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**The International Criminal Tribunal for the Former
Yugoslavia (ICTY): An Examination**

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Introduction

The decade of the nineties has been marred by continued violence besetting the former Yugoslavia. Today's technology allows people across the globe to read in the newspaper publications and view, first hand, the violence emanating from this region of the globe. The events unfold before us daily. A news crew ducks in the city of Sarajevo while a sniper cuts loose on the civilians. Millions of refugees flee their homelands. Soldiers round up civilians at gunpoint. Mass graves are unearthed. The fifteen bodies of slain ethnic Albanians, victims of ethnic cleansing, send their message across the television screen for anyone to find justice for this tragedy. As we sit and watch or read these unsettling events, we sympathize with the victims' feelings of helplessness. We wonder how many children of slain fathers have been left behind to defend themselves. How many mothers have died shielding children from the shrapnel of exploding bombs? How many children are left with no parents or family of any kind? The answer is too many. The international community, meaning the governments representing the member states of the United Nations (UN) General Assembly, has found a possible medium for finding justice for the victims of Yugoslavia. The UN General Assembly created in *ad hoc* fashion the International Criminal Tribunal for the former Yugoslavia (ICTY) to try the individuals responsible for perpetrating crimes against humanity, genocide, and war crimes.

By examining the effectiveness of the ICTY, its strengths and weaknesses will provide insight into an organization capable of establishing a tangible rule of international law. In order to evaluate the success or failure, it is absolutely necessary to trace the roots of trouble plaguing the former Yugoslavia. At the conclusion of this paper, it is anticipated that the reader will understand in greater detail the complexities

surrounding the violent events occurring in the former Yugoslavia. By becoming familiar with the complexities and analyzing a key weakness of the ICTY, it will be painfully obvious how ineffective the ICTY has been and will be if changes are not immediately implemented.

The ICTY was established on May 25, 1993. The United Nations (UN) Security Council created the ICTY to prosecute war crimes in the former Yugoslavia. War crimes committed include “summary executions, torture, rape, arbitrary mass internment, deportation and displacement, hostage taking, inhuman treatment of prisoners, indiscriminate shelling of cities, and unwarranted destruction of private property.”¹ The ICTY is attempting to end the circle of violence by placing responsibility for war crimes on the individual instead of blaming entire groups or nations. Reconciliation will elude the former Yugoslavia unless the individuals responsible for the atrocities are held accountable. “No long-lasting reconciliation between ex-enemies, after all, can come about without a proper accounting for war crimes; peace is built upon truth. Such a process re-establishes confidence in the rule of law. It should also deter future killers.”² It is also the hope of the UN Security Council that the success of the ICTY will deter future atrocities in the international community as a whole.

The ICTY has achieved its goal despite numerous setbacks. It has issued public indictments on more than 70 individuals and several more sealed indictments. The process of justice has been stalled because the ICTY has tried and convicted only one person after five years. Thirty are in custody and awaiting trial.³ However, none of the detained war criminals are top military or political figures ultimately responsible for

implementing war crimes, ethnic cleansing, and crimes against humanity. The former Yugoslavia will never see change if it continues to be controlled by alleged criminals.

The ICTY cannot prosecute without defendants. Apprehending the indicted war criminals falls under the North Atlantic Treaty Organization (NATO) Implementation Forces (IFOR) stationed in the former Yugoslavia. However, the IFOR troops can only apprehend the suspects if they happen to run into them on the street. The top political and military leaders, which have been indicted by the ICTY, still have access to their power. The war criminals either have the sense to stay out of sight or are surrounded by large security forces.⁴

Special forces groups representing several nations have been brought in and had limited success in apprehending the war criminals. The fear of casualties looms to large to attempt a realistic, successful mission. Despite the lack of success, the Special Forces military units are the best there is to accomplish the need of apprehending indicted war criminals. However, casualties are almost a certainty. Politicians control the Special Forces and are having a difficult time accepting a friendly death toll as a consequence. There is no clear leadership willing to solve the ICTY's problem.⁵

The magnitude of this problem has several facets. The cycle of violence will continue for future generations unless put to a stop now. By placing the guilt on individuals instead of groups or nations, future retaliation between nations can be significantly reduced. The ICTY will stagnate and lose its momentum if it cannot follow through with the prosecution of the war criminals it has indicted. The international community cannot stand idly by and let the former Yugoslavia continue to repeat centuries old atrocities which have sparked both World Wars.

The goals of any solution to the ICTY's problem should be the safest apprehension of its indicted war criminals. The killing of any suspects, intentional or unintentional, should be considered a failure. The local community must perceive the West as an objective mediator for justice and not a bully exercising its own judgement without a jury. The success of the ICTY will be measured by how many cases it has brought to trial. The ICTY does not wish to prosecute without defendants present and able to defend themselves.

The safety of all persons involved in apprehending the indicted war criminals should also remain a key factor of implementation. Heavy casualties will only cause the international community to become even more timid and indecisive. Good intelligence will help give the upper hand to friendly forces. However, a plea for no casualties is unrealistic. The consequences of violent action will most likely result in some casualties no matter the training and skill of the people involved. Military forces know the consequences of their career field. It is time the politicians begin understanding the fundamentals of their career--making decisions.

The U.S. Secretary of State, Madeleine Albright, and the U.S. Secretary of Defense, William Cohen, have made a verbal commitment to do whatever it takes to apprehend war criminals in the former Yugoslavia. However, the only result is indicted war criminals giving themselves up from the lower level of the decision making process. The war criminals responsible for implementation need to be apprehended or the war crimes will continue.

