

# INTERNATIONAL CRIMINAL TRIBUNALS AS GLOBAL SUBJECTS OF MODERN INTERNATIONAL RELATIONS

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**Abstract.** The creation in 1993-1994 of the first international criminal tribunals (for the former Yugoslavia and for Rwanda) was an important destructive event in modern international law and international relations. The UN Security Council has gone beyond its powers and, thus acting *ultra vires*, has established bodies with the competence to prosecute citizens of the states of the former Yugoslavia, including heads of state and government. These tribunals, being called “international”, however, did not meet the criteria of internationality in totality. The tribunals were created without the consent of the states in respect of which they were supposed to act. This violated the basic principle of the conciliatory nature of international law. Moreover, in their activities, the tribunals began to apply the sources of international law arbitrarily, as well as to create their own “law”. This “law” also does not meet the criteria of *internationality* because it was created not by states (nations), but by judges themselves, often contrary to the existed norms of international law. The question arises: what is the place of the so-called “international” criminal tribunals established by the UN Security Council in the modern system of international relations? The main goals of the global governance bodies are: 1) Elimination of objectionable political and military leadership of any states; 2) Destruction of progressive international law; 3) Formation of repressive global law. Examples of the destruction of international law and the formation of global law are the decisions of the International Tribunal for the Former Yugoslavia against R.Karadzic, General Mladic, S.Milosevic and others. The activities of international criminal tribunals pose a serious threat to the modern international legal order.

**Keywords:** *international law; international criminal law; international tribunals; International Tribunal for the Former Yugoslavia*

## INTRODUCTION

At present, the world community is faced with a number of serious fundamental problems. First of all, these problems relate to the issues of collective and individual security of states, the implementation of the principles of sovereignty, territorial integrity, self-determination of peoples, etc. To a large extent, these problems have arisen in connection with the emergence of new subjects of the world relations. For a long time in world relations, in fact, the only subjects were states. In the 21<sup>st</sup> cen-

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tury, along with states, the new entities arises (at times they have more significant resources than states).<sup>2</sup>

The collapse of the Yalta-Potsdam international system was caused by the results of the so-called “cold war” and the destruction of the Soviet Union. It is no coincidence that it was during this period that the formation of new supranational entities, including international criminal judiciary, began. The officially proclaimed goals of the creation of these judicial bodies was the prosecution of international crimes and the punishment of those who bear the main responsibility for their commission (Mezyaev, 2016).

The international criminal courts not only failed to fulfill their officially declared goals, but achieved exactly the opposite goals - namely, they accused the innocent of committing crimes and exclude the real criminals from responsibility.

The first bodies of international criminal justice were the International Tribunal for the former Yugoslavia (ICTY) and the International Tribunal for Rwanda (ICTR), which were established by the UN Security Council in 1993-1994. As further practice has shown, the creation of these tribunals has become an essential element in the process of the destruction of the Yalta-Potsdam international system and the formation of a new *global* (no longer *international!*) system. Given the role of international criminal tribunals in this process, this new system can be fully called “The Hague” system. This article attempts to consider the essence of the ICTY and the ICTR and their real role in the destruction of the world security system within the Yalta-Potsdam international system.

## ESTABLISHMENT OF TRIBUNALS

On May 25, 1993, the UN Security Council (UNSC) adopted Resolution No. 827 on the establishment of the International Tribunal for the former Yugoslavia, and on November 8, 1994, the Resolution No. 955 on the establishment of the International Tribunal for Rwanda. These tribunals had received the competence to prosecute citizens of the states of the former Yugoslavia, including heads of state and governments. This decision was taken outside the powers of the Council under the UN Charter, that is, the UNSC acted *ultra vires*. These tribunals, called “international”, however, did not meet the criteria of *internationality in totality*. The Tribunal was created without the consent of the states in respect of which it was supposed to act. This violated the principle of the conciliatory nature of international law. This means that the illegal creation of the ICTY and the ICTR violated the fundamental foundations of international law on an unprecedented scale. The problem is not only of violation of international law, but that the commission of this violation by the main body of the United Nations, on the one hand, and the obligation to accept this violation by all states of the world, on the other. It is interesting to note that the creators of the tribunal were aware of the lack of legal grounds for its creation. First, one should pay attention to the fact that the members of the UN Security Council did not use the legal arguments contained in the report of the UN Secretary General on the establishment of the ICTY. Thus, UNSC Resolution No. 827 does not mention the reference proposed by the UN Secretary General to article 29 of the UN Charter.

