The Arrests of the Century or Missed Opportunities? A Comparative Case Study of the International Criminal Tribunal for the Former Yugoslavia

Tamaria A Johnson, Spelman College
The Arrests of the Century or Missed Opportunities?  
A Comparative Case Study of the  
International Criminal Tribunal for the Former Yugoslavia

DEPARTMENT OF POLITICAL SCIENCE

By

Tamaria Johnson

24 April 2009
# TABLE OF CONTENTS

**ABSTRACT** ........................................................................................................................................... 3

**INTRODUCTION** ....................................................................................................................................... 4
Overview of the Study

**LITERATURE REVIEW** .............................................................................................................................. 6
3 Schools of Thought:
- The Prevalence of Realism within the International System
- Security Strategies amid the Cold War Era
- Intrastate Conflict in the Balkan region and the ICTY

**METHODOLOGY** ......................................................................................................................................... 11
- Discussion of key variables
- Rationale for the Research Method

**COMPARATIVE CASE STUDY** ..................................................................................................................... 13
- Introduction of the International Criminal for the Former Yugoslavia
- Judicial Proceedings at the ICTY: The Case of Slobodan Milosevic

**CONCLUSION** ........................................................................................................................................... 17

**POLICY RELEVANCE** ............................................................................................................................... 18

**REFERENCE** ............................................................................................................................................ 19
ABSTRACT

Conflict resolution and reconciliation are integral to the restoration of civil society by the political integration of formerly fragmented social networks. Yet persistent ethnonational tensions within multinational states, like those experienced in South Eastern Europe have fostered new hostilities and secessionist movements in the post – Cold War era. This paper examines the International Criminal Tribunal for the Former Yugoslavia (ICTY) by emphasizing the effectiveness of the international court to prosecute political and civilian leaders responsible for committing war crimes, crimes against humanity, and acts of ethnic cleansing and/or genocide during the Balkan wars of the 1990s; its ability to foster reconciliation among political leaders as well as citizens in the Balkan region of South Eastern Europe. The study employs a comparative case study research design to investigate the progression of the ICTY, the cooperation of states with the ICTY, and the future of international criminal courts within the realm of universal jurisdiction. The empirical results suggest the integration of international prosecution, multilateral cooperation, and domestic reform can be a strong deterrent against intrastate conflict to advocate international criminal justice, positive peace, and civil reconciliation. This study will demonstrate that effective judicial intervention conducted by the ICTY in the case of the Slobodan Milosevic trial can be instrumental in eschewing future ethnonational aggression in South Eastern Europe and in other multinational states like Sudan, Georgia, Israel, and Iraq.
INTRODUCTION

The collapse of the Soviet Union in 1991 led to the dismemberment of many artificially – constructed nation – states that were united only by Soviet rule, in the case of Yugoslavia.\(^1\) As violence quickly erupted in Yugoslavia following the declaration of independence by Slovenia and Croatia in 1991 and subsequently in Macedonia and Bosnia - Herzegovina, the international community became largely ambivalent about the proper course to take to handle the multiple – aggressor problem.\(^2\) International states like the United States and those in Western Europe with the support of the North Atlantic Treaty Organization (NATO) was recognized as “a regional security regime” responsible for the “Long Peace” in Europe for its role in stabilizing the levels of conventional forces within the regime.\(^3\) However, the plethora of actors compounded with the complexity of the situation in the Balkans caused many Western states to be hesitant toward intervening in the conflict, a sentiment reminiscent of the Wilson Administration following the First World War.\(^4\) The reluctance of individual states to intervene in Yugoslavia precipitated interest in institutionalism, or the theory that when states can jointly benefit from cooperation they form institutions to provide information, reduce transaction costs, make commitments more credible, establish focal points for coordination, and in general facilitate the operation of reciprocity.\(^5\) Institutions were considered a more practical solution to resolving international disputes and conflicts given their pursuits of establishing peace and stability lied with their function to cooperate with states amid competing interests and shifting balances of power. The renewed role of the United Nations in the 1990s, allowed the UN Security Council to respond to the atrocities committed in Yugoslavia with the creation of the International Criminal Tribunal for the Former Yugoslavia (ICTY), 47 years after the International Military Tribunal at Nuremberg and in the Far East (Tokyo) to prosecute political and civilian leaders accused of violating the laws or customs of war, article 3 of the Geneva Conventions and of Additional Protocol II; committing genocide and crimes against humanity.\(^6\)

The ICTY was a direct outcome of the escalating violence in the Balkans, although the objective of the international tribunal according to former U.S. chief diplomat Richard

