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# War, Genocide and Atrocity in Yugoslavia: The ICTY and the Growth of International Law

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## 1. Introduction

This chapter will examine the conflagration in Yugoslavia during the 1990s and the role of international law in the recovery of community there in the past decade. Since remembrance of the past (Durkheim, 2008; 1992) reconfigures and heightens the meaning of what happens in the present, different traditions and histories in each of the six republics in the Yugoslav Federation produced a variety of unattended ruptures, threats and problems from WWII to the present. We gain new insight into the challenges of sustaining a balanced social integration (Durkheim 1893/1997) and vital ethnic diversity as modernity goes forward in older communities by examining what happened in Yugoslavia during the 1990s. The role of International Law (Cassese, 1986) is highlighted in terms of being a force for social order in the aftermath of great social upheaval. The importance of justice processes associated with the International Criminal Tribunal in Yugoslavia (ICTY) has commanding significance in providing a foundation to support economic processes for rebuilding community.

## 2. International law and world ordering

Since Nuremberg and WWII, never has there been such an uptake of ideas that were part of the emergence of international law and its world ordering capacity (Slaughter, 2004:15-31; 64-103; 216-260) as occurred in Yugoslavia in the 1990s. This applies as surely to communities recovering from atrocity as those trying to improve trade in the aftermath. Samantha Power (2002:171-327) describes in detail the grotesqueries of several of the many recent genocides in which humanitarian involvement was implicated. In the case of the Yugoslav wars, the need for intervention came at a point historically when the Western democracies were being dragged into one war after another with the consequence that public apathy towards military action by western powers became politically untenable (Bass, 2000:206-215). Public moral outrage grew, however, as reports of atrocities intensified. It was partially mollified by the intervention of a wider network of nations (Valentino, 2004:1-8). The United Nations also began to organize a commission to inquire into what was occurring and established guidelines for involvement.

Winston Churchill in a speech on August 24, 1941 (Brietman, 1998:91-93) described the Nazi offensive in the Balkans and the east as "merciless butchery." Allied strategies against the

Nazi monolith in Europe finally halted human rights abuse and aggressive warfare by 1945. At the time Serbian Partisans were recognized as part of the Allied effort. In the 1990s, there was a different face for Serbia as the United States was asked to stop atrocities and ideological killing by Serbia against members of the constituent republics opposed to the federation. For several of these states, like Croatia, which had aligned with Nazi interests in WWII, there was a policy of persecution against Serbs. The Nazi-led Ustasha in Croatia dictated that a third of the Serbian minority were to be killed, another third expelled, and the remainder were to be converted to Catholicism and assimilated as Croats. In allegiance with the Gestapo, torture and massacre of the Serbs went forward. Jews in the area were the first to be sacrificed to Nazi reprisal killings (Browning, 2004:334-346) as the Nazi eastern front was established and Holocaust went into the Final Solution. However, Serb Partisans had been an estimable fighting force for decades before that and, despite brutal repression had won through in the region by the end of 1945. In the postwar period of the 1950s and 1960s, sovietization silenced (Denich, 1994) the voice of memory in favor of a "brotherhood and unity" theme propagated under Marshall (Josep Broz) Tito. When Tito died in the 1980s, old animosities flared as decentralization took over the Yugoslavian republics. Nationalism grew during the 1980s and undergirded support for the leadership of the noncommunist, Slobodan Milosevic.

As the Yugoslavian wars ignored the Geneva conventions, atrocity and genocide fulminated in the republics. An already growing role for International Law and The Hague in a world divided (Cassese, 1986) took further expansion. Currently international law supports redevelopment of social, political and economic institutions (Hagan and Ivkovic, 2006) where democratization is associated with a justice cascade (Sikking & Booth Walling, 2007) that reconciles peoples who might otherwise enter a destructive cycle of endless violence.

### **3. Historical overview**

Yugoslavia had ethnic diversity by the 1920s but there was little structural integration between ethnicities throughout the twentieth century. Modernization separated the fluid present from the static and iconic past, which for Yugoslavia had roots in archaeological times. The region has been a crossroads from antiquity to the present, with people living there extending from the Illyrians and Thracians of the third century BC on to the Roman Empire of the third century CE. The ever growing mix of peoples there went on to include the Goths, Huns, Avars, Slavs and by the seventh century CE, the Serbs and Croats. In 1463 the Ottoman Turks invaded the areas of Serbia and Montenegro. By 1919 the Balkan region was referred to as the Kingdom of Serbs, Croats, and Slovenes, a time when they were still dealing with aggressive Turkish territoriality from the 1800s. Serbs, followed by the Croats, were then the largest ethnic groups in the Kingdom. Post WWI, Croatian nationalism was also on the rise and King Alexander in 1929 attempted to quiet Serbian and Croatian tensions with a change of name to Yugoslavia. In 1946, after WWII, Yugoslavia became a federation of six republics. Croatia and Slovenia were the most economically well developed republics in the region. Serbs, however, dominated the officer corps of the Yugoslav People's Army (JNA), and under Tito, Serb influence in the military grew stronger.

With the collapse of communist regimes (Woodward 1995) throughout eastern Europe and perestroika in the Soviet Union, the parallel structure of social integration in the federation followed an ethno-religious principle. Political unrest flowed along ethnic lines. The federation that had galvanized during the Tito years, held together by a suprasocialist patriotism of the communist party elites, began to disintegrate in the 1980s. It was replaced by a growing xenophobia that turned to the oppositions holding during WWII. Serbs and Croats were once again enemies. Narratives of the Serbian intelligentsia (Guzina, 2003: 91-111) spread to military and economic elites. The media popularized it and gradually a realization grew that only by building a Greater Serbia could the haphazard regional integration be replaced by a fast moving democracy. Nationalist rhetoric was taken over by politicians until the interpretation of a broader issue appeared to loom behind specific controversies occupying constitutional decentralization. There was concern that the Republic of Serbia would align with Serbs scattered throughout the other republics and a greater Serbia would form (Cohen and Soso, 2007: 105) to the detriment of current interests within already economically flourishing republics.

