

The Court of convenience:

International Criminal Tribunal for the Former Yugoslavia

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Abstract

The International Criminal Tribunal for the Former Yugoslavia is allegedly established as an emergency measure to stop atrocities in the already ongoing ethnic conflict and bring those responsible for war crimes and crimes against humanity to justice. Established in 1993, The ICTY is the first international *ad hoc* criminal tribunal since the Nuremburg and Tokyo Trials. Located in The Hague, it set out to serve as an example that no one is above the law thus prosecuting high ranking officials and heads of states. Abolishing impunity, delivering justice, bringing peace and security to the war-torn region, and above all giving a voice to the victims are said to be the main objectives of the Tribunal.

Nevertheless, the last two decades of the Tribunal's operation have seen more failures than successes. The ICTY has not scored very well with the majority of the population of the once warring nations nor has the court lived up to its expectations. Instead, it has served as a political instrument of the powerful nations who aim to exert their hegemonic powers on the weaker states and nations. The ICTY is serving its purpose, one of a façade behind which those who have established the Tribunal can exercise their further geopolitical aspirations with absolute judicial immunity. The Tribunal's legitimacy and credibility are constantly placed under scrutiny due to its unorthodox judicial practices, extremely controversial judgments and lack of impartiality and judicial independence.

For my father

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INTRODUCTION

On December 31, 2014 the International Criminal Tribunal for the Former Yugoslavia (hereinafter ICTY) will forever close its doors leaving behind many residues of historical, moral, and legal content. Balkanization – divide and conquer phenomenon was successfully inserted and is still firmly holding ground with its residues contaminating post-war communities in the former Yugoslavia. These residues have polluted the road of reconciliation which may never be completely constructed for generations to come. The legacy that the ICTY leaves behind will forever haunt the integrity of an international ad hoc body and the sloppy execution of international law. The Hague Tribunal is an example of perverse abuse of jurisprudence that serves greater hegemonic purposes of those who established the court in the first place. Considering the ICTY has been etched in history along with its controversial judgments layered with biased journalism, in reality it robs humanity of the truth while producing false historical records.

The biggest sin of the Tribunal is one of moral nature, leaving the most severe and debilitating impact on society as a whole. It has aided a propaganda coup to demonize an entire nation with prescribing it the worst crime of all – genocide. It has created unbearable conditions for maintaining mere coexistence of once warring nations, let alone promoting reconciliation and building better relations. Instead of helping peace and stability settle in the region, the politics of the court have further deteriorated the pillars of hope on which the former can be achieved. Permanent installments of foreign arbitrators on the soil of the former Yugoslavia are a testament of victor's justice wherein occupation of a sovereign country has been widely accepted as the norm.

The purpose of this paper is to answer the question: What are the consequences of the ICTY's politicization?

In a political game of thrones world superpowers exert their hegemony onto weaker states and nations which become collateral damage in their quest for domination. The paper will establish a relationship between the propagandist and persuasive nature of the media and the establishment of the ICTY. Pledging allegiance to the international tribunal by servicing its PR department, the media was instrumental in distorting the truth and creating an environment suitable for operationalizing, maneuvering, and throwing around political weight of those who have vested interests in the Tribunal (i.e. NATO, the US). With the help of the media and “embedded” journalists who were resorting to one-sided biased reporting the stage was set for big players to assert their positions. Thus, the common critique of the Tribunal as being a political instrument, a kangaroo court, is not to be easily discounted.

Enormous capital has been funneled into the Tribunal thus leaving an impression of throwing money at a problem instead of helping to alleviate real problems on the ground in post-conflict communities. Two decades of media frenzy have consumed the people with hate and mutual mistrust whereas they built mental barricades causing resentment that leaves no room for open and constructive debate about the past. In the absence of a healthy dialogue and without an environment which allows for this dialogue to develop naturally, former neighbours turned enemies will continue to be enslaved by their opposing narratives and beliefs. It is evident even today, almost twenty years after the conflict the people are caught in a trap of eternal blame-shifting, stigmatization and victimization, thus unable to find inner peace.

The author, a native of Sarajevo, herself experienced the wrath of the merciless media propaganda that flourished during the war in Bosnia. Once the Dayton peace agreement was signed people started to slowly pick up the pieces of their shattered lives and try to glue them back together. After years of persistent applying at various embassies in Belgrade for a refugee status, finally in 1996 the author and her family immigrated to Canada. Upon touching Canadian soil in search of a better life, the family was hopeful that the painful memories are now at least some thousands of kilometers farther away.

Nevertheless, after just a few days in the country and on her way to enroll in one of the neighbourhood schools, the author was greeted with “Četnik whore” as she walked down the street. The echoes that shattered the mundane silence of that freezing March morning came from a Bosnian Muslim girl who also immigrated some years before. Both girls were twelve at the time. Hatred perpetuated by incessant smear campaigns against the Serbs was obviously omnipresent, virtually inescapable. It had been inbred and passed on from parents to their children. There were also many other instances of bullying and hate speech which the author was readily subjected to all throughout Junior High and High school.

Furthermore, this paper explores the less travelled road of circumstances surrounding the establishment of the International Crimes Tribunal for the former Yugoslavia. It proposes arguments which are crucial to the court’s incapacity to promote reconciliation but rather explain how the court has aided in destabilizing the region. The paper is constructed from a very practical perspective and aims to provide a comprehensive and concise outline of fundamental problems of the ICTY as it continues with its daily business while casting a shadow on its crucial impact on societies it alleges to protect.

The author's contribution is reminiscent of synthesizing a chain of events which have caused and continue to cause unprecedented damage to the former Yugoslavia region and the world community as a whole. The author is contributing by shedding light on some unexplored features surrounding the role of the ICTY and the consequences of politicization of an international criminal court. Most importantly, a sense of obligation has presided over the author to raise awareness and expose the myriad of problems concerning the establishment of the Tribunal and its inner workings.

Methodology

The methodology approach for this thesis is one of qualitative research design. Considering the very nature of the ICTY and its lengthy procedures dragging on for years, new information is continuously being generated. Main sources of information for this thesis have been gathered with the help of internet data of electronic law journals, media reports, ICTY official reports, and other independent sources. Also, various literary works have been utilized in efforts to extract theoretical foundations as well as empirical work collected throughout the twenty years of the Tribunal's existence.

The desk research involved analyzing scholarly literature and assessing various reports from both proponents and opponents of the Tribunal. The author extrapolates main arguments with the help of already existing literature and tries to create an analytical cohesion throughout the text. The qualitative method is used in an effort to establish a comprehensive and practical insight into the lingering problems of the Tribunal and consequences them stemming from them.

Chapter 1: Perceptions of the International Criminal Tribunal for the former Yugoslavia

Ever since the establishment of the ICTY there has been a myriad of debates surrounding its legality, effectiveness, and achievements. The proponents have been extremely vocal in expressing their satisfaction with the court regardless of the countless problems it continues to encounter. On the other hand, the critics are equally determined in their judgment of the Tribunal, calling it “a kangaroo court” and a complete failure of international law, among many other things.

1.1. Successes

The ICTY was established while the conflict was in its early stages, thus ongoing. The court has been hampered by structural problems; its very establishment is questionable on a legal basis, judicial independence and impartiality, allegations of bias and inability to contribute to reconciliation. Nevertheless, the supporters of ICTY are adamant that the court has proved to be successful despite its many problems. In as such, the proponents conclude that the tribunal has contributed greatly to establishing peace in the region, delivering justice, establishing the truth which will leave a historical record and upholding victim’s rights. One of the most important achievements of the ICTY is the ruling on the crime of genocide which is seen as the biggest contribution to international humanitarian law (Devitt 2012, 4). This extension of the 1948 Genocide Convention and the Geneva Conventions is of paramount importance for the ICTY forefathers.