---


\(^6\) Yves Beigbeder, “Chapter 3: The International Criminal Tribunal for the Former Yugoslavia,” p. 69, 72.
Holbrooke was to serve as “...little more than a public relations device”. According to scholar Gareth Evans, overcoming global indifference requires addressing four major recurring problems: the problem of perception (getting the story out and its gravity understood), the problem of responsibility (confronting traditional taboos against international involvement in sovereign countries’ internal affairs), the problem of capacity (having available the appropriate institutional machinery and resources), and the problem of political will (effectively mobilizing that capacity in the face of competing priorities and preoccupations). The United Nations’ lack of political will in making governments compliant to international law and enforcement has made it incredibly difficult to prosecute suspected war criminals, like Bosnian - Serbian military leader Ratko Mladić who remains at large, reportedly, under the protection of the Serbian military. Serbia has largely condemned the ICTY, perceived as unfairly targeting Serbs given the charge of group, or ethnic responsibility in the Balkan wars of the 1990s, gleaned from a November 2002 survey where 40 percent of Serbs felt that the next president of Serbia should not hand over indicted Serbs to the ICTY. Moreover, the ICTY did not deter subsequent atrocities in Srebrenica, Bosnia and Herzegovina and Kosovo. The lack of enforcement by the United Nations and the organization’s relatively slow response to international disputes and conflicts has prompted discussion in whether the United Nations is capable of dispute settlement in the former Yugoslavia.

Current scholarship has remained ambivalent regarding the success of the ICTY, in terms of deterring atrocities, consolidating the rule of law, promoting democracy, and facilitating the peace process in the Balkans, but the ICTY stands as a model for peace building assistance for multinational states in South Eastern Europe and in other regions of the world. The ICTY assures states according to relative – gains logic that their own interests as well as the interest of the ICTY will be evenly considered, therefore, advocating the role of multilateral cooperation in preventive diplomacy. The creation of the ad hoc international criminal tribunal for the former Yugoslavia was viewed as the advent of “international judicial intervention,” a trend that was based on the understanding that justice was a non – negotiable element of sustainable peace building. The United Nations intended to “manage” international conflicts with the creation of the ICTY by legitimizing international criminal justice, establishing the significance of institutions by their ability to provide information (intelligence), advancing initiatives committed to providing civil peace and reconciliation, and recognizing the plight of survivors with reparations and opportunities for testimonies. Recent outbreaks of violence in Russia, Georgia, 


Israel, and Iraq have signaled the urgency of the ICTY in serving as a pre–conflict peace building intervention strategy to combat the multiple nation, multiple state problem.

**LITERATURE REVIEW**

The precedent established by the International Military Tribunal at Nuremberg and in the Far East (Tokyo) enhanced the legitimacy of international criminal justice where national criminal institutions were no longer the main arbiters of justice because states and parties who violated international custom involving the treatment of combatants, prisoners of war, and civilian populations were now subject to international condemnation and prosecution. 12 47 years after these international military tribunals were created in response to the events of the Second World War, the United Nations created the International Criminal Tribunal for the Former Yugoslavia to respond to the exactions, war crimes, and crimes against humanity committed by all parties during the dismemberment of Yugoslavia and by the ethnic cleansing initiated by ethnic Serbs. The dissolution of the Soviet/USSR Empire in 1991 led to the disintegration of Yugoslavia and the subsequent declaration of independence by Slovenia and Croatia. Many marginalized ethnic and religious groups sought to secede from Yugoslavia under escalating Serb nationalism exerted by the state. As competing interests among citizens in Yugoslavia led to interminable political turmoil and violence, international intervention led by the United Nations sought to curtail further intrastate conflict with the creation of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 under Chapter VII of the UN Charter, or the International Criminal Tribunal for the Former Yugoslavia in 1993. As of March 2009, the ICTY has indicted 161 individuals, including former Serbian President Slobodan Milosevic and has had 117 proceedings concluded at the ICTY with only two at–large criminals - Ratko Mladic and Goran Hadzic yet to face prosecution at the ICTY. 13

Realism, or the theory of the international community being in a constant state of anarchy where cooperation between states is temporary, war is inevitable, and genuine peace or a world where states do not compete for power is not viable for states who concerned with their own vested interests characterized the international system from the end of the Second World War to the collapse of the Soviet Union in 1991. During the Second World War, sovereign states sought to attain regional and global domination under the guise of advancing national security interests of state supremacy and survival. 14 State behavior was rooted in the belief that the absence of an enforceable, centralized governmental authority to monitor state aggression sanctioned states to operate in a “self–help” world where protection against external forces was the main priority. 15

---


However, the end of the Second World War proved victorious for the Allied Powers who sought to atone for transgressions committed by the Axis Powers through the avocation of an international tribunal to prosecute suspected war criminals. The Allied Powers established the International Military Tribunal at Nuremberg and in the Far East (Tokyo) where defendants were held responsible for their individual complicity in waging aggressive war (individual responsibility), failure to control the actions of their subordinates (command responsibility), and violations of the Hague Conventions of 1907, the 1929 Geneva Conventions, and the Red Cross Convention of 1929. After the completion of these military tribunals, critics contend it was “victor’s justice” where only the vanquished were prosecuted for crimes committed during the Second World War and was not an independent institution, but a reflection of the distribution of power in the international system. Therefore, international judicial institutions were perceived as lacking credible legal standing and recognition to justly compel nation – states to its judicial authority.