<sup>2</sup> International Criminal Justice: Modern Issues (2009). Bassiuni M.Sh., Glotova S.V., Gritsaev S.A., Dodonov V.N., Doria J., Dremina-Volok N.V., Zaul V., Zelinskaya N.A., Ilyutchenko N.V., Inogamova-Khegai L.V., Kayumova A.R. and etc. Moscow.

And this is, in principle, the right thing the Council did. After all, article 29 speaks of the creation of not any, but only such bodies that help in the performance of the functions of the UNSC. The UN Charter does not give any grounds for establishing judicial functions in the Security Council. It is quite obvious that the prosecution of individuals is also not included in the functions of the UNSC. At the same time, the refrain to use the reference to article 29 was not replaced by a reference to any other article. The creation of an international tribunal by referring not to the article, but to the chapter (Chapter VII) is evidence that the UNSC did not have a legal reasoning for the decision (Ignatenko et al, 2020).

Secondly, a number of member states of the Council explicitly declared that there were no legal grounds for the creation of an international criminal tribunal by the UNSC. Thus, the representative of the People's Republic of China stated that an international tribunal should be established by concluding a treaty in order to provide a solid legal basis for it. Although the Chinese delegation voted in favor of Resolution No. 827, the position of the PRC was explained as follows: "Our political position should not be seen as our support for this legal approach."<sup>3</sup> Brazil also expressed its disagreement with the legal justification for the creation of the UNSC. Brazil's representative to the UNSC stated that the establishment of the ICTY solely on the basis of a Security Council resolution leaves unresolved a number of legal problems related to the powers and competences granted to the Council by the UN Charter.<sup>4</sup>

In his report to the Security Council, the UN Secretary General recognized that the proper way to create an international tribunal is to conclude an international treaty. However, he then concludes that the creation of an international tribunal through the adoption of a UNSC resolution is also acceptable because the conclusion of the treaty "will take too long."<sup>5</sup> This argument is clearly not convincing from the point of view of international law.

## COMPETENCE AND JURISDICTION OF THE ICTY

The competence of the ICTY (and the ICTR) includes the exercise of jurisdiction over persons who have committed serious violations of international humanitarian law, as well as a number of powers related to the investigation and prosecution of these persons, in particular, requests for legal assistance from states, referral of cases to national courts, etc.

Special mention should be made of the inclusion in the *ratione materiae* of both tribunals of the crime of genocide. The ICTY Statute defines the crime of genocide in the same way as the 1948 Convention on the Prevention and Punishment of the Crime of Genocide. At the same time, formally article 4 of the Statute states that "an international tribunal is empowered to prosecute perpetrators of genocide, as defined" in this article of the Statute. The same applies to the Tribunal for Rwanda (art. 2). It would seem that the absence of references to the Convention and the definition of genocide in the statutes themselves could be explained by the problems of the participation of certain states (and, accordingly, the problems of succession in the

3 See the speech of the Representative of the People's Republic of China in the UN Security Council at the 3217<sup>th</sup> meeting of the UN Security Council on May 25, 1993, UN Document: S/PV.3217. P.33.

4 See the speech of the representative of Brazil in the UN Security Council at the 3217<sup>th</sup> meeting of the UN Security Council on May 25, 1993, // UN Document: S/PV.3217. P.37.

5 Report of the UN Secretary-General, submitted pursuant to paragraph 2 of UNSCR 808 (1993), // UN Document: S/25704 of May 3, 1993, para 20.

case of the states of the former Yugoslavia). However, this argument does not work in relation to Rwanda, which, of course, was a party to this treaty. In this regard, the question arises: why was it necessary to grant the jurisdiction of the tribunals as it is defined in the statute of the tribunals themselves, adopted by a UNSC resolution, and not in accordance with an international treaty? We find the answer to this question in the subsequent practice of both Tribunals.