In light of celebrating twenty years of the Tribunal’s existence, current President Judge Theodor Meron gave an enthusiastic speech in which he commended the ICTY for its many great achievements. Despite all the challenges, Meron is convinced the Tribunal has exercised fair and

efficient jurisprudence and “made profound contributions to global efforts to battle impunity, to international law, and to the rule of law in the former Yugoslavia” (Meron 2013).

Praising the ICTY as one of the best achievements of international humanitarian law is a common rhetoric of those ‘founding fathers and mothers’ of the Tribunal. An endless cascade of literature is flooding the libraries around the world in which the ICTY is viewed as a success, one of justice prevailing in the battle between good and evil. Upon the establishment of the ICTY and its sister International Criminal Tribunal for Rwanda (ICTR), there has been a proliferation of other subsequent courts for Sierra Leon, Uganda, Nigeria, Kosovo, Cambodia and East Timor. Also, without the ICTY there would probably be no permanent international court, the International Criminal Court (ICC) that was established through the Rome Statute in 1998 which entered into force in 2002 (Orentlicher 2010, 11).

The first ICTY President, Antonio Cassese boasted of tribunal’s remarkable achievements considering it was built from scratch (Clark 2012, 1). He commended American and French efforts for establishing the Tribunal and although it is essentially a UN institution it would not have been created without their impetus.

Never before Nuremburg and Tokyo Trials were any international criminal courts instituted for delivering justice in hopes of harvesting peace on the road to reconciliation. Interestingly enough, the ICTY is the first of its kind, an ad hoc tribunal which is now the point of reference for all those that followed, most importantly the International Criminal Court (ICC). Legal experts such as Michael Humphrey argue that we have gone a long way from Nuremburg and Tokyo and international justice has evolved tremendously whereas impunity is the thing of the past, replaced by justice on demand (Devitt 2012, 4). In addition, the ICTY has been

instrumental in merging diplomatic and interventionist methods in order to prevent further atrocities in Bosnia, restore the rule of law, and bring about reconciliation. Moreover, by prosecuting high ranking officials for war crimes the Tribunal has been successful in abolishing legal impunity which was exercised widely in South Africa and Latin America (Humphrey 2003, 496).

Humphrey (2003) welcomes the efforts of the ICTY in challenging impunity and individualizing guilt and adds that “the application of criminal law to large-scale atrocity necessarily result in selective prosecution, producing a symbolic economy of justice” (2003, 498). Trials serve as instruments of social healing which is accomplished through the punishment of the culprit. However, true reconciliation can only be achieved if the victim manages to forgive and becomes vengeance-free (Ibid, 499). Ad hoc tribunals such as the ICTY are of outmost importance for limiting violence while its prosecutions help deter future human rights abuses. Thus, these tribunals are established to send a message that grave breaches of humanitarian law will not go unpunished. The ICTY has greatly contributed to the grave breaches regime, in other words it expended the list of crimes under the Geneva Conventions and added to their greater interpretation. In addition, the Tribunal helped define the substance of grave breaches, modernized and developed standards to better operationalize them (Roberts 2009, 744).

The ICTY was launched with the promise of justice and it seems at any cost necessary. The tribunal is operating thousands of kilometers away from where the crimes took place thus in the eyes of the victims it is distancing them from justice. However, the reason for creating a court outside of the former Yugoslavia is one of a precautionary nature due to the fact that judicial systems in the post-war countries had to be marred with corruption therefore non-functional. In

addition, the locality of the court was also a method of preventing possible accusations of “victor’s justice” (Devitt 2012, 3).

The term victor’s justice dates back to the writings of Thucydides on the Peloponnesian War but became famous during the Nuremburg and Tokyo Trials. The trials were set up by the allied victors after defeating Nazi Germany in World War II. According to Bass (2002), although victory is needed for justice to be possible it is the fairness of the trial that makes it justice. In reference to Nuremburg, winners prosecuting losers justifies victor’s justice because they were put on trial for committing real crimes. Hence, the bombardment of German and Japanese cities by the allies is rationalized as exerting necessary power to defend the innocent from the wrath of the enemy (2002:329). In opposition to growing claims of the ICTY implementing victor’s justice and ethnic favoritism, Meernik (2003) argues that the ICTY is exercising law by following internationally accepted legal standards on which the judges base their decisions. He adds that there is absolutely no bias towards the Serbs but that those who committed most crimes in numbers and in severity get prosecuted and jailed for longer. The ICTY is almost completely void of political elements that could hinder its operation in any way despite judges coming from NATO countries (2003, 159).

Saxon (2005) opined that the ICTY sends a very strong political message as it should because the law is rarely separated from politics. In the absence of the Tribunal, Saxon argues that alleged notorious war criminals such as Radovan Karadzic and Ratko Mladic would still be able to abuse their power. Therefore, the message that there can be no one above the law is loud and clear (2005:569). In regards to accepting guilty pleas for giving out milder sentences, the Tribunal welcomes public confessions of guilt by the accused. Taking responsibility for their horrific crimes and expressing remorse is considered to be very helpful in achieving reconciliation,

bringing peace and justice to post-war communities. The main objective of the ICTY is to establish the truth that will guide the rule of law and aid in the process of reconciliation. The accusations of American stronghold on the Tribunal in efforts to further their hegemonic inspirations are dismissed as judicial illiteracy suffered under Tito in the former Yugoslavia. The negative attitudes towards the ICTY stem from not being able to confront the past, especially for to the Serbs. Therefore, the judgments rendered and the truth that is constantly being revealed during trials is playing a crucial role in dealing with “the worst parts of their histories” for the Bosnian Serbs which may play a vital role in preventing history from being repeated (Ibid, 563).

Diane Orentlicher (2010) acknowledges that despite all its problems the ICTY has given the victims some justice as the Bosnian Muslims have been highly supportive of the court which is a true testament because “according to the most authoritative data base”¹ the Bosnian Muslims (over 80%) suffered the most in the war (2010:13). She correlates the differing perceptions of the Tribunal divided down ethnic lines with the number of defendants from all three sides. By arguing that two thirds of indictees are Bosnian Serb, she asserts that it is somewhat logical for this ethnic group to have the biggest resentment towards the ICTY. The Bosnian Muslims have been the most receptive to the Tribunal and approving of its work, while the Croats have always been somewhere in the middle (Ibid, 49).

1.2. Justice vs. Peace

The ever-present discourse of the co-existence of peace and justice is conceding to those in favor of justice by any means necessary. Pierre Hazan (2004) tackles the strain between peace and justice in reference to the conflict in Bosnia and the ICTY. From the very beginning the policy of the Security Council was marred with ambiguities and even more so once the Tribunal was

¹ The author does not specify nor does she refer to this “most authoritative data base” by any name.

created. The Americans, French and British employed strategic legalism which was the product of realpolitik disguised in legality to endorse their agendas. Lawrence Eagleburger, American Secretary of State used the strategy first in order to add credence to his premature accusation of the Serbian leadership. The Americans sought for the Vance-Owen peace plan to be rejected, in which they succeeded. Hazan points out how the law was used, or in other words abused to stifle efforts to reach a negotiation. It was at this juncture that the Americans succeeded in naming their candidates for potential war criminals very early on, before the ICTY was even established. All were Serbs; Slobodan Milosevic, Ratko Mladic and Radovan Karadzic. Also, the French used strategic legalism for their political goals as to excuse France from any potential criticism and curry favor with the French public (Hazan 2004, 535).

Shortly after the superpowers set the stage for their political parade and the ICTY opened its door for operation. The French had no intention of creating an effective international tribunal but simply exercise judicial activism. On the other hand, the Americans wanted an operational court that would serve as a legal weapon to pursue their interests. Thus, they invested immensely into the Tribunal, in particular the Office of the Prosecutor (OTP) which greatly adds to scepticism of the ICTY's independence. Having provided the Tribunal with financial and human aid along with its political backing, the United States failed to provide evidence and attest to Eagleburger's claims against the Serbian leaders (Ibid, 536).