During the Cold War period, the United States, Western Europe, and other Western allies banded together to deter military aggression and the expansion of communism exercised by the Soviet Union. Under collective security, states and the inclusion of international institutions facilitated cooperation among temporary allies who functioned upon the basis of underlying interests and intentions. The alignment between East and West fuelled competition over wealth and power, but also drove domestic and ideological pathologies. The collapse of the USSR/Soviet Empire in 1991 focused international interest on the viability of collective security since collective security institutions (i.e. NATO) were deemed effective in helping states define their national interests to contribute to international stability. Unfortunately, in the post – Cold War era, collective security became an impractical solution to resolving international disputes and conflicts amid the increased pervasiveness of intrastate conflict. In the 1990s, 220,000 people were killed in classical interstate conflict, whereas an estimated 3.6 million died in wars within states.

From 1991 – 1999, over 300,000 people died and over 2 million civilians were displaced after an eruption of violence divided Yugoslavia into several newly independent states. During the late 1980s, Serb nationalist, Slobodan Milosevic became the leader of the Serbian Communist Party and petitioned for the creation of a “Greater Serbia” despite the Croatian, Bosnian, Albanian, and other minority populations in Yugoslavia. Milosevic championed the Serb nationalist movement through the process of “natural homogenization” where ethnic identity and conflict would erode as minority groups became incorporated into the common

---


secular industrial culture. Pro–Serbian sentiments soon pervaded Yugoslavia, and after the declaration of Slovenia, Croatia, Macedonia, and Bosnia-Herzegovina’s independence from Yugoslavia in 1991 and 1992, pro–Serbian forces attempted to curtail the further disintegration of the state by unleashing mass propaganda and violent campaigns to dehumanize ethnic minorities.

Immediately, the UN Security Council responded to the conflict in Yugoslavia with the Commission of Experts investigating and collecting evidence on “grave breaches of the Geneva Conventions and other violations of international humanitarian law”. On May 25, 1993, UN Security Council resolution 827 established the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 under Chapter VII of the UN Charter. The ICTY, like its tribunal ancestors (Nuremberg and Far East (Tokyo) has limited territorial jurisdiction and time, but is succeeding in indicting and prosecuting political and military officials. The International Criminal Tribunal for the Former Yugoslavia promotes a better image of justice than was perceived with the Nuremberg and Far East (Tokyo) trials as concrete international laws and treaties have firmly established the Tribunal’s legitimacy in the international community.

Yet, the International Criminal Tribunal for the Former Yugoslavia is not impenetrable from diatribes, meaning it has been in existence for 16 years but has not been successful in preventive diplomacy, apprehending suspected war criminals, facilitating peace, strengthening the legal institutions of post–Yugoslav successor states, promoting democracy, and garnering increased support for the ICTY in the Balkan region. First, preventive diplomacy aims to address the root causes of conflict and to assist governments and communal groups in reaching a consensus on how to find new ways to solve mutual problems. After the Dayton Peace Treaty was signed in Paris on December 14, 1995, Bosnian Serb and Croat leaders along with the ICTY prosecutor, Judge Richard J. Goldstone petitioned Bosnian Serb representative Slobodan Milosevic to surrender former Bosnian Serb President Radovan Karadzic and General Ratko Mladic to the ICTY. Milosevic refused to turn over these suspected war criminals to the ICTY and Bosnian Serb President Biljana Plavsic threatened to withdraw support for the peace agreement, warning that “massive civil and military unrest would result in the Republika Srpska which might well prove uncontrollable by the civil authorities.” As a result, Karadzic and Ratko remained at large while lesser criminals were tried at The Hague (Netherlands), although

---


Karadzic was recently arrested in 2008 and now faces charges of war crimes and crimes against humanity at the ICTY.\textsuperscript{26}

Furthermore, the ICTY has not deterred subsequent war crimes in the former Yugoslavia. After the creation of the ICTY, violence emerged in Srebrenica in 1995 after Bosnian Serb forces were ordered to attack Srebrenica and other small towns located in the middle of the Serb – held Bosnia and Herzegovina to “demilitarize” the areas.\textsuperscript{27} By July 1995, more than 30,000 Bosnian Muslims were victims of ethnic cleansing in Srebrenica. In 1998, Serbian forces backed by then Serbian President Slobodan Milosevic invaded Kosovo to quell Albanian resistance in the province. In 1999, successful intervention by NATO ended the conflict but interethnic violence continued in Kosovo, seen in the period between January and May of 2000, where 95 murders were reported.\textsuperscript{28}

Moreover, the ICTY has not strengthened the legal institutions of post – Yugoslav successor states because the Tribunal exercises primary jurisdiction over war crimes prosecutions and also shares concurrent jurisdiction with nation – states. According to a 1999 survey, Bosnian judges and prosecutors felt marginalized by the ICTY because of the location of the tribunal in The Hague (Netherlands), the lack of communication between Bosnian and tribunal legal professionals, criticism of the Bosnian legal system from the international legal community, and the perceived political nature of the Tribunal.\textsuperscript{29} In addition, a November 2002 survey revealed that 47 percent of Serbs preferred a Serbian president who would try suspected war criminals only in Yugoslav courts.\textsuperscript{30} Misunderstandings between the ICTY and Yugoslav successor states regarding legal procedures and the proper legal forum to issue sentences ultimately stymies judicial proceedings.