Radovan Karadzic is a prime example. He was the former Serb President but was convinced to resign his position when the ICTY indicted him for war crimes. He still

retains much of his power and control over the military and therefore has the needed protection against his would be captors. The UN Security Council has made it a priority to capture Karadzic. The members of the Security Council who have taken responsibility for apprehending Karadzic fear the casualty rate in any attempt to apprehend him.

One mission was attempted but aborted at the last minute. Over 300 people were involved in the developments of the mission and eventually led to a leak of intelligence. General Wesley Clark, commander of all NATO forces in the former Yugoslavia, wanted detailed information on the residence which Karadzic was staying on the night the mission would be implemented. The intelligence side believed the requests were unrealistic and believed the General was getting cold feet.

General Clark did not want any casualties and would not send any troops in until assurances could be made. There are no assurances in the business of military conflict. At the last minute, a local approached the NATO intelligence officials and revealed the mission plan intended to capture Karadzic. The leak cancelled the mission immediately. The reason for this waste of time and resources is simple--there were too many people involved over a long period of time.⁶

It was a failure and embarrassment for the military forces involved and the politicians whose diplomacy has only given confidence to the likes of Radovan Karadzic. Diplomacy with the threat of force has been attempted but has thus far failed. The threat of force has failed to materialize which makes diplomacy a lame duck. Indicted war criminals that were responsible for giving the orders are aware of this and will continue to challenge the West until a realistic attempt at military force is successful.

In any negotiation, it is understood that force is the ultimate recourse. It is the art of diplomacy to keep the threat potential, to keep its extent indeterminate...For

once power has been made actual, negotiations in the proper sense, cease. A threat to use force which proves unavailing, does not return the negotiation to the point before the threat was made. It destroys the bargaining position altogether[;] for it is a confession not of finite power, but of impotence.⁷

Violence has to be anticipated in a diplomatic ultimatum. “To exploit it, is diplomacy – vicious diplomacy, but diplomacy.”⁸ The indicted war criminals of the former Yugoslavia have no reason to respect the diplomatic ultimatums issued to them by the United Nations or any member of the international community because the threat of force has not been followed through. Air strikes do not count for violent consequences. They are ineffective and the proof is found in Iraq, terrorist groups, and Bosnia itself. Air strikes have not altered the course of action by countries, political leaders, or terrorist organizations on a permanent basis. It only serves to entrench the enemy and further their resolve.

A permanent solution must be obtained and the formation of the ICTY was a credible step towards that goal. However, if it is not followed through to completion, all future persons violating international law will do so with the confidence that there are no consequences for their actions. The crimes detailed in this research should be motivation enough for the international community to involve itself in facilitating a more permanent solution. In attempting to eliminate the senseless violence, which has beset the former Yugoslavia for centuries, it is crucial to understand the deep roots of ethnic strife that has existed throughout Yugoslav history.

By understanding what motivates the intense hatred between the Croatians, Serbians, and Muslims, the ICTY will be better prepared to achieve its goal of ending the circle of violence and assigning responsibility to individuals rather than ethnic identities or religious affiliations. It is not the intent of this paper to simply categorize these people

as being prone to violence. However, violence has visited this region several times from its 7th century origins to the present. What is important to realize in Yugoslav history is that the historic violence reported, whether it is true or not, is used in the present to whip up hatred of one ethnic group against the next. Why? So that the leaders who are facilitating the violence can create a national identity giving the individual political power and thus control over a geographic region and global recognition.

A Brief History of the Yugoslav Peoples

The roots of Yugoslav are found in three Slavic tribes that migrated from Russia in the 7th century. These Slavic tribes were the Serbs, Croats, and Slovenes. All three tribes maintained a separate existence until December 1, 1918. However, King Aleksander of Serbia changed that and announced the formation of the Kingdom of Serbs, Croats, and Slovenes. Aleksander's Kingdom consisted of six republics (Slovenia, Croatia, Bosnia-Hercegovina, Serbia, Montenegro, and Macedonia) and two autonomous provinces of Voljvodina and Kosovo.⁹ This kingdom was called Yugoslavia meaning South Slavs. The attempt to unify the Slavic people under one central authority was something of a dream for all involved. However, there were and still are too many conflicting factors to constitute a harmonious union.

By 1918, the Ottoman, Austro-Hungarian, Russian, and French empires had all played a hand at controlling portions the Serbs, Croats, and Slovenes from the outset of their first migration to the region. In addition to the different empirical controls, religion served to further divide the three tribes. The Croats and Slovenes were primarily Roman Catholic. The Serbs were Orthodox Christians. Some of all three tribes converted to

Islam during the Ottoman empires control over the area. Social differences also played a role. Serbian society was peasant and patriarchal, lacking a superstructure, and largely homogeneous. Croat and Slovene society had many attributes of a class society. Slovene society also was more industrialized, possessed a strong German influence, and its most wealthy citizens were foreigners.¹⁰

The Serbs, Croats, and Slovenes were, for the most part, never given an opportunity to discover and explore their own identity. Outside influence throughout the centuries created the base for which these three tribes got to work with in 1918 in forming a semblance of unity. The only remaining common denominator was language but even claiming that was a stretch. Each tribe adopted a different alphabet. Despite the overture of King Aleksander spouting unity, the formation of Yugoslavia was through monarchical control with a central authority hidden beneath the façade of Parliamentary representation for the six republics and two autonomous provinces. Free expression was still repressed and controlled.