The debate over the symbiosis of peace and justice and which should be on which variable axis in correlation to international tribunals has been widely replaced by a notion of peace versus justice. Unlike in other parts of the world where amnesty was applied in order to heal the wounds of violent conflicts, the ICTY opted for a peace via justice approach. In cases of South Africa and Latin America, truth and reconciliation commissions (TRC) were instrumental in restoring

peace rather than using criminal trials which were considered to be damaging the society more. Establishing the truth was considered the most vital component of reconciliation and eventual peaceful co-existence between once warring nations or groups. On the other hand, the ICTY was adamant that without first enforcing justice there can be no peace. However, Clark argues that there is little empirical evidence which indicates that criminal tribunals have assisted in building peace and stability (Clark 2011, 19). Furthermore, if the debate over peace and justice outweighs the notion where peace is in direct opposition to justice than the alleged function of international criminal courts to promote peace is bound to be highly jeopardized (Ibid, 21).

1.3. Failures

Bloodshed in El Salvador, genocide in Indonesia and Cambodia among many other horrific atrocities around the globe never until the Bosnian conflict prompted the Security Council to establish an international criminal court to stop the suffering as is claimed to be the incentive behind the ICTY. Thus, a very important question is raised of why it took so long for establishing an international criminal tribunal. Nuremberg and Tokyo seem to have served their purpose and failed to “lend themselves immediately to the progressive development and codification of international criminal law” (Zacklin, 2004: 541).

Academics and human activists who advocated for a permanent installation of an international criminal court were seen as idealistic and thus marginalized. Also, adding to many decades of infeasibility of an international court was the fierce refusals of many states to surrender their sovereignty to the court. Therefore, there was no international criminal code that would ascertain the establishment of such a court (Ibid). The ad hoc tribunals were more a cause of political contrition rather than a deliberate policy to uphold international justice. Assumption is that the

international community failed to respond quickly to the wars and in order to save face established a tribunal that would ease their conscience (Ibid, 542).

Fatic (2000) argues that the ICTY's presumed role was one of fostering an environment respondent to reconciliation and cooperation between the countries of the former Yugoslavia. The tribunal should have acted as a "filter of messages" thus circumventing the proliferation of resentful feelings (2000: 9). Failing to create an atmosphere of trust and understanding, the ICTY has been labeled a political instrument rather than a genuine mission of the international community to halt violence and bring peace to the region. Consequently, the ICTY failed to stay impartial and provide judgments according to misdeeds, and not persons and nations. As such, the ICTY could not be seen as a facilitator of regional reconciliation but remains a pawn in "the *Realpolitik* of the great powers" (Ibid, 10).

Krishanu Sengupta (2007) contends that due to the long political impasse of the Cold War, the UN still on its training wheels needed to accentuate its legitimacy which was under scrutiny during the Yugoslav and Rwanda conflicts (2007: 60). The ICTY has been highly controversial in its objectives whereas it was promising a lot and setting the expectations bar very high but delivering very little. Once the Tribunal started encountering problems it quickly went back on its promises by trying to refute them. Thus, Hayden (2011) argues that the ICTY is a political tool for those who finance the Tribunal and only masks its true role behind the vows of reconciliation. Condemning the Tribunal for its 'antiwar profiteering', Hayden strongly believes that the ICTY was utilized as a mechanism which allowed for the war to continue as it served other purposes. The NATO powers were able to reawaken the legacy by legitimizing its purpose after almost fifty years of inactivity. The business of NATO gained new grounds and sought to

expand its power by acquiring new recruits and further undermine Russia's influence in the Balkans (2011: 324).

In regards to political elites in the former Yugoslavia, the ICTY was successfully used as a mechanism of controlling the masses and keeping very much alive nationalist tensions. The Srebrenica "genocide" in particular as Hayden points out is used as a strategic tool that "legitimizes a grievance or perpetrates persecution of defenders of each besieged nation" (Ibid, 325).

Despite many praises, the ad hoc tribunals have fallen short time and time again as ineffective and inefficient representatives of international justice. Former UN Assistant Secretary-General for Legal Affairs, Ralph Zacklin (2004), outlined many problems facing the ICTY. He claims that the "ad hoc Tribunals have been too costly, too inefficient and too ineffective" (2004, 545).

The enormous costs of the Tribunal cannot be legitimized by its aggressive pursuit of justice if it is at the expense of impoverishing the post-war regions for whom the tribunal was allegedly established. Hayden (2006) noted that the ICTY budgets kept ballooning each year and for the first twelve years of its operations they amounted to about one billion USD. Furthermore, he compares the ICTY budgets to those of major international agencies assigned to rebuild Bosnia and Herzegovina and highlights stark discrepancies. In comparison to the World Bank investments to promote growth in Bosnia, the ICTY is awarded four times the amount the World Bank allotted to hospitals and clinics. Also, the United Nations Development Program (UNDP) expenditures in Bosnia between 1996 and 2004 came out to around 60% of a single year '04/05 budget of the ICTY. Following the conflict, well over half a million refugees and IDPs were scattered around the region. The UNHCR was responsible for assisting these people and in 2004

disposed of a budget just over \$50 million which was still only %40 of the ICTY budget. Even more staggering is the comparison of Bosnia's IMF loan payments in 2005 which were close to \$30 million. It was calculated that after paying three years in advance all of Bosnia's IMF projected payments, the ICTY budget for 2004/05 would still have left \$197 million at its disposal (2006, 400-403).

Hayden (2006) strongly opposes the Tribunal's tactics of seeking justice over "the needs of the elderly, youth, the sick, disabled and unemployed" (Ibid, 403). He also raises an important question, one that seems to elude a popular public debate, whereas the pursuit of justice at any cost should take precedent over economic and political development of war-torn regions. It is a common fact that economic and political sanctions have debilitated nations, such as was seen in the former Yugoslavia. The power of the ICTY to dictate play and impose sanctions on those that do not fully cooperate is very damaging. This only stalls the economic development which is extremely important for the post-war rehabilitation of the region (Ibid).

The Tribunal has been very often criticized for its lack of impartiality but the advocates are persistent in arguing that one side committed the most atrocities and thus endured more prosecutions. Fatic (2000) concurs that it is a rarity particularly in civil war to have as equally as many crimes committed on all sides. However, this creates an environment of stigmatization due to the perception of a whole nation as the sole guilty party. This inevitably minimizes the gravity of crimes of those perceived less guilty thus the claim they were simply defending themselves. This could potentially entice inter-group tensions and halt reconciliation. Fatic skews our attention to different strategies used by the international tribunals for achieving the impression of impartiality (2000:84).

It is argued that justice is the most important component in promoting reconciliation which is crucial for implementing transitional justice. Although reconciliation was not officially a part of the ICTY mandate, it was insinuated and widely accepted as one of the outcomes of the court. The Security Council reassured the world that the ICTY will serve its purpose of aiding in restoration and maintenance of peace in the region. However, Hayden (2011) posits that the ICTY has more counter effects and causes excessive damage that directly hinders the process of reconciliation. The very actions of the tribunal have enticed more ethnic hatred among previously warring nations and served as a catalyst for mutual recrimination (2011: 316).

In contrast to the Nuremburg Tribunal which lasted less than five years, the ICTY is excruciatingly slow and after twenty years keeps the painful war memories very much alive. In addition, the overwhelming resources put into the Tribunal could much better serve the people it claims to represent. The stagnant social and economic climate in the former Yugoslavia cannot bring about reconciliation, quite the opposite. There is an obvious gap in the literature as almost no research was conducted in regards to the social and economic impact of the Tribunal on former Yugoslav republics. Out of many problems plaguing the tribunal, its social role and impact on post-war communities is assumed and rarely studied (R. M. Hayden 2006, 395).