In a number of its decisions the ICTY violated the provisions of the 1948 Convention, in particular, *de facto* canceling the need to establish special (specific) intent when qualifying the crime of genocide. Recall that, according to article II of the Convention, genocide is understood as “acts committed with intent to destroy, in whole or in part, any national, ethnic, racial or religious group as such”. As you can see, the Convention establishes the need to establish not just intent, but special intent, that is, the question of intent is one of the essential in the Convention. However, in its decisions, the ICTY found certain individuals guilty of genocide, while at the same time applying the theory of the so-called joint criminal enterprise (JCE).<sup>6</sup> The third category of the JCE provides the tribunals with the opportunity to convict not only persons who did not themselves commit any crimes, but did not even know about the commission of these crimes by others. Such, for example, is the decision of the ICTY Appeals Chamber in the case *The Prosecutor v. R. Brdjanin* of 19 March 2004. This decision was undoubtedly prepared in advance as a precedent for the case of S. Milosevic just at that stage of the process, when it became obvious that the prosecutor’s office failed to prove the intent of S. Milosevic to commit genocide (as, in fact, the very fact of genocide<sup>7</sup>). Such a precedent was necessary due to the fact that the accusation of genocide was proclaimed by the highest political leadership of NATO member states, primarily the United States. Being an institution dependent on these states, the ICTY tried to find any way to convict S. Milosevic for genocide, even in the absence of legal grounds for this. The creation of a precedent by the ICTY Appeals Chamber in *Brdjanin* case was a reaction to the refusal of one of the members of the Trial Chamber in the case *The Prosecutor v. S. Milosevic* to vote for the recognition of the accused guilty of genocide under the 1<sup>st</sup> category JCE.<sup>8</sup>

As we can see, the defects in the wording of the substantive jurisdiction of the international tribunals have significantly affected the activities of these tribunals in the most negative way. However, the main problem in the establishment by the UNSC of the material jurisdiction of the ICTY and the ICTR was the exclusion from this jurisdiction of crimes against peace. Analyzing the peculiarities of certain formulations of the jurisdiction of ad hoc tribunals, it is impossible not to ask the question: war crimes are impossible without war, but no one cares who unleashed this war. Had such a question been asked, the activities of the two Tribunals would have had a completely different focus.

6 It should be noted that the application of this theory, which has no legal basis not only in the Statute of the Tribunals, but even in the Rules of Procedure and Evidence, instead of the rules of liability (Article 7 of the ICTY Statute and Article 6 of the ICTR Statute)

7 The complete failure of the factual proof of the genocide throughout Bosnia is visible, for example, in the failed strategy of trying to prove this accusation in the trial of S. Milosevic. (For more details, see: Mezyaev A.B. (2006) Trial against Slobodan Milosevic in the Hague Tribunal. Notes from the courtroom. Kazan. P. 264-269). In addition, it should be noted that this accusation was dismissed by various court chambers in the International Tribunal for the Former Yugoslavia and the International Court of Justice.

8 See: Dissenting opinion of Judge O-Gong Kwon on the decision of the Trial Chamber on the amicus curiae request to acquit the defendant under Article 98bis of the Rules of Procedure and Evidence of 16 June 2004, *Prosecutor v. Slobodan Milosevic*. [Trial Chamber] Decision on Motion for Judgment of Acquittal. Dissenting Opinion of Judge O-Gon Kwon. [http://www.icty.org/x/cases/slobodan\\_milosevic/tdec/en/040616.pdf](http://www.icty.org/x/cases/slobodan_milosevic/tdec/en/040616.pdf)

In the academic literature, the *ad hoc* international criminal tribunals of the early 1990s quite often put on a par with the international Nuremberg and Tokyo tribunals, claiming a certain succession of the ICTY to the first military tribunals of 1945-1946. However, this assertion does not stand up to scrutiny. Unlike the Nuremberg and Tokyo international tribunals, the jurisdiction of the ICTY turned out to be truncated in relation to the most important issue of the armed conflict in the territory of the former Yugoslavia - who unleashed the war and, thus, created grounds for the commission of war crimes in the future.

There is every reason to believe that this truncation was done intentionally. At the trial against S. Milosevic and V. Seselj, convincing evidence was presented that it was the initiators of the creation of the ICTY - the United States and its NATO allies - that were the main organizers and financiers of the armed conflict on the territory of the former Yugoslavia. Thus, Russian defense witnesses, former director of the Foreign Intelligence Service E.M. Primakov and former head of the international cooperation department of the Ministry of Defense of the Russian Federation, Colonel-General L.G. Ivashov, testified that NATO countries were preparing a military attack on Yugoslavia several years before the start of bombings in 1999. It should be noted that the ICTY prosecutor's office, which should have been aimed at establishing the truth in the case, resisted the very fact of giving these testimonies, and even made direct threats to Russian witnesses during their testimonies.

