

DEN OM NATIONALISM, LIVSFARLIGA HISTORIEBRUK OCH HISTORIEN VÄGEN TILL FÖRSONING

Texter till Del 3 Vägen till försoning

The role of ICTY in the making of history



United Nations established the International Criminal Tribunal for the Former Yugoslavia (ICTY) in Haag in 1993.

Foto: ICTY

Justice is an indispensable ingredient of the process of national reconciliation. It is essential to the restoration of peaceful and normal relations between people who have lived under a reign of terror. It breaks the cycle of violence, hatred and extra-judicial retribution. Thus peace and justice go hand in hand.

Antonio Cassese, former ICTY President

In 1993, a year after the war began in Bosnia and Herzegovina, the United Nations established the International Criminal Tribunal for the Former Yugoslavia (ICTY). The enormous scale of the mass violence in Bosnia, accompanied by images of destroyed towns and emaciated detainees in camps, created an international outcry and prompted the international community to undertake the first experiment in international criminal justice since the Nuremberg Trials at the end of the Second World War.

At the outset of the ICTY's operations in 1994, even those who supported the ICTY's creation doubted that it would have an impact. Nearly twenty years later, as the ICTY nears the end of its institutional life, its legacy in the former Yugoslavia and its effect on reconciliation remain a topic of vibrant popular and scholarly debate. This article provides a brief summary of the work and effect of the ICTY with respect to Bosnia, concluding with a look at the impact of the ICTY on peace and reconciliation.

In creating the ICTY, the UN hoped to deter civilian and military officials in the former Yugoslavia from committing any further atrocities, while at the same time sending a powerful signal that those responsible for atrocities already committed would be brought to justice. Unfortunately, the establishment of the ICTY alone produced little if any deterrent effect, as the genocide at Srebrenica – the single largest crime of the entire Bosnian war – occurred after the tribunal had come into existence. In the wake of Srebrenica, indictments and arrest warrants were issued for the Bosnian Serb president Radovan Karadžić and his military commander

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Ratko Mladić. Again, many doubted that they would ever face justice, and indeed they were not arrested and transferred to The Hague until 2008 and 2011, respectively.

Nevertheless, the ICTY set about investigating the conflict, sending numerous investigative teams to Bosnia already before the Dayton Peace Accords ended the war in December 1995. In 1996, the Bosnian Serb Duško Tadić became the first person to be put on trial for war crimes and crimes against humanity at the ICTY, providing an important signal that the Tribunal would prosecute those responsible for serious international crimes. Evidence and testimony collected for the trial of Tadić proved useful in generating leads for other cases. This culminated in 2001 with the extradition of the former Yugoslav and Serbian president Slobodan Milošević to the ICTY.

As of September 2011, the ICTY had indicted 161 persons and convicted 64. As regards the war in Bosnia, the ICTY issued indictments against members of all three warring sides: the Bosnian Serbs, the Bosnian Croats and the Bosnian Muslims (Bosniaks). Reflecting the disproportionate nature of the armed conflict and the commission of atrocities, significantly more Bosnian Serbs were indicted by the Tribunal than Bosnian Croats or Bosniaks. In terms of international criminal justice, the ICTY is responsible for several major advances. The Tribunal has created a large body of jurisprudence that will influence the prosecution of international crimes for decades to come, and which has been to a very large extent adopted by the permanent International Criminal Court founded in 2002. The massacres at Srebrenica in July 1995 were officially found by the Tribunal to be a genocide. Specifically with respect to violence against women, the Tribunal established several major precedents in international law by prosecuting rape as a war crime. Working together with the International Commission on Missing Persons and researchers in Bosnia, the ICTY has also brought comfort to victims by helping to locate mass graves and identify victims. As a result of this work and careful demographic analysis, it has been possible to produce definitive estimates of the total numbers of victims of the war. This type of information has in turn limited the scope for politicians and others to manipulate the public with exaggerated estimates of the crimes committed.

Although the ICTY is anticipated to finally end its operations in 2014, some of the cases have been transferred to courts in the former Yugoslavia. The ICTY was never intended to try all perpetrators of serious international crimes – an impossible task – but instead only the most important perpetrators. In Sarajevo, the State Court of Bosnia and Herzegovina has an ambitious mandate and has already prosecuted dozens of persons.

