Christopher Black:

The Ad Hoc War Crimes Tribunals

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The creation of the ad hoc war crimes tribunals by the United States and Britain, using their power in the Security Council, was the first step in creating a fascist legal order after the counter-revolution in the USSR. The creation of these kangaroo courts signaled the abandonment of the principles of national sovereignty and self-determination of peoples that had been enshrined in the UN Charter as necessary conditions of international peace and security. It was the Soviet Union and soviet legal theorists, such as Pashukanis, who insisted on these fundamental principles in the UN Charter after the Second World War and which were the basis for the liberation struggles of all the third world countries trying to escape the colonial system.

The abandonment of these fundamental principles, upon which all international law was constructed, has since been trumpeted by the further step, taken by the American government, of claiming the right to set up their own military tribunals to condemn as criminals any persons who resist the agenda and attempted implementation of the New World Order. This has been done with little opposition from UN member states, in particular those with veto power on the Security Council, Russia and China, and who are the future targets of the New World Order. The result of this surrender of these principles has been a rapid descent into further wars of aggression by the United States and its allies and the creation of conditions for nuclear war. Why members of the Security Council have surrendered their sovereignty by supporting the creation of these illegitimate ad hoc tribunals and accepting these new military courts must be the subject of another essay. This address attempts simply to state the actuality of the ad hoc tribunals that, unlike the American military tribunals, which are openly fascist, have masks of legality and moral justification to disguise their criminal aspects.

My remarks are not meant to be a complete analysis of the illegal structure, financing and administration of these tribunals. For that I will refer the reader to Dr. Hans Koechler's excellent book Global Justice or Global Revenge, International Justice At The Crossroads, International Progress Institute, Vienna, 2003, in which he analyses the political nature of the ICTY and ICTR, the selection of judges by the United States, their control of the prosecution, rules of evidence and procedure and the manipulation of the UN Charter in order to create them. I also refer the reader to my essay, An Impartial Tribunal, Really?, published in Mediterranean Quarterly in 2000 and republished on numerous sites on the internet, in which I concentrate on the role of the American, British and German foreign ministers in the creation of the ICTY, the role of allegedly non-governmental organizations, in particular the role of various institutes funded by George Soros, in their creation and financing and the funding of the ICTY by Nato governments and mainly American private corporations.

The focus of my remarks here is on the reality of the indictments and trials at these tribunals. I have some familiarity with the ICTY but most of my experience comes from its sister tribunal the ICTR, the tribunal concerned with the events in Rwanda in 1994. There are three other tribunals of this type; one in Cambodia which is a joint Cambodian-UN operation concerning the aftermath of the American heavy bombing campaign during the Vietnam War and the consequent collapse of Cambodian society, another in Sierra Leone, of a similar nature, concerning the civil war generated by the west to protect the
DeBeers diamond trade, and the new UN tribunal in Lebanon concerned with using the western-linked murder of Mr. Hariri as a propaganda weapon against Syria and Hezbollah. I am

familiar with the mandates of these tribunals and with the nature of the trials conducted in them and I believe that my remarks apply to all these tribunals without exception.

The purpose of these tribunals is simply propaganda. They have no other purpose. The supporters of these tribunals claim that they are advances in international justice and that even though it is clear that they engage in selective prosecution on a mass scale, they are still better than nothing. Nothing could be more removed from the truth. They are designed to justify the wars of aggression committed by the United States and its allies, to demoralize the peoples of the countries whose leaders are arrested and to mask the role, actions and interesrts of the United States in conducting these wars.

It is important that the peoples whose leaders are the targeted by these tribunals understand that the charges are fabricated and without foundation. It is important to understand that the persons accused are not accused because they have committed war crimes but are accused because they have been selected to complete the propaganda drama that has been concocted. It is tragic that the western media has been used very effectively to convince the Serbian people, the Rwandan people and others that their leaders targeted by these tribunals are in fact guilty of some terrible crimes and that, even though these tribunals may not be really legitimate, these people deserve to be punished.