There had not been a strong sense of Yugoslav identity as a communist satellite country, yet being one meant submerging ethnic identity into a nominal unity. Atanasova (2009:59) looking at Macedonia during the same period found many similarities. Macedonia is also a Central European nation with many of the same problems and attributes as republics in Yugoslavia. Macedonia is a landlocked country wedged between Bulgaria, Albania and Greece. As in Yugoslavia the debates directing public opinion leading to regime change was elitist in nature and occurred exclusively at the level of political and military elites. Leadership could not embrace their people or the rationality of a culture of participation rather than one of dominance. The people were the “outsiders” ready to be objectified in various kinds of social policy. Nationalism in this way took on many of the dynamics of Nazi politics in Germany, 1928-1945, and increasingly came to be the omnibus solution for all problems as social movements threatened unrest.

In Yugoslavia from the 1950s onwards the interests of the more developed republics were seen as more than ever compromised rather than benefitted by the federation. Smaller, ethnically homogeneous territories of Kosovo and its neighbor Vojvodina, both in Serbia, increasingly wanted independence from the federation. Kosovo in the 1990s accounted for 12 percent of Serbia. It had a population of two million of which about 90 percent were Albanian Muslims who saw their interests as aligned with Albania more than Serbia. Unemployment was high there (57 percent) in 1989 and throughout the 1990s. The people of Vojvodina, who were mainly Christian, had other regional allegiances. Yet in terms of collective memory, the Serbs saw Kosovo as the heart of the first Serbian state in the 1100s. The Serbian Orthodox Church’s patriarchate was located there in 1346. In the 1980s, the Serbs insisted Kosovar be called Kosovo-Metohija since it represented monastic lands (Rogel, 2003:169). There were many battles fought in that area over time but none more meaningful than the final conquest of Serbian lands in 1389 with the battle of Kosovo Polje. Kosovo had profound symbolic meaning, then, for the Serbs and oral legends associated with the region enshrined the Serbs as a chosen people. The 1974 Constitution made Kosovo one of eight official units, with Kosovo and Vojvodina given parity with the republics. This did not sit well with Serbs who felt once again cheated of their heritage (Rogel, 2003:171)

As Serbian nationalism grew after Tito's death in the 1980s, Kosovo, had gained with its own constitution, a new supreme court and its own university in Pristina, was an irritant to the Serbs. It was, however, the non-communists who were the first to voice dissent. Though Slobodan Milosevic was communist, he became popular with Serbs in Kosovo who wanted nationalism. Television and the Orthodox Church boosted his popularity in Serbia and, by 1988, Serbian nationalism looked to create a greater Serbia that would include Serbian peoples scattered throughout the whole of Yugoslavia. Serb intelligentsia wanted a new Yugoslavia with a new constitution based on the federalism of the 1950s and tighter political measures in Kosovo. They also wanted a greater say in the affairs of Serbian people in Croatia and Bosnia, among others. It was a sufficiently loose understanding to attract even opposite political In the debates of intellectuals and a popularizing of them by the media, however, ethnic cleansing entered the exchange of rhetoric (Guvina, 2003:104-108).

In order to consolidate power, Milosevic purged the League of Communists (LCY), the national communist party, in Kosovo, Vojvodina and the republic of Montenegro. Kosovars protested the purge. They rejected the Serbian brand of nationalism being propagated at their expense (Rogel, 2003: 172-173). Albanian students in Pristina, engaged in unrest with mass rallies and rhetoric focused on the strength of ethnicity. They favored an independent Kosovo Republic. Kosovo had various kinds of mining operations of great importance to Yugoslavia's economy and felt they could leverage this into political clout against the militarily superior Serbs. However, no matter how important and reasonable the protest mounted by Kosovo, Belgrade imposed severe police and military force to repress it. When Belgrade cut them off, the Kosovars did not relent but heroically set up their own trade unions, and organized their own schools and hospitals. Nevertheless Kosovo lost its autonomy by March 1989, and Kosovars were left to lead a virtual life in a virtual state (Ignatieff, 2000).

#### **4. The Wars of the 1990s in Yugoslavia**

Within opposing tides of sentiment and interests in the 1980s, political power valances shifted favoring Slobodan Milosevic as a popular politician and opinion leader. Using internal military intelligence videotapes and other primary sources unearthed after the 1990s wars, Silber and Little (1997) pointed to the significance of the role taken by Slobodan Milosevic of Serbia in directing controversy towards the break-up of Yugoslavia and its reconstitution in 1992.

The precipitating event for the start of the wars was the 14<sup>th</sup> Extraordinary Congress of the League of Communists of Yugoslavia in January 1990. Divisiveness had made unity unpalatable. The Yugoslav wars were fought throughout the former Yugoslavia between 1991 and 1995. Complex, they were the deadliest wars fought in Europe since WWII. They lasted from 1991-1995 and for seventy-eight days in the spring of 1999.

There were three main wars in the 1990s: the Ten Day War (1991), the Croatian War of Independence (1991-1995), and the Bosnian War (1992-1995). A smaller war in 1999 occurred in Kosovo.

The Ten Day War: Slovenia as an economically strong republic within Yugoslavia seceded on June 25, 1991 together with Croatia. The Ten-Day War started the next day with the

Yugoslav People's Army (JNA) moving towards the Croatian border with Italy. Slovenia put up barricades and launched demonstrations, then went on to secure its border posts and the international airport at Brnik. After a three-month moratorium on secession during the summer of 1991, by October 26th the JNA withdrew from Slovenia. Losses to Slovenia were light. It maintained its independence and prosperity throughout the 1991-1998 period.