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Since there is no statute of limitations on the most serious crimes, it is to be anticipated that investigations and prosecutions will continue for many decades.

The ICTY has left an indelible imprint on the history of the conflicts in the former Yugoslavia. The archives of the Tribunal hold several million pages of documentation, as well as tens of thousands of hours of audio and video material. This includes the powerful testimony of countless, courageous victims, who travelled to The Hague to testify against those who committed crimes against them and their relatives. Nowhere else in the world does a similar collection of material exist, and this archive is sure to be of crucial importance to historians and other researchers for generations to come. At the same time, the expansive judgments issued by the Tribunal are accounts not only of the crimes committed and the criminal responsibility of the accused, but are often miniature histories of whole regions and periods. This has already had a significant impact on the collective memory of the conflicts in the former Yugoslavia.

If the immediate goal of the ICTY at the outset was to end impunity and prosecute those responsible for the most serious crimes in the former Yugoslavia, the more ambitious and long-term goal was to contribute to peace and reconciliation in the region. The Tribunal and its supporters strongly believed that the prosecution and punishment of war criminals would remove them from leadership roles in the political systems and militaries of the region. This contributed to making it very difficult to deny that crimes had been committed, thereby providing consolation to victims and their relatives. By revealing the extent of criminal activity, the hope was that those sections of the population in the former Yugoslavia that had identified with extreme nationalism and its most malignant political manifestations would henceforth take responsibility for these crimes and distance themselves from this ideology. All of these factors taken together would assist in creating an atmosphere of apology, forgiveness and reconciliation.

There can be no doubt that the ICTY has indeed made remarkable contributions towards regional reconciliation. Newspapers and electronic media in Bosnia, Croatia and Serbia report on a daily basis on the latest developments at the Tribunal. Support for regional reconciliation among both the public and political elites has generally speaking increased. The focus is predominantly on achieving membership in the European Union, where cooperation with the ICTY and other steps towards reconciliation are required. Presidents and prime ministers have issued numerous official apologies for crimes committed by their countries. In the case of Srebrenica, the Serbian parliament has also issued a declaration of apology. And

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by the time that Ratko Mladić was belatedly arrested and extradited to the ICTY in 2011, his arrest brought very few protests in Serbia. By contrast, many Serb politicians, commentators and ordinary citizens greeted the arrest as the fulfilment of an important obligation – even if they often were reluctant to enter into detailed discussions of the crimes with which Mladić was charged.

Despite this relatively optimistic picture, many obstacles remain. The ICTY's version of events has not by any means attained universal acceptance in the former Yugoslavia. Many nationalists, particularly in Republika Srpska in Bosnia, continue to regard the Tribunal as an anti-Serbian institution that has unfairly and disproportionately targeted Serbs for prosecution. In Croatia as well, many politicians and a large portion of the public refuse to accept that Croatian generals have been convicted by the Tribunal for grave crimes (they are currently appealing the verdict). Perhaps most controversially of all, a disturbing number of Serb politicians in Bosnia continue to deny that genocide was committed in Srebrenica. Conversely, many Bosnian Muslim (Bosniak) victims feel deeply disappointed that many perpetrators of crimes at Srebrenica and elsewhere continue to live and work freely, often in the very communities where they committed crimes.

The idea that the ICTY would alone be able to bring reconciliation to Bosnia and other parts of the former Yugoslavia was always naively optimistic. The experience of Europe after the Second World War teaches us that many factors must also contribute in order to bring successful reconciliation. Yet while it is impossible to test counterfactual theses in practice, there can be no doubt that the work of the ICTY has to a considerable extent contributed to making Bosnia a better place than it would otherwise have been. The most aggressive and extreme of nationalist leaders were removed from the political scene by the ICTY and other international institutions. Most importantly, as noted above, Bosnian institutions led by the State Court now themselves confront the continuing challenge of bringing perpetrators to justice, expanding the judicial and historical record of the conflict and thereby rendering some modicum of solace to the victims of the war and their relatives.