

Novorossiya Must Bring Kiev's War Criminals to Justice: A Legal Analysis

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Global Research, October 12, 2014

Region: [Russia and FSU](#)

Theme: [Crimes against Humanity](#), [Law and Justice](#), [US NATO War Agenda](#)

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Under the influence of an intense disinformation campaign much of the world has tried its best to ignore the existence of the sovereign state of Novorossiya (Federativnoye Gosudarstvo Novorossiya). The Western media when it does mention Novorossiya applies denigrating terms like self declared state, unrecognized state and even puppet republic to describe the status of Novorossiya. In fact under international law, Novorossiya has the same status as any other member of the community nations – it is a sovereign independent nation.

The “gold standard” of statehood is the Montevideo Convention on the Rights and Duties of States enacted in 1933. The Montevideo Convention requires an aspiring state to have its own territory, population, a functioning government and the ability to enter into relationships with other states. Novorossiya while not currently in control of all its territory has maintained an undisputed presence in Lugansk and Donetsk backed up by a seasoned army and security forces. There is a sizeable population in Novorossiya despite ethnic cleansing attempts by the Ukraine government. There is a functioning government and diplomatic efforts are ongoing as evidenced by the Minsk process. In a just and fair world then Novorossiya would be welcomed into the fold of sovereign nations as its newest member. But the world is neither just nor fair and Novorossiya is attacked by enemies in the West and blocked on other fronts by economic sanctions and diplomatic boycotts.

Nonetheless, Novorossiya has friends. The Russian people of course overwhelmingly support this new nation and South Ossetia has welcomed Novorossiya by diplomatically recognizing it. Diplomatic recognition is an important first step towards international legitimacy since South Ossetia itself is recognized by four UN member states – Russia, Venezuela, Cuba, and Nauru. More recognition for Novorossiya of course would be desirable but is not necessary to establish legitimacy. Somaliland for example which has been sovereign since 1991 and is recognized by no other country yet has maintained its complete independence and conducts business worldwide, issues passports and currency, and defends itself without any disapproval from the major powers. Novorossiya unlike Somaliland is an industrialized nation in Europe and not on the periphery of Africa, its relevance as an independent nation is assured.

But how does this relate to war crimes committed by Kiev's political elite, Ukrainian armed forces and so called volunteer brigades of fascists? Before the brilliant tactical victory by the Novorossiya self defence forces that broke the blockade of Donetsk and Lugansk in late August 2014, it appeared as if the entire command and political infrastructure of Novorossiya might be in real danger of liquidation, summary arrest or exile if Ukrainian

forces and their foreign mercenaries stormed Donetsk and Lugansk. The very real scenario of another unfair UN sponsored tribunal like the ICTY (International Criminal Tribunal for Yugoslavia) which mainly persecuted Serbs for defending themselves was looming large in the vent Ukraine prevailed.

Personally, on the 4 months anniversary of the Odessa I was thinking shame on the ICC (International Criminal Court) which has ignored the snipers of the Maidan and the paid thugs who burned innocents alive in Odessa. And God forbid the UN set up show trials to demonize the defenders of Donetsk and Lugansk. As an international human rights lawyer I believed there had to be a way for justice to prevail. I wrote an article suggesting the Council of Europe, a separate organization from the biased European Union, of which both Ukraine and Russia member might be a possible sponsor of a war crimes tribunal. [See:www.globalresearch.ca/crimes-against-humanity-committed-by-kiev-regime-the-case-of-an-independent-ukrainian-war-crimes-tribunal/5399117]

One of the Council of Europe's main organs is the European Court of Human Rights. I was thrilled when the day after my article was published; Foreign Minister Lavrov met with the Secretary General of the Council of Europe, Thorbjorn Jagland. However nothing concrete has emerged and under heavy pressure from the United States the Council of Europe has proven itself no friend to Novorossiia through its inaction and has seemingly become yet another loudspeaker for Kiev's backers.

Nonetheless, a war crimes tribunal is an important weapon against fascism. Fascists thrive in dark places and times and hide their identities behind masks and hoods; the threat of exposure their identities and deeds scares them greatly. Even during the worst days of the Second World War, Himmler eased his murder of the Jews in Hungary in fear of prosecution after the war. The cowards and the cravens in Kiev, who allow their forces to target schools and mass transit in Donetsk would likely modify their behaviour if they risked indictment for war crimes from a recognized tribunal. But the Kiev regime is currently well protected by backers in United States and NATO and consequently is emboldened in its attempts to intimidate the people of Novorossiia.

Therefore Novorossiia itself as a sovereign state must seize the initiative. Just as Novorossiia and only Novorossiia defended itself from Kiev, it is only Novorossiia that can move forward with a war crimes tribunal. Evidence and testimony has been already been collected and it is abundant. Many of the perpetrators both high and low are known and the rest will be discovered. The enablers, propagandists and funders of genocide outside Ukraine are also numbered and known for the most part. There is no lack of allegations or suspects. What is lacking is the mechanism to bring them to justice.

Currently, Novorossiia is isolated. The threat of sanctions against the companies and persons of those who might help has unfortunately made the cause of justice take a back seat to economics and politics. Yet Novorossiia can act against war criminals and not just symbolically. Section 107 of the Restatement (Second) of Foreign Relations Law of the United States [1965] states that:

"An entity not recognized as a state but meeting the requirements for recognition specified in § 100 [of controlling a territory and population and engaging in foreign relations], or an entity recognized as a state whose regime is not recognized as its government, has the rights of a state under

international law in relation to a non-recognizing state...”

