The ICTY – Controversies, Successes, Failures, Lessons

Sabrina P. Ramet
Professor of Political Science at the Norwegian University of Science and Technology (NTNU), Senior Associate of the Centre for the Study of Civil War, International Peace Research Institute in Oslo (PRIO)

I

The International Criminal Tribunal for the former Yugoslavia (ICTY) was established on 25 May 1993, at the initiative of the United Nations Security Council. As stated in the Council’s Resolution 827, the objectives of the tribunal are to deter future war crimes, to bring about justice, and to make a contribution to the restoration and maintenance of peace (Clark 2009: 123). The tribunal indicted a total of 161 persons. Of this number 72 were Bosnian Serbs; 25 were Serbs from Serbia, Croatia, or Kosovo; there were also 25 Bosnian Croats, five Croats from Croatia, nine Bosniaks, eight Kosovar Albanians (including one officer in the Croatian Army), and the remainder members of other nationalities or not reported. Of the 161 indictments handed down, 18 were later withdrawn and 13 indictees were eventually acquitted; those acquitted included one Croat (General Ivan Čermak), three Bosniaks (among them, General Sefer Halilović), two Serbs (among them, former Serbian president Milan Milutinović), four Bosnian Croats, two Kosovar Albanians, and one Macedonian (Ljube Boškovski, the former Macedonian Minister of the interior). Thirty-five trials are still ongoing (as of 8 October 2011). Of the remaining 95 cases, most resulted in prison sentences, with some cases being transferred to national courts and some indictees (including former Serbian President and Yugoslav President Slobodan Milošević) dying before their trials could be concluded. This set of articles brings together analyses of the trials of the aforementioned Slobodan Milošević (by Judith Armatta), former Bosnian Serb President Biljana Plavšić (by Jelena Subotić), and Croatian General Tihomir Blaškić (by Eric Gordy).
The ICTY has provoked a number of controversies since its birth nearly twenty years ago, with some observers tallying up its successes, others tallying up its shortcomings and failures, and still others endeavoring to draw lessons from its experience. In the remainder of this short introduction, I will endeavor to summarize the sundry assessments made of the ICTY and its work.

II

Controversies. One of the controversies has to do with whether war crimes trials are worthwhile. No one disputes that punishment is, in moral and legal terms, the appropriate response to serious crimes. However, even before the birth of the ICTY, Samuel P. Huntington argued that, in new democracies or in states in transition, putting people on trial for egregious violations of human rights could complicate their transition to democratic rule and even destroy the prospects for democracy altogether (Huntington as cited in Sikkink and Booth Walling 2007: 428). In a similar spirit, Michael Scharf argued that granting amnesties to persons suspected of war crimes might be more conducive to social peace than prosecution and trials. In his view, prosecuting indicted war criminals “can prolong […] conflict, resulting in more deaths, destruction, and human suffering” (Scharf as cited in Goldsmith and Krasner 2003: 51). These arguments were advanced in the spirit of philosophical realism, which holds that interests, not moral imperatives, should guide policymakers, and, accordingly, that consequentialism (judging utility by consequences) rather than universalism (judging appropriateness by conformity to moral and/or legal principle) should serve as the ultimate criterion in assessing the anticipated or actual success of policy choices. Along similar lines, Goldsmith and Krasner have urged that stability be given a high priority and that “[t]he best strategy for stability often depends on context and contingent political factors that are not reducible to a rule of law […]. Political prudence demands that foreign policy actions be judged in terms of their consequences, not their intentions” (Goldsmith and Krasner 2003: 55, 59).

Against this “realist” point of view, Theodor Meron has defended what we might call the “idealist” position. As he put it in 1993, “The credibility of international humanitarian law demands a war crimes tribunal to hold accountable those responsible for gross violations in the former Yugoslavia.” (Meron 1993:122). While realists want decisions about whether to put suspected war criminals on trial or not to be decided on the basis of interest, and argue that granting amnesties to perpetrators of war crimes may be more likely