

**"Did the Death of Slobodan Milosevic Before a Conviction by the
ICTY Hinder the Peace Process in the Balkans?"**

McCall C. Carter

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Dr. Gordon Bowen

Honor Code Pledge: McCall Carter

Chapter One: Introduction

Rape. Sieges. Concentration Camps. Genocide. These are only some of the atrocities that occurred in the former Federal Republic of Yugoslavia. Ethnic nationalism was rising again after the world had hoped it had ended. The year was 1990, and the Cold War was coming to an end. With the fall of the Berlin Wall in 1989, hope in the West sprang anew with the belief that the ideals of democracy had won. However, elsewhere in Europe, atrocities such as those mentioned above were being committed daily by victims' neighbors, friends, and perhaps even family. After several separation movements by Croats and Slovenes, Serb nationalists, led by Slobodan Milosevic, were attempting to unite all Serbian peoples – at any and all costs. Meanwhile, the international community was shocked, because this was the last place they expected such a thing to happen. Civil wars were practically expected in third world developing nations, but they were not expected in Europe; a continent that not fifty years before had experienced the genocide committed by Nazi Germany. The continent was believed to be beyond such occurrences in its borders. But it did happen, and the world was left to deal with it.

How does a world, region, or people deal with such atrocities? And, perhaps more importantly, how are they prevented from occurring again? For many liberal internationalists, justice is the answer. International humanitarian law as we now know it began after World War II with the Nuremberg Trials.¹ This was the first major attempt by the international community to prosecute for crimes committed during a time of war.² That this action was chosen set a far-reaching precedent for the treatment of war crimes

¹ Neier, Aryeh. *War Crimes: Brutality, Genocide, Terror, and the Struggle for Justice*. New York, Times Books (1998), xiii.

² Singer, Peter. *One World: The Ethics of Globalization*. New Haven, Yale UP (2004), 113.

to come, as well as introducing a new option into peacekeeping. According to the scholar Martha Minow, "[b]y deciding... to hold trials, the Allies sought to establish an international body of rules to guarantee peace and human rights with institutions sufficiently strong to enforce those rules."³ This approach was perceived to be a more favorable response to the atrocities than an attempt at revenge.⁴ However, despite these broad hopes and aspirations for the trials at Nuremberg, many criticisms, some well deserved, were voiced. The main criticism of the Nuremberg Trials was that they allowed the Allied powers, under the mask of international justice and human rights, to exact revenge through guilty convictions to their enemies. In fact, one United States Chief Justice called the court a "high class lynching party."⁵ However, despite these shortcomings, some state that "...the most important contribution of Nuremberg [was] the development of a kind of international law that grows, and is always in the process of becoming."⁶

International humanitarian law saw a new high in its development when the International Criminal Tribunal for the Former Yugoslavia (ICTY) was formed. The ICTY was one of the first real attempts at international justice since the Nuremberg Trials.⁷ It is for this reason that the effectiveness of the ICTY is given so much importance in this thesis.

However, theories of whether an attempt at justice is an effective way to make peace differ. Many liberal internationalists believe that promoting justice in a post-

³ Minow, Martha. Between Vengeance and Forgiveness: Facing History after Genocide and Mass Violence. Boston, Beacon Press (1998), 29.

⁴ Minow, 29.

⁵ Minow, 30.

⁶ Minow, 33.

⁷ Minow, 27.

conflict society will lead to long term peace. There are many reasons behind this, but perhaps the most concise explanation was given by Boutros Boutros-Ghali when he stated that "one of the main aims of the Security Council" when they established the ICTY

was to establish a judicial process capable of dissuading the parties to the conflict from perpetuating further crimes... the Tribunal [ICTY] will contribute to the peace process by creating conditions rendering a return to normality less difficult. How could one hope to restore the rule of law and the development of stable, constructive and healthy relations among ethnic groups, within or between independent states, if the culprits are allowed to go unpunished? Those who have suffered... are unlikely to forgive or set aside their deep resentment... the only civilized alternative to this desire for revenge is to render justice: to conduct a fair trial by a truly independent and impartial tribunal and to punish those found guilty. If no fair trial is held, feelings of hatred and resentment seething below the surfaces will, sooner or later, erupt and lead to renewed violence.⁸

In addition to addressing the wrongs that were committed, international criminal tribunals are also meant to individualize guilt. If guilt is assigned to individuals, then it will break the tendency of ethnic groups to assign guilt to whole ethnicities, creating a situation in which war caused by ethnic nationalism is less likely.⁹ Another benefit of international law is that it "... signifies that the community at large considers a crime against one of its members to be a crime against all..."¹⁰ Another theory, that perhaps has less empirical evidence to support it, is that international law acts as a deterrent to future atrocities, because perpetrators will fear the consequences of their actions.¹¹

Despite the positive aspects that international humanitarian law may bring to post-conflict situation, there are still many criticisms of it and its past uses. Perhaps one

⁸ Hazan, Pierre. *Justice in a Time of War*. College Station, Texas A&M UP (2004), 40-41

⁹ Neier, 211.