The result of this is that these national and patriotic leaders are abandoned by the people; sold out in return for vague promises of better things to come, and the people themselves feel ashamed of them, themselves and their countries. The tribunals claim they pursue individuals as war criminals but in actuality the propaganda equates the people with the individuals and so instead of individual responsibility, the Serbs and the Hutus and others are fixed with a collective responsibility. This bitter fate is made worse by the fact that the collective guilt is placed upon the peoples of Serbia and the others by the very war criminals who caused the wars in the first place and who committed wars of aggression against them. Insult is added to injury.

The first proof that anyone needs is a copy of any indictment drawn up by the prosecution at the tribunals and a history of that indictment over time. A normal criminal indictment in a domestic jurisdiction is a simple document stating that A is accused of committing X crime against person B at a certain place and time in violation of a criminal code section. The indictment is not the evidence and is not meant to be. However, and indictment at the ICTY or ICTR is a multipage document which reads like a propaganda tract instead of a legal document. In fact they are not drafted as legal documents. Their sole purpose is to be read by the public and referred to by the prosecutors as propaganda tracts. They contain a long and always confused version of historical events that twist and turn to escape multiple logical and factual inconsistencies and ramble on about the evil nature of the government of which the accused was part, and often it is difficult to make out that any actual crime is being charged at all. In many cases if not all, the crimes seem to be simply involvement in a losing side in the wars and the documents contain long passages of political rhetoric, personal insults, and invectives against the accused. After reading many paragraphs of this nature and thinking this is all very interesting but where is the crime, you will come across a charging section stating that based on the preceding paragraphs, the accused is guilty of a war crime or genocide with no connection between the two. It is not unusual to find, in the same document, paragraphs that contradict one another. For instance in the case of General Ndindiliyimana, chief of staff of the Rwanda Gendarmerie in Rwanda, the indictment contained allegations that he ands his men did a certain action but then in another paragraph there was a statement that something entirely different happened in which case he was not guilty of anything. In fact we brought a

motion to acquit based on the fact that in his case the indictment contained within it a complete defence to the charges in it! This sounds absurd but this is the situation faced by the accused.

Frequently the indictment is changed over time so that it is never clear what people are really being charged with. In fact I was told by a trusted informant in the ICTR prosecution service that my client and other accused were ordered arrested and then spend several years waiting for a trial because they needed that time to concoct a case.

This was clearly the case with President Milosevic. He was illegally extradited on a UN indictment that contained completely fabricated charges which were exposed as such during the beginning of his trial. When it became embarrassingly obvious that they had no case against him whatsoever, they added two new indictments to the first, overturning their prior position that to do so would make the trial too long and complex. But the purpose of the trial, once again, was not to make sure a dangerous criminal faced "justice", but was rather to convince the public that he was a bad man and his government and people and nation deserved to be bombed and killed.

In a criminal trial the prosecutor has the duty to give to the defence the evidence they claim to have against the accused so that the accused can understand the charges and prepare a defence. However, instead of getting this in the form of witness statements and documents the prosecutor hands over thousands of documents with words, sentences, paragraphs, entire pages blacked out, redacted, completely useless. Often one accused is served with documents concerning another accused. This appears at first to be a matter of incompetence. But soon one realizes that it is deliberate. The aim is to confuse buy time so that the defence cannot know what the real case is and therefore cannot go to find witnesses or documents to refute the allegations because it not known what they are.

This situation prevails throughout the trial. The allegations are never exactly clear, and the defence, in one way or another learns that the prosecution is hiding information that clearly shows the accused to be not guilty. The prosecutor routinely denies the existence of documents that are known to exist and which they have. They have changed documents. One famous example of that is a fax sent by the Canadian general Dallaire, commander of the UN forces in Rwanda in January 1994 that allegedly warned the UN of a coming genocide against the Tutsis and the murder of Belgian soldiers. When the prosecutor produced this document in the trial and tried to make it an exhibit they were embarrassed when we established that the document they were presenting was not the original but one that had been altered and that British Army personnel were involved in its creation and so a fax, warning of genocide, had never existed.

