



International Criminal Tribunal for the Former Yugoslavia

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(Kambanda), to clarify the definition of rape in international law and hold that it could constitute genocide (Akayesu), and to pass the first genocide conviction of journalists (on Jean-Bosco Barayagwiza, Ferdinand Nahimana, and Hassan Ngeze). Its proponents thus claim that the ICTR, despite having what they assert as a limited mandate and resources, has indeed contributed to accountability, reconciliation, and peace in Rwanda and atrocity deterrence more widely, even if those achievements are not yet apparent and will be realized only in conjunction with other efforts, such as Rwanda's national and local justice systems, including *gacaca* (see separate entry).

Conclusion

Along with the ICTY the only other ad hoc international war crimes tribunal the Security Council has established through the UN Charter's Chapter VII authority, the ICTR represents a significant development in transitional justice. The ICTR's ultimate success will likely be determined only after it completes its work. In the meantime, proponents and opponents alike will continue to weigh in on the tribunal's achievements and controversies.

Zachary D. Kaufman

Cross-references: Congo, Democratic Republic; *Gacaca* Courts; Genocide; International Criminal Court; International Criminal Tribunal for the Former Yugoslavia; International Tribunals; Prosecute and Punish; Rwanda; Special Court for Sierra Leone.

Further Readings

- Clark, P. and Z. D. Kaufman, eds. 2009. *After Genocide: Transitional Justice, Post-Conflict Reconstruction, and Reconciliation in Rwanda and Beyond*. New York: Columbia University Press.
- Morris, V. and M. P. Scharf, eds. 1998. *The International Criminal Tribunal for Rwanda*. 2 vols. Irvington-on-Hudson: Transnational Publishers.
- Schabas, W. 2006. *The UN International Criminal Tribunals: The Former Yugoslavia, Rwanda, and Sierra Leone*. Cambridge: Cambridge University Press.

International Criminal Tribunal for the Former Yugoslavia

The International Criminal Tribunal for the Former Yugoslavia (ICTY) was created by UN Security Council (UNSC) Resolution 827 in May 1993 to prosecute persons responsible for genocide, war crimes, and crimes against humanity committed in the former Yugoslavia beginning in 1991. This encompasses the crimes resulting from the conflicts within and between Bosnia-Herzegovina, Croatia, Serbia, and Montenegro, Kosovo, and the Former Yugoslav Republic of Macedonia, following the fragmentation of Yugoslavia. The ICTY was created in the midst of war, and the UNSC resolution proclaimed that the tribunal would "contribute to the restoration and maintenance of peace" and ensure that violations "are halted and effectively redressed" (UNSC Resolution 808, 1993, preamble). Although conflicts continued in the region after the court's creation, the ICTY has been able to put some of the senior political and military leaders responsible on trial. The tribunal is still hearing cases at the time of this writing, although the UNSC has declared that it should conclude its work by 2013.

Political Background

From their outbreak in 1991, the conflicts in the former Yugoslavia attracted widespread media attention, and following the broadcast of televised images of concentration camps in Bosnia-Herzegovina around the world, international actors faced considerable pressure to stop the atrocities. The members of the UNSC were reluctant to risk endangering their troops by taking military action, but in October 1992, the Security Council created a Commission of Experts to investigate war crimes in the region. In its interim report, the commission called on the UNSC to create “an ad hoc international tribunal” to prosecute crimes in the former Yugoslavia. Similar demands were also made by the UN Special Rapporteur for the region and some national governments. After debates on the form that the tribunal should take, the UNSC unanimously mandated the Legal Council of the UN Secretary General to draft a statute for the tribunal. This statute was unanimously adopted by the UNSC in May 1993 under Chapter VII of the UN Charter, which relates to international peace and security. This method of adoption meant that all UN member states were required to cooperate with the tribunal, including governments within the former Yugoslavia that had not consented to the tribunal’s creation. In addition, unlike transitional justice processes elsewhere, victims or civil society groups from the region were not consulted on the decision to create the tribunal or on the shape of its mandate. The creation of the ICTY was an innovation in international responses to mass violence and a landmark event in the development of transitional justice. However, it was met with cynicism by some commentators who viewed it as a “legal fig leaf” designed to detract attention from the failure of international actors to intervene militarily. In the initial years of the court’s operations, these critiques were strengthened by the unwillingness of many states to genuinely cooperate with or fund the tribunal, and by the failure to mandate international peacekeepers to arrest suspects who were indicted by the ICTY. However, from 1997 on, international actors became more supportive of the tribunal’s work, and it became an effective institution.