Lastly, the ICTY is not perceived as promoting democracy in the Balkan region but rather domestic conditions have facilitated the process of democratization. The death of President Franjo Tudjman in December 1999 and the indictment of former Serbian President Slobodan Milosevic in 2001 facilitated democratic reforms in Croatia and Serbia respectively. The ICTY is widely unpopular in Serbia, gleaned from an April 2002 survey, where only 10 percent of Serbs saw the ICTY as the best way to serve justice.\textsuperscript{31} For many post - Yugoslav successor states, the ICTY is perceived as a direct attack on state sovereignty and lacks central and judicial authority to issue justice deemed more prudent for national courts.

However, if the ICTY is proven a failure by its inability to promote its intended goals by the year 2010, the utility of international judicial institutions to render substantiated judgments

\begin{itemize}
  \item \textsuperscript{27} Howard Ball, “Chapter 5: “Ethnic Cleansing” in the Balkans and the International Criminal Tribunal for the Former Yugoslavia,” p. 136.
  \item \textsuperscript{28} Snyder, Jack and Leslie Vinjamuri, “Trials and Errors: Principle and Pragmatism in Strategies of International Justice,” p. 28.
  \item \textsuperscript{29} Snyder, Jack and Leslie Vinjamuri, “Trials and Errors: Principle and Pragmatism in Strategies of International Justice,” p. 22.
  \item \textsuperscript{30} Snyder, Jack and Leslie Vinjamuri, “Trials and Errors: Principle and Pragmatism in Strategies of International Justice,” p. 21, 22.
  \item \textsuperscript{31} Ibid.
\end{itemize}
on conventional or customary international law on war crimes, crimes against humanity, and genocide will be undermined by sovereign states seeking to resolve cases in national courts only, which effects the viability of international law in dispute settlement. In the context of national courts, the primary jurisdiction of national courts requires physical, financial, and enforcement resources to render justice.\(^{32}\) In addition, not all national courts’ legal procedures correspond to the 1966 International Covenant on Civil and Political Rights, meaning there is a possibility that coercive activities can be used to extract confessions, arbitrary arrest, or detention, limit due process, or restrict individuals’ access to legal counsel. Additionally, anyone who is charged with a criminal offense might not benefit from the principle of non–retroactivity of national and international laws, except when a crime is generally acknowledged by several international states. Most importantly, independent judiciaries may not be guaranteed at all levels of government or instituted into national constitutions, countries’ might not provide well–trained legal professionals, military personnel might be protected by allies or receive lenient sentences in military courts, and some newly–installed governments might engage in “victor’s justice” where justice is determined on the basis of revenge for past discretions of former political, military, and administrative leaders.\(^{33}\) Lastly, judicial failings and weaknesses are found even in countries with a long democratic tradition, gleaned from the rejection by the United States of the protection of the Geneva Conventions to Guantanamo detainees.\(^{34}\)

Overall, the ICTY is not a perfect model for judicial intervention but it is the most effective in resolving cases involving war crimes, crimes against humanity, and genocide given that political retribution or negligence are often absent from investigations and prosecutions of suspected war criminals. Many national courts have granted amnesty or prescription to suspected war criminals, allowed suspected war criminals to seek asylum in “friendly” states, refused to grant extradition on the grounds of the protection of national sovereignty and are hesitant to indict or bring judgments to political leaders and senior military leaders accused of serious human rights violations. In the case of Kosovo, The United Nations Mission in Kosovo (UNMIK) initiated local trials in the Kosovo province in 1999 to prosecute responsible parties accused of war crimes. However, elevated ethnic tensions between Kosovar Albanians and Kosovar Serbs led to accusations of ethnic bias in prosecutions once the trials commenced, case in point, local Albanians judicial officials were heavily biased in their prosecution of several Serb suspects apprehended by the KFOR (NATO implementation force for Kosovo) in the summer and fall of 1999.\(^{35}\) In an October 2001 National Democratic Institute poll, 89 percent of Kosovo Serbs felt that local courts would not resolve disputes with members of another ethnicity fairly.\(^{36}\) Two years later, in July 2003, four former members of the Kosovo Liberation Army were convicted, which sparked renewed violence in the province upon allegations of biased of


\(^{33}\) Ibid.


the UNMIK trials against Kosovar Albanians. While there has been criticism of the ICTY regarding its ability to execute justice, war crime trials conducted in Kosovo have shown the limitations of national courts in resolving matters related to international humanitarian law and human rights violations.