The “Royal dictatorship” as John Lampe called it lasted until Yugoslavia’s forced involvement of World War II in which Adolph Hitler destroyed any semblance of unity attempted by the “Royal dictatorship”. After World War II, monarchy gave way to Communism and Josip Broz Tito (of Croatian descent) was its new leader demanding “Brotherhood and Unity”¹¹ of the Yugoslav peoples. Despite Tito’s break with the Soviet Union, he remained in complete control. Tito suppressed violently any form of nationalistic tendencies from any group in opposition to his central authority regardless of ethnic origin. Religious practice and the press were controlled. Tito’s grip on Yugoslavia remained until his death in 1980.¹²

The death of Tito saw the rise of political leaders with the freedom to pursue an autonomous existence. Unfortunately, the people of Yugoslavia have been influenced or controlled by foreign powers in some form or another from its origins leaving a skewed or altered existence through time. What the Serbs, Croats, and Muslims are reminded of is the violent atrocities perpetrated against each other throughout their history. The violence, which unfolded in 1991, has been justified as revenge against these past atrocities. Under this auspice, each ethnic group would have the excuse they need to act out violently against the other. World War II is an excellent example of this.

World War II War Atrocities

The war crimes, crimes against humanity, genocide, and several additional acts of violence occurring after the Yugoslav breakup in 1989 are not exclusive to the events tragically unfolding today. Acts of violence very similar to what we are observing were occurring during World War II, which continued a precedent for violence between each ethnic group. The people of Yugoslavia have thus far been unable to forgive and forget. Rebecca West explains it this way:

Nationalist from each group typically claimed that their own depredations had been exaggerated, while those of the enemy had been played down. All parties adopted the pose of victims rather than victimizers, and proclaimed that the accusations against them were overblown and unjust.¹³

Each ethnic group claims the role of victim versus aggressor. However, Lampe records involvement of each ethnic group violently acting out against each other creating a Civil War within the confines of a World War.¹⁴

Hitler attacked the Kingdom of Yugoslavia on April 6, 1941. The Nazi-led dismemberment of the first Yugoslavia destroyed nearly all the existing institutions. The

Croatian Ustasa allied themselves with Germany. The Tito-led communists joined Russia. Britain courted the rest of Serbia and the Muslims were linked to the depleted Ottoman Empire in Turkey. These alliances divided the region against itself creating the arena for a Civil War.

As Lampe writes, the Ustasha attempted to create an “ethnically pure Croatian state from which Serbs, Jews, and gypsies would be permanently cleansed.” He reports that well over 300,000 Serb men, women, and children were killed carrying out the Ustasa agenda. Serbian State Guards took part in a massacre of over 2,000 men and schoolboys supportive of the Partisan resistance or Tito-led forces. The Muslims were then allowed to loot and burn the city, which prompted the Partisan forces to summarily execute any of its opponents whereas before they merely punished them.¹⁵

It is important to understand that the violent acts occurring in World War II were duplicated in World War I, the Battle of Kosovo in 1389 between the Serbs and the Muslim led Ottoman Empire, and the Muslim landowners over the Serb peasantry during Ottoman domination. These are only a few of the well known violent events marring Yugoslav history. Each ethnic group has a plethora of victim-type historical events to draw upon to excuse current violent retribution.

Rise of Nationalism

The rise of Serb, Croat, and Muslim nationalism, although evident in the past, has never been more apparent than the events unfolding daily. It is the rise of nationalism with the use of myth structures espousing a “Golden Age” which have been used by the elite’s of Yugoslav society to gain control and power. “What we have here is a

chauvinistic culture in which the dominant objective of scholarship, education, literature, and journalism is not truth but how best to support and advance nationalist myths.”¹⁶ Ivo Banac speaks on the same issue by emphasizing Serbian historians revisionist work of Yugoslavian history under Slobodan Milosevic.

It became an agency of aggressive national aggrandizement, clearly in service of Milosevic’s political program—the establishment of a strong and unified Serbia that would, once again, be capable of dominating Yugoslavia and, failing that, go its own way together with all the territories in which the Serbs lived, including portions of Croatia and most of Bosnia-Herzegovina.¹⁷

The Serbs are generally recognized as the initiators of aggression for what is seen unfolding in the former Yugoslavia today. Croats and Muslims have been more of a reactionary, defensive front to Serb forces. Quite the reversal from Croat aggression during World War II.

Serb and Croat ethnic groups subscribe to different mythic origins at the expense to each other. The Serbs believe themselves to be the most ancient peoples. Kosovo was and always will be sacred Serbian land based on the Battle of Kosovo in 1389. So hallowed is the ground on which the battle took place that Serbian soldiers reportedly remove their shoes out of respect when crossing in order not to wake the dead Serb warriors. Their claims to Kosovo come at time when the province’s population breakdown is 90% ethnic Albanians and 10% ethnic Serbs. Yugoslavia’s Deputy Prime Minister Vuk Draskovic explained on March 31, 1999 on a MSNBC chat line that “all Serbs would die for Kosovo.”¹⁸ Zeljko “Arkan” Raznatovic, a notorious Serb paramilitary commander and indicted war criminal by the ICTY for unspeakable atrocities, had this to say in response to Kosovo: “We will defend our land of Kosovo,

pure Serbian land. For centuries a Serbian land. So you (United States and NATO) will have a hell of a time if you attack us, that I can promise.”¹⁹

Serbs believe that their involvement and conduct in both World Wars was entirely noble and justified. Any mention of inflicting suffering on others elicits a justified response claiming past atrocities to the Serb people at the hands of the Croats and Turks. “This culture carefully preserves the myth of Serbs as innately the most magnanimous of peoples, straightforward and hospitable, naïve and brave, an perpetually the victims of Albanians, Croats, and many others.”²⁰ Croats have similar claims of elitism, and being the unfortunate victims of violence at the hands of their neighbors.