This problem also had an impact on the activities of the Commission of Experts of the Office of the ICTY Prosecutor, created to consider the advisability of conducting an investigation into crimes committed during the NATO aggression against the Federal Republic of Yugoslavia in 1999. The main methodological problem in the activities of this Commission was the fact that the analysis of the crimes committed by the command and soldiers of NATO was carried out as if in a vacuum: the degree of seriousness of certain war crimes committed during the aggression was assessed from the point of view of international humanitarian law, but the aggression itself was not considered generally. The Commission eventually "concluded" that none of NATO's crimes were "serious violations of international humanitarian law" and therefore did not fall under the jurisdiction of the ICTY. But it is absolutely clear that the main crime of the NATO countries was aggression itself and every military attack, both on civilian and military targets, was an international crime.

## ACTIVITIES OF THE TRIBUNALS

The main trials at the ICTY include the trial against the former President of the Federal Republic of Yugoslavia, Slobodan Milosevic; against the former Deputy Prime Minister of Serbia, Vojislav Seselj; against the top military and political leadership of the FRY (*Prosecutor v. Milutinovic et al*); against the presidents of the Serbian states on the territory of the countries of the former Yugoslavia: three presidents of the Republika Srpska Krajina M. Martić, G.Hadžić and M.Babić, two presidents of the Republika Srpska B. Plavšić and R.Karadžić; against the leader of the Bosnian Serb army, General R.Mladić; against the chairman of the parliament of the Bosnian Serbs M.Krajišnik.

The first trial at the International Criminal Tribunal for the Former Yugoslavia was against the head of the Serbian Democratic Party in Kozarac, Duško Tadić. Despite the fact that the first defendant occupied a very modest position and his

guilt in the commission of crimes (by others) was insignificant, his case became, in many ways, a precedent due to the fact that the tribunal first considered a number of important issues precisely in its first trial. So, it was in the case of D. Tadic that the ICTY ruled on the legality of its creation. Therefore, the appeals of all the other defendants on this issue were subsequently not considered and were decided by a simple reference to the decision in the case of D. Tadic. It was in the case of D. Tadic that the tribunal issued a decision (with a similar precedent character) on the qualification of an armed conflict and the criteria (standards) for imposing responsibility on persons for committing crimes during an armed conflict. At the same time, the International Tribunal for the Former Yugoslavia issued a decision that directly contradicts the standard established by the International Court of Justice (in the case of *Nicaragua v. USA*)<sup>9</sup>. If the International Court of Justice in 1986 formulated and substantiated the criterion of “effective control” of state responsibility for the actions of paramilitary groups, then the ICTY, in order to achieve the goal of justifying the responsibility of the FRY for the actions of such formations in Bosnia and Herzegovina, declared the applicability of the criterion of “general control” (Mezyaev, 2007). It was this decision of the ICTY that the President of the International Court of Justice judge Guillaume, had in mind when he said that the activities of the tribunal for the former Yugoslavia pose a threat to the integrity of international law. Finally, it was in the case of D. Tadic that the theory of “joint criminal actions” was applied, for which there were no legal grounds for the application of the ICTY, but which was subsequently applied on the basis of the binding nature of the decisions of the Appeals Chamber.

The trial of former Republika Srpska President B.Plavsic should be noted in connection with the use of a new tactic by the ICTY prosecutor’s office to “prove” their indictments by making a “deal” with the accused. Formally, such a “deal” (plea bargaining) means that the defendant admits his guilt, signing a document prepared by the prosecutor’s office, and refusing to conduct a trial.

