
JAG’S “THE PEOPLE V SECNAV” (SEASON 9, EPISODE 14): DEPICTION OF INTERNATIONAL CRIMINAL JURISDICTION IN A 21ST CENTURY US LEGAL DRAMA

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ABSTRACT:

“Justice must be done but it must be seen to be done”: following this legal maxima, this article aims to provide an analysis of the depiction of a international criminal jurisdiction (the International Criminal Court) in a 21st Century US TV legal drama (JAG). This depiction is also analysed through the lens of the then-US international policy, in the frame of its “War against Terror”.

Aired from 1995 to 2005 on CBS and NBC, *JAG* (which stands for Judge Advocate General) is an American legal drama produced by Donald P. Bellisario. Prequel to the more-known show “NCIS”, it follows the adventures of top-level military lawyers Lt-Commander Harmon Rabb Jr, (US Navy) and his fellow colleague Colonel Sarah “Mac” Mackenzie, (United States Marine Corps).

During 10 seasons and 227 episodes, the pair is dedicated to “investigate, defence and prosecute the law of the sea”, fighting “in and out of the courtrooms” with “daring and tenacity” as stated in the beginning of every episode.

On 2004 February 6th is aired for the first time the 1-hour long 14th episode of the 9th season titled “The People v SecNav”¹.

Its main plot is the following :

After the bombing on 17th March 2003 by US aviation of a hospital, located in the Iraqi city of Takifa, the US Secretary of the Navy Edward Sheffield (SecNav) is prosecuted before the International Criminal Court (ICC) for violations of Articles 7 and 8 of the Statute of Rome and breaches of 1949 Geneva Convention and Article 2§4 of the UN Charter.

This episode draws the attention of international relations aficionados as it takes place at the crossroads of major points of American policy since the beginning of the 21st century : A marmite relationship with international justice and the use of force in the context of the Global War on Terror, facing the hostility of his long-time French ally.

One can first be surprised to see an American citizen prosecuted before the International Criminal Court, as the United States have withdrawn its signature of the Rome Statute in 2002 and refused since to ratify the Statute.

If US hostility toward the ICC is embodied into the 2003 *American Service-Members' Protection Act*, forbidding US authorities to concur and support ICC's activities², one can always see “changing dynamics”³ in the relationship between the ICC and the United States.

1 "JAG" People vs. SecNav (TV Episode 2004) - IMDb

2 American Service-Members' Protection Act (state.gov)

3 The Changing Dynamics of the US-ICC Relationship - The Kenan Institute for Ethics at Duke University

The last episode of this changing dynamics being the revocation by President Biden of the sanctions initiated by President Trump against top level ICC officials⁴

In the episode, this hostility is explained by JAG Commanding Officer Admiral Chegwidden to SecNav in plain language *“The complain is meaningless: We withdrew from the 1998 Treaty of Rome. The United States does not recognized the International Criminal Court”*. However, according to SecNav *“We cannot reconstruct Iraq by ourselves. The President need more backing from the UN”*.

This motivates SecNav to voluntarily appear before the International Criminal Court The following plan shows Admiral Cheggwidden briefing Rabb and Mackenzie : the latter stated *“The ICC never tried a case before [...] if we do loose, we will branded as outlaw by the whole civilized world”*.

This notion of “civilized world” or “civilized nations” occurs twice in the episode and makes undoubtedly thinks about the “general principles of law recognized by civilized nations” which are quoted as source of international law in article 38 of the Statute of International Court of Justice. Moreover, further in the episode, SecNav will states that the USA “accept [their] responsabilit[ies] which all civilized nations should”.

If the Permanent Court of International Justice has recognized, among general principles of law recognized by civilized nations, the principle of reparation for the breach of an engagement⁵, SecNav states an American view of those principles which implies “fight against oppression and tyranny [...] When we take arms, it’s not for land, oil, or money but for freedom”⁶.

So the trial of SecNav is depicted as a tribune for America’s Global War on Terror

The novelty of the ICC and the necessity to entertain the audience of a TV show can explain

4 Ending Sanctions and Visa Restrictions against Personnel of the International Criminal Court - United States Department of State

5 PCIJ CASE CONCERNING THE FACTORY AT CHORZOW (CLAIM FOR INDEMNITY) (MERITS) SERIES A.-No. 17 September 13th, 1928 “[...]the Court observes that it is a principle of international law, and even a general conception of law, that any breach of an engagement involves an obligation to make reparation “

6 Whereas, the notion of “civilized nations” can refer, in the *jus in bello*, to the famous “Martens Clause” Vladimir V. Pustogarov: *The Martens Clause in International Law*. In: *Journal of the History of International Law*. 1(2)/1999, Martinus Nijhoff Publishers, S. 125-135,

the liberties taken with real-world procedures : If we can see a Dutch police officer putting SecNav in custody at his arrival at the Hague on the ground of a “warrant issued by the Pre-Trial Chamber of the ICC”⁷, we have to notice that this scene takes place, as the whole trial, in the premises of the Peace Palace, hosting the International Court of Justice.