On the other hand, Janine Clark (2011) highlights a different gap in regards to truth and reconciliation, in other words ‘an impact gap’. She posits the need for transitional justice that is evidence-based thus advocating for truth and reconciliation commissions (TRC). Clark argues that this approach is important for three reasons: 1) to produce realistic expectations of what the ICTY can achieve; 2) to be able to assess the work of the Tribunal and if in fact it is contributing to peace and restoration; and 3) there is no “one-size-fits-all” model of transitional justice (Clark 2011, 244-245).

However, the biggest gap in the literature is the acknowledgment of the crimes committed against the Serbs. There has almost been a complete omission of Serbian victims by leading scholars and the mainstream media. Hayden (2006) criticizes the proponents for their premature optimism by arguing that the Tribunal has a very bad report card as a result of a low popularity score and lack of credibility. Therefore, the ICTY can delay reconciliation and prevent closure “by keeping the fate of selected victims in constant view” while ignoring others (2006:404).

Chapter 2: Background Context

2.1. The Causes and Reasons for the dissolution of SFRJ²

From its very onset, Yugoslavia, the union of South Slavs was being undermined by foreign factors and domestic quislings. The culprits of systematic destruction of Yugoslavia are identified in the German aspirations and Austrian efforts to subdue communism, supported by the United States under the supervision of the Vatican and the Pope Wojtyla (Ekmecic 2008, 552-553). Despite system and state regulation protecting the given order by constitutional and statehood amendments, the same order was thoroughly undermined from the inside-out. Foreign intelligence agencies strongly supported separatist agendas and injected insiders and spies of all sorts in order to weaken the inner-domestic and outer-foreign position of the country. As such, during the sixties and seventies there was a proliferation of the Young Muslims and Ustasha organizations which carried out various killings and sabotage. There were embassy assassinations and hijacking of airplanes and an organized Ustasha terrorist organization in the early 1970s (Vukovic 2001, 222; CIA 1976).

Nevertheless, Yugoslavia was thriving economically and developing into a modern and sovereign country, or so it seemed. In 1984, Yugoslavia won the bid and hosted the XIV Winter Olympic Games. On the surface everything was in tune with the exhilarating mood of the people. However, during this period the country was flooded with foreign agents and counter-intelligence who scouted suitable pawns and those prone to criminal actions in order to set off a breakup of a single unique system of self-governance of the working class in the world (Ekmecic 2008, 526). They operated thoroughly and were very well organized. They started the destabilization process by focusing on the most vital component parts of the country, the republics.

² Socijalna Federativna Republika Jugoslavija – Socialist Federal Republic of Yugoslavia

Slovenia was first as was the most developed and the most-favored. During Tito's reign, Slovenia enjoyed the largest inflow of capital thus having the best standard and the first, led by foreign services, to begin the breakup of the system and country respectively. If history has us convinced that the 1914 assassination of Archduke Ferdinand in Sarajevo was the cause of the outbreak of World War I, then a claim could be made that the Slovenian secession consequently led to the final crumbling of Yugoslavia (Vukovic 2001, 214). Politicians, being guided by foreign intelligence services (with Germany playing the lead role), launched an organized a well-prepared attack. They masterfully used the confusion after the death of then President Tito to their advantage. People were in a state of trance following the death of their beloved 'dictator'. This was a perfect opportunity to bring to power a coalition of obedient representatives, throwing into the mix large amounts of money which consequently destroyed almost all factories due to unimaginable inflation never before recorded in the history of banking (Ekmecic 2008).

Considering the fact that the JNA³ (the Yugoslav People's Army) and its officer corps consisted mostly of Serbs (although there were other nationalities conscripted as well), dismantling the army was the first strategic blow. In the meantime, Franjo Tudjman and his HDZ⁴ party which included extremists from the Croatian diaspora such as Gojko Susak gained significant power in Croatia while receiving money and support from Germany (Vukovic 2001, 222).

The mosaic was completed and the war loomed with the onset of well-organized attacks on the JNA barracks in Slovenia. The JNA personnel started crumbling under strong foreign instructions, and they were not prepared to fight with the people from whom they were incurred and found themselves in grave confusion. Since JNA did not intend on fighting, hence they have

³ Jugoslovenska Narodna Armija

⁴ Hrvatska Demokratska Zajednica - Croatian Democratic Union

done all to make a peaceful and civilized retreat from by then self-proclaimed Republic of Slovenia. However, in order to withdraw the JNA placed a condition on Slovenia to unblock the barracks and release the captured officers and soldiers. The Slovenian government supported by the Germany declined to follow suit which caused a brief skirmish between the two parties. Nonetheless, there were JNA casualties (Dragnich 2006, 48-49).

Right after the Slovenian secession, Croatia declared independence which was again supported by Germany. The Croatian government headed by Franjo Tudjman and Gojko Susak launched an open war with the Serb minority, forcing them to defend themselves in fear of retracing their suffering in the Second World War (Vilic and Todorovic 2002). Despite the UN weapons embargo, Croatia continued to be supplied with weapons by the Americans (Cohen 1994).

After Croatia came Bosnia and Herzegovina (BiH), which will go down in history for its new methods of war as never before seen in this region. Journalists, Arab mujahedeen, foreign mercenaries and assassins, fierce propaganda machinery; all found themselves in Bosnia (Fulton 2010, 111). Before the eventual bloodshed in Bosnia an attempt at a peaceful resolution was made in Lisbon on February 23, 1992. The Cutileiro plan was signed by all three Bosnian leaders – Radovan Karadzic, Alija Izetbegovic, and Mate Boban. The plan was a partition of Bosnia and Herzegovina into three ethnic divisions thus becoming a confederation; Serb, Croat, and Muslim, respectively (Binder 1993). Despite having signed, the Bosnian Muslim leader Alija Izetbegovic reneged only after meeting with the US ambassador Warren Zimmerman. Thus, the Cutileiro plan was never implemented due to the US encouragement of both Muslims and Croats to reject the agreement after having signed it. This was the beginning of American destabilization of the region, just like the Germans played a significant role with siding with Tudjman's aspirations of an independent Croatia (Gibbs 2009, 109-112).

The unprovoked attacks on the retreating JNA columns (which was the only legal military force at the time) in May would ignite the conflict into a full-blown war. First, it was the Dobrovoljacka massacre followed by the infamous carnage of the Tuzla column. Upon an agreement for safe withdrawal of the Yugoslav Army from the Bosnian territory, safe passage was guaranteed. Nevertheless, it would turn out to be a bloodbath of calculated ambushed attacks by the Bosnian paramilitary troops on the retreating JNA columns. Massacre in Dobrovoljacka Street numbered up to sixty young soldiers all aged 18 to 20. Their bodies were burned and mutilated. The Tuzla column massacre claimed up to two hundred lives of young innocent men (Vilic and Todorovic 2002; Gorin 2009). These massacres were never investigated by the Hague Tribunal.

The war intensified as wealthy Arab countries were sending large sums of money, consistently supplying the Muslim side with weapons while the U.S. secret services was responsible for training and organizing their paramilitary units (The White House 1996; Dragnich 2006, 50). Millions of dollars from Iran and Saudi Arabia were funneled through and into the hands of U.S. congressmen and politicians who assured terrorist activities were conducted according to pre-drawn plans in a campaign to condemn Serbs and impose sanctions on them (O'Connor 1997; Mitchell 1996).