The first such “deal” was concluded with the accused D.Erdemovic, who, having pleaded guilty to the murder of more than 1,200 people, in return for making a “deal with justice” received only five years in prison, and then was generally released ahead of schedule. Such a mild punishment is explained by the fact that Erdemovic agreed to testify at other trials (including the trial of S. Milosevic and R. Karadzic). However, the inclusion of a new Article 62-bis (the institution of “bargaining with justice”) in the ICTY Rules of Procedure and Evidence is in conflict with the Statute. Part 3 of Article 20 of the ICTY Statute, immediately after the phrase about the defendant’s statement on confession or non-recognition of his guilt, it says: “then the Trial Chamber sets the date for the trial.” This means that the Statute establishes the rule that a trial is ordered regardless of whether the defendant has pleaded guilty or not. At the same time, we are not talking about any hearings (for example, on sentencing a person who pleaded guilty without trial), but about “trial”. The fact is that if the accused admits his guilt, court hearings are held to determine the punishment.<sup>10</sup>

9 Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America). Judgment of 27 June 1986

10 From the authentic texts of the ICTY Statute in English and French it is clear that we are talking about a trial, and not just court hearings on any other issues: “The Trial Chamber shall then set the date for trial”; “*La Chambre de première instance fixe alors la date du procès* “. The text of the statute in Serbian (although it is not official) also explicitly refers to a trial and nothing else: “*Pretnesno vijeće će zatim odrediti datum početka suđenja* “. The word “*sudenja*” is a term unequivocally understood as a trial, and not just any court session.

The most important trial in the ICTY was the trial against the former President of Serbia (1991-1997) and President of the Federal Republic of Yugoslavia (1997-2000) Slobodan Milosevic. The first indictment against S. Milosevic was issued during the bombing of the Federal Republic of Yugoslavia by NATO aircraft in May-June 1999. For the actions that NATO troops committed, responsibility was placed on the president of the country that was subjected to inhuman aggression (the main targets of NATO attacks were not military, but civilian objects). At the same time, NATO war criminals were removed from responsibility by the tribunal itself. The ICTY prosecutor refused not only to press charges, but even to investigate these crimes. Thus, the ICTY showed that it is not only an accomplice in the crimes of the NATO countries, but also one of the instruments of NATO aggression against Yugoslavia. In June 2001, S. Milosevic was secretly kidnapped in Belgrade and handed over to the ICTY. During the trial, the right of the accused to an equal position with the prosecution, failure to provide the necessary information, refusal to ensure the rights enshrined in international human rights treaties, the use of secret witnesses and secret meetings, the use of dubious evidence, and even open falsification of evidence were repeatedly violated during the trial. For example, one of the witnesses for the prosecution retracted his testimony right in the courtroom, saying that he was tortured in order to force him to give false evidence against S. Milosevic.

The prosecution failed to prove S. Milosevic's intent to commit the actions he was accused of. The initial concept put forward by the ICTY prosecutor's office was the assertion that S. Milosevic sought to seize the territories of other states in connection with his plans to create a "Greater Serbia". S. Milosevic categorically denied this statement. By the end of the trial, it became clear that the prosecutor's office had failed to prove intent and retracted their original assertion. Moreover, this was done in a very peculiar way, namely: by declaring that she had never claimed this before (although it was directly written in the text of the indictment), which caused surprise even from the judges.

During the defense part of the process, convincing evidence was presented that the mass exodus of the population from Kosovo (one of the main accusations against S. Milosevic) was the result not of the criminal orders of the FRY authorities, but of the NATO bombing. Russian witnesses for the defense also testified about this - the former Chairman of the Council of Ministers of the USSR N.I. Ryzhkov, the former Chairman of the Government of the Russian Federation and Director of the Foreign Intelligence Service of the Russian Federation E.M. Primakov, as well as the former head of the Main Directorate for International Military Cooperation of the Russian Ministry of Defense General L.G. Ivashov (Ruzhkov et al, 2005). Precisely due to the fact that the presented evidence not only completely refuted the indictment against S. Milosevic, but also showed the participation of the ICTY itself in concealing the real perpetrators of the Yugoslav tragedy, in September 2004, S. Milosevic was forcibly appointed a lawyer. This decision was supposed to radically change the course of the defense and exclude S. Milosevic from real participation in the formation of the strategy and tactics of his own defense. Only the boycott of witnesses and the actual disruption of the process forced the tribunal's appellate chamber to cancel this decision and restore S. Milosevic's legal right to defense in person.

And other decisions of the ICTY in the case of S. Milosevic contain a lot of violations of international law and general principles of law. Thus, the ICTY gave S.

Milosevic exactly two times less time than the prosecution had. At the same time, the tribunal misinformed the General Assembly and the UN Security Council, stating that S. Milosevic was given as much time for defense as the prosecution had.