**METHODOLOGY**

Under the doctrine of universal jurisdiction, international criminal justice seeks to establish human rights norms and the efficacy of international law within the international system to obviate the Hobbes approach to security. An independent or key causal explanatory variable is the phenomenon by which a dependent or outcome variable engenders observable concepts. An independent variable must vary to generate an observable phenomenon, develop control variables, and avoid the generality of a conclusion. Although compliance to international law is voluntary, increased international support for human rights norms and international humanitarian law has led to the emergence of legalism. In this study, I am identifying the effectiveness of international criminal justice (independent variable) by examining evolving international law that seeks to exercise primary jurisdiction over persons suspected of grave breaches of conventional international law.

To measure the effectiveness of international criminal justice, I will examine pertinent international laws and treatises governing genocide, war crimes, and crimes against humanity, the progress of the International Criminal Tribunal for the Former Yugoslavia, and the rate of indictments and convictions for accused political and civilian leaders prosecuted at the ICTY in The Hague (Netherlands). Operationalization is the process of defining a vague concept to make the concept measurable in the form of variables consisting of specific observations. Operationalization allows experiments to yield measures that are more precise, ensures reliability, discloses bias, and uncovers inconsistency in data results. For example, in experiments where there exist consistent results for a particular observation, operationalizing the dependent variable can reveal a systematic measurement error since an error in the dependent variable can lead to incorrect experimental results even in the absence of bias.

The scale of intrastate violence in resource-limited countries like those countries of the former Yugoslavia has fuelled resistance toward international criminal justice and actions seeking to unduly burden state sovereignty. A dependent or outcome variable is the means by which experimental results are produced given the impact of variations from the independent variable. To understand the causes of intrastate conflict (dependent variable), four main clusters of factors must be examined to determine how certain countries are more prone to internal conflict than others: structural factors, political factors, economic/social factors, and cultural/perceptual factors. Intrastate conflict is often rooted in historical grievances, religious strife, and cultural insensitivities, but is exacerbated by discriminatory policies enacted by the state.

Since compliance to international law is voluntary, arrests and detention of suspected war criminals has been facilitated by the consent of represented states or through the persuasion of Western states. A control variable allows the experiment to account for inconsistency by maximizing the validity of measurements. Multilateral cooperation (control variable) between states and international institutions has led to greater transparency in judicial activities and the process of civil reconciliation in the Balkan region. As globalization introduces new international challenges regarding security and development, multilateralism offers a more inclusive role for international actors to interact with one another through a transparent agenda and open dialogue.
For this study, I will employ a comparative case study research design, which is a type of comparative case study that reports and interprets two or more measures on any pertinent variable. The comparative case study research design incorporates both quantitative and qualitative approaches to synthesize empirical and factual information into a single inquiry. This research design establishes a relationship between historical and contemporary events to effectively explain a particular phenomenon. The comparative case study is most prevalent among researchers seeking to describe politically important events systematically.

However, one major weakness of the comparative case study research design is that it does not necessarily lead to accuracy as quantitative indexes might not relate closely to concepts or events that can be measured leading to serious measurement error and problems for causal inference. For this study, it is important in case selection that I make a reasonably certain causal inference (learning about causal effects from the data observed) to have more observations than hypotheses. More observations maximize leverage over a particular problem to increase confidence in estimates. It can be difficult to analyze constitutions, laws, interviews, and political events because explanatory abilities are weak due to circumstances changing rapidly over time and the plethora of data extends to an insufficient degree of precision characterized by external validity. External validity is how the experimenter affects the treatment during the experimental process. Because the quantitative approach differs from the qualitative approach in terms of how variables are measured – quantitative approach uses deductive treatment while the qualitative approach uses inductive treatment; it makes it difficult to reach a general conclusion. Internal validity refers to internal factors that affect how variables are measured. Since the research design incorporates two separate methodologies it is more time consuming and is unlikely, that results will be precisely duplicated. Reliability refers to applying the same procedure in the same way to produce the same measure.

Scientific research is designed to observe and test particular hypotheses concerning particular inquiries and the experimental process, but it is not without flaws, it is important to understand the challenges posed by validity (internal/external) and reliability because it is often hard to define in experiments which can lead to erroneous results and value – laden judgment. Since patterns in political events and political actors are constantly changing, good descriptions of events are hard to solidify amid weak explanatory data posing challenges of selection bias, invalid secondary sources, and value – laden judgment regarding the “aggressors” in the Balkan conflict. To supplement weaknesses in the research design, it is important to have better descriptions of new situations and new insights on known phenomenon.