Croats assert nine hundred years of Croatian parliamentary life. Croatia now claims that Knin in northern Dalmatia, currently a capital of the Milosevic-backed Serbian Republic inside Croatia, must be recaptured because it was once one of many key cities of Croatian statehood. Croats believe themselves to be “as congenitally more just, civilized, cultured, and democratic than almost any other people, especially Serbs.”²¹ Croats ignore Pavelic’s Ustashi regime responsible for hundreds of thousands of Serb deaths in concentration camps, by mass executions, and forced deportation.

According to Steven Majstorvic, Muslim myth and legend is largely non-existent. He explains that Muslims have no ancient land claims to validate their existence. “Instead of historical records and oral history, the Bosnian Muslims will have access to videotapes, and Benedict Anderson’s notion of the printing press as a vehicle for the imaging of identity has evolved to NPR and PBS.”²² This does not mean that they do not have a legitimate claim of existence to Yugoslavia. Muslim converts in the social system built by the Ottoman Empire were the landowners and freeholders of Yugoslavia.

They took advantage of this superior position by taxing the Serb and Croat peasants, whom they regarded as second class citizens, mercilessly. This of course created a source of resentment to be later avenged by Croat and Serbs insuring the circle of violence continued. Majstorovic believes the Muslims are the “most free to pursue their own vision of an ethnic identity. Without a Kosovo or a thousand years state to guide them, they are in a Big Bang period of imagining their place in the world.”²³

Majstorovic has fallen prey to those manipulating the rise of nationalism. The belief that Muslims are capable of pursuing their own ethnic identity is incorrect. Muslim identification is not a matter of ethnicity; but rather, religious affiliation. Muslims share, in large part, the same ethnic background as the Serbs and Croats. Being Muslim is a choice of religious conversion. The Serbs and Croats, who are engineering the rise of nationalism, wish the outside world to refer to the Muslims as an ethnic minority separate from Serb and Croat origin. John Fine, a professor at Michigan University, makes it very clear that the three groups in question (Serbs, Croats, and Muslims) all speak the same language and share the same historical origin. Fine is referring to Bosnia-Herzegovina. This region was the most diverse within the former Yugoslavia with a slight majority falling to the Muslim community. Before the violence, all three groups co-existed peacefully. The only differences were in their religious affiliation. The Serbs are largely Orthodox and the Croats primarily Catholic. Being Muslim is of course a part of the Islam religion.²⁴

Islamic influences occurred as the Ottoman Turks were in control of much of the former Yugoslavia. Fine indicates that the Ottoman Turks did not refer to ethnic identity but instead religious affiliation. With Bosnia under Ottoman control, there was a

considerable rise in Orthodoxy and Islam due to the out-migration of Catholics and the conversion of Catholics to Orthodoxy and Islam. The reason for this is quite simple. The Orthodox leader, the patriarch of Constantinople, resided in the Ottoman capitol and therefore easily controlled. Catholicism was headquartered in Rome under papal control. It is easy to understand an increased tolerance for Orthodoxy over Catholicism. It must be noted that conversions were happening quite frequently. Catholics were converting to Orthodoxy and Islam while Orthodox Christians were converting to Catholicism and migrating out of Bosnia. During this confusing conversion/migration process, Islam enjoyed the highest new convert total. The emphasis of Fine is the new converts to Islam. There did exist some immigration of Muslims from the outside but the vast majority of new Muslim residents were newly converted Serbs and Croats from Orthodoxy and Catholicism.²⁵ The realization that Muslim origins are based on religious affiliation versus ethnic identity make evident the manipulation of nationalistic rhetoric which casts the Muslims as an ethnic minority. The purpose of the Serbs and Croats is “to depict the conflict as an ethnic war – to justify their states’ territorial expansion, ... and also to label it ethnic Muslim to stir fears of the Turkish past and of Muslim fundamentalism.”²⁶

The rise of nationalism is not attributable simply to the use of myth and legends to create a superior attitude of one ethnic race over another. There are many factors which contributed. Nevertheless, the actions of Yugoslavia’s intelligencia to rewrite history in favor of political aims encouraging myth and legend as truthful accounts is the unfortunate reality as presented by Banac in his historiographical study of Yugoslavia. The results are seen on CNN on a nightly basis. These myths and legends provide the

excuse of violence perpetrated in the former Yugoslavia under the façade of retribution and revenge as a defense mechanism or ancient land claims for ethnic cleansing and genocide.