**The Croatian War of Independence:** This war is known to Croats as The Homeland War. It lasted from 1991 to 1995 and though it ended in Croatian victory, there were massive losses in terms of casualties, bloodshed and the economy. Aggressive warfare led to atrocity and claims of genocide against Serbia which were later sustained by the ICTY. Displacement of Croatia's highly urbanized population was huge. The Battle of Vukovar is noteworthy. When it fell to Serbian led forces on November 18, 1991, a massacre of soldiers and civilians followed.

**The Bosnian War:** In the break-up of Yugoslavia, this war began with the multi-ethnic Republic of Bosnia and Herzegovina passing a referendum in support of independence on February 19, 1992, that was opposed by Belgrade and Bosnian Serbs. War broke out on June 19, 1992, with Serbian forces opposing Zagreb-backed forces engaged in bitter fighting that led, among other things, to the siege of both Sarajevo and Srebrenica. This was the bloodiest of the Yugoslav wars. Bosnia's Serb faction led by ultra-nationalist, Radovan Karadzic, psychiatrist and amateur poet turned politician, as President of Republika Srpska, led Serbian allied forces in aggressive warfare that produced untold brutality on Bosnians. By April 1995, 90 percent of all atrocities in the Yugoslavian wars were identified as Serb caused and inside Bosnia. In 1994 the United States brokered a peace between Croatian forces and the Bosnian Army of the Republic of Bosnia and Herzegovina. Under Operation Maestral the Bosnian Serbs were pushed back by the combined forces of the Croatian Army and the Bosnian and Croat forces in Bosnia and Herzegovina. Operation Maestral was backed by Nato Air Strikes against the Bosnian Serbs. After Operation Flash and Storm, the fighting ended in Croatia in mid-1995. The Dayton Agreement on December 14, 1995, however, permitted Bosnian-Serbs to have their demands met to establish Republika Srpska, a decision which today is responsible for continued conflict and destabilization in the region.

**The Kosovo War:** This war took place in seventy-eight days between January and June of 1999. Disturbances in Kosovo at that time set Albanians and Serbs on a collision course that polarized Yugoslavia in the early 1990s (Rogel, 2003:167). The Dayton Accords signed in Paris in 1995 had not ended Kosovo's concerns. Kosovo took a militant policy toward Serbs, and Serbia escalated oppression of local populations. By 1998, in connection with the larger violence in Yugoslavia, the ICTY had to make arrests throughout Serbia and in Kosovo. On January 8, 1999, a reported massacre of forty-five civilians at the village of Racak in Kosovo (Strauss, 1999; Walker, 1999) opened up a series of inquiries by the ICTY about Serbia's role in events there. It convinced NATO and the Contact Group set up by the Dayton Accord to hold jurisdiction in the former Yugoslavia, and that intervention against Serbia was imperative. Great Britain, Germany and the United States began preparing an occupying force (Rogel, 2003: 176). On February 6 to 26, 1999, the Rambouillet Conference in Paris brought Serbia, Albania, America, Britain and Russia to the table. By February 23 1999, meetings had sustained agreement that there should be wide-ranging autonomy for Kosovo within the framework of the Serbian state. This agreement was to be secured by

the stationing of a 28,000 member peace force under the umbrella of NATO. Serbia rejected the presence of NATO troops. In March, NATO set up a military presence by attempting to work with the Kosovo Liberation Army (KLA) to secure Kosovo so as to staunch the many ceasefire violations taking place there. In the end, the conference failed in that Russia and Serbia refused to sign the Rambouillet Accord on March 23, 1999. Kosovo signed after consulting with Albanians. The war began on March 24, 1999 and lasted seventy-eight days until June 10, 1999. On June 9, 1999, Yugoslavia signed a Military-Technical Agreement that ended the fighting. The UN Security Council passed its Resolution 1244 which outlined the postwar settlement (Rogel, 2003:180) for the area and the United Nations set up a mission in Kosovo.

## 5. Atrocity

Atrocities of the most egregious kind took place throughout the wars, and claims of genocide were made. The atrocities associated with ethnic cleansing in Yugoslavia during the 1990s were patterned on those that took place during the Nazi Occupation of the Balkans and Russia from 1941-45 and the Holocaust, 1933-45. As one local war spawned another, policing and administration of law were inadequate to deal with the crimes of a military not acting under the Geneva conventions. From 1993-1995, the United States and other Western powers were called on to create a situation which would limit further infractions of the Geneva Convention and International Law.

Five years after Vukovar had surrendered to the JNA, Clea Koff (2004) was part of a United Nations forensics team sent to Croatia. She described a bleak, mortared landscape where signs of the earlier destruction were everywhere. The Borovo boot factory had been abandoned; every other house had been shelled to the foundation. Mortar shells had indiscriminantly left holes in buildings so that she could see rooms in homes and apartments left open by the blasts. She reflects, "I couldn't see any people around the apartments" and, despite its being winter, there was no electricity. Those living there were not from that place originally, "They were refugees: Serbs, "cleansed" out of northern Bosnia or the Krajina in Croatia, forced to leave behind their dead, forced to live one step from squatting, in the apartments of the Croats who themselves had been cleansed from this town" (Koff, 2004:164).