The very last year of war would leave a mark in history following the fall of Srebrenica in July 1995 and its aftermath, dubbed “the worst war crime in Europe since WWII”. It also became subjected to harsh criticism as being the greatest political propaganda of the twentieth century (Herman, 2005). Today, Srebrenica massacre is probably the biggest obstacle to restoring relations between Serbs and Muslims and of having any hope of meaningful reconciliation. A month later, Operation Storm left its deadly stamp in human history as the biggest ethnic

cleansing after the Second World War with over a quarter of a million Serbs ethnically cleansed from Croatia (Savich 2010).

Finally, in November 1995 the three-and-a-half year war came to an end after all three ethnic groups came to a negotiating table and signed the famous Dayton Accords. Bosnia and Herzegovina was partitioned into two entities – the Federation of Muslims and Croats occupy 51% of the territory and Republika Srpska consisting of Bosnian Serbs in the remaining 49% of the territory (Chandler 2000, 67).

2.2. The Establishment of the International Criminal Tribunal for the Former Yugoslavia

The Tribunal was established in 1993 in the midst of a brewing ethnic war allegedly to deter warring leaders to refrain from violence in hopes of establishing peace. Enacted by the UN Security Council Resolution 827 on May 23, 1993 the ICTY aimed to achieve three goals; to deliver justice by individualising guilt and bringing those responsible to account for their actions, deter future atrocities, and assist in further reconciliation and peace building between the nations (Clark 2009, 23).

It was a ‘truly historical moment’ when the Tribunal was established in an effort to reshape and reinforce accountability for human rights breaches during armed conflicts. To set things in motion, the Security Council requested in Resolution 808 a single draft Statute in an attempt to establish an international criminal court for the former Yugoslavia. From the very beginning there was great scepticism in how the Tribunal would overcome many obstacles that were presented; be it of legal, institutional or political nature (Zacklin, Some Major Problems in the Drafting of the ICTY Statute 2004, 361).

Establishing an international body requires a treaty which is the epitome of international law, thus through a treaty states exercise their sovereign will and negotiate terms and conditions once the intergovernmental treaty body is formed, i.e. the tribunal. Hence, such a tribunal would apply to only those states which have signed and ratified the treaty. This presented a major problem as a treaty is only applicable to those states which have signed and ratified it, which in theory is a very lengthy process and requires (Ibid, 362).

In addition, considering the war in the former Yugoslavia was intensifying and time was the enemy a more crucial issue was the reality that warring parties would not be very keen in coming to the table, signing and ratifying the treaty. Fear of embarking on exhausting and time consuming negotiations was unwelcomed by the international community who wanted a 'quick fix' to the situation at hand. The strategy quickly shifted and wheels were in motion for a more speedy solution. It had to be radical considering the many clauses in international law had to be surpassed and new roads bulldozed.

As such, the Security Council was determined to exercise its 'hidden powers' under Chapter VII of the UN Charter which binds all states as a matter of law. The lurking question still haunts many legal experts in as such as if it could be legally justified. Being that the Security Council is the protector of international peace and security and it exercises for which its capabilities are virtually limitless. In order to surpass some of the legalities it needed to be established that the war in the former Yugoslavia constituted a direct threat to international peace and security (Zacklin 2004, 362-3).

Once the Security Council reached a consensus that the situation in the former Yugoslavia posed a threat, it exercised its power under the UN Charter to establish the International Criminal

Tribunal for the former Yugoslavia. Controversies swirled but the decision was considered legal and justified and one that will fulfill the need to hurry justice. Consequently, the then Secretary General Boutros-Ghali gave the green light in establishing the ICTY under the auspices of Chapter VII which was concluded to be legally justified (Ibid, 363).

Dr. Kosta Cavoski (2000) argues that the Hague Tribunal is illegally established by lacking the essential legal basis for its formation. He is critical of the Security Council for providing a very feeble proof of a legal basis found in one of the Chapter VII clauses of the UN Charter (2000:2). Nonetheless, the Security Council successfully surpassed this rule and in Resolution 827 of 25 May 1993 self-gifted the right to establish for the first time an ad-hoc tribunal. The legal basis was protected by a veil of Chapter VII of the UN Charter under which the Security Council takes on a protector role of international peace and security as it was concluded that the Yugoslav conflict poses a direct threat to world's peace. Regardless of a loosely defined legal basis provided by the Secretary-General, what actually won over the legality was the ultimate goal of expediency and effectiveness. According to Cavoski (2000), the Security Council implemented nonexistent legislative powers through Resolution 827 of 25 May by suspending 1949 Geneva Convention protocols and giving the Tribunal jurisdiction over crimes committed on the territory of the former SFR Yugoslavia. Having done so, it singlehandedly made null and void the competence of all national courts worldwide (2000, 3).

According to the latest reports (updated 30 May 2013), the ICTY has indicted 161 persons for grave breaches of international humanitarian law committed in the former Yugoslavia as of January 1991. Out of the 161 indictees, the Tribunal has so far processed 136 with 69 of those being sentenced, 18 acquitted, 13 referred to the national courts, and 36 have either deceased or

their charges withdrawn (ICTY 2013). These numbers are incredible considering the Nuremburg Trial only had twenty four defendants.

Chapter 3: The residues of the ICTY

3.1. Media as a propaganda tool

Power of mass media has proven to be insurmountable and used more than often as a political tool for gaining points and rendering justice. In regards to the raging war in the former Yugoslavia it was precisely the media coverage which was strategically applied to assert public opinion in favor of events that would follow – establishment of the ICTY. Media campaigns played a crucial role in the conflict in as such as securing indictments of those already demonized in the media thus circumventing routine investigation and legal procedures. The media is ultimately the main source of information which American and British politicians used to make vital decisions and start the pre-mature finger-pointing. Nazifying the Serbs started very early into the conflict. It started with the image manipulation of the Bosnian Serb “death camps” by the British news crew. Every magazine and newspaper front page illustrated the same image of an emaciated Bosnian Muslim man behind a barbwire fence plastered with the editor’s choosing of emotionally-laden titles of horror (E. S. Herman 2009, 1; Mandel 2004, 122).

Pictures fashioned using camera angles and edited to look like Auschwitz-style barbwire ‘concentration camps’ of the infamous Omarska and Trnopolje camps were the start of the Nazi-analogies contributed to the Serbs. The images enraged the world and the green light was given for the Security Council to establish the Tribunal. However, Thomas Deichmann (1997), a German freelance journalist inquired into these allegations and through his investigation concluded that the British journalists were inside the little compound that was enclosed by a barbed wire fence when they filmed the camp, in other words the people in the camp had freedom of movement as Trnopolje camp was a refugee transit center. However, the journalists interviewed the people through the fence to have a more dramatic effect (Deichmann 1997).

Despite the controversies over the alleged ‘concentration’ camps the western powers had already divided the nations into friends and foes. The Bosnian Muslims and Croats were friends, considered victims of Serbian aggression while the Serbs were the foes. The ultimate blow to the Serbs was the ICTY’s decision to rule the crimes in Srebrenica as genocide. Considering the power of the Western media and the narrative that was already widely adopted it seems that the graver the charge the less need for irrefutable proof (Johnstone 1997, 16).

Peter Brock (2005) also extensively researched the media involvement in Yugoslavia and in his book *Media Cleansing: Dirty Reporting* exposed the role of the media as one of doing “yeoman service in advancing the program of the individuals, groups and governments that wanted war” (S. E. Herman 2006, 3-4). Contrary to popular belief, embedded journalism is not a phenomenon which proliferated during the Iraqi invasion under the Bush administration but rather a Western media leading method during the Yugoslav conflicts (Ibid).