When asked why the court chamber not only rejected the guarantees provided by the Russian Federation, but did not even consider them, one of the members of the court chamber, Judge I. Bonomi, said that this issue constitutes “the secret of the courtroom”.<sup>11</sup> However, even without the judge’s answer, it is quite clear that the court simply had neither legal nor factual grounds to ignore Russia’s official guarantees (Mezyaev, 2006).

Another important process was the trial against the former Deputy Prime Minister of Serbia (1998-2000), leader of the Serbian Radical Party, professor at the University of Belgrade, Vojislav Seselj. V. Seselj arrived at the tribunal voluntarily immediately after the announcement of the indictment against him. To understand everything that happened during the process, it should be taken into account that V. Seselj arrived at the tribunal not for the purpose of personal protection, but to prove the political nature of the tribunal and its real role in concealing real crimes and removing real criminals from responsibility. V. Seselj reasonably considered the tribunal as an instrument of war waged by Western countries against his people. It should be recognized that V. Seselj performed his task brilliantly. For ten years spent in the prison of the Hague Tribunal, V. Seselj, indeed, managed to provide enough evidence not only of his innocence, but of the criminal methods of the tribunal’s employees.

The indictment against Seselj was so false that the prosecutor’s office was unable to start the process for five years. All this time the accused was in the ICTY prison. After that, it turned out that many testimonies against Seselj were given under duress. More than thirty witnesses for the prosecution testified under oath in court that the ICTY prosecutor’s office threatened them and their families in order to force them to give false evidence against V. Seselj. Professor Seselj presented a detailed lawsuit against ICTY Prosecutor C. del Ponte for preparing false witnesses at his trial (Seselj, 2011).

Seselj was the only ICTY defendant who was denied the right for the presentation of the defence case (this right is provided in the article 21 of the ICTY Statute), although he was a lawyer and professor of law at the University of Belgrade. From the very beginning of the process, a lawyer was forcibly assigned to him. V. Seselj managed to defend his right for self-defence in person only by going on a hunger strike, which lasted 28 days (Mezyaev, 2007).

Seselj was the only ICTY accused who was denied the right for defence case and presentation of defence witnesses. The secretariat of the tribunal stated that Seselj should pay for his own defense. Prior to this, all ICTY defendants were recognized as indigent. Indeed, not a single individual is yet able to pay from his own funds the costs of paying lawyers, conducting investigations, paying for the arrival and accommodation of witnesses in an international tribunal. In response to the accused’s demand to indicate what means the secretariat of the tribunal had in mind, claiming that the accused had the appropriate means, the secretariat stated that Šešelj “could sell his house”. This situation clearly demonstrates the real power that the secretariat of the tribunal has, which can arbitrarily deprive the accused of the right to defense.

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<sup>11</sup> Interview of ICTY Judge I. Bonomi to the editor-in-chief of the Kazan Journal of International Law. *Kazan Journal of International Law*. No. 3 (2009-2010). P.99-101.



At the same time, even judges are not able to ensure the rights of the accused. Thus, in response to the current situation, the presiding judge of the Trial Chamber Jean-Claude Antonetti, said that V.Seselj still could pay for his defense by turning to his numerous supporters in Serbia and “urge them to fold 2-3 euros.”<sup>12</sup>

ICTY brought the main charges against the top military and political leadership of the Federal Republic of Yugoslavia, the Republic of Serbia, as well as the Republika Srpska and the Republic of Serbian Krajina. Separate accusations were brought against officials of a lower rank in the Republic of Croatia, the Republic of Bosnia and Herzegovina, and the Republic of Macedonia. Despite the fact that there was convincing (since they were public) evidence of guilt in committing war crimes against the President of Croatia F.Tudjman and the President of Bosnia and Herzegovina I. Izetbegovic, the ICTY prosecutor’s office did not even investigate them.

This approach reflects the policy of proclaiming only one people, the Serbs, to be responsible for the armed conflict on the territory of the former Yugoslavia. This policy was incorporated into the activities of the ICTY by the activities of the Independent Commission of Experts, established by the UN Security Council in 1992. According to the testimony of the secretary of this commission, V.S.Kotlyar, the commission was engaged only in investigating only those crimes of which the Serbs were accused. The crimes committed against the Serbs were not investigated. At the same time, attention should be paid to the fact of the sudden and early termination of the work of the commission. According to V.S.Kotlyar, this happened on the eve of the submission of materials on the crimes committed against the Serbs by the government of the FRY.