Killings and human rights violations continued after the signing of the Dayton Accord and, in 1999, war in Kosovo had begun. Throughout the almost ten years of warfare, rape had been used as a method of ethnic cleansing and had happened under official orders to displace a targeted group (de Brouwer, 2005: 9-10). Patterns in the killings had reflected a determined attempt to symbolically and physically destroy the patrilineal basis of a targeted ethnicity. Women were kept in camps until the late stages of pregnancy. At least 35,000 Bosnian and Croatian women were kept in Serbian run "rape camps" (de Brouwer, 2005; Robson, 1993). The NATO-led Kosovo Force (KROR) documented the rapes of Albanian, Roma and Serbian women by Serbs and members of the Kosovo Liberation Army (de Brouwer, 2005). According to the Women's Group, *Tresnjevka*, more than 35,000 women and children were held in Serb-run "rape camps"(de Brouwer, 2005: 9-10; Robson, 1993). In the Srebrenica massacre, July 1995, 20,000 Bosnian women, children and elderly were bussed mainly to rape areas; 8,000 boys and men were systematically murdered and buried in mass graves. The Foca massacres (Bosnia) between 1992 and 1994 involved the killing of around

2,704 people. Barkan (2002) indicates that in Foca upwards of twenty thousand Muslim women were sexually enslaved and tortured (Stiglmayer, 1994) by Bosnia Serbs, Serbs and Montenegrins during the Bosnian war of 1992-1995. Dragoljub Kunarac, Radomir Kovac and Zoran Vukovic were convicted by the ICTY of rape, torture, and enslavement committed during the Foca Massacres.

Hagan and Ivkovic (2006:130-151) report that every area of the former Yugoslavia has people living there who have memories of losses of family and property, and various kinds of psychic and physical wounds that submerged rather than healed. Hagan and Ivkovic conducted research in four cities representing Kosovo, Serbia, Croatia and Pristina. Victimization measures indicated that Sarajevo had the highest victimization (Hagan and Ivkovic, 2006:138-139), followed by Vukovar, Pristina and Belgrade, but no area was without those who were "personally victimized," "witnessed victimization," had "family victimized," or "neighbors victimized." Without telephone or household sources of information, respondents were sampled from the streets, at coffee shops, department stores and other venues in the central business districts of the cities in the study (Sarajevo, Belgrade, Vukovar and Pristina). There was a slight bias in the sample towards "better educated" than the rest of the city population, which meant being better informed and more willing to take part in the study. Pristina, the city most recently in need of defense and least able to organize criminal proceedings, gave the ICTY the most support and Belgrade, the least victimized city, gave the least support (2006:140).

Displaced persons and others choosing to move went to centers representing their own ethnicity. Lukic and Nikitovic (2004:86-110) point out that while international humanitarian organizations moved some refugees from Bosnia and Herzegovina around the world, "the overwhelming majority of refugees from Bosnia and Herzegovina sought refuge in Serbia and Montenegro or resettled inside Bosnia and Herzegovina..." (2004:89). Census data indicate that in 1996, the largest percent distribution of refugees from Bosnia and Herzegovina went to Vojvodina, the least to Kosovo (90 percent Albanian); the largest numbers of Croats also went to Vojvodina and the least to Kosovo. Serbia and Croatia made up 50 percent of the population in the eight republics. Vojvodina was 25 percent Catholic or Protestant, the rest Muslim; Kosovo was 89 percent Muslim majority. Serbia was considered by many to be the most religiously diverse of the republics, with Greek and Rumanian Orthodox and Catholics in the majority, and Muslims, Protestants and Jews the remainder. However, Central Serbia and Belgrade were over 90 percent Orthodox. Parallel ethnic structures still directed social integration. Examining census data, for instance, Lukic and Nikitovic (2004: 89; 85-110) use the 2001 census to describe the flow of refugees from 1996 onwards. The total number of refugees from the federation of Bosnia and Herzegovina in Serbia was higher in 2001 (84.2%) than 1996 (78.7%) (UNHCR, Serbian Commissariat for Refugees, and ECHO, 2002). Of the refugees, 139,076 lived in Belgrade, 95,024 in Central Serbia outside of Belgrade, 442 in Kosovo and Metohija, 217, 438 in Vojvodina (UNHCR, Serbian Commissariat for Refugees and ECHO, 2002).

## **6. The question of intervention and the ICTY**

The Yugoslavian wars of the 1990s afford an example of the kind of situation in which Europe, the United Nations and the United States might hope that low-risk, small-scale

military interventions for humanitarian missions could prevent atrocities where there were human rights abuses. Valentino (2008:727-729) points out that President Clinton, who came into the US Presidency in 1993, avoided putting ground forces in Bosnia in 1995, and Kosovo in 1999, and admitted that there was a lot to learn about this kind of hopeful problem-solving. Public concern in the West was restrained during most of the 1991-1995 period. The West, and especially the United States, had been careful about committing troops to combat (Bert, 1997) without carefully setting rubrics in place beforehand. It was so in WWI and also in WWII (Bass, 2000). Variations on this in Vietnam and Somalia served as painful reminders of instances where the principle had not been followed. Public concern as the bloodletting escalated in Yugoslavia was appeased by United Nations efforts. After the UN Security Council had put in place a commission to investigate the Yugoslavian wars, it finally supported the creation of the International Criminal Court (ICTY) to warn the perpetrators that infractions of Geneva Conventions and human rights law would not go unnoticed or unpunished. This was meant to allay concern and stay the specific involvement of nations ready to go to war over infractions of human rights law. The Yugoslavian Wars, however, challenged this understanding.

The wars in Yugoslavia in the 1990s differed from WWII in many respects (Bass, 2000: 148-152; 206-209). In WWII soldiers were already engaged in battle when evidence of atrocities came filtering in; Nuremberg was established after the war with the unswerving political will of the Allies to honor laws of war as it was through these that their own soldiers were protected in battle and capture. At this time, President Clinton initially spoke of Bosnia as a shooting gallery; conventional norms of warfare (Silber and Little, 1997) were by all reports not in play in the war zone.