On the other hand, the comparative case study research design develops good causal hypotheses complementary to good descriptive analysis for answering research inquiries. Since case studies are limited to a certain amount of cases that will be measured, it is essential to have observations that will provide stronger evidence for a conclusion through convergence and corroboration of findings on the principle of triangulation. When research findings are concrete, they can be used to increase the generalizability of the results. Finally, it substantiates a theory if generated hypotheses can be measurable to explain an intended outcome.
COMPARATIVE CASE STUDY

The International Criminal Tribunal for the Former Yugoslavia

At present, the ICTY is nearing the completion of its judicial mandate with 6 individuals at the pre-trial stage, 21 accused individuals currently at trial, and 9 persons at the appeal stage (Table 1). On May 25, 1993, the International Criminal Tribunal for the Former Yugoslavia (ICTY) was established by UN Security Council Resolution 827 to prosecute those parties responsible for violating international humanitarian laws and conventions during the Balkan conflict of the 1990s. Cases argued before the Tribunal involve violations of grave breaches of the Geneva conventions and the 1977 Protocol II supplements regarding the treatment of soldiers and civilians in war time (both international and civil wars, genocide, crimes against humanity (based on the Nuremberg Charter), and violations of the laws and customs of war. Access to evidence, resources, suspects, and witnesses require funding from the United Nations and those states from the former Yugoslavia in order for the ICTY to control its docket prior to the initiation of trials. However, once proceedings commence at The Hague, the administration of justice is directed by the Chief Prosecutor and the judges who determine indictments, verdicts, and the length of sentences for accused suspects. According to Article 24 of the ICTY Statute and Rule 101, the Trial Chamber determines the appropriate prison sentence for suspected criminals in view of alleged charges and consideration to home states (states formerly a part of the former Yugoslavia) domestic judicial practices.

After sentences are rendered, those convicted individuals must be transferred to prisons outside The Hague since the Tribunal does not have its own facility to detain convicted criminals. According to Article 27 of the ICTY Statute, it specifies the sentences of convicted criminals “shall be served in accordance with the national law of the host state, subject to the supervision of the tribunal.” Currently, ten states have taken convicted criminals from the ICTY, which include, the United Kingdom, Finland, Denmark, France, Italy, Germany, Sweden, Austria, Spain, and Norway; Belgium and Ukraine have signed agreements on the enforcement of sentences. Given their detainment of convicted criminals from the ICTY, these states also have the discretion to commute sentences for their held prisoners or pardon them upon the consent of the ICTY President. If their decision is granted, those freed persons also have the right to return home to their respective country in the Balkan region.


41 Rassi, Christopher M. and Ines Monica Weinberg De Roca, “Sentencing and Incarceration in the Ad Hoc Tribunals,” p. 43.
<table>
<thead>
<tr>
<th>TABLE 1. Judicial Proceedings at the ICTY, as of March 2009</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>117 proceedings concluded at ICTY</strong></td>
<td></td>
</tr>
<tr>
<td><strong>161 indicted at the ICTY since its inception</strong></td>
<td><strong>10 accused acquitted</strong></td>
</tr>
<tr>
<td><strong>36 accused currently in custody at Detention Unit</strong></td>
<td><strong>58 accused sentenced</strong></td>
</tr>
<tr>
<td><strong>4 accused provisionally released</strong></td>
<td><strong>2 awaiting transfer</strong></td>
</tr>
<tr>
<td><strong>2 accused currently at large (including Ratko Mladic and Goran Hadzic)</strong></td>
<td><strong>28 accused transferred to serve sentence</strong></td>
</tr>
<tr>
<td><strong>44 accused in 19 cases (as of March 2009)</strong></td>
<td><strong>26 sentences served</strong></td>
</tr>
<tr>
<td><strong>9 persons at appeal stage</strong></td>
<td></td>
</tr>
<tr>
<td><strong>21 accused currently at trial</strong></td>
<td></td>
</tr>
<tr>
<td><strong>1 person acquitted and 5 sentenced by a Trial Chamber, appeals possible</strong></td>
<td><strong>2 accused died while serving sentence</strong></td>
</tr>
<tr>
<td><strong>6 accused at pre – trial stage</strong></td>
<td><strong>20 indictments withdrawn</strong></td>
</tr>
<tr>
<td><strong>4 accused acquitted by the Appeals Chamber</strong></td>
<td><strong>36 accused have indictments withdrawn or are deceased</strong></td>
</tr>
<tr>
<td></td>
<td><strong>10 reported deceased before transfer to the ICTY</strong></td>
</tr>
<tr>
<td></td>
<td><strong>6 deceased after transfer to the ICTY (including former Serbian President Slobodan Milosevic)</strong></td>
</tr>
</tbody>
</table>

*Source: www.icty.org – March 24, 2009*
Case 1: The Indictment of Slobodan Milosevic

Ironically, the ICTY has indicted 161 persons with more than half of these persons indicted at the turn of the new millennium (Table 1).\textsuperscript{42} The ICTY has been a tribunal that is long and complicated – “the simplest of trials is likely to last at least six months, and the length of most trials is measured in years” due to the volume of evidence and witness testimonies.\textsuperscript{43} Accordingly, on August 28, 2003, the UN Completion Strategy endorsed by Security Council Resolution 1503 stated the ICTY should focus on the trials of the most senior leaders and transfer intermediary- and lower-level accused to competent national jurisdictions in order for the tribunal to complete initial trial activities by 2008 and all appeals by 2010.\textsuperscript{44} Among those senior leaders targeted by the ICTY, former Serbian President Slobodan Milosevic known as the architect behind the “Greater Serbia” conspiracy. In 2001, former Serbian President Slobodan Milosevic became the first former head of state ever to be judged by an international criminal court.