These excuses may seem founded in ignorance and bloodlust to outside observers; however, to the people of what was once Yugoslavia, these are legitimate claims. They appear as excuses to outsiders but reasonable explanations to those carrying out the atrocities. This is not an attempt to excuse or justify the violence but rather to set a proper backdrop to the intentions of the ICTY. Majstorovic explains Walker Conner's belief that the

...objective history of an ethnonational group is irrelevant for understanding the critical subjective essence of ethnic identity....It is not what is, but what people believe is that has behavioral consequences. And a subconscious belief in the group's separate origin and evolution is an essential ingredient of ethnonational psychology.²⁷

This concept is vital to understanding the role of the ICTY as the implement of justice. The belief structures, established by the propaganda of various myths and legends, have sunk themselves deep into Yugoslavia society and culture.

Hatred in the Streets

Cvijeto Job documents funny but furious folk doggerels and speeches revealing nationalist hatred in Yugoslavia. These were being sung on the streets on the eve of the 1990 civil war in Croatia and Bosnia. One from Belgrade went:

*Comrade Sloba [Milosevic],
send salads,
There will be meat galore,
We'll be slaughtering Croats.*

Another, from Zagreb, went:

*Mother of God,
Queen of Croats,
Bring us back Ante Pavelic,
So we can flush out Serbs again,
Half put to knife,
half string up on the willows.*

The integration of this ethnic hatred is illustrated in the interview between the New York Times and Goren Ivanisevic, a then young tennis superstar from Split Croatia. In the interview, Ivanisevic told how policeman in Australia, assigned as his bodyguards after a death threat, showed him how to fire a machine gun. It was considered in fun but the chilling quote of Ivanisevic reveals a deep seeded hatred revealed to a shocked, naïve international community. Ivanisevic said, “They let me shoot a machine gun. It was tough to control but, oh, it was a nice feeling, all the bullets coming out. I was thinking it would be nice to have some Serbs standing in front of me.”²⁸

It is now understood that the roots of hatred extend beyond the propaganda of the intelligentsia community reaching the streets and reinventing itself in folk songs. The ethnic strife has reached such normalcy in Yugoslav society that a prominent figure in the international community could make an offhanded remark of killing Serbs. The ICTY is hard pressed to produce the results it seeks because the atrocities, which are reaching the international community, are too grievous to ignore.

Accounting of the War Crimes

The sexual abuses are especially hard to ignore and tug at our collective sense of morality. Although morality is a difficult definition to apply on such a broad scale as international behavioral expectations, it not difficult to accept that the rape and sodomy

of children, as young as 7 years old, as inherently wrong. By October of 1992, the data collected by the State Commission for Gathering Facts on War Crimes in the Republic of Bosnia and Herzegovina reported "14,000 women, girls and female children were raped" by Chetniks.²⁹ Female children as young as 7 and women over 50 years old were sexually abused.

The abuse did not stop with rape. "After raping, they beat them up and massacre and torture them as well as cut off their breasts, arms and genitals and extract their intestines and burn them alive." Forced impregnation has been reported. Women after their third and fourth month of gestation are released to "Go and deliver Chetniks." This is evidence of a 60-90 day detention of the female civilian populace. During their imprisonment, they are raped, tortured and beaten. Those who are released are in a "very difficult psychophysical condition."

Women who are not detained in camps are kidnapped during the night and returned in the morning. Mothers who protested were punished immediately. Any resistance is met with severe violence. A village was rounded up and 8 of the young men were killed immediately. They divided them into 3 groups and ordered the girls and young women to remove their clothing. The females explained they could not in front of parents, children and husbands. The Serb soldiers began beating them and removed their clothing. The men who protested were immediately executed. The girls and young women were raped in front of their parents, children and husbands.³⁰

Displacement is a routine event along with looting and burning of homes. The displaced residents, when able to return home, commonly find their possessions looted and homes burned to the ground. In March of 1993, the State Commission for Gathering

Facts on War Crimes in the Republic of Bosnia and Herzegovina published a *Diary of a Chetnik*. The diary records events occurring from June 5 –17, 1992.

The author is second in command of a Serbian military unit. The author describes his soldiers as more concerned about looting the homes of displaced people than fighting and defending themselves. Looting is very profitable to a soldier who is missing a paycheck and not fed well. Stolen property is a means to obtain both quickly with no resistance to endanger them.³¹

The author also describes ethnic cleansing. “The actions starts next morning at 6:00 (...) We cleanse each house, one by one (...) Shots can be heard.”³² It is obvious what has happened and it is clear the author participated. Those individuals who were not able to escape were murdered in their homes. These are only some of the many atrocious crimes committed in the former Yugoslavia. Cherif Bassiouni, the legal expert on the five-member special UN commission to investigate war crimes in the former Yugoslavia, explored the reasons behind the acts of violence.

Cherif Bassiouni believes the violence is created and excused by a “perversion of psychiatry.” He has compiled 80 hours of videotapes of violence. Recorded are interviews of victims including a 14-year-old Muslim girl describing how she was gang-raped by Serbian soldiers who were once her neighbors. Also included are the description of a hospital stormed and the sick and wounded evacuated. They were taken to a field and shot, all 294 of them. “Arkan” was responsible for this and so proud of his work that he sent a copy of the videotape recording the massacre of a town to the British Broadcasting Corporation. He was quoted as saying, “People can say I am ‘Mr. Horrible,’ but I don’t give a damn. I am proud, do you understand?”