¹⁰ Neier, 212-213.

¹¹ Minow, 48-49.

of the greatest criticisms is that tribunals serve more as a symbol than as an effective body of justice, because they will never be able to try all the perpetrators due to the sheer number of them and the various, often minor, roles each one played.¹² Martha Minow believes that international tribunals risk committing the errors of retroactivity, politicization, and selectivity. Retroactivity is the word used to describe the idea that crimes are punished after the fact, and at times without the clear precedent of previous rulings. Politicization is the possibility that a tribunal will become concerned with "political pressures and calculations."¹³ Finally, selectivity concerns the fact that no criminal tribunal will be able to try all the perpetrators, and therefore must select which ones to indict, and which ones should be allowed to go free. By allowing some perpetrators to go free, a tribunal has already compromised a complete justice.¹⁴ Often times, high ranking officials, while indicted, fail to be tried and/or convicted by an international tribunal.¹⁵ "[These] dangers do indeed tarnish the rule of law ideal. The question is when, and whether enough to mettle remains in that ideal to make the effort at prosecution worthwhile."¹⁶ This quote brings to light the problems that occur with courts such as the ICTY. It provides a sense of a cost/benefit analysis of whether the possible successes of international courts make up for the failures that will almost surely occur. Therefore, the question remains, "does international law promote peace, and if so, what are the requirements for success?"

It is a form of this question that this paper is attempting to answer. However, the focus that has been chosen is the case-study of the International Criminal Tribunal for

¹² Minow, 122

¹³ Minow, 31

¹⁴ Minow, 31

¹⁵ Minow, 40

¹⁶ Minow, 31

the Former Yugoslavia and the specific case of the trial of Slobodan Milosevic. The final question that will be answered is, "Did the death of Slobodan Milosevic before a conviction by the ICTY hinder the peace process in the Balkans?" The specific area of the peace process that will be examined is the prevalence of ethnic nationalism among the Serbian people, and the effect, if any, that the trial and death of Slobodan Milosevic had on this, as well as the ICTY itself. Public opinion polls will be analyzed in order to find out the effects of Milosevic's trial and death among the Serbian people, as well as Serbian newspaper articles and outsiders' views of the state of nationalism in Serbia.

This specific topic has been chosen for several reasons. Firstly, the author believes that the topic is important to international relations in the broad sense of the effects of international law on post-conflict peace building. Secondly, it is believed that this case is important because of its lasting effects on the human rights of Eastern Europe, and the possibility of another war if grievances are not addressed. Finally, the outcome of this tribunal (the ICTY) will have an influence on how future international criminal tribunals and courts are viewed.

The paper will follow the general order as outlined below. It will begin by explaining specific aspects of the ICTY and its importance in international law. Then, a review of reports and important judgments that it has made since its inception will occur, in order to provide the reader with a fuller understanding of its history and what effect the trial of Slobodan Milosevic may have on the Tribunal. Next, Slobodan Milosevic's trial will be examined in greater detail, including his indictment and his extradition to the ICTY in The Hague. After this, examination of public opinion polls that monitor the ethnic nationalism in Serbia will begin, as well as the general state of politics and public affairs;

for instance, "is the political system stable?" "Does the radical nationalist party have a strong support in the country?" As well as "what is the general attitude of Serbs towards the ICTY?" Finally, after this analysis, a short section on the future of the ICTY, what is at stake, and what actions will improve its effectiveness will be provided.

Chapter Two: The Court

I. History

To understand the importance of the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the role that it plays in establishing peace in the Balkans, a brief history and background must be provided. It was established in 1993 by UN Security Council Resolution 827. It is located in The Hague in The Netherlands, and was established to fulfill the following four purposes: "to bring to justice persons allegedly responsible for serious violations of international humanitarian law, to render justice to the victims [of the crimes], to deter further crimes, [and] to contribute to the restoration of peace by holding accountable persons responsible for serious violations of international humanitarian law."¹⁷

II. Jurisdiction and Budget

The jurisdiction of the ICTY is relatively limited. It is allowed to indict war criminals for "grave breaches of the 1949 Geneva Conventions, violations of the laws or customs of war, genocide, [or] crimes against humanity."¹⁸ It is only allowed jurisdiction over crimes that were committed since 1991 in the Balkans area, specifically the countries that used to comprise Yugoslavia. It is not allowed to prosecute or indict any

¹⁷ "Fact Sheet on ICTY Proceedings," 8 May 2006. <<http://www.un.org/icty/cases-e/factsheets/generalinfo-e.htm>> 11 Oct. 2006, 1.

¹⁸ "Fact Sheet", 1.