Mission, Organization, and Activity

Resolution 827 proclaimed that the goals of the ICTY were to prosecute war criminals, halt violations, and restore peace to the region. However, over time, numerous other goals have been variously ascribed to the tribunal, including reestablishing the rule of law; promoting reconciliation between the peoples of the former Yugoslavia; establishing that guilt lies with individuals rather than entire groups; providing a forum for victims to tell their stories; providing a model of fairness and due process for courts in the region; creating an accurate historical record and eliminating denial of the crimes that were committed; and developing international jurisprudence. Clearly, together these goals exceed those proclaimed by the UNSC, but to some extent the ICTY has viewed itself as tasked with fulfilling them. However, their achievement is dependent on many factors, not just the operations of the ICTY, particularly given that it is not a permanent institution.

The ICTY Statute, contained in the Annex to Resolution 827, mandates the tribunal to “prosecute persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991” (ICTY Statute, Article 1). The jurisdiction of the court extends to grave breaches of the Geneva Conventions,

violations of the laws or customs of war, genocide, and crimes against humanity. These crimes encompass a wide range of violence perpetrated against civilians, such as murder, torture, rape, enslavement, deportation, and arbitrary imprisonment. In addition, the widespread destruction of public or private property or cultural monuments is considered a war crime. Unlike the Nuremberg tribunal (see separate entry), the ICTY does not have jurisdiction over the crime of aggression. Furthermore, it can only try individuals, not organizations or governments. The maximum sentence that can be imposed by the tribunal is life imprisonment.

As it was established during an ongoing conflict, the ICTY is located in The Hague, the Netherlands. It currently employs more than 1,100 staff and its budget for 2008–2009 was US\$376,232,900. The ICTY is composed of three branches: the judiciary, the registry, and the Office of the Prosecutor. The judiciary comprises sixteen permanent and twelve *ad litem* judges who are elected by the UN General Assembly for four-year terms. These judges are divided between the three trial chambers and the appellate chamber. They vote among themselves to elect the president of the ICTY, who at the time of this writing is Judge Theodor Meron. In addition, the judges are responsible for developing the tribunal's rules of procedure and evidence, which govern the conduct of legal proceedings, the admission of evidence, and the protection of victims and witnesses. The registry is responsible for the administration of the tribunal, and its staff is appointed by the UN Secretary General. The registrar at this writing is John Hocking.

The ICTY prosecutor is independent of national governments and the other organs of the tribunal and is appointed by the UNSC for renewable four-year terms. The prosecutor at this writing is Serge Brammertz, and his predecessors were Ramón Escobar Salom, Richard Goldstone, Louise Arbour, and Carla del Ponte. The prosecutor can initiate investigations in response to information submitted by international organizations, national governments, nongovernmental organizations, or individuals. In addition, the prosecutor is empowered to investigate *ex officio*. In conducting investigations, the prosecutor can question suspects, victims, and witnesses; collect evidence including by exhuming mass graves; and conduct on-site investigations. All indictments are reviewed by the trial chambers.

Delays in the appointment of the first prosecutor meant that the ICTY did not issue its first indictment until November 1994. The court's initial indictments were for comparatively low-level suspects, which triggered concerns over its ability to deliver justice against those who had orchestrated the campaigns of mass violence. However, in the summer of 1995, the tribunal indicted the Bosnian Serb leaders, Radovan Karadžić and Ratko Mladić, and the Dayton Peace Agreement signed in December 1995 required the states of the former Yugoslavia to cooperate with the tribunal's work. From 1997, the ICTY gradually gained custody of higher-level suspects, culminating in the trial of Slobodan Milošević. During this period, the ICTY expanded significantly in resources and personnel: from the court's inception to 2009, the tribunal indicted 161 persons and issued 60 sentences in 48 cases. Its total budget since its creation until 2009 was US\$1,585,211,622. This has led to criticisms of the cost of trials before the international court.

The ICTY has also been criticized for being too remote from the peoples of the former Yugoslavia. Since its creation, opinion polls have shown that the levels of support for the tribunal vary among the region's ethnic groups, but overall the majority of the population in the region does not have a positive view of the tribunal. It is viewed skeptically for several reasons. First, it has only indicted and tried a small number of offenders, and

many persons who are suspected of war crimes continue to be at liberty. Furthermore, many of those who have been tried are former political leaders, which, while important, is often less relevant to victims than prosecutions of the direct perpetrators responsible for harming them. In addition, among the indicted leaders, the ability of Ratko Mladić – and, until recently, Radovan Karadžić – to evade arrest fed suspicions of the court.

Second, the court has been criticized for being biased in its indictments. For example, Serbs highlight the pattern of indictments to argue that the tribunal is biased against them, as they have been the subject of two-thirds of the indictments. However, it does appear that across the Balkan conflicts in the 1990s, ethnic Serbs were responsible for a disproportionate number of the violations committed. The tribunal has also been criticized for the decision taken by Carla del Ponte when she was prosecutor to not investigate the NATO bombing campaign against Serbia.