Bassiouni refers to two articles found in two unnamed French magazines entitled “Psychiatry and genocide” and “The psychiatric conspiracy in Yugoslavia.” The articles, which Bassiouni refers to “details Bosnian Serb President Karadzic’s use of Raskovic’s theories to manipulate his people into acts of hatred for the political advantage of a Greater Serbia.” Dennis Breo, author of “Human Rights II” article found in the *Journal of American Medical Association*, reports that Karadzic considered the late Jovan Raskovic, Md, his mentor. Breo explains that Raskovic was the director of a major Sarajevo hospital, where he abused electroshock and wrote *The Mad People* (his psychological profile of the Balkan ethnic groups). Breo quotes Bassiouni as he reads excerpts from the French magazine articles: “Listen to this. It was Raskovic’s idea exploited by Karadzic, that since the ~Muslims have anal-erotic personalities and are the sort who love to amass riches, they are fair game for slaughter...since the ~Croats are castrated and terrified of everything and unable to exercise authority, that it is up to the Serbs to guide them.”

Karadzic used these psychological theories to whip up hatred. Obviously these theories are not responsible for starting the civil war, but they were instrumental in excusing the violent acts. Bassiouni spoke to soldiers from each warring faction (Croats, Serbs and Muslims) and explained to them that they could not rape, torture and kill innocent civilians. They replied, “Yes, but we are only retaliating... We must defend ourselves.”³³ This nonsense is proof of Karadzic’s effectiveness.

Torture, rape, inhumane treatment of prisoners and displacement of persons from their homes are among the few examples, which have continued since the supposed end of the war in the former Yugoslavia. The torture of prisoners continues. A survivor of a

detention facility under Serbian control witnessed the torture of a man. “There was one guy hanging one meter off the floor at the wall. Ropes held him up there and on one side there was hot water falling on one of his shoulders and on the other side there was cold water and he was crying.”³⁴ Another witness described pregnant women, who were visibly swollen with child, beaten for three days while a prisoner of a detention camp. She died on the fourth day.³⁵

Severe beatings are common in the detention centers. A witness described a man so severely beaten he could not recognize for seven days that he was a neighbor. Another man at the same place and time was hit directly in the eyes with iron knuckles for not accusing someone else of a crime as ordered. Summary executions are commonplace. The same witness above reported 24 executions in a three-day period. This is one witness reporting from only one detention camp.³⁶ The last four examples occurred in 1998. The victims were civilians.

The violence, which occurred, was done not against military targets and personnel but against civilians including children. Statistics accumulated in 1992 showed that 85% of the injured were civilians and only 15% belonged to other groups and soldiers. Children made up 15% of the total 85% injured civilians. These statistics were compiled during the war. The war did not officially end until 1993 in Dayton, Ohio with the signing of the Dayton Peace Accords. Despite the signing, the crimes against civilians continue to this day.³⁷

The Importance of International Law

The violence against non-combatants gave the international community the legal grounds to involve itself in what was originally considered an internal struggle or civil war. As long as the combatants in a civil or internal conflict adhere to the laws established by the Geneva Convention of 1949, the legal premise for international involvement would have been questioned. The Geneva Convention of 1949 establishes the humane treatment of all persons taking no active part in the hostilities, which include members of armed forces who have laid down their arms. Humane treatment involves the prohibition of violence to life (including cruel treatment and torture), hostage taking, outrages upon personal dignity, and mass executions. It also provides for the visitation of an impartial humanitarian body such as the Red Cross.³⁸ All of these provisions have been violated in the former Yugoslavia. Croats, Serbs, and Muslims are all responsible for grave breaches of the 1949 Geneva Convention by the well-documented violence perpetrated against each other.

The United Nations Security Council, by the authority present in Chapter 7 of its Charter, determined that the activities occurring in the former Yugoslavia were considered a threat to international peace and security. Chapter 7 provides the United Nations the power to establish the means of resolving threats to international peace and security. The ICTY was established in ad hoc fashion to try individuals for violations of international humanitarian law. In order for the ICTY to be considered a legitimate court of law, the principles of legality had to be established. Cherif Bassiouni explains the legality of international law and how it relates to the former Yugoslavia. This is

extremely important to understand because it is this foundation which supplies the ICTY with the necessary authority to exist.

Bassiouni makes a clear distinction between national criminal law and international criminal law. Murder, rape, slavery, assault, battery, kidnapping, forcible confinement, robbery or theft all falls easily under most national criminal courts. However, this alone does not make the crime a recognized international violation. Crimes against humanity easily correlate to crimes recognized by national courts. The problem is in creating an international element, meaning jurisdictional authority given to the international community, within the framework of what are considered crimes against humanity. Bassiouni calls the international element a “‘state action or policy,’ the pre-requisite legal element for ‘crimes against humanity’.”³⁹ This author agrees with the notion presented by Bassiouni that national legal systems are frequently unable to reach those in control of state agencies by virtue of their positions. This unfortunate reality predicates the necessity of international intervention due to the power and influence state agents have over their respective nations.⁴⁰

Radovan Karadzic is a good example of this abuse of power. The ICTY possessed the authority to indict Karadzic for crimes against humanity because he used the Bosnia-Herzegovina government to perpetrate what is now considered to be crimes against humanity. Because this is would be considered an international incident, Karadzic is also indicted for crimes of genocide or ethnic cleansing based on the 1948 Convention on the Prevention and Punishment of the Crime of Genocide. The convention states that “genocide is a crime under international law.”⁴¹ Karadzic used the

state to achieve goals of ethnic cleansing and therefore reaches beyond the scope of his state's national law, making him responsible to the ICTY.