The prosecution relies almost exclusively on witnesses who are scripted, that is told what to say and how to say it. In the case of the ICTR, over ninety percent of the witnesses are Hutu prisoners, that is, people arrested by the new pro-US regime and held in prison without charges for years and beaten, threatened and manipulated with promises of freedom if they testify against the accused. None of them withstand any serious cross-examination and it becomes apparent to any observer that they are reciting prepared scripts and have difficult remembering what they are supposed to say. Intelligence officers who have fled the regime in Rwanda have testified before the ICTR and stated that they helped to prepare the witnesses for trial and witnesses have stated on many occasions, at the ICTR and ICTY, that they were forced to testify in a certain way and that methods used ranged from threats of prosecution, bribes, physical threats against them and their families and outright torture. One has to ask

oneself when faced with all this, why it is necessary if the accused actually committed a crime. One has to assume that there would be real witnesses with concrete evidence. The fact that the prosecutor at both tribunals uses false testimony should be evidence enough that the charges are false as well.

The prosecution is not alone. Many judges assist them in these methods by either condoning this behaviour when it is brought to their attention, or sometimes reprimanding the prosecutor but never taking concrete action. The judges themselves try to limit defence questioning of the witnesses so they are not so easily exposed and interfere in the questioning. This was clear in President Milosevic's case throughout his ordeal. Prosecution witnesses are protected in various ways, as we saw most famously with the testimony of General Wesley Clark. We saw the same thing two years ago with the testimony of General Dallaire at the ICTR.

But the threats do not stop there. Witnesses have been murdered. Witnesses have disappeared from UN safe houses (one famous case is a prosecution witness who contacted the defence to state he had lied under pressure and wanted to withdraw his testimony and was brought to the ICTR to do so, kept in a UN safe house overnight for his "protection" but the next day had disappeared. No one could explain how he got out of a UN safe house under constant guard or where he now is.)

Even counsel are threatened to try to intimidate them so that they will abandon any effective defence or kicked out of the tribunals under various excuses.

It is also important to note that the accused are selected based on their position in the armed forces, government, and intellectual reputation. Officers in the armed forces are often selected based upon how effective they were in resisting the aggressor or because they just fit the logic of the story set out in the indictment. They are not charged because the prosecutor is genuinely concerned with justice. There is always another logic involved in who is charged and who is not.

There are many dramatic stories one can relate concerning all these things but I will not burden the reader with these things. I refer you to the transcripts of the trials themselves where all this is abundantly clear. The essential point to understand is that these methods would not be used if, in fact, the people accused by these tribunals were actually guilty of the crimes alleged against them. Based on my experience and that of other defence counsel, it is my considered opinion that none of the accused is guilty of the crimes alleged against them. If they are then they should only be tried by legitimate governments in their own countries and not by these fascist tribunals whose aim is not bring justice to the world but to justify war.

Therefore, the people of Serbia, in this case, must stop feeling ashamed for wars they did not create and for crimes they did not commit. The tribunals will succeed if the people continue to accept or to believe that some of the accused must be guilty of something and that these tribunals have the right to conduct these trials. They do not have that right and as a matter of law these tribunals do not exist and none of their judgments or decisions are of any legal or moral relevance.

To the people of Serbia I suggest the creation of a support committee or group for the UN political prisoners held by the ICTY. The men and officers of the JNA and the administrative officials held at Scheveningen and other prisons must be released. If crimes have been committed, then the files should be sent to legitimate Serbian authorities for review. These men

cannot be abandoned by the country they served and fought for against a brutal enemy. They deserve support not condemnation and isolation.

In 2007, 35 of the prisoners at the ICTR signed a declaration stating that they were political prisoners of the United Nations. This was an historic step. They wrote a letter to the prisoners at the ICTY which they asked me to convey to them asking them to do the same as they all faced the same enemy. I am not sure my contacts distributed it as asked as I received no reaction. The important thing is that they have analysed the situation correctly, they are political prisoners, and the prisoners at the ICTY are also political prisoners of the United Nations and the Serbian people must demand their release.

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