Whether or not the ICTY was a token gesture by Western powers to defray negative press as the West demurred when action was needed, the mounting casualties day by day led influentials like Elie Wiesel to raise moral concern that the Holocaust must not be repeated while the West did nothing. However, collective memory of the embarrassing confusion and loss of life, both for soldiers and civilians, in Cambodia and the Vietnam War weighed against the plea from Raphael Lemkin echoing from the Holocaust in the 1940s, "If women, children, and old people would be murdered a hundred miles from here, wouldn't you run to help? why do you stop this decision of your heart" (Lemkin, 2002:26-27), when his own family were being slaughtered in Lithuania? The ICTY answered back across the years, as it became a determined force for justice over tyranny, for victims and survivors of aggressive warfare, atrocity and genocide over their oppressors.

However, the entry of western military forces into the bloodshed in Yugoslavia, 1991-1995, was not solely influenced by public opinion. The tipping point on increased involvement may have been the shooting down of an F-16 aircraft by a Serb missile, leaving its pilot trapped in enemy territory for six days. He was finally rescued by a US marine helicopter commando. The event has subsequently been recognized in the film *Behind Enemy Lines*. This was the single American life (Bass, 2000:216; Stephanopolis, 1999) that many who study American public opinion say broke the stagnation.

Structurally and institutionally other factors were configured into the decision. The human rights activists did continually apply pressure on public opinion. A prominent group in

international human rights, Human Rights Watch, in July 1992, called for the punishment of perpetrators of war crimes and genocide. Also in July 1992 the journalist Roy Gutman, with *Newsday*, published the first article on Bosnian Serb run concentration camps. Eventually names like Omarska, Keraterm, Trnopolje and Manjaca would be identified as places where atrocities and war crimes occurred like Sarajevo, Srebrenica and Ovchara, all written in savagery and bloodshed. It was only after the news of rape and atrocity in concentration was aired by the media and pictures of emaciated bodies of Bosnian men held captive by Serbian commanders were beamed around the world that the UN Security Council took initial steps to set up what later became the ICTY (Bass, 2000: 210). The resolution to setup a United Nations commission to gather evidence of war crimes went ahead, even with many of the Western powers involved finding the taking of war criminals to be an impediment to peace.

The commission of experts out of which the ICTY emerged worked slowly initially. The first chair of the commission, Frits Kalshoven, at first did not criticize the effort. Cherif Bassiouni, a law professor at DePaul University who sat on the commission did make criticism; he also fought hard for human rights. He could not tolerate UN stodginess in the face of a mounting death toll in Yugoslavia and began fundraising to get more investigative work underway. Through the MacArthur and Soros foundations he raised 2.4 million dollars to fund the evidence gathering. The UN had committed only \$900,000 at that point. With this he detailed evidence from 900 prison camps, 90 paramilitary groups, 1,600 reports of rape and 150 mass graves (Bass, 2000: 211). He did criticize the UN for foot dragging pointing to obvious instances of it, forcing the war to drag on longer. Eventually the obstructionism of Britain and France became part of the reason that Kalshoven resigned from the commission.

While Serbs claimed 70 percent of Bosnia in 1992, Bassiouni still saw no change in the commission's failure to carry out its mandate effectively. After US President Bill Clinton came into office, he sent his first secretary of state, Warren Christopher, to tour Europe and sound out America's allies on a) lifting the arms embargo against the Bosnian Serbs and b) launching air strikes against them. The European powers, however, felt air strikes would endanger UN troops already committed to the war zones in Yugoslavia; Clinton backed off the initiative. With sound reasoning, Christopher on May 18, 1992, said at a congressional hearing that Bosnia was "a problem from hell" (Silbur and Little, 1997: 287).

By May, 1992, the quagmire continued. France and Britain seemed to oppose a tribunal. At that point Madeleine Albright, America's United Nations ambassador, fought hard for it and on February 22, 1993, the Security Council unanimously passed a resolution inaugurating the International Criminal Tribunal in Yugoslavia (ICTY).

## **7. The ICTY: A struggle to do the job right**

The formal title for this tribunal is The International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991. It represents a body of the United Nations established to prosecute perpetrators of serious crimes committed during the wars in the former Yugoslavia. It was instituted as an ad hoc court associated with The Hague (Netherlands), and called on to finish its work by December 31, 2014.

It may have been intended to be just another kind of reprimand rather than an actual court with indictments and defendants being tried. Albright doubted that any arrests would be made. Britain had 2,700 soldiers on the ground with UNPROFOR and France had 4,000. They both wanted their troops coming home without casualties. Meanwhile, Helsinki Watch complained that valuable evidence was disappearing every day. It took three months to draft a statute for the tribunal and get on with the selection of eleven judges. The process was fraught with contradictions and contrarities. In the end, the UN General Assembly made its choices and altogether it came out well, with three high profile judges, two from Egypt and one from Canada, and the chief judge being Antonio Cassese, an international law professor from Italy. Cherif Bassiouni was nominated by Egypt as one of the judges, and Richard Goldstone of South Africa was approved as chief prosecutor by the Security Council on July 8, 1994 (Bass, 2000: 213-224).

The judges were paid with an ad hoc budget until the end of 1993 as the tribunal confronted a host of minor obstacles and chief judge, Cassese, battled on past each one. To combat the underfunding and slow running forced by the UN on the tribunal initially, the judges themselves did fundraising. Goldstone's first indictment was the commander of the Susica camp in Bosnia, Dusan Tadic, who was accused of crimes against humanity in the summer of 1992. On May 7, 1996, he was the first war criminal to be tried in The Hague. Goldstone had come into office while Serb forces continued to besiege Sarajevo and other Bosnian towns. Cassese protested that the war was sustaining a bloodbath while the ICTY attempted to prosecute and the Western powers looked on, doing as little as possible. Bosnian Croat forces and the Bosnian government had been at war and the siege of Sarajevo had taken place while the tribunal had no power to enforce its data gathering mandate. Serbia actively blocked investigations and treated The Hague with contempt. Chief judge, Cassese, registered one protest after another. "Relying on a reluctant UN and NATO to enforce its edicts, the tribunal could only inconvenience and stigmatize its suspects" (Bass, 2000: 223).