Technically or legally speaking, the ICTY is a legitimate authority to be recognized. This could not have been achieved without the groundbreaking achievements of the Nuremberg trials established in 1945 following the conclusion of World War II. Although there are many questionable aspects behind the Nuremberg tribunal, it did provide the basis for the evolution of international law as it is seen and implemented today.

The precedent set by the Nuremberg trials

“The wrongs which we seek to condemn and punish have been so calculated, so malignant and so devastating, that civilization cannot tolerate their being ignored, because it cannot survive their being repeated.”⁴² Associate Supreme Court Justice Robert Jackson said this in his opening statement to the International Military Tribunal in Nuremberg. The Nuremberg Trials took place under the Charter established in London between June and August of 1945 by the representatives of the victorious Allied Powers (United States, USSR, France and the United Kingdom). Joe Heydecker and Johannes Leeb, authors of *The Nuremberg Trial*, claim one million Germans were placed on the War Crimes Commission list as wanted criminals. However, the result was a mere 22 German officials tried at the Nuremberg trial. Michael Scharff labeled the defendants as a “Who’s Who” of the Third Reich.⁴³ In this sense, at least Nuremberg was successful in obtaining the top officials responsible for the atrocities of World War II.

The events that prompted the formation of the Nuremberg Tribunal in 1945 occurred between 1930 and 1940. Concentration camps were established by the Nazi regime to incarcerate without trial Jews, Communists, and any opponents of the Nazis. The Nazis outlawed the Jews, took away their German citizenship, and made marriage and sexual intimacy between Jews and German citizens a criminal offence. The Nazis annexed Austria and Czechoslovakia, invaded and occupied Poland, Denmark, Norway, Luxembourg, Holland, Belgium, and France; and then it “set in motion, ‘the final solution to the Jewish problem’ by establishing death camps such as Auschwitz and Treblinka, where six million Jews were killed.”⁴⁴

As the Allied forces began pressing into Germany and an end to the fighting was in sight, the Allied powers were faced with the task of establishing an acceptable procedure for dealing with the surviving leaders of the Nazi regime. The “United Nations,” a term adopted by the Allied powers and 22 other nations united against the Axis powers of Germany, Italy, and Japan, established the “United Nations War Crimes Commission.” The War Crimes Commission was tasked with the investigation and collection of evidence against the Axis leaders. However, the representatives of the Commission were divided on how to proceed. Britain, represented by Winston Churchill, and Russia, represented by Joseph Stalin, wanted court martials and summary executions to which Stalin supplied a list of 50,000 Nazi war criminals to be shot.⁴⁵ United States President Franklin D. Roosevelt also supported the idea by a memorandum, which supported Churchill’s plans for the Nazi leaders and agreed to “concert with him a list of names”⁴⁶ for execution. Former plans radically changed with the death of Roosevelt in April of 1945. The new U.S. President, Harry S. Truman, vehemently opposed the idea

of summary execution. The U.S. was able to convince Britain and Russia that establishing an international tribunal would serve several shared objectives. Scharf explains the benefits of said tribunal:

First, judicial proceedings would avert future hostilities which would likely result from the execution, without trial, of German leaders. Legal proceedings, moreover, would bring German atrocities to the attention of the entire world, thereby legitimizing Allied conduct during and after the war. Finally, such a trial would permit the Allied powers, and the world, to exact a penalty from the Nazi leadership rather than from Germany's civilian population.⁴⁷

This is where the similarities of Nuremberg and the ICTY are evident. The international community's attempt to end violence existing in the former Yugoslavia demonstrates the nearly identical objectives employed by the Allied powers in 1945.

The significance of Nuremberg can be found in its charter. The Nuremberg Charter listed three categories of offences: 1) crimes against peace, 2) war crimes, and 3) crimes against humanity. These categories were, according to Roger Clark, loosely related to the Geneva Convention of 1929 and the Kellogg-Briand Pact of 1928. What Nuremberg was attempting to achieve was individual responsibility for atrocities committed. The 1929 Geneva Convention achieved this objective through the recognition of international customary and treaty law. The Kellogg-Briand Pact of 1928 used a much-cited sentence of, "Crimes against international law are committed by men, not by abstract entities, and only by punishing individuals who commit such crimes can the provisions of international law be enforced."⁴⁸ Although Clark points out the discussion of valid legal claims is disappointing; he is quick to point out what Nuremberg established. Clark is joined in his observation by Michael Scharf in that the offence of crimes against humanity and the liability of the State for human rights abuses within the

State's own borders had been firmly represented and accepted by the international community.⁴⁹

The benefits of Nuremberg, which found there way into the ICTY, must be tempered with the stark differences between the two. This plays a significant role in understanding the potential success and limitations of the ICTY. The Nuremberg Tribunal is generally referred to as "victor's justice." The Allied Powers obtained an unconditional surrender from Germany and set themselves up as what could be considered *de facto* territorial rulers. They were the unquestioned victors of World War II and ready to punish the atrocities that were carried out on its citizens. Nuremberg was established by the International Military Tribunal and already had a majority of the defendants in custody which indicates the ability of the tribunal to arrest as well as prosecute. The ICTY was created, in this author's opinion, in the completely opposite manner. Rather than create an institution with the ability to apprehend, detain, and indict and then deal with the question of legality, the ICTY was created first on the basis of legal legitimacy. However, in firmly establishing itself as a legitimate legal institution, an implementation process was overlooked. The ICTY is not capable of apprehending the indicted war criminals.