See also Article 74 of the Vienna Convention on the Law of Treaties which states that “The severance or absence of diplomatic or consular relations between two or more States does not prevent the conclusion of treaties between those States.” What all this means is that under international law Novorossiia may avail itself of all the remedies under international law as long as some other states concur.

Novorossiia can set up not just a domestic tribunal but an international one that can reach beyond its borders. This is especially important because the war criminals are for the most, except for their foot soldiers, not on the borders of Novorossiia or inside the territory of Novorossiia. The criminals are in Kharkiv, Denepetrovsk, Kiev, Lviv, Warsaw and beyond. International reach is the key. When the oppressed people of Ukraine finally wake out of their slumber and throw out the rascals in the Kiev government and cleanse the country of Nazis and corrupt oligarchs, the criminals will find a soft landing in Germany, the United States, the United Kingdom and Canada just as many blood stained Banderists did after Second World War. The Vatican, MI6, and the predecessor to the CIA did all they could to help certain useful Nazis and their collaborators escape justice via the ratlines and find a new life as assets abroad. A repeat of this travesty of justice must be avoided as these rotten apples have a way of resurfacing later with their message of hate and ultra nationalism.

It is not enough to want justice for crimes. It is not enough to investigate war crimes. The guilty must eventually be chased down and brought back to face justice for these efforts to be credible. The task is even more daunting when most of the major powers in the world are on the side of the killers. Even the international organizations tasked with enforcing human rights, the ICC, the UN, and Council of Europe have abandoned their responsibilities to the people of Novorossiia. Is a war crimes tribunal therefore a mission impossible?

A Modest Proposal

It is impressive that even in the midst of current battle for the Donetsk Airport brave people are collecting and documenting evidence of war crimes committed in the Donbass. The news media and human right activists from Russia have been particularly helpful. But who should be the recipient of the evidence? If the investigation of the downed Malaysian jetliner flight MH-17 is an indication of the sort of justice that can be found outside Novorossiia, I have serious doubts.. Evidence has been destroyed by the Ukrainian government, unfounded allegations of mass murder of innocent passenger of flight MH-17 levelled against not only Novorossiia but the Russian government which has been defamed by the press and politicians from Kiev to Kansas City. The Dutch team who are the lead investigators of the plane crash and from a NATO member state are susceptible to subtle and not so subtle pressure. Everyone has been kept in the dark through a lack of transparency throughout the process.

On the other hand, why not turn the evidence over to a friendly country like Russia? That also creates a problem. Sanctions will flow like wine at a wedding and any results denied and discredited by a thousand naysayers in the Western press. I suggest Novorossiia must act on its own initiative against war criminals however not just domestically but internationally too. As pointed out above, Novorossiia as a sovereign state may engage in foreign relations. It can sue in the courts of other countries because it is an independent

sovereign state under international law and its agencies are legal entities. Novorossiia may file cases with international tribunals. However, it is also blocked from membership in the major international organizations and the existing tribunals seem heavily prejudiced against Novorossiia.

Novorossiia therefore must set up its very own International Tribunal and give it independence to act in lieu of the UN, ICC, and Council of Europe. This bold act will result in recognition of the tribunal even when states may still shy away from recognizing Novorossiia itself. Progressive states will recognize the tribunal and its power to seize property and extradite criminals. Perhaps a third party country host can be found too.

But how can this be accomplished and who will do the work when the existence of Novorossiia still hangs in the balance? Much of the field investigation is being done already. However, the most important element is who will staff the Tribunal? Yes people from Novorossiia and Russia but also lawyers and jurists from around the world who seek to advance the cause of justice should be encouraged to participate. It is international participation and support that will give the proposed tribunal substance even as the UN and ICC have failed the people of Donetsk and Lugansk.

We live in a virtual world. While court rooms are still necessary, there exists the technology to supplement traditional methods of justice. Judges often conduct hearings via Internet while the accused are held elsewhere. Jurists and attorneys from around the world could act as judges, advocates for the defence and prosecution. International lawyers commissioned by Novorossiia could file actions to seize assets of blood stained Ukrainian oligarchs and politicians with bank accounts and property outside Ukraine for the benefit of the victims and their families. There are dozens of international lawyers who would help and they in turn know dozens more.

The war criminals are smug in the thought they have powerful friends outside Ukraine who will help them escape justice if their plans to subvert Ukraine and destroy the Donbass ultimately fail. Let us unleash a volunteer corps of a thousand lawyers linked by technology worldwide and undeterred by their governments. Novorossiia must give to them the commission to hunt down the war criminals and seize their assets. Give us lawyers the right to sue the merchants of death and destruction, the purveyors of deadly agitprop, and even the old networks of Nazis who are behind the Banderists.

Lawfare is a strategy of using law as a substitute for traditional military means to achieve an operational objective – in this case bring war criminals to justice and deter future crimes. The present day legal hurdles are surprisingly low and the proliferation of potential forums adds to the attractiveness of lawfare. Novorossiia can demonstrate standing and jurisdiction and is especially well situated to take advantage of lawfare. Legal action can be accomplished without loss of life or large scale deployment of assets. The only requirements are potential standing and a knowledgeable legal representative. A court filing often generates as much or more publicity than a military skirmish.

The world and its organizations have largely ignored, covered up or even condoned the war crimes committed against the people of Novorossiia. The backers of fascism think they can act with impunity just as they did after the Second World War when Nazi war criminals used the Vatican run “ratline” to escape to South America and Spain. But the world has changed, technology and access to information has levelled the playing field. Novorossiia has demonstrated it can prevail against great odds on the battle field, now let the members of

the international community who abhor war crimes use their skills and technology to make the seemingly impossible happen – to bring Kiev’s war criminals to justice.

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