## CONCLUSIONS

Summing up the activities of the ICTY, one should consider not only those processes that took place, but which did not take place. We have already noted the clear failure of the actions of both the Commission of Experts, established to collect facts about violations of international humanitarian law, and the ICTY Prosecutor. Charges against the highest military and political leadership were made only against the Serbs. Unlike the Serbs, the authorities of Croatia and Bosnia and Herzegovina (first of all, the presidents of these republics F. Tudjman and I. Izetbegovic) were not prosecuted by the ICTY. Among those processes that should have taken place, but did not take place in the ICTY, one should name the trials against the top leadership of NATO and the member countries of the bloc that participated in the aggression, first of all, NATO Secretary General J.Solana and the top political and military leadership of the countries members of NATO.

Despite the fact that there was every reason to open an investigation into the perpetrators of the crimes during this aggression, the ICTY refused to do so. Moreover, in the midst of the aggression, the tribunal issued an indictment against the head of state who was subjected to aggression and precisely for the crimes that were committed by NATO. In order to prove his objectivity, as well as due to pressure from the international community, the ICTY Prosecutor created a Commission of Experts, whose task was to study the possibility and expediency of starting an investigation into crimes committed during the NATO aggression against the FRY. However, the

<sup>12</sup> Look into: Double standards in the protection of human rights. Case of Professor Seselj. (2009) Moscow Fund of historical perspective.

commission concluded that there were no grounds for launching such an investigation. The commission's report was made public on June 13, 2000, and ended with the following conclusion: "Based on the information available, the commission recommends that no investigation be carried out into incidents that occurred during the NATO bombings." This conclusion was explained by the fact that, allegedly, "... in all cases, either insufficient clarity of law was found, or a low probability was established that the investigation would lead to obtaining sufficient evidence necessary for a justified prosecution against accused, both higher and lower levels."<sup>13</sup>

In the decision of the Commission, five main legal defects in the argumentation can be identified: the arbitrary use of sources on the basis of which the commission made its conclusions; an erroneous method of selecting facts, according to which, the commission considered only cases related to the death of people; incorrect application of the norms of international law in connection with damage to the natural environment of the FRY; distortion and non-application of the norms of the current international law in deciding the question of the legality of the use of weapons that cause severe damage to the civilian population; distortion of facts and law in the qualification of specific crimes. Despite the fact that the commission's decision was exclusively advisory in nature, the ICTY Prosecutor C. del Ponte unconditionally accepted this recommendation. On June 2, 2000, at a meeting of the UNSC she announced the decision not to start an investigation into NATO crimes. Although the prosecutor stated that she "accepted the recommendation of the Commission", she nevertheless went much further than the commission. Thus, del Ponte stated that "although NATO made certain mistakes, I can say with satisfaction that during the NATO bombing campaign there were neither deliberate attacks on the civilian population, nor unwarranted attacks on military installations." Thus, the tribunal for the former Yugoslavia took the most active steps to lay responsibility for the crimes committed by NATO on the leadership of the country that was subjected to NATO aggression. Carrying out unlawful prosecution is itself a crime, but it is aggravated by the fact that this crime was committed to cover up another, more serious crime. The ICTY acted not only as a party to the conflict in the territory of the former Yugoslavia, but also as an instrument of war. It should be noted that the role of the international criminal tribunals, as a weapon of war, is fully manifested in the activities of the International Criminal Court (ICC) (Sufhre, 2019). In 2011, during the NATO aggression against Libya, ICC issued an arrest warrant for Libyan leader M. Gaddafi.

Thus, we see that the international criminal courts and tribunals are very far from the official goals that were announced when they were created. Their activities violate not just individual norms of international law, but its foundation. Progressive international law was the legal basis of the Yalta-Potsdam international system. The resolution of international law is a necessary element for the destruction of the entire international system. This is exactly what is happening at the present time. However, the destruction of international law is accompanied by the formation of a new "legal matter" - the so-called international precedent law (international precedent law).<sup>14</sup> However, this term is not entirely accurate, because this "right" is created not

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13 Look into: Final report to the Prosecutor by the Committee Established to review the NATO Bombing Campaign Against the Federal Republic of Yugoslavia. Para 91.