Edward S. Herman (2006) gives a very detailed account of the content in which the Brock (2005) discusses “pack journalism”⁵ as the main source of information. Thus, journalists in Bosnia are identified as the pack which came together to represent the presumed ‘good side’. In addition, he proclaims that most of the journalists did not know the language and had poor knowledge of the region; its geographical, historical and cultural significance in the Balkan Peninsula. Consequently, finding themselves in a war zone and out of fear for their life the journalists tended to ‘congregate in protected areas’ (Herman 2006, 4). As such, they depended on each

⁵ ‘Pack journalism’ is first mentioned in the book *The Boys on the Bus* by Timothy Crouse where he acknowledges that “any self-respecting journalist would sooner endorse incest than come out in favor of pack journalism”. <http://www.washingtonpost.com/wp-dyn/articles/A37323-2004Aug26.html> Thus, “pack journalism” is defined as homogenous reporting, in other words mimicking reports of other colleagues because chances of ‘getting it wrong’ are close to impossible because they reiterate the same thing. <http://www.christian-sauve.com/2009/04/the-boys-on-the-bus-timothy-crouse/>

other to produce news and because they were positioned solely in the areas under Bosnian Muslim control, their reports in the end were identical.

The journalists lacked demographic knowledge of the city of Sarajevo and its large Serb population thus unsuspecting of their faith. Their material only focused on the victimization of the Bosnian Muslims failing to provide transparency and give a bigger picture of the conflict. Many of the journalists went on to write books and profit from their war reporting which Brock labels “victim epics” that are based on unsubstantiated evidence. This fusillade was confirmed by the UN official Aracelly Santana which noted never seeing “so much lack of professionalism and ethics in the press.” (S. E. Herman 2006, 7) Such one-sided distorted reports “pollute[s] the informational reservoir of history” in which the real facts become casualties of war (Carpenter 2011, 25).

3.1.1. Reporting on the ICTY

In their *The New York Times on the Yugoslavia Tribunal: A Study in Total Propaganda Service* (2004), Edward S. Herman and David Peterson carefully dissect the media perception of the ICTY proceedings along with emphasizing the overall media theatrics involved in the Yugoslav conflicts of the 1990s. The authors are extremely tongue sharp in regards to western mainstream media portrayal of the ICTY in which convenient truth takes precedent over anything else. In their view it is a straightforward concept of a ‘party line’ in which roles are ascribed in advance; one of a villain and the other of a victim. Naturally, the villain is demonized while the victim is tactically exposed and dramatized. (Herman and Peterson, *The New York Times on the Yugoslav Tribunal: A study in total propaganda service* 2004)

3.1.2. Demonize, indict, convict

The *New York Times* extensively covered the ICTY trial proceedings and according to Herman and Peterson (2004) journalists assumed their party line position, one which adhered to the mainstream narrative of “bad Serbs” and “good Muslims and Croats”. Those who strayed, as was the case with David Binder who failed to comply with the party line, were quickly replaced by “less knowledgeable but more accommodating journalists” (Herman and Peterson, *The New York Times on the Yugoslav Tribunal: A study in total propaganda service* 2004, 5). Herman and Peterson carefully reconstruct Marlise Simons’ reporting as she served as the paper’s main reporter on the ICTY. They decompose Simons’ 120 articles on the Tribunal and draw conclusions from their detailed analysis. The results show that almost half of the sources Simons consistently relied on were produced by the NATO and ICTY officials to corroborate the relativity of her printed claims (Ibid, 2).

Thus, the other half is also controversial as the sources are extracted from human rights group officials in alliance with the ICTY and indictees that pled guilty in exchange for lighter sentences. Essentially, her sources are derivatives of the party line rhetoric and directly influence the conscribed bias and preferential treatment of the prosecution which is clearly stated by Herman and Peterson (2004). The most impactful analysis of Simons’ biased reporting is proposed by the language and tone she uses in further inflicting theatrical elements in an effort to coat her words by evoking stronger emotions among readers.

MARLISE SIMONS' WORD USAGE

Slobodan Milosevic	Prosecutors Louise Arbour and Carla Del Ponte; Judge Richard May
Infamous	Forceful (Arbour)
Sniped	Resolute (Arbour)
Scoffed	New assertiveness (Arbour)
Smirk on his face	Very capable (Arbour)
Speechmaking	No-nonsense style (Arbour)
Badgers the simple conscripts	Tough crime fighter (Del Ponte)
Carping	Unswerving prosecutor (Del Ponte)
Blustery defense	Natural fighter (Del Ponte)
Loud and aggressive	Unrelenting hunter (Del Ponte)
Notorious	Finding the truth (Del Ponte)
Defiant	Keeping tight control (May)
Reverted to sarcasm	Patiently repeated questions (May)
Contemptuous	Sober, polite and tough (May)
Outbursts	Expert on evidence (May)
Face often distorted with anger	Among the best suited (May)

Table 1-1 (Herman and Peterson, *The Dismantling of Yugoslavia* 2007, 5)

Critically addressed by Herman and Peterson (2004), a clear-cut dichotomy is represented as evident from the excerpt table of a compiled ‘thesaurus’ used by Simons during her reporting on the Tribunal. One cannot criticize one’s true beliefs, however a journalist is obliged to refrain from personal anecdotes but rather make an attempt at transparent and objective reporting. Nevertheless, Simons followed suit with “journalism of attachment” and advocated existing mainstream narratives for which The New York Times editors did not raise issues as to not go against the grain (Ibid, 9).

The table clearly illustrates the climate within the Tribunal and towards the accused who is supposed to be considered innocent until proven guilty. Simons is not shy about her characterization and exclusively uses negative language in regards to Milosevic, while on the other hands reserves positive reference to the prosecutors Louise Arbour and Carla Del Ponte,

along with the presiding judge, Richard May. Consequently, this approach is highly biased and harshly condemned as “deeply corrupt journalism that is *de facto* propaganda service” (Ibid, 11).

Dimitri Oram (2007) argues that the popular narrative of Serbian guilt was used to exonerate NATO’s crimes as well as pre-emptive secessionist ideologies of former leaders of the Yugoslav republics (Slovenia, Croatia, and Bosnia). Further on, the prematurely assigned guilt was a strategy to pressure Serbian leadership of Yugoslavia into compliance with the western blueprint “for the region including full privatization, an independent Kosovo, and fully unified Bosnia” (2007, 1).

Closely mirroring the detailed dissection of Marlise Simons’ reporting of the ICTY by Edward S. Herman and David Peterson, Oram reiterates *The New York Times* agenda of methodical and aggressive incestuous reporting on the Tribunal in order to circumvent any opposing claims. Interesting to note, while Simons was very supportive of the former prosecutor Carla Del Ponte expressing her admiration with a myriad of epithets such as; “tough crime fighter”— she changed her tune after accusing Del Ponte of concealing evidence and letting Serbia off the hook in regards to turning over to the court some crucial government records. Nevertheless, Simons continued with her usual crusade reporting on the ICTY in which she blatantly omitted many hindrances and institutional problems during the Milosevic trial (Ibid, 3). In addition, prosecution lawyers took it upon themselves to issue ‘warnings’ to journalists in case they attempted to criticize their performance at the Tribunal during the trial of Milosevic (Mitchell 2002). Furthermore, Simons explicitly continues to deny the readers objectivity and fails to report on those judges which did not follow the mainstream agenda and raised concerns on many of the court’s decisions. For example, Judge Skotnikov questioned the ICJ’s right of jurisdiction and eventual rulings of ICTY in proving genocide took place in Srebrenica (Oram 2007, 4).

3.2. Victor's Justice

The mainstream media served as a pretext to legitimize the abuses of judicial processes by the ICTY, to demonize the presupposed enemy, and by grossly inflating numbers of the dead in the conflict so to emphasize the plight of those 'worthy' victims. Furthermore, the media created a safe haven for reporting convenient lies and half-truths that have no evidentiary of legal bearing. Consequently, it is an environment of what Herman (2002) calls the "new humanitarian normalization of victor's justice" (2002, 1).