On April 1, 2001, Serbian authorities under US financial pressure arrested and detained Milosevic in Belgrade, and indicted him for abuse of power and corruption.\textsuperscript{45} On June 29, 2001, Milosevic was transferred again but this time to The Hague by the government of Serbia led under then President Zoran Djindjic, overriding the edict of a constitutional court and without the approval of President Kostunica.\textsuperscript{46} Milosevic was indicted with three charges: crimes against humanity, war crimes, and genocide involving his participation in atrocities committed in Croatia, Bosnia and Herzegovina, and Kosovo. On July 3, 2001, Milosevic appeared before the Tribunal without legal counsel and refused to enter a plea of guilty or non – guilty. Milosevic refused to recognize the legitimacy of the Tribunal and the three indictments charged against him, perceiving the trial to be an excuse for justifying NATO’s military campaign in Kosovo.

From February 2002 until the end of December 2003, the Prosecution gathered evidence against Milosevic to prove he ordered ethnic cleansings, slayings, and orchestrated other massacres or that he was cognizant of these things but chose not to intervene. But, on February 25, 2004, the ICTY Prosecution in The Hague abruptly concluded its proceedings before the final two days of evidence against Milosevic, and most disturbing is that it coincided with the President of the Trial Chamber announcing his own departure from the Tribunal because of health concerns.\textsuperscript{47} Some scholars believe friction with the judges, the adding of charges, and


\textsuperscript{44} Dieckmann, Jens and Christina Kerll, “UN Ad Hoc Tribunals Under Time Pressure – Completion Strategy and Referral Practice of the ICTY and ICTR from the Perspective of the Defence,” p. 88.

\textsuperscript{45} Yves Beigbeder, “Chapter 3: The International Criminal Tribunal for the Former Yugoslavia,” p. 82.

\textsuperscript{46} Ibid.

weaknesses in the case were all catalyst in the conclusion of Milosevic’s trial. First, Prosecutor Carla del Ponte was attempting to bring additional charges involving Croatia and Bosnia and Herzegovina to the original Kosovo indictment which caused hesitation with the Trial Chamber President, Judge Richard May who believed this approach would delay the start of the proceedings. Reluctantly, May agreed the cases could be heard together, but requested the Prosecutor begin first with Kosovo so during the course of the proceedings the preparation on the other cases could be carried out effectively.

However, the Croatian and Bosnian indictments against Milosevic made it difficult for the Prosecutor to present his case amid the extant customs of international humanitarian law. First, the charge of grave breaches of the Geneva Conventions of 1949 required the Prosecutor to demonstrate the alleged crimes were committed as a part of an international armed conflict; yet the former Yugoslavia was breaking up and those states were not independent, in the sense, of achieving sovereignty within the international system. Also, the charge of genocide for the massacre at Srebrenica was nearly impossible to prove given unreliable testimony from witnesses whose evidence seemed largely political and of limited material relevance to the case. The case as a whole against Milosevic became much harder to prove with Croatian and Bosnian indictments added, which was unlikely to be proven beyond reasonable doubt at the trial.

Yet, Milosevic’s trial commenced in 2002 with the Kosovo phase beginning with witnesses brought in to support the prosecution’s claim that Milosevic participated in a joint criminal enterprise to be held accountable for charges of war crimes and crimes against humanity. The most impressive witnesses were Albanian politicians (with the exception of Serbian Mahmut Bakalli) who offered credible testimony that confirmed the former Serbian leader’s responsibility in instigating violence in the province. Unfortunately, most of the witnesses had not mentioned Milosevic’s participation in a joint criminal enterprise – the most important charge brought against the Serbian leader. Instead, these witnesses confirmed historical records of his political behavior without any new developments that might advance the profile of the case. Overall, the response to the Kosovo phase of the trial was mixed since the proceedings failed to reach expectations.

Expectantly, the Bosnia and Herzegovina and Croatia phase had more witnesses to testify against Milosevic to include high – ranking insiders such as Milan Babic, president of the Croatian Serb proto – state, Republika Srpska Krajina (RSK), Ante Markovic, the last prime minister of the Socialist Federative Republic of Yugoslavia (SFRY), Stipe Mesic, former president of the SFRY and president of Croatia, and even, General Wesley Clark, Supreme Allied Commander in NATO during the Kosovo campaign and former 2000 and 2004 U.S. Presidential candidate. Disappointingly, the most important witness were absent from the trial - Biljana Plavsic, Momcilo Perisic, Jovica Stanisic, and Franko Simatovic “Frenki.” Despite this fact, the evidence produced by those who were present at the trial did provide solid historical record on the Yugoslav war, particularly, Stipe Mesic, former president of the SFRY and
president of Croatia and Ante Markovic, the last prime minister of the Socialist Federative Republic of Yugoslavia (SFRY) who both testified that Milosevic was instrumental in the “break up” of Yugoslavia and had tremendous clout throughout the rest of the republic. Other protected and unprotected witnesses also corroborated with extant stories of Milosevic’s involvement in the conflict.