14 Mezyaev A. (2016). International Criminal Court in The Context of Inter/Supra/Contra-national Relations. *Kazan Journal Of International Law And International Relations*. Special issue published by Russian and South African Associations of International Law. P. 24-32.

by states, but by individual judges, and, moreover, in contradiction with the current law. Thus, it is more accurate to speak not about international, but global law, which, at the same time, is openly repressive. The protection of the international legal order implies an awareness of the dangers posed by international criminal courts and tribunals not only for specific states (Serbia, Bosnia and Herzegovina, Sudan, Libya, etc.), but also for the entire international community as a whole. And such defense requires confronting these institutions and their repressive agenda.

### LITERATURE:

1. Double standards in the protection of human rights. Case of Professor Seselj (2009). Moscow. Historical Perspective Foundation. (In Russian)
2. Final report to the Prosecutor by the Committee Established to review the NATO Bombing Campaign Against the Federal Republic of Yugoslavia. Para 91// <https://www.icty.org/en/press/final-report-prosecutor-committee-established-review-nato-bombing-campaign-against-federal>
3. International Criminal Justice: Modern Issues (2009). Bassiuni M.Sh., Glotova S.V., Gritsaev S.A., Dodonov V.N., Doria J., Dremina-Volok N.V., Zaul V., Zelinskaya N.A., Ilyutchenko N.V., Inogamova-Khegai L.V., Kayumova A.R. and etc. Moscow. (In Russian)
4. International Humanitarian Law: War, Memory, Justice. Legal And Historical Aspects (2020). Ignatenko G.V., Perevalov V.D., others. Moscow. (In Russian)
5. Interview of ICTY Judge I.Bonomi to the editor-in-chief of the Kazan Journal of International Law (2010). *Kazan Journal of International Law*. No. 3 (2009-2010). S.99-101. (In Russian)
6. Mezyaev A.B. (2006) Trial against Slobodan Milosevic at the Hague Tribunal. *Notes from the courtroom*. Kazan. (In Russian)
7. Mezyaev A.B. (2007) Genocide case. Judgment of the International Court of Justice in the case "On the Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)". Some questions of facts and international law. *Kazan Journal of International Law*. 2007. No. 1. S. 35-65. (In Russian)
8. Mezyaev A.B. (2007) Trial against Vojislav Seselj at the International Tribunal for the Former Yugoslavia. *Moscow Journal of International Law*. 2007. No. 4 (68). pp. 82-109. (In Russian)
9. Mezyaev A. (2016). International Criminal Court in The Context of Inter/Supra/Contra-national Relations. *Kazan Journal Of International Law And International Relations*. Special issue published by Russian and South African Associations of International Law. P. 24-32.
10. Mezyaev A. (2016) The Real Face of the International Criminal Court. *The Thinker*. Vol.67. #1 P.28-35.
11. Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America). Judgment of 27 June 1986
12. Prosecutor v. Slobodan Milosevic. [Trial Chamber] Decision on Motion for Judgment of Acquittal. Dissenting Opinion of Judge O-Gon Kwon. [http://www.icty.org/x/cases/slobodan\\_milosevic/tdec/en/040616.pdf](http://www.icty.org/x/cases/slobodan_milosevic/tdec/en/040616.pdf)
13. Report of the UN Secretary-General, submitted pursuant to paragraph 2 of UNSCR 808 (1993) // UN Document: S/25704 of May 3, 1993, para 20.
14. Ryzhkov N.I., Primakov E.M., Ivashov L.G., Mezyaev A.B., others (2005). *Defense witnesses speak. Trial of Slobodan Milosevic*. Moscow: Veche Publishers. (In Russian)
15. Seselj V. (2011). A Suit Against Prosecution and False Witnesses of the Hague Tribunal. Belgrade.

16. Speech of the Representative of the People's Republic of China in the UN Security Council at the 3217<sup>th</sup> meeting of the UN Security Council on May 25, 1993, UN Document: S/PV.3217. P.33.
17. Speech of the representative of Brazil in the UN Security Council at the 3217<sup>th</sup> meeting of the UN Security Council on May 25, 1993 // UN Document: S/PV.3217. P.37.
18. Suhfree C. (2019) Is The International Criminal Court Biased Against Africa? Justifying the African Narrative of ICC Bias. *Kazan Journal Of International Law And International Relations*. № 10 (2018-2019). P. 43-52.