



Written by [Joe Wolverton, II, J.D.](#) on November 16, 2011

International War Crimes Tribunals Suffering Staff Shortage

Late last week the heads of the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) informed their superiors at the United Nations General Assembly that their work is being hampered by a staff shortage.



In a [news release](#) issued Friday, November 11, the General Assembly warned that based on information provided to it by the presiding judges of the war crimes courts, the “great progress” made in the last year in “ending impunity for genocide and war crimes in the former Yugoslavia and Rwanda” may be slowed by the “alarming rate” at which experienced and qualified staff is departing.

In his annual report to the General Assembly, Judge Patrick Robinson (left), president of the ICTY, told the world body:

The tribunal is taking all measures possible to expedite its trials, but as it nears the end of its mandate, highly qualified and essential staff continue to leave at “alarming” rates for more secure employment elsewhere

According to the companion report delivered by Judge Khalida Rachid Khan of the ICTR, the staff situation is just as dire in her court, as well.

Many experienced staff members have left for more permanent jobs at other institutions. These departures constitute an important loss of experience and institutional memory...

Although these are problems inherent in any closing institution, there are ways to combat the extreme staff attrition occurring at the ICTR.

The measures set out by both tribunal presiding judges to stanch the flow of experienced employees include an employee incentive program that would provide “a direct incentive to stay until the actual abolition date of their posts has proven highly effective in other downsizing organizations.”

An additional proposal for slowing the attrition of valuable personnel involved obtaining approval from the United Nations General Assembly for a waiver that would allow interns to apply for permanent posts before waiting six months from the end of their internships, as the regulations now mandate.

Unless such measures are adopted by the General Assembly, the judges advised that the work they are doing ultimately will remain undone. What, exactly, is the critical work being carried out by these war crimes tribunals?

According to Judge Khan’s report, the ICTR must remain fully staffed and functioning at full capacity



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so that “the remaining fugitives can be arrested.” Principally, the task yet outstanding for the court is to capture the nine remaining at-large fugitives, including three of the most “high-ranking” of the accused: Félicien Kabuga, Protais Mpiranya and Augustin Bizimana.

She continued, saying, “These fugitives, who are accused of the most terrible crimes, must be arrested to send a strong message to the world that evading justice is not an option.”

The “mandate” at the ICTY (based in The Hague) is much the same: wrap up the prosecution of the remaining 35 of the 161 persons already indicted by the court.

Judge Robinson boasted to the General Assembly of the “milestone” achieved earlier this year in the arrests of Ratko Mladic and Goran Hadzic.

A brief outline of the charges made against these men was provided in an [article](#) published by the Jurist:

Serbian general Ratko Mladic is being held pending his trial at The Hague following his May arrest after 16 years on the run. He is charged with committing war crimes during the Bosnian civil war and the Srebrenica massacre where 8,000 people were killed.

Croatian Serb rebel leader Goran Hadzic, who was arrested in June, is also being held at The Hague pending his trial also on charges of war crimes committed during the Bosnian civil war and Srebrenica massacre.

Rwandan genocide suspect and former Hutu militia leader Bernard Munyagishari is awaiting trial at the ICTR for charges of genocide and crimes against humanity, including rape. He is alleged to have recruited, trained and led a militia group that killed and raped Tutsi women during the 1994 Rwandan genocide.

Regardless of the purported nobility of the mission of these two international bodies, the participation of the United States in their work is of questionable constitutional legality.

The article of the [United Nations Charter](#) that created both the ICTR and the ICTY (Article 48(1)) mandates that: “the action required to carry out decisions of the Security Council for the maintenance of international peace and security shall be taken by all the Members of the United Nations.”

It would seem, therefore, that as the United States of America is a member state of the United Nations, then it has agreed to abide by the terms and conditions set forth in the UN Charter, including Article 48(1).

As part of the obligation to the United Nations accepted by the United States, there is a specific requirement to cooperate in the missions assigned to the war crimes tribunal. Article 29 of the ICTY Statute and Article 28 of the ICTR Statute, read, in relevant part:

1. States shall cooperate with the International Tribunal [for Rwanda] 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:
 - (d) the arrest or detention of persons;
 - (e) the surrender or the transfer of the accused to the International Tribunal [for Rwanda].



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Of particular interest to constitutionalists is the [act](#) of Congress taken on February 10, 1996, wherein legislation was passed implementing two executive agreements with the ICTY and ICTR for the purpose of arresting and surrendering to these Tribunals and indicted fugitives found present within the territory of the United States.

There are several reasons why this agreement violates the Constitution of the United States. First, the United Nations Charter and rules promulgated under its authority likely do not conform with the Fourth Amendment to the Constitution regarding lawful searches and seizures of individuals. Second, many of the treaties made subsequent to the initial entrance of the United States into the United Nations were made by presidents (of both parties) without the advice and consent of the Senate as required by Article II of the Constitution.

In fact, according to one [report](#):

Over the decades... US presidents have entered into many more international executive agreements, which do not require the advice and consent of the Senate, than treaties. For example, during the 1980-1992 period US presidents entered into 4,510 executive agreements, but only 218 treaties.

There is no authority granted to the executive branch to enter into international "executive agreements" with foreign nations or global governments.

Finally, and perhaps most importantly, the participation by the government in the United States in the apprehension of fugitives wanted by the international war crimes tribunals violates the Tenth Amendment. The Tenth Amendment reads:

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

For example, in 1997 when the United States State Department demanded that a Federal District Court in Texas permit the surrender of Rwandan Elizaphan Ntakirutimana to the ICTR in Arusha, Tanzania, where he had been indicted on several counts of genocide, conspiracy to commit genocide and crimes against humanity, it was expressly violating the Tenth Amendment. Honorably, United States Magistrate Marcel Notzon in Laredo, Texas, proclaimed such when he informed the federal government that the congressional legislation permitting the government of the United States to surrender or extradite indicted fugitives to the ICTR was unconstitutional and he ruled against extradition.

The surrender of the sovereignty of the states cannot be permitted to be surreptitiously accomplished by way of "executive agreements" and orders from the federal government that state law enforcement pursue and apprehend fugitives from international courts.



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