Additionally, a report prepared by a Belgian military intelligence officer, Reynaud Theunens concluded that Serbian authorities not only created the Croatian Serb and Bosnian Serb militaries and supported them in material and financial ways, but also supplied them with officers and closely coordinated operations with them. Theunens went on to say that evidence shows that Yugoslav People’s Army (JNA) units operated in close proximity with paramilitary and Territorial Defense forces in the Vukovar area in 1991; Milosevic and Army of Yugoslavia (VJ) Chief of Staff Momcilo Perisic had received all daily combat reports of RSK activity at least from 1993, and VJ troops assisted Bosnian Serb forces (VRS) in a number of operations in eastern Bosnia. Milosevic participated in Bosnia in large part because of his perception of the region being a demographic threat to both Serbs and Croats because of the high concentration of Islamic followers in the country.

Nevertheless, the prosecution case on the Croatia and Bosnia and Herzegovina phase finally closed on February 25, 2004. During the proceedings, the Prosecutor gave compelling arguments for Milosevic’s culpability in the Yugoslav war corroborated with solid witness statements confirming Milosevic’s role in instigating attacks and assisting with their implementation. However, both armed conflicts in these regions failed to fall under the category of “international” conflict under the grave breaches of the Geneva Conventions of 1949. Additionally, the charge of genocide would likely fail as well due not only to limited applicability of applying the charge of genocide but proving Milosevic intended to rid Yugoslavia of “unwanted persons” for ethnic purification. Overall, the trial did establish copious historical records to implicate Milosevic in the Balkan conflict. However, two years later, proceedings remained ongoing for the failing leader and regrettably, Slobodan Milosevic died in 2006 due to persistent health problems.

CONCLUSION

Discontented Yugoslav citizens sought political and cultural autonomy with the emergence of Slovenia, Croatia, Macedonia, and Bosnia – Herzegovina in 1991 and 1992 after the collapse of the Soviet/USSR Empire. Immediately, interethnic violence arose among former nationals where over 300,000 people were killed and over 2 million civilians were displaced. The United Nations responded to the crisis with the creation of the International Criminal Tribunal for the Former Yugoslavia (ICTY), 47 years after the international military tribunals of the Second World War. After sixteen years, the ICTY has indicted 161 persons and rendered over 58 sentences. To understand if the ICTY is capable of executing “true” justice and civil

53 Ibid.
55 Yves Beigbeder, “Chapter 3: The International Criminal Tribunal for the Former Yugoslavia,” p. 82, 83.
reconciliation in South Eastern Europe, I examined the case of former Serbian President Slobodan Milosevic.

During this “trial of the century,” Milosevic became the first former head of state to ever be judged at an international criminal court. Charges of being a commander and participant in a joint criminal enterprise for the commission of offences in Croatia, Bosnia and Herzegovina, and Kosovo, crimes against humanity, violations of the laws or customs of war, and, in respect to the population of Bosnia and Herzegovina - genocide were brought against the former President of Serbia. During the course of the proceedings, Serbia reluctantly offered assistance to the Tribunal with exchanges for international aid being the prime incentive for cooperation with the ICTY. Nonetheless, large amounts of evidence from a variety of witnesses implicated Milosevic in the Yugoslav war. And, the opportunity to make Milosevic an example for any leader seeking to declare “sovereignty immunity” against their involvement in inhumane political and military actions was not lost when Milosevic died in 2006. The Milosevic trial now stands as a model for the ICC amid ICC Chief Prosecutor Luis Moreno - Ocampo initiating charges of crimes against humanity and war crimes against sitting Sudanese President Omar al-Bashir for his alleged culpability in Darfur.

POLICY RELEVANCE

Multinational states are prone to continued interethnic violence if the international community does not intervene to reduce the rates of intrastate conflict, therefore, I believe international criminal courts are crucial to conflict prevention and civil reconciliation. The ICTY is set to conclude its judicial proceedings by the year 2010 with new research findings facing the threat of being outdated amid the establishment of the ICC. Time jurisdiction for the ICTY can lead to extensive research which is time consuming and burdensome for a single researcher to undertake under time constraints, requiring more researchers to assist with collecting and evaluating data. Although, the arrests of suspected criminals and the response of the international community and those states involved in the conflict is time consuming, the development of new insights into this conflict substantiates the creation of hybrid/special courts and the ICC in general. To understand how states in South Eastern Europe and around the world can resolve international disputes and unsettled grievances, the ICTY stands as a model for international courts and the International Criminal Court (ICC) with its emphasis on justice promotion and reconciliation among former antagonists.
REFERENCE