After the shooting down of the American F-16 in Yugoslavia, NATO finally started bombing Bosnian-Serb positions. Difficulties still continued at the ICTY which still had a budget insufficient for witness protection and investigation. Goldstone issued indictments that, as with Tadic, were mainly of low level officials. Analysts held that he needed to prosecute the big fish, those who had ordered the killings and known of or not prevented war crimes. Once again, the Serbs were utterly uncooperative. The tribunal felt that if they could get even a mid-level leader he could be put on trial and release information leading to the arrest of those still higher in the command chain. Their determination did find fulfillment in many indictments including that for Milosevic who bore command responsibility for Serb paramilitary groups. By July 25, 1995, Goldstone went on to indict Radovan Karadzic, president of Republika Srpska from 1992-1996, and Ratko Mladic, a General in the Bosnian Serb army, for genocide and crimes against humanity. The 44 month siege of Sarajevo and the massacre at Srebrenica were instances of Mladic's blatant savagery. With Mladic leading his Bosnian Serb Army into Srebrenica, one of six Bosnian towns nominally under UN protection, Mladic is said to have bragged that the fate of Srebrenica's Muslims were in his hands (Rohde, 1998:179). Bosnian Serb forces under Mladic slaughtered more than seven thousand Muslims at Srebrenica. The day The Hague indicted Karadzic and Mladic, Mladic's forces took the UN safe area of Zepa (Rohde, 1998:329). Karadzic and Mladic were also responsible for the deaths of 12,000 civilians in the shelling of Sarajevo.

The slaughter at Srebrenica July 11, 1995 showed the world that only military force could stop the bloodletting between the warring parties. Madeleine Albright on August 10, 1995 blasted the Bosnian Serbs in a closed session of the UN Security Council. She unveiled U-2 photographs of mass graves near Srebrenica. At about that time, three senior US diplomats on their way to Sarajevo were forbidden to use Sarajevo's airport and had to take an armed personnel carrier through treacherous mountain roads. They met with disaster on the way. Their deaths had helped bring the US full scale into Yugoslavia (Holbrooke, 1999: 373). By that time, the balance of forces on the ground swung against the Serbs. With no NATO troops around Goradze and UN personnel gone from Serb territory, on August 29, 1995, NATO planes engaged a massive bombing campaign against Bosnian Serb positions and Holbrooke began directing a diplomatic effort to bring peace to the Balkans. He finally brokered a ceasefire signed by Milosevic and his then top general, Radovan Karadzic, on October 5, 1995. By November there was a gathering of leadership on all sides at Wright Patterson Air Force base in Dayton, Ohio. In December 1995 a NATO force of 60,000 IFOR troops moved into Bosnia bringing a sudden peace (Bass, 2000: 246).

Even with that, the ICTY had no protocol for making arrests of those indicted that was guaranteed by any specific legal entity for policing the peace in the Balkans after the Dayton Accord. Journalists could see that IFOR troops were making every effort *not* to encounter indicted perpetrators. They insisted that they were not a police force and did not want to get involved in the legal hassles of prosecuting those they could easily have apprehended. NATO and IFOR found themselves in 1995 taking defensive strategies against Goldstone and Albright—they would not protect teams investigating grave sites. The ICTY turned to a private humanitarian minesweeping organization, and “on July 7, 1996, at Cerska near Srebrenica, where IFOR feared to tread, mine sniffing dogs from the Norwegian Peoples Aid rushed in” (Bass, 2000:254; Rohde, 1998: 346-347) and did the job.

Despite all the obstacles, the tribunal and the United Nations were a presence in the Yugoslavian debacle that was historically unique. It sent workers to deal with the remains of massacres and war zones and detail what had happened from a forensics point of view. This brought dignity to the lives of those brutalized and killed who were without so much as a gravestone to honor their lives. Clea Koff (2004) who, as a Forensic Anthropologist with the United Nations participated in five missions in Yugoslavia and Kosovo, wrote as she worked in the Cerska area of Bosnia, “I felt anger toward people who deem murder an acceptable political policy. I felt the last of my naivete drain away as I uncovered more and more people shot while their hands were tied” (Koff, 2004: 138). She felt two kinds of duty to the murdered, first to identify who they were and “allow them to incriminate their killers,” and second, to help return their remains to their families. The ICTY was among the small number of institutions worldwide who brought this gift of decency and civilization to the civilian victims of the Yugoslavian wars of the 1990s.

## 8. Contributions of the ICTY

The International Criminal Tribunal for the former Yugoslavia (ICTY) was established by Resolution 827 of the United Nations Security Council on May 25, 1993. Its jurisdiction covered four clusters of crime consisting of 1) grave breaches of the Geneva Conventions, 2) violations of the laws or customs of war, 3) genocide, and 4) crimes against humanity. Various countries signed agreements to carry out custodial sentences. The maximum

sentence the court could impose is a life sentence for those tried and found guilty. Final indictments of the court were issued by December 2004, the last of which were confirmed and unsealed in 2005. The Tribunal will complete all trials by the end of December 31, 2014, complete all appeals by 2015. Exceptions to this are the trials of Radovan Karadzic whose trial is expected to end in 2014, recently arrested Ratko Mladic, and Goran Hadzic (ICTY Completion Strategy Report May 18, 2011) whose trial dates are pending. After the closure of the ICTY its responsibilities will be transferred to the International Residual Mechanism for Criminal Tribunals which will begin functioning for the ICTY on July 1, 2013. Goran Hadzic was the last of the 161 indicted fugitives to be arrested on July 20, 2011.

