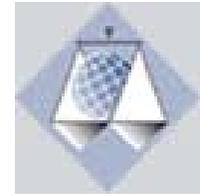


The Achievements & Shortcomings of the

International Criminal Tribunal for the Former Yugoslavia



As the International Criminal Tribunal for the former Yugoslavia (ICTY) proceeds through its ninth and most visible year of existence, it is now possible to look back at its work to date and begin to assess its potential legacy. The record is mixed. On the one hand, the ICTY's achievements have exceeded the boldest hopes of its creators. However, in several important respects, it has failed to make a difference in the region itself.

With the arrest of former Yugoslav President Slobodan Milosevic and his subsequent transfer for trial to The Hague by the Serbian authorities, the ICTY suddenly achieved a level of credibility previously unforeseen. In a few short months, Milosevic went from the pinnacle of power in Serbia and the leading role in the unfolding tragedy in the former Yugoslavia to that of the accused in the dock, from regional kingpin to a solitary accused, facing the most serious criminal charges under international law.

Milosevic's transfer to The Hague is the capstone of the tribunal's somewhat improbable rise from the margins of the international arena to that of a serious international institution that is not only having a significant impact in the region, but is also laying the groundwork for the International Criminal Court (ICC). This rise to international significance has defied the tribunal's critics, who saw the tribunal as simply a fig leaf for the failure of the "international community" to stop the carnage in the former Yugoslavia, particularly in Bosnia, during the dark days of the early and mid-1990s. The critics have been proven wrong: the ICTY has grown into an effective court, which has painstakingly administered trials that are widely perceived as fair. In the process, the tribunal's judges have developed an important body of international law and criminal procedure that will serve as critical guideposts for the ICC as well as other prosecutions for serious violations of international humanitarian law.

The tribunal has also had a significant impact in the territory of the former Yugoslavia, as a number of individuals associated with heinous acts of barbarism have been brought to the bar of justice or have disappeared from the scene. These developments are important if there is to be a return to peace in the region and not simply the absence of conflict, which more accurately describes the current state on the ground. It is axiomatic that peace and stability cannot exist with war criminals in positions of power.

These are substantial achievements. At the same time, there is another fundamental sense in which the tribunal has been much less successful. Unfortunately, principally due to a failure in design and, to a lesser extent, in implementation, the tribunal's long-term impact on the systems of justice in the area of conflict has been minimal.

Even more fundamentally, as the tribunal begins to move towards the latter stages of its life as an institution, it has made scant contribution to the prosecution of war crimes and crimes against humanity – the pillars of its subject matter jurisdiction – in the courts of the states of the former Yugoslavia. Thus, the irony may be that despite the millions of dollars spent on building a judicial infrastructure in The Hague, there is virtually no effective enforcement of these important laws in the courts that ultimately matter most, i.e., the region's domestic courts. This result may well have impacted the choices of the international judicial and quasi-judicial mechanisms for the future in areas of conflict, including the ICC and courts in Kosovo, East Timor, Sierra Leone, none of which follow the model established by the ICTY or its sister, the International Criminal Tribunal for Rwanda (ICTR).