ICTY: A Legitimate Force to be Reckoned With?

The ICTY has been created by the most professional standards of legal precedent. Nuremberg started the world thinking about the need for justice in the wake of humanitarian atrocities. The Nuremberg tribunal was successful because there was nothing to stand in its way, nobody to question its motive and legitimacy. The

weaknesses of Nuremberg were recognized but in light of the overwhelming evidence against the Nazi defendants for unthinkable crimes, motive and legitimacy were overlooked to make sure that justice or, more appropriately, retribution was accomplished. For the ICTY, there were no victors of war. The Dayton Peace Accords, signed in Paris, may have officially ended the war but certainly not the violence that continues against the civilian population. Dayton recognized no clear victor of the war, simply a truce.

The International Military Tribunal established Nuremberg, while the United Nations (UN) Security Council under Chapter 7 of the UN's charter established the ICTY. The legitimacy is founded on the adoption of the Nuremberg Charter by the UN General Assembly in 1946.⁵⁰ The definition of war crimes found within Nuremberg's Charter was later codified and elaborated on in the four Geneva Conventions of 1949.⁵¹ The definition of crimes against humanity was adopted by the 1948 Convention on the Prevention and Punishment of the Crime of Genocide.⁵² This gives the ICTY a legitimate foundation established by the UN and recognized by the international community to levy justice—real justice.

However, in building a strong legal foundation, a major practicality was overlooked or ignored. Gabrielle MacDonald addressed this issue while a guest of the *Common Ground* radio program. She points out that Nuremberg had all of its defendants in custody because they had the power to arrest. She goes on to say, "That's one of our major problems of course, is that the Tribunal does not have the power to arrest individuals. We rely upon the states to execute our arrest warrants. The prosecutor has issued 75 indictments and we have only 8 persons in custody because states have not

cooperated.”⁵³ This may be simplifying the issue too much; nevertheless, the ICTY can go no further without the defendants in custody to prosecute. To break down any other would be weaknesses are a mute point. The ICTY will not be considered a force to be reckoned with if the indicted criminals are able to scoff at the supposed power and legitimacy of the court. There are still no realistic consequences for perpetrating international crimes against humanity, genocide, or crimes of war.

Conclusion

With the creation of the information super highway, CNN, satellite innovations, and many more techno-toys, the world has become much smaller. We as consumers and participants of this technology are forced to digest the violence which invades the safety bubble we find ourselves clinging to. In times past, it was easy to ignore the tragedies which visited our brothers and sisters across the globe but not today. We see the trauma unfold before us as it happens. The violent experience families have faced in the former Yugoslavia is now my shared experience by a technological medium.

This is a good thing. The phrases “global community” or “international community” is no accident. Trade barriers are slowly falling. Foreign investment is increasing. Longevity is increasing. Infant mortality is decreasing. Industry is expanding. The globe is becoming; however slowly, more homogeneous as we speak. We could call this “global civilization.” The advancement of society has increased the notion of civility. By this it is meant, a moral undertone of what is right and wrong. As we (the international community) watch the atrocities unfold, a majority of us feel that this is inherently wrong. It is not necessary to reintroduce the horrible atrocities

described in this paper. The international community is forced to react, to condemn, to provide justice.

The world was faced with a similar situation following World War II. The purpose of the Nuremberg tribunal was to implant in everybody's mind that the Nazi atrocities were unacceptable to the international community. Consequences had to be levied against those found guilty. Today, it is no different. The atrocities are unacceptable to the global community. The ICTY was created to levy justice. It is hoped, just as Nuremberg hoped, that by establishing a consequence for unacceptable behavior the atrocities would be eliminated. The victims would be vindicated in a "civilized" manner versus violent retribution to satisfy their hate.

The ICTY is certainly capable of ending the circle of violence that has plagued Yugoslav history for centuries. However, the ICTY has come up against a significant barrier. The ICTY is relying on the states, which were Yugoslavia, to apprehend and turn over the individuals it indicts for crimes against humanity, genocide and crimes of war. The states are not cooperating. The ICTY does not have defendants to prosecute. For all the legitimate legal foundation the ICTY was carefully established upon, it cannot determine its own success. Unless this problem is solved immediately, the ICTY will be an absolute failure.

Yugoslavia will never return to the peaceful co-existence of multiple ethnicity's and varying religious background if the leaders of the respective states are continue to possess the ability to implement programs of ethnic cleansing or continue to support the crimes against non-combatants. The international community must not fail to recognize that the civilian population is not only the victim of violence but also manipulation.

Bosnia-Herzegovina is an example of peaceful coexistence among the Serbia's, Croatians, and Muslims. John Fine, University of Michigan, believes that the only real solution is the reuniting as the culture of Bosnia-Herzegovina once was. Fine provides evidence of peaceful coexistence by the 30-40% mixed marriages.⁵⁴ This is why the success of the ICTY is so absolutely crucial. The leaders who have been responsible for the atrocities must be apprehended, tried and convicted. Without their manipulating force influencing the people of Yugoslavia, it is hoped that the coexistence Fine describes can be returned to this region. However, Yugoslav history will never go away. Even if the ICTY is successful in ending the circle of violence by targeting those individuals responsible for the atrocities, will another individual with political aspirations be willing to use the same manipulative strategies to gain power. Only the Yugoslav people will, in the end, have to be ultimately responsible for a steady, consistent and peaceful coexistence.

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