Since the first hearing of the ICTY held on November 8, 1994, 161 individuals have been Indicted and 100 of these will have completed proceedings by 2011. Among those indicted by the ICTY, five of the one hundred have been acquitted, 48 have been sentenced, and 11 had their cases transferred to local courts. Another 36 cases were terminated because the defendant had died, or indictments were withdrawn. The indicted ranged from common soldiers to generals and police commanders to Prime Ministers. Among the (sitting or former) heads of state indicted were Slobodan Milosevic, Milan Babic, former President of the Republika Srpska Krajina, Ramush Haradinaj, former Prime Minister of Kosovo, Radovan Karadzic, Former President of the Republika Srpska, Ratko Mladic, former Commander of the Bosnian Serb Army, and Ante Gotovina, Former General of the Croatian Army. On July 21, 2010 commanders of the Kosovo Liberation Army, Ramush Haradinaj, Idriz Balaj and Lahi Brahimaj had their cases re-opened for trial. The Croat Serb general and former President of the Republic of Serbian Krajina, Goran Hadzic, became the last fugitive wanted by the ICTY to be arrested. On July 21. Of these Haradinaj (Kosovo) was acquitted.

This list is growing but remains dominated by top leadership involved in atrocity and war crimes. Initially there had been a fear among tribunal staffers that there would be a flood of low-level suspects (Bass, 2000: 261) with a very small budget to secure the integrity of evidence and prosecution of each person named. This was a critical weakness. With the tribunal being freighted with the burden of low budgets from the start, it could not protect witnesses appropriately. One of the tribunal's best witnesses of the Srebrenica massacre, for instance, said he might not testify because his family had no protection from Serb reprisals. (Bass, 2000).

After Richard Goldstone, decided to return to South Africa, Louise Arbour of Canada took over in 1996 as Chief Prosecutor. To the dismay of some, Arbour while not playing to the press, at the very start of her tenure in office, unsealed secret indictments. The military would have the element of surprise in apprehending them. The decision pleased NATO and the Pentagon, with great reason. They wanted accountability for the crimes committed. Smaller fish were still the majority of cases coming before the ICTY at that time, like the accused concentration camp commander, Zeljko Meakic, and Simo Drljaca who as police chief had been involved in ethnic cleansing in 1992 at Prijedor. Milan Kovacevic, the director of the Prijedor hospital and who together with Drljaca ran Omarska, were both indicted for complicity in genocide. Arbour was deliberate in her pursuit of those indicted by the ICTY, however, and finally Slobodan Milosevic became the first serving head of State called to account, then Milan Milutinovic, President of the Republic of Serbia, Nikola Sainovic, Deputy Prime Minister of the Federal Republic of Yugoslavia, and Vljako Stojiljkovic, Minister of Internal Affairs of the Republic of Serbia.

By 1996, British commandos had picked up Kovacic while he was fishing in a lake not far from Omarska (Bass, 2000:267). Unarmed, he surrendered and was taken to The Hague. Drljaca, living up to his violent reputation had drawn a pistol and fired on the British commandos when they moved away from their helicopter. SFOR's rules of engagement permitted them to take him down, and they did so. NATO was supportive. Republica Srpska reacted with anger, condemning the killing. This change of politics in SFOR and the West in general toward a robust arrest process for indictees of the ICTY was denounced by Russia who warned Britain to launch no more "cowboy" raids. The French proved a poor second in terms of the bravery it took to carry out the work of arresting and prosecuting those well known for their savagery during the ethnic cleansing process. The slow process of apprehension and detention of inductees continued until the 1998 War for Kosovo began. Slobodan Milosevic's 1987 repression of the ethnic Albanians in Kosovo. This leader's repression of the ethnic Albanians in Kosovo triggered the 1991-1995 wars in the former Yugoslavia. Milosevic brushed off attempts to negotiate a deal with the moderate Albanians (Rogel, 2003:176). Nearly ten years later, Richard Holbrooke, drawing on ties to Slobodan Milosevic developed on earlier diplomatic tours, got Milosevic to agree to a monitoring force for Kosovo, the Kosovo Diplomatic Observer Mission (KDOM). In late September, 1998, the United Nations Security Council issued Resolution 1199 calling for a ceasefire between Serbs and Albanians. This time, the United States favored intervention. Under the suggestion from French president Jacques Chirac, that the situation be defined as a humanitarian emergency. NATO could now justify its involvement. In what Igor Ivanov of Russia, exasperated with the Serbs, especially of Milosevic's tedious brother who was then Serbian ambassador to Moscow, said he would not support United Nations intervention but would support NATO. KDOM (Kosovo Diplomatic Observer Mission) and KVM (Kosovo Verifying Mission) approved by Holbrooke and Milosevic in October, monitored the violence.

The violence in Kosovo nevertheless did escalate, and on January 8, 1999, forty-five inhabitants of the Albanian village of Racak were massacred. Serbs were to blame. The KVM confirmed this. NATO saw intervention as imperative. Great Britain, Germany and the United States prepared to become an occupying force (KFOR). A last attempt at diplomacy was organized with Serbs and Kosovars summoned to a peace conference in Rambouillet, France set for February 6, 1999. Serbs treated the conference as a lark (Rogel, 2003: 177). Albania, however, worked hard to get Albanians to sign the peace agreement. Kosovars could benefit by signing and Madeleine Albright promised them a referendum in three years. After consulting Albanians at home, the Kosovars signed. As expected, the Serbs did not, and so the Kosovo War began on March 24, 1999.

