

Making Faces by «International Justice»

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A new International crime tribunal with an abstruse name - *International Residual Mechanism for Criminal Tribunals (MomUT)*, started to function since July 2. It took on the functions of International Tribunal for Rwanda. In July next year it will replace the International Criminal Tribunal for the former Yugoslavia (ICTY). The creation of MomUT is a triumph of another international trickery.

Under the guise of «termination of International Criminal Tribunal for the former Yugoslavia's activities», something many countries, first of all Russia, had demanded for so long, the Rwanda and Yugoslavia tribunals continue to exist under a new name. It urges to exclaim: «Here, the old familiar faces!»: Theodor Meron of the USA has become the president of MomUT, John Hocking of Australia is appointed the Registrar of the International Residual Mechanism for Criminal Tribunals. The Rwanda Tribunal Prosecutor has become the Prosecutor for MomUT. There was no election, all these gentlemen were appointed by UN Secretary-General! The majority of judges come from NATO countries. Asians replaced Africans and visa versa. The just adopted «new» operational procedures are absolutely similar with the ones of International Criminal Tribunal for the former Yugoslavia!

The triumph of trickery is bolstered by the fact that no matter the International Residual Mechanism for Criminal Tribunals has started to function the Criminal Tribunal for the former Yugoslavia continues its activities too! Moreover, as President of the Mechanism Theodor Meron stated lately the parallel functioning will last till December 2014 so that that the cases of the accused - Vojislav Seselj, Drake Tolima, and Adriano Prlić and others could be closed (1). Looks absolutely absurd – the International Residual Mechanism for Criminal Tribunals was created exactly for the purpose of investigating the cases that the International Criminal Tribunal for the former Yugoslavia «had no time» to bring to an end. There is a little ruse here. In case an accused appeals till July 2013 – the appeal won't be considered by the MomUT but rather by the Appeals Chamber of ICTY even when the Tribunal itself ceases to exist. In other words it will ensure parallel existence of the MomUT and ICTY! Now it becomes clear why the Tribunal has planned to come out with a whole bunch of verdicts exactly in March-May 2013. Now, after nine and a half years, the Seselj sentence will be handed down hastily in March 2013 (2). Then the accused will be made appeal just in time to prolong the illegal continuation of the International Criminal Tribunal for the former Yugoslavia's activities. It's worth to note that while discussing the report submitted by the president of ICTY and MomUT T.Meron at the recent UN Security Council's session, where it all was set straight, not a single UNSC member took notice of the egregious fact

Last week interesting things happened at the ICTY session. First, the former President of Republika Srpska in Bosnia-Herzegovina Radovan Karadžić was acquitted of genocide charges. V. Seselj, the head of Serbian Radical Party, was sentenced to further two years in custody for disrespecting the court.

There is a reservation required to be made immediately concerning the Karadžić acquittal. He was freed of only one charge among others (genocide in Bosnia's municipalities) (3). The decision was taken on Rule 98 bis («Motion for Judgement of Acquittal») of the Rules of the ICTY Procedure and Evidence that envisages that the Court may proceed to acquit right at the end of the trial if no defence evidence is subsequently adduced. It means the decision is just preliminary and is related only to the charges not supported by any hard evidence so there is no defence required. The Trial Chamber decided the evidence produced by prosecution gave no ground to assert that genocide took place in Bosnia. It's a really important conclusion! No matter Radovan Karadžić was acquitted on such an important charge, it should be remembered the Court refused to dismiss all other charges like murder, deportation, inhumane acts in Bosnia. Besides the Court refused to acquit him on a

separate charge – complicity in Srebrenica massacre. This charge was considered to be substantially supported by evidence produced by prosecution. Thus Karadžić will have to produce witnesses to refute the testimony about what happened in Srebrenica at the defensive part of trial.

Looking from outside the Court's decision to acquit Karadžić appears to be quite unexpected. Indeed, at first glance it contradicts the decision taken by another trial chamber in the case of Slobodan Milošević. In his case the number of witnesses was much less still it was enough to admit the fact of genocide in Bosnia. Moreover the decision looks like a heavy blow against prosecution in the case of General Radko Mladić. Actually there were the same witnesses in the cases of Karadžić and Mladić. But nothing to be surprised about has taken place in reality. It's a long time the Hague Tribunal sticks to the policy of «one genocide» when only the Srebrenica events are «consecrated» as such. That's all. This policy is bolstered by the UN International Trial in 2007 while considering the Bosnia versus Serbia case (the decisions were taken by the judges coming from the very same countries as in the case of International Criminal Tribunal for the former Yugoslavia). This way the decision only came in line with the long ago established approach to the Bosnian events since the first half of the 1990s.

On June 28 Vojislav Seselj was sentenced to two years in custody on the third trial for contempt of court. (4) Before that he had been sentenced to 15 and 18 months behind bars. Judge Stefan Trechsel, presiding the trial chamber, stated his disaccord in the written form adding it to the otherwise joint decision saying Seselj's actions were no doubt an «aggravating factor» but a two years in custody verdict was too harsh. The trial procedures were followed by flagrant disregard for the rights of the accused. For instance, he was refused to consult a lawyer. As a result the defence failed to produce witnesses. It was something to predict remembering that Seselj was to produce the witnesses whose names he had openly identified and that supposedly were to be defended by the Tribunal so vigorously. The witnesses were to testify they were not threatened by anyone and had no claims to Seselj.

So, the last decisions by International Criminal Tribunal for the former Yugoslavia were handed down with special «elegance» to show alleged independence of the Tribunal's judges and make believe there was inside struggle going on. But it hasn't changed anything in substance. The reprisals against Radovan Karadžić and Vojislav Šešelj continue against the background of struggle to close the ICTY as soon as possible. A «new» international tribunal appears, all top positions grabbed by old actors... One more making face by «international justice»!

(1) Paragraph 45 of the ICTY president's report at the UN Security Council session called Assessment and Report of Judge Theodore Meron, President of International Tribunal for the Former Yugoslavia Provided to The Security Council Pursuant to Paragraph 6 of Security Council Resolution 1534 (2004), and Covering the Period from November 2011 to 22 May 2012. UN Document S/2012/354, May 23, 2012, p.12

(2) The ICTY press briefing, May 27, 2012 <http://www.icty.org/sid/10992>.

(3) The written Tribunal's decision on Rule 98-bis (an appeal to acquit at the end of defensive part of the trial) is not made public as a rule. At present only a brief comment on oral decision is accessible: <http://www.icty.org/sid/10994>. The video is accessible: <http://www.youtube.com/watch?v=ZYLZhyZpd14&feature=plcp>.

(4) the text of the verdict: http://www.icty.org/x/cases/contempt_seselj3/tjug/en/120628_judgement_en.pdf.

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