3.2.1 Croatia

Croatia finally achieved its goals and became an independent country for the first time if we void its first independence as the NDH⁶, a Nazi puppet state in WWII. Besides gaining independence it is now one of the most ethnically pure⁷ countries in the region. Thus, Croatia by all accounts came out of the dissolution of Yugoslavia as an absolute winner.

November 16th, 2012 marks the second time since WWII that Croatian crimes against the Serbs go unpunished. Referring back to the genocide at the notorious concentration camp Jasenovac and many others at the hands of the Ustasha where over half a million Serbs, Jews, and Roma were exterminated (Gutman 1995, 739-740). This time Croatia celebrated the release of their generals Ante Gotovina and Mladen Markac, convicted in 2011 of murder and ethnically cleansing the Serbs from the Krajina region, their ancestral land. They were each sentenced to 25 and 18 years respectively. However, the appellate court overturned the decision and acquitted them of all charges. A shocking three-to-two split decision, resembling more of a rigged boxing match than an international court representing justice. The two dissenting judges, Carmel Agius

⁶ Nezavisna Država Hrvatska – Independent State of Croatia

⁷ Ethnicity and Race by Countries - Information Please® Database, © 2007 Pearson Education, Inc. All rights reserved.

Read more: [Ethnicity and Race by Countries | Infoplease.com](http://www.infoplease.com/ipa/A0855617.html#ixzz2VkU3K8PL) <http://www.infoplease.com/ipa/A0855617.html#ixzz2VkU3K8PL>

and Fausto Pocar were in dismay by the decision and expressed their concerns over their colleagues' decisions "which contradict[s] any sense of justice" (Stagno-Navarra 2012).

The acquittals relegitimized the merciless aggression waged by Croatia against Serbian civilians, dubbed the Homeland War (Schindler 2012). Croatia, a NATO member has selfishly reaped benefits from the Hague Tribunal. This was just another example of the unjust and biased dealings of this farcical post-war western powers' concoction, the ICTY. According to the Serbian public opinion, with this decision the Hague Tribunal had finally lost all credibility if it ever had any to begin with (Spiegel Online International 2012).

The mirror opposite reaction shook Serbia, especially those hundreds of thousands expelled from Croatia in the ethnic cleansing operation "Oluja" (Operation Storm), which is now a national holiday in Croatia in celebration of their greatest victory over the 'aggressor' (Herman and Peterson 2007). The shameful ruling singlehandedly legalizes the biggest ethnic cleansing in post-WWII Europe and rids Croatia of war crimes and crimes against humanity committed on its territory. By helping clean its judicial slate, the ICTY welcomes Croatia with open arms to the "prestigious" EU club (Schindler, Croatia Gets Its Generals Back 2012).

Interestingly enough, with the absence of guilt the case filed a few months ago by American Serbs against Military Professional Resources Inc. (MPRI) is now dead in the water. The American agency is accused of training Croatian troops, instructing, and taking part in the genocide and expulsion of over 200,000 Serbs from Krajina. The plaintiffs requested ten billion US dollars or \$25,000 for each of the expelled Serbs, a small price to pay for irreplaceable lives, scorched homes and stolen childhoods (B92 2012).

The paradox of the Tribunal's efforts to promote reconciliation in the region would be laughable, if it wasn't so traumatically sad. The U.S. State Department issued its statement of support of the court's decision; no surprise there being it helped create the same Tribunal. It is evident that the international community has long ago marked the Serbs with a scarlet letter. Thus, a new slogan was recommended for the ICTY: "Innocent until proven you are a Serb" (Politika 2012).

3.2.2 NATO/US and the assumed victory of Kosovo Albanians

Only two weeks after the highly controversial ruling which acquitted the Croatian generals, the ICTY acquitted of all charges the former KLA⁸ commander and former Prime Minister of the quasi-state of Kosovo, Ramush Haradinaj. The decision only certified the triumph of NATO and their "merciful angel" bombing campaign against the former Yugoslavia. Chomsky (1999) calls it *The New Military Humanism*. With this decision, the ICTY is held hostage to American strategic legalism, as hinted earlier by Hazan (2004: 535). In other words, the Tribunal has legally stamped "approved" to illegal NATO bombing of a sovereign country and KLA terrorism; all while leaving Serb, Roma, and other minority victims without a voice.

The charges were brought up at the ICTY against NATO by different lawyer groups from all over the world. NATO was charged for causing civilian deaths by purposely targeting civilian targets (Serbian Television Station – RTS, a passenger train, the Chinese Embassy, refugee convoy, and many other), and for using prohibited weapons such as depleted uranium (Catalinotto 2000). The Hague Tribunal quickly dropped the charges claiming that there is no case to be tried. The ICTY has never even conducted a formal investigation into the matter. Michael Mandel was one of the lawyers who filed the charges against NATO and stresses that "NATO committed every crime from mass murder on down in front of the world and it

⁸ Kosovo Liberation Army – http://www.start.umd.edu/start/data_collections/tops/terrorist_organization_profile.asp?id=3517

confessed its guilt in every press conference of Jamie Shea" (Sengupta 2007, 66). The same Jamie Shea, NATO spokesperson at the time, openly stated that the ICTY cannot and will not inquire into NATO's alleged crimes unless they allow for it to happen (Colon 2002).

In addition, Kosovo is home to one of the biggest U.S. military bases in the world. It would be naïve to acknowledge this as a humanitarian mission but rather be wary of the implications of American domination in Europe. Furthermore, the decision casts a shadow on the investigation into the organ trafficking which incidentally was made public by the former Chief Prosecutor Carla Del Ponte (Traynor 2008).

Other claims of a corridor for heroin trade are also very plausible in regards to "Europe's youngest country", or as is commonly referred to as "mafia state" (Engdahl 2012). Kosovo is not only not independent in theory considering it is not a UN member and is yet to be recognized by many other countries, but also in practice being it is under the US/NATO military control. Kosovo Albanians are essentially subtenants in their own 'country' as they are ever-grateful to their saviors thus obliged to pay for their 'freedom'. They even erected a life size statue of Bill Clinton in downtown Pristina, despite him still being alive.

Engdahl (2012) further argues that since the US occupation Albania and Kosovo became major transit routes for heroin smuggling into Europe from Afghanistan, therefore securing a corridor becomes mutually beneficial for the landlord (US/NATO) and the tenants (Kosovo Albanian government). There are billions of reasons for cooperation and all are measured in dollars. Also, the geopolitical importance of Kosovo ensures US control of the transport corridors and would be oil and gas pipeline routes via the Caspian Sea and Middle East into Europe (Ibid).

3.3. Controversies of Srebrenica

William Schabas (2001) highlights the objective of the ICTY from its inception, a promise of being the first international court to successfully prosecute the crime of genocide (2001, 23). Being that the Tribunal was established in early 1993, years before the alleged atrocities in Srebrenica took place for which the tribunal established to be a crime of genocide. It is very disconcerting to think that the forefathers of the ICTY were crying wolf way in advance. Nonetheless, the promise made by the Security Council was achieved almost a decade later. With the help of media reports that prescribed the atrocities on ground to those of genocide along with the Bosnian Muslim government insisting on claiming victimhood, the Security Council was quick to react. When the Tribunal started operating, the Office of the Prosecutor was very enthusiastic and eager to seal convictions. Genocide charges were popping up everywhere, all attributed to Serbs. However, it seemed the charges of genocide could not stick so were regularly abandoned (Ibid, 26-29). Nevertheless, the ICTY delivered on its promise of securing a conviction for genocide in the famous case against General Krstic (Prosecutor v. Radoslav Krstic 2001).