Third, there has been lack of involvement of local actors in the work of the tribunal, and local political elites remain opposed to its operations. This can be partially attributed to the relative underdevelopment of civil society groups in the region and the continued success of nationalist politicians in elections. In addition, it appears that there is a growing apathy toward the tribunal. Media coverage of its proceedings is declining, and for many of the region's inhabitants other concerns, such as economic security, corruption, and the threat of organized crime, are now considered more urgent than prosecuting war crimes.

Fourth, the ICTY has attracted criticism from victims for its lack of clear sentencing criteria and the use of plea agreements. These have resulted in considerable discrepancies among sentences awarded for similar crimes. In addition, where defendants benefited from a plea agreement but failed to fulfill their obligation to cooperate with the prosecution, it has discredited the use of such agreements for some victims.

From 1999 on, the ICTY did attempt to respond to some of these problems by implementing an Outreach Strategy to explain its operations and objectives to its constituents in Yugoslavia. This did improve awareness in the Balkans of the ICTY's mandate and operations, but was not sufficient to create a generally favorable impression of the institution.

These criticisms, combined with a changing international political climate after September 11, 2001, in which key international donors of the ICTY began to shift their interests and funding toward combating the threat of global terrorism, contributed to the UNSC's decision to adopt a completion strategy for the tribunal's work. Under this strategy, the ICTY will prosecute some of the most serious cases among its existing indictments, with the trials to be completed by 2013. It will transfer the other cases to the domestic courts in the region. In addition, the domestic courts will have responsibility to try the thousands of perpetrators who have yet to be indicted. As part of its completion strategy, the ICTY, along with other international actors, has been working to develop the capacity of the local courts.

Conclusion

From its rather shaky inception, by the beginning of the twenty-first century, the ICTY had grown into an effective institution commanding significant resources and personnel. Its impact was positive in several ways, internationally and within the former Yugoslavia. First, through its judgments, the ICTY enriched international humanitarian law by, for example, ruling that rape can be a crime against humanity. Second, it provided a forum for the prosecution and punishment of offenders in a context where the domestic courts of

the region did not have the capacity to ensure fair trials. Third, in May 1999, the tribunal made history by indicting a sitting head of state, Slobodan Milošević. Furthermore, under the terms of the Dayton Peace Agreement, those indicted by the ICTY could not serve in public office, and therefore its indictments facilitated the removal of other war criminals from public life. Fourth, its investigations into events such as the genocide in Srebrenica helped undermine cultures of denial in the former Yugoslavia and provide acknowledgment to victims. Fifth, the creation of the ICTY provided a template for the ad hoc tribunal in Rwanda and was the inspiration behind the creation of the International Criminal Court and hybrid tribunals in Kosovo, Sierra Leone, and East Timor. However, the ICTY was only ever intended to prosecute a small number of offenders, and as its completion approaches, justice for the vast majority of the crimes committed in the wars in the former Yugoslavia has yet to be achieved.

Louise Mallinder

Cross-references: Bosnia-Herzegovina; Commission for Investigation of the Events in and around Srebrenica between 10 and 19 July 1995; Croatia; East Timor; Hybrid Tribunals; International Criminal Court; International Tribunals; Kosovo; Serbia and Montenegro; Special Court for Sierra Leone; Truth and Reconciliation Commission of Yugoslavia; War Crimes Chamber of the Court of Bosnia-Herzegovina.

Further Readings

- Hazan, Pierre. 2004. *Justice in a Time of War: The True Story Behind the International Criminal Tribunal for the Former Yugoslavia*. College Station: Texas A&M University Press.
- Kerr, Rachel. 2004. *The International Criminal Tribunal for the Former Yugoslavia: An Exercise in Law, Politics, and Diplomacy*. Oxford: Oxford University Press.
- Scharf, Michael P. 1997. *Balkan Justice: The Story Behind the First International War Crimes Trial since Nuremberg*. Durham: Carolina Academic Press.

International Historical-Enlightenment and Human Rights Society Memorial (Soviet Union, Russia)

The International Historical-Enlightenment and Human Rights Society Memorial (simply known as Memorial) began in August 1987 in Moscow as an eleven-person group campaigning for signatures in support of the creation of a monument to victims of Stalinist repression. Soon after its creation, Memorial expanded its scope to encompass the establishment of a scientific and public research center with an archive, a museum, a reception room for victims, and a library containing information and data on Soviet repression. In 1989, Memorial was registered as a nongovernmental organization, with hundreds of local chapters throughout the Soviet Union. The following year, it erected a monument to victims of totalitarianism across the street from Lubyanka (the headquarters of the Soviet secret political police, the KGB) in Moscow. The organization went on to build an enormous archival record on Soviet victimizations, to publish execution lists and authoritative reference works on the Gulag (the penal labor camps where political prisoners were often sent) and the NKVD (Stalin's secret police, precursor to the KGB), to set up a small museum in Moscow and in the former labor camp in Perm, to create a virtual museum of Gulag art, to locate Stalin-era mass grave sites, and to aid victims in attaining rehabilitation and compensation. After the Soviet Union was dismantled and the communist