Moreover the dress of the Prosecutor, depicted during the episode as an opponent, is similar to the one of real ICJ judges (black with a white jabot).

This can be analyzed as a criticism toward the International Court of Justice, which recognized in the LaGrand Case⁸ that the US have breached their obligation to respect Article 36 of the Vienna Convention on Consular Relations as well as to respect also an Order of the Court indicating provisional measures⁹

The Prosecutor, referred in IMDB as “International Court of Justice Attorney”, is embodied by French-speaking late actor Ray Proscia¹⁰. The character speaks with strong French accent, uses French words¹¹, and during the whole episode, blames the US for its “arrogance” and its desire to impose their culture to the world.

Several clashes occurred on the then-cold relationships between the US and France following France’s refusal to support the 2003 Iraq invasion¹² : “Did the world asked you to be its saviour” asks the Prosecutor to which SecNav answers “In 1917, in 1941, and throughout the 40 years of the Cold War, the World asked us for help and we have given it [...]”. Another clash between the two men deals with the notion of “evilness” (whether it is the 100 Iraqi civilians killed during the bombing or the “slaughter of American citizens followed by jubilant dancing in Middle East”)¹³. One has to notice that, on the contrary to the reality, the Prosecutor is

7 Article 58 of the Statute of Rome

8 LaGrand (Germany v. United States of America), Judgement, I. C. J. Reports 2001, p. 466

9 LaGrand (Germany v. United States of America), Provisional Measures, Order of 3 March 1999, I. C. J. Reports 1999, p. 9

10 Résumé (rayproscia.com)

11 In the end of the episode, SecNav asks the Prosecutor, in French, if he want to dine with him : “Our countries have been friends for 2 centuries. Such friendship shouldn’t be discarded”.

12 As a symbol of those tensions we can remind, among others, that French fries and French toast were renamed “Freedom Fries” and “Freedom Toast” in the US House of Representative’s cafeterias CNN.com - House cafeterias change names for 'french' fries and 'french' toast - Mar. 12, 2003

13 This notion of “evilness” also refers to the so-called “Axis of Evil” doctrine developed by President G.W. Bush, qualifying the countries accused of supporting terrorism, namely Iraq, Iran, and North Korea (Address Before a Joint Session of the Congress on the State of the Union | The American Presidency Project (ucsb.edu))

depicted not as an independent organ¹⁴ but as a representative of France and French policy, accused by SecNav from suffering from an “inferiority complex” towards the USA, both countries aiming at universalism¹⁵

The ICC, as depicted in the episode, also obeys to its own rules of procedure which differs from the real procedural rules: Lt-Commander Rabb begins the trial by filing an objection not on the admissibility and jurisdiction of the Court¹⁶ but on the fact that SecNav appear before the Court in a glass booth, which can “invoke the image of a convicted war criminal”¹⁷. His objection is granted and the trial begins.

It implies only oral testimonies of a doctor working in the Takifa hospital, a woman having lost her child during the bombing and her husband having “disappeared” during Saddam Hussein’s regime¹⁸, as well as the testimony of Lieutenant Morris, who asked for the bombing of the hospital. The latter stated “We had orders to avoid schools, mosques, historical sites”, which is in line with international jus in bello conventions.

More surprising is the appearance before the Court of the Secretary General of United Nations who seems to act as an expert, an amicus curiae and/or a witness¹⁹. His appearance brings a discussion with the Prosecutor about the legitimate use of force according to Chapter VII of the UN Charter, especially against terrorist groups or in case of pre-emptive strike in the context of weapons of mass destructions²⁰. And one is not surprised (in a US television show) to hear UN Secretary General quoting the Bible during his testimony/pledge for the peace before the Court²¹.

14 Article 42 of the Rome Statute

15 On the “competition” between France and the USA for universalisme see Pierre Bourdieu, « Deux impérialismes de l’universel », in Christine Fauré and Tom Bishop, *L’Amérique des Français*, Paris, F. Bourin, 1992; Stanley Hoffmann, « Deux universalismes en conflit », *The Tocqueville Review*, Vol.21 (1), 2000.

16 Article 19§1 of the Statute of Rome “The Court shall satisfy itself that it has jurisdiction in any case brought before it. The Court may, on its own motion, determine the admissibility of a case in accordance with article 17.”

17 Cf *mutatis mutandis* on the topic of metal cages : ECHR 17th July 2014 (GC) Svinarenko & Slyadnev v Russia (*Applications nos. 32541/08 and 43441/08*)

18 Saddam Hussein’s Trial was at hot topic in the time of the airing of the episode : Captured on 13 December 2003, his trial would begun in 19 October 2005 until 21 December 2006 before the controversial Iraqi Special Tribunal, which condemned Hussein to death penalty.