At the start of the 1999 war, Milovic purged all but hard-liners in leadership in the Serbian government and police. He then sent forty thousand military personnel and police in or near Kosovo to put pressure on the Albanians of Kosovo, but to no avail. A 'virtual war' (Ignatieff, 2000:53-56) ensued thereafter. Kosovars had generally welcomed NATO engagement and fled to Albania, Montenegro and Macedonia in large numbers. More than 848,000 fled during the conflict. As they left, Serbs confiscated their homes and property ownership documents making it difficult for them to return.

NATO's involvement in military action in the Kosovo war had to be granted by the full body of NATO countries. This required nineteen supporting signatures from member

countries. The head of NATO, Javier Solana of Spain, secured these. It was the first “high tech” war ever before staged. General Wesley Clark of the US directed operations. NATO’s part in the war was carried out exclusively by air, from heights of 15,000 feet in order to avoid NATO casualties. Mission reports each day were by e-mail video and, twice daily, the general held teleconferences “to coordinate this war waged by committee “ (Rogel, 2003: 178). Ground assault troops were never used; NATO used ultramodern technology operated by a NATO crew of 15,000 who were assisted by 30,000 technicians. Air power alone won through using strategic bombing. Though, about fifty percent of Kosovars had crossed into Albania or went elsewhere before the action started, ten thousand Serbs and Albanians were killed in bombing runs. There were two NATO casualties. Russia pressured Serbia to call a halt, however, the Serbs were unwilling to surrender. Fighting was concluded with a Military-Technical Agreement. The brilliant win of NATO over unrepentant leaders of savage ethnic cleansing throughout the 1990s who could not be convinced to relent and submit to the jurisdiction of the ICTY after the Dayton Accord, were determined in 1999 to pursue nationalism Serbian style. Attempts by the United Nations, NATO and The Hague to censure and quiet this process were mocked by those in power in Serbia. The process was complex and critics in a confusion of concerns accused leaders and organizations in the powerful West of being the violators of ethical codes. The West was accused of foot dragging when it would not get involved in stopping ethnic cleansing between 1991 and 1995, and immoral when it did finally enter a messy civil war.

## 9. Aftermath of the 1990s wars in Yugoslavia

Looking at the atrocities in Bosnia under Serb attack and the possible pernicious effect on collective memory of those targeted in each separate area of the former Yugoslavia where atrocity had occurred, over the entire decade of the 1990s, every group eventually carried scars from traumatic experience (Herman 1992; Staube, 2006:867-894) of some kind and degree. In the end, the goal was to recover peace and return to normalcy.

After the 1990’s wars, 85 percent of the emigrants from the ethnically diverse areas of Bosnia and Herzegovina to Serbia and Montenegro were Serbs (Lukic & Nikitovic, 2004:88-89). They made up 36.7 percent of the total population of Serbia in 2001, down from 43.1 percent in 1996. The ethnic push factor during war did not stand alone, however. Higher levels of education were also positively associated with the move. Statistics show that highly trained and professional migrants were heavily represented in the postwar migration. Younger, better educated migrants opted for resettlement to distant regions offering better economic conditions. This meant that a large portion of migrants moved to the large urban center in Belgrade. This allowed them to retain their former lifestyle or better it. In turn, though initially they competed for jobs available to citizens of Serbia, for the longer term these refugees stood to benefit that nations’ economic recovery. In this sense, the halting of atrocity and warfare of the 1990s brought by the Dayton Peace Accord (1995) did help end the violence (Rohde, 1998; Honeg & Both, 2001) and led to normalization and recovery of community. It was however insufficient and late for many who experienced the horrifying intensity of human rights abuse. Multi-ethnic communities had been segregated, slaughter had followed “brotherhood and unity, western powers had helped, but not readily when it was first needed. The ICTY brought justice processes against perpetrators, but more would be needed for reconciliation to repair the breach of trust.

## 10. Conclusion

Bass (2000:301-302) notes that establishing the truth so as to debunk claims that no atrocity occurred is one of the major gains brought by the United Nations in constituting tribunals like the ICTY. By bringing justice along with truth, tribunals lessen the chances for private, uncontrolled vengeance. Leaving justice entirely to the victims is hardly likely to produce anything more than suspicion and bitterness as the road to the future. Where local courts are left to bring justice to victims and perpetrators, they tend to bring unhelpful harshness (Bass, 2000:309-310) and the danger that politicization might trigger a backlash. The tribunal also removes or limits leaders with known ties to war, atrocity and genocide so that the pathway to peace and recovery is further assured. Madeleine Albright in Pristina in July 1999, noted that justice is the parent to peace (Bass, 2000:284). When she visited The Hague and addressed a statement to the ICTY in 1997 she said, "Justice is essential to strengthen the rule of law, soften the bitterness of victims' families, and remove obstacles to cooperation among the parties." The ICTY established a model for resolving ethnic differences by "the force of law rather than the law of force."

Future research should examine the unique difficulties of mounting multi-national efforts requiring combat, different ways of adequately funding such operations so that there is efficient and effective action when war, atrocity and genocide egregiously threaten civilian lives (Power, 2002:397; 401-403; Hagan and Ivkovic, 2006). Part of this would involve studying how to deal with the problem of militarized refugee populations (Kenyon Lischer, 1999; Kushner and Knox, 1999). New research should map the aftermath of violence and how various kinds of organizations can more effectively focus on getting funds to those living in former war zones. Every effort should be made to promote economic revitalization of devastated communities. National entities benefitted by justice processes should be allowed entry into the global community (Miller et al., 2011:68-91) so as to give the next generation a basis for hope (Jones 2005). The valiant judges and staff of entities like the ICTY should not have to fight intransigence and bad faith to even get to the point where they can do their jobs. Finally, new research should continue to explore the positive effects of transitional justice mechanisms (Sikkink and Booth Walling, 2007) in maintaining and sustaining peace.

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