security Council Permanent Members are ignoring the indictments and even obstructing the justice
 4. how certain insiders were obstructing the formation of indictments (e.g. Sir Geoffrey Nice)

Are the cases after 2009 being shortened?

Will the time limits imposed by the Security Council affect the quality of rulings?

States and International Institutions – Question of Cooperation

- **Article 29 (ICTY STATUTE):**

1. **States shall co-operate** with the International Tribunal in the investigation and prosecution of persons accused of committing serious violations of international humanitarian law.

2. **States shall comply without undue delay with any request for assistance or an order issued by a Trial Chamber**, including, but not limited to:

- (a) the identification and location of persons;
- (b) the taking of testimony and the production of evidence;
- (c) the service of documents;
- (d) the arrest or detention of persons;
- (e) the surrender or the transfer of the accused to the International Tribunal.

Indicted of crimes against humanity: Radovan Karadžić and Ratko Mladić

(and Goran Hadžić)

- **NATO forces refused to arrest the two believing that this could be destabilizing for peace talks at Dayton**
- Carla Del Ponte, Chief Prosecutor (2008):
“Ratko Mladić is in Serbia. There is no doubt about this. He has been there since 1998. During all this time he has been and remains within reach of the Serbian authorities.”
- It has taken **fourteen years to arrest Karadžić**; and **Mladić** has avoided arrest for **over a decade**.



example of the failure of the international community as a whole to effectively set up a mechanism for enforcing indictments.

Things started to move in the right direction **both in Croatia and in Serbia, after the European Union refused to continue membership negotiations without the full cooperation with the ICTY.**

The target states learned how to play the game, using their own mobilization of shame:



complaining about the inefficiency of the tribunal and the failure of the tribunals to indict or convict war suspects of other nationalities.

- Rwanda seemed to hold a **unique status as a victim state** - generating much international sympathy.
- In addition, it held **control of key evidence and access to witnesses**.
- The Rwandan government was frequently able to exert considerable pressure to achieve its goals—particularly in **blocking investigations** of alleged atrocities by its own Patriotic Front troops who ended the genocide by toppling the Hutu government.
- **government of Rwanda refused to cooperate with the ICTR as they believe that reconciliation could not occur unless the tribunal was held in Rwanda**

National Courts and their Limited Reach - Examples

- **Veljko Kadijević**

Last Defence Minister of Former Yugoslavia



- Accused for war crimes in Croatia
- He was at the head of JNA (National Army of Yugoslavia) in 1991, at the time when war operations took place in Vukovar and Dubrovnik.
- **He moved to Russia, where he was granted a Russian Citizenship in 2008. He is residing in Moscow.**
- **Russia, as a member of Interpol, has a duty to arrest Kadijević and to extradite him to Croatia. However, this is being ignored, without any consequences.**

Interpol: “There is no legal document that would force Russia to arrest him. We can only recommend a member state to locate and arrest the accused person.”

National Courts and their Limited Reach - Examples

- **Dragan Vasiljković
("Captain Dragan")**

- **In custody in Australia, since January 2006**
- **Accused for war crimes in Croatia.**
- Republic of Croatia is seeking his extradition.
- **2012 – waiting for the decision of Australian Minister of Justice**
(after having used all the remedies)



National Courts and their limited reach - Examples

- **Ivica Rajić**
- Sentenced to 12 years (by the ICTY) for war crime in Stupni Dol, Bosnia and Herzegovina.
- **Was hiding from 1995 until 2003**, when he was arrested.



Rajić was hiding in Split, Croatia, for 8 years.

Allegedly, he had the support of Croatian Defence Minister Gojko Šušak, Croatian police and intelligence apparatus.

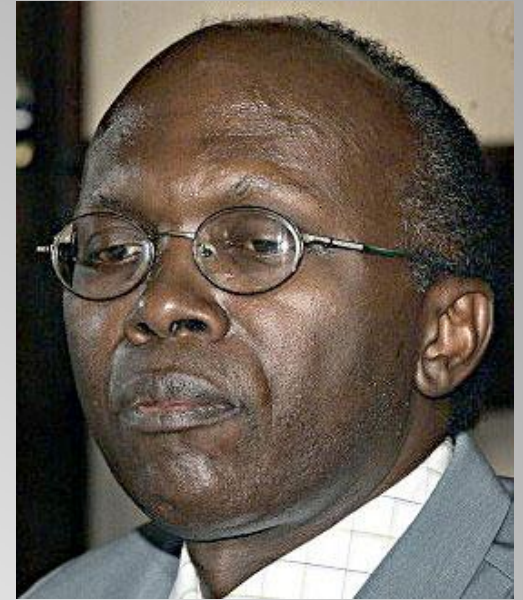
He is liberated after having spent 2/3 of his jail sentence.

He lives in Croatia.

National Courts and their limited reach - Examples

- **Léon Mugesera**

- Accused of giving a speech in 1992 that **incited the mass murder** of between 500,000 and one million members of the Tutsi tribe.



- Mugesera has been **deported to Rwanda** for trial in **January 2012**, after almost **16-years of court proceedings in Canada**.

National Courts and their limited reach - Examples

- **Jean Leonard Teganya**; genocide suspect
- An ethnic Hutu, a medical student. He was interning at Butare University Hospital when Hutu extremist militia killed nearly 200 Tutsi patients, staff and moderate Hutus during the 1994 genocide.
- Mr. Teganya left the hospital in June 1994 and fled Rwanda for the DR. Congo a month later. He has spent time in Zaire, Kenya and India before settling in Canada in 1999. **He has been in Canada since November, 1999.**
- **March, 30 - 2011 - Canada orders deportation to Rwanda**


Unanswered Questions (2):

Goal: transfer “intermediary- and lower-level accused” to competent (not so often) national jurisdictions in order to complete all trial activities.

 **Is this a viable option?**

- **What kind of criteria are being used to determine which cases are low- and which high-level? The number of victims, the position of the accused or the cruelty and range of the committed crime?**
- **Will this bring justice and satisfaction to the victims in the near future?**
- **Why is the project of ICTY and ICTR too swiftly and too easily being brought to its end, when there is more work to be done?**

Unanswered Questions (3):

- Will the states and their national courts be able to put pressure on other states where accused persons are hiding and be successful (regarding extraditions and arrests) to the extent that ICTY and ICTR were?
-  - considering that the states at question are the ones with low political significance and with limited (if any) economic independence
- Are principles being sacrificed (again) because the international community has lost interest in tribunals, since they can not be used as an efficient political pressure weapon anymore?

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Thank you for your attention!

Former ICTY Chief Prosecutor, Louise Arbour:

“There is little hope for the promotion of the rule of law internationally if the most powerful international body makes it subservient to the rule of political expediency.”