19 Article 45§3 of the ICJ Statute “ The oral proceedings shall consist of the hearing by the Court of witnesses, experts, agents, counsel, and advocates”

20 The alleged presence of weapons of mass destruction was the rationale for the 2003 Invasion of Iraq.

21 Namely Isaiah 2:4 [...] “[A]nd they shall beat their swords into ploughshares, and their spears into pruning-hooks” and Isaiah 11:6 “And the wolf shall dwell with the lamb [...]”.

If real-world international jurisdictions are lay, we can recall the proactive role of late Pope John Paul II in

After having escaped an assassination attempt in the Great Hall of Justice, SecNav asks for the extradition of the aggressor in the US in order to be tried by his country's courts. The Prosecutor refuses, stating the Netherlands have jurisdiction on this issue and that this country does not apply death penalty²²

And the Prosecutor makes an offer : if SecNav pleas for guilty, charged will dropped in exchange of "*reasonable reparations for the US*"

Then arrives the conclusion: According to the president of the Court the use of force without the mandate of the UN Security Council "*is a breach of international law*". But, "*this illegality must be weighted against the circumstances of each particular case*"²³

And the president of the Court states the verdict : SecNav is not guilty of crimes against humanity, war crimes, intentionally targetting non combatants (which refers to the 4th 1949 Geneva Convention).

SecNav is only guilty of "*willingfull destruction of civil properties*", and, as a consequence will have to pay 20 millions USD to the city of Takifa. "*Not sure the taxpayer will agree*" says Lt-Comdr Rabb, implying the US Treasure will subrogate SecNav in the payment of this reparation.

But this is not surprising as, in real-world, the ICC Trust Fund for Victims pays *in lieu* of the sentenced person, due to the high sums at stake²⁴

pacific settlement of disputes Fabio Vio Valdivieso, *La mediación de su S.S. el Papa Juan Pablo II*, Editorial Aconcagua, Santiago du Chili, 1984 ; Nouailhat Yves-Henri, « Le Saint-Siège, l'ONU et la défense des droits de l'homme sous le pontificat de Jean-Paul II », *Relations internationales*, 2006/3 (n° 127), p. 95-110. DOI : 10.3917/ri.127.0095. URL : <https://www.cairn.info/revue-relations-internationales-2006-3-page-95.htm> ; Visite de sa Sainteté le Pape Jean Paul II à la Cour internationale de Justice. In: *Annuaire français de droit international*, volume 31, 1985. pp. 278-285. www.persee.fr/doc/afdi_0066-3085_1985_num_31_1_2661

²² Cf (among others) for the prohibition of extradition in a country in which the extradited person risks death penalty and/or inhumane and degrading treatments ECHR (Plenary) *Soering v The United Kingdom* (Application no. 14038/88)

²³ Cf Article 59 of the ICJ Statute : "The decision of the Court has no binding force except between the parties and in respect of that particular case."

²⁴ In the BOSCO NTAGANDA case, a Reparation Order was issued by the Court, fixing a sum of reparation of USD 30,000,000. Mr NTAGANDA being declared "a indigent for the purposes of reparations at the time of the present Order" (ICC Trial Chamber VI, THE PROSECUTOR v. BOSCO NTAGANDA , Reparation Order, 8th March 2021, : ICC-01/04-02/06); In the Katanga case, the ICC Trial Chamber II issued an Order fixing, *inter alia*, the prejudice of the 297 victims of Katanga's actions to USD 3 752 620, a 1 000 000 USD liability of Mr Katanga, declaring the latter " indigent for the purposes of reparations at the time of the present order for reparations" (ICC Trial Chamber II, Order for Reparations pursuant to Article 75 of the Statute, 24 March 2017 ICC-01/04-01/07).

So the depiction of international justice in this episode is in the line with the attitude of the USA against the International Criminal Court²⁵ and international justice at large.

However, beyond the mix between ICJ and the ICC and the “americanization” of the procedure²⁶, one has to hail the attempt to sketch and sum up, in the time and in the form of a TV Show episode, not what ICC procedure is, but what it might be like.

This having in consideration that the real-world ICC was, in the time of the episode’s airing, the was still located in temporary premises, its permanent premises being inaugurated on April 19th 2016²⁷, and its first judgement was rendered in 2012 in case “The Prosecutor v. Thomas Lubanga Dyilo”.

25 « L’interprète » (Sidney Pollack, 2005) : l’ONU, la Cour pénale internationale et les Etats Unis. – Une analyse d’Arnaud Louwette - Centre de droit international (ulb.ac.be)

26 However the procedures in international law and international criminal law are already close to common law procedures : The clearest example of this is the occurrence of individual opinions (Art 57 of the ICJ Statute, Article 83§4 of the Rome Statute).

27<https://www.icc-cpi.int/news/icc-permanent-premises-officially-opened-his-majesty-king-willem-alexander-netherlands>