Srebrenica is now written in history as ‘the worst crime committed on European soil since the Second World War’, and one of genocide (Civikov 2010, 11). Before the tragic events in Srebrenica took place, the Bosnian Serb army evacuated all women and children to the area under the Bosnian Muslim control. The defence counsel made claims against the charge of genocide in the subsequent trials of several defendants. One being that if a calculated plan of eradicating an entire group truly existed, why than were children and women spared considering they are the beating pulse of every community. For someone to go to those lengths and organize a transfer of a significant part of a population and later allegedly systematically slaughter the

men, all of military age in a genocidal intent to destroy a group in whole or in part is highly implausible (Schabas 2001, 46). Nevertheless, the ICTY judges used their own interpretation of treaty law under the Article 2 of the 1948 Genocide Convention⁹ which was morphed into Article 4 of the Yugoslavia Statute. By claiming to be exercising customary international law they concluded that genocide took place in Srebrenica. This continues to be a highly disputed decision, one lacking logic and legal basis (Sengupta 2007, 66). Schabas (2001) argues that the massacre in Srebrenica can surely be prosecuted under crimes against humanity but categorizing it as genocide can “distort the definition of [genocide] unreasonably” (2001:47).

In a Norwegian documentary, *Srebrenica: A Town Betrayed* (2010), Hakija Meholic a former Srebrenica Police Chief gives a shocking testimony of the ultimate betrayal (Flyum and Hebditch 2010). He claimed that Alija Izetbegovic, Bosnian Muslim leader at the time, received him and other Srebrenica representatives in Sarajevo to discuss further actions. Alija made them a

⁹Articles 2 and 3 of the 1948 Genocide Convention read:

Article 2

In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.

Article 3

The following acts shall be punishable:

- (a) Genocide;
- (b) Conspiracy to commit genocide;
- (c) Direct and public incitement to commit genocide;
- (d) Attempt to commit genocide;
- (e) Complicity in genocide.

proposal after he had a conversation with the U.S. President Clinton in regards to the Muslim enclave. As suggested by Clinton, they needed 5000 dead Muslims in order to employ NATO and intervene militarily against the Serbs. Hakija was shocked at the slightest inclination that his own leaders are willing to sacrifice them for the “greater good” (Ibid).

Another Bosnian Muslim shares Hakija’s skepticism. From his own admission, a disabled war veteran from Srebrenica, Nesib Buric claims that the Bosnian Muslims resisted the Bosnian Serbs and did not surrender without a fight like it is commonly stated. He is devastated by the adopted narrative that he and his fighting comrades did not put up a fight and cowardly surrendered. In addition, he expresses great dissatisfaction with the Bosnian Muslim government and stresses that their own leaders betrayed them and later deserted them (Hadzic 1999).

Out of the alleged 8000 victims, grossly inflated by the media and later reiterated by the Tribunal, about 2000 bodies have been exhumed. There are also many discrepancies surrounding the names of the people carved into the monument at Srebrenica. Many of the names are of those living and registered voters in foreign countries, while many others are those who died much earlier before the fall of Srebrenica (E. S. Herman 2009, 3). The Bosnian Muslim government denied claims but did say that some are buried there because of symbolic reasons.

Moreover, a well-known and documented fact of over a thousand Serbian civilians slaughtered by the Muslim forces under Naser Oric in early 1993 did not dissuade the judges to acquit him of all crimes. Tightknit Serbian villages in and around Srebrenica region were systematically attacked and their residents savagely murdered. The most horrific brutalities were committed on Serbian Orthodox Easter, January 7, 1993 (Bogdanich 2011, 49).

Convicting Oric would undermine the Srebrenica narrative with an even smallest inclination that the Serbs have been long provoked and sought to avenge their dead (E. S. Herman 2009, 2). Basically, the ICTY case on Srebrenica was clinging on a thread, a sole witness who admitted committing mass executions of Bosnian Muslims. Drazen Erdemovic, a Bosnian Croat was a typical war dog as he fought on all three sides during the war, only joining the Bosnian Serb units much later into the war. This star witness was the smoking gun the ICTY was in desperate need of. Due to his cooperation and dramatic display of remorse which the Tribunal took at face value, he was sentenced to only five years in prison only to serve three and a half (Civikov 2010, 17). It is without a doubt a very small price to pay for self-admittedly brutally killing hundreds of people.

Only in a political court conducting political trials can a defendant be treated as Erdemovic was. The murderer-turned-witness would have been immediately disqualified in a real trial that is bound by law. A thorough investigation by Germinal Civikov (2010) in which he completely debunks the testimony of Erdemovic highlights damaging consequences of bargaining with justice (2010:16). Also, during his testimony Erdemovic named seven other perpetrators none of which were ever sentenced not even investigated (Ibid, 18-22).

Nevertheless, the Tribunal was not so much interested in any of the alleged mass murderers but was after the bigger fish. The big fish, Ratko Mladic and Radovan Karadzic have been the torn in the eye of the Tribunal since it started operating, hence one of the reasons for establishing the Tribunal so they could deliver on a promise made by the Americans (E. S. Herman 2011, 195). But, with the ICTY doors closing very soon radical moves have to be made. These convictions have to be secured in order to vindicate the ICTY of any doubts that may linger considering its credibility.

The controversies surrounding Srebrenica are countless and we may never really find out what really happened as the ICTY jumped the gun and sealed the case shut. The truth is being evaded and politicizing Srebrenica does a big disservice to both Muslims and Serbs. The Muslims will forever feel victimized while the Serbs are vilified. Both nations are stigmatized, especially the Serbs as the entire nation has been demonized by the widely adopted narrative of Serbian collective guilt.

Conclusion

Almost twenty years have slithered by since the most recent Balkan saga, and yet no sign of neighbourly love. The wounds of war cut so deep may take some generations just for their pain to numb, however there is no guarantee that those generations will be willing to forgive and forget. It seemed that for many decades the wounds of the Second World War were forgotten and forgiven but they reared their ugly heads in the early 1990s with the onset of a bloody ethnic conflict. Nevertheless, under Tito's regime all was to be forgotten in the name of 'brotherhood and unity' but the burden was the heaviest on the Serbs. The atrocities committed against the Serbs in World War II were devastating but having formed a pact union with their own executioner, the Croats, speaks volumes about this nation's case of amnesia. The dead would eventually come to haunt the living.

The media carousel has been implicitly responsible for the whirlwind of problems that have plagued the ICTY from its very beginnings. The media was used as a strategic tool of persuasion in methodically coaxing public opinion in favor of expeditious creation of the Tribunal. Thus, media campaigns were employed to exhaustion to serve their intended purpose. The unprecedented problems within the Tribunal; structural and institutional fallouts, problems of independency and impartiality, tremendous costs and debilitating long trials have plagued the Tribunal from the beginning. A handful of controversial judgments have directly hampered any hope of reconciliation and peace building in the region. The acquittals of Croatian Generals on appeal after they were initially convicted of grave breaches of humanitarian law, and those of former Kosovo Albanian terrorists are judicial blasphemy at best. The Serbian victims have not gotten any voice in the Hague Tribunal.

The Tribunal was utilized by powerful states as a legal convenience to bend the rules in order to pursue their wider agendas. NATO bombing of Yugoslavia and the subsequent unilateral illegal secession of Kosovo are prime examples of victor's justice. Politicization of Srebrenica has completely crippled the region whereas the animosities are even more emphasized. The once warring nations are adamant at sticking to their side of the truth and the ICTY has left devastating residues that will continue to contaminate the post-war communities. The Hague Tribunal did not even attempt to establish the real causes of the conflict but rather hide the truth. It served as a political tool for NATO and its allies in reasserting their position in the great war of hegemons and the new world order.

Crimes committed in the former Yugoslavia undoubtedly place a burden on all peoples regardless of ethnicity considering they adhere to their innate as well as institutional moral and ethical codes. One victim is too many and contrary to popular belief, the breakup of Yugoslavia was not a quest for "Greater Serbia" but a complex political cancer which with the help of the big country players metastasized and pulled the entire country into an abyss.

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