

**Krzysztof Żarna\***

**ACTIVITY OF THE INTERNATIONAL CRIMINAL  
TRIBUNAL FOR THE FORMER YUGOSLAVIA  
(1993–2017). AN ASSESSMENT**

**DZIAŁALNOŚĆ MIĘDZYNARODOWEGO  
TRYBUNAŁU KARNEGO DLA BYŁEJ JUGOSŁAWII (1993–2017).  
PRÓBA BILANSU**

**Abstrakt**

Celem artykułu jest przeprowadzenie analizy działalności Międzynarodowego Trybunału Karnego dla Byłej Jugosławii (ICTY). Autor starał się odpowiedzieć na pytania: jakie cele przyświecały utworzeniu Trybunału; z jakimi trudnościami borykali się prokuratorzy; czy w rzeczywistości był on odzwierciedleniem sprawiedliwości międzynarodowej; czy ICTY miał wpływ na stosunki międzynarodowe? Przeanalizowano cztery procesy: Slobodana Miloševića, Ante Gotoviny, Radislava Krsticia i Ratko Mladicia. Artykuł opiera się na następujących założeniach: po pierwsze, powołanie ICTY w pewnym stopniu przyczyniło się do zakończenia konfliktu w byłej Jugosławii. Po drugie, działalność Trybunału była jednym z czynników determinujących powstanie Międzynarodowego Trybunału Karnego. Po trzecie, samo postawienie przed wymiarem sprawiedliwości osób oskarżanych o najcięższe naruszenia praw człowieka było sukcesem. Po czwarte, wyroki ICTY wpłynęły na eskalację stosunków chorwacko-serbskich z jednej i na przyspieszenie akcesji Republiki Chorwacji do Unii Europejskiej z drugiej strony. W artykule posłużono się szeregiem metod badawczych charakterystycznych dla nauk o polityce: analizą instytucjonalno-prawną, która pozwoliła na przeanalizowanie działalności ICTY. Analiza systemowa znalazła zastosowanie w wyjaśnieniu roli ICTY w systemie międzynarodowego sadownictwa karnego. Dzięki analizie treści przeanalizowano postępowania procesowe przed Trybunałem. Studium przypadku posłużyło do analizy poszczególnych procesów. Metoda analizy decyzyjnej pozwoliła na przeanalizowanie procesów podejmowania decyzji w ramach działalności ICTY.

**Słowa kluczowe:** International Criminal Tribunal for the former Yugoslavia, Ratko Mladić, Radislav Krstić, Ante Gotovina, Slobodan Milošević

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### Introductory remarks

After the II World War, development of international judiciary took place, the main purpose of which was to bring people accused of gross violations of the law, such as mass genocide, crimes against humanity and war crime, for trial. Criminal Tribunals are divided into “Nuremberg”, *ad hoc*, “hybrid” and permanent (Plachta 2004: 15). According to Karolina Wierczyńska, there are permanent and temporary tribunals. In temporary tribunals we can distinguish international and hybrid tribunals. Among international ones, there are *ad hoc* and Nuremberg tribunals (Wierczyńska 2009: 158–159).

The main purpose of this article is an attempt to conduct a review of the activity of the International Criminal Tribunal for the former Yugoslavia (ICTY) which formally ceased its activities on December 21, 2017. The author tried to answer the following questions: what were the objectives behind the creation of the Tribunal; what kind of difficulties the prosecutors faced; was it actually a reflection of international justice; did ICTY have an influence on international relations? In article four processes of Slobodan Milošević, Ante Gotovina, Radislav Krstic and Ratko Mladić were analysed. This was not a random choice. All of these processes shocked the public and were unprecedented. The article is based on the following assumptions: first, the establishment of the ICTY contributed, to a certain extent, to the end of the conflict in the former Yugoslavia. Second, the Court's activity was one of the factors determining the establishment of the International Criminal Court. Third, bringing people accused of the gravest violations of human rights to justice was considered considerable success.. Finally, on the one hand, the ICTY rulings influenced the escalation of Croatian-Serbian relations, and accelerated the accession of the Republic of Croatia to the European Union on the other. In the article a number of research methods specific to the science of politics were used, namely; institutional and legal analysis, which allowed to analyse the ICTY activity. Systems analysis has been applied in explaining the role of ICTY in the system of international criminal justice. Due to the analysis of the content, the court proceedings before the Tribunal were investigated. Case study was used to analyse individual processes. The method of decision-making analysis allowed to investigate the decision-making processes within the ICTY activity.

## **I Establishment of the International Criminal Tribunal for the former Yugoslavia (ICTY)**

The prime objective of the International Criminal Tribunal for the former Yugoslavia (ICTY), with headquarters in the Hague, Netherlands, was tackling crime as well as the prosecution of persons who flagrantly violated the rules of international humanitarian law. Pursuant to the Statute of the International Tribunal, under United Nations Security Council resolution 827, the Tribunal was competent to prosecute serious crimes, such as grave breaches of the Geneva Conventions, violations of the laws or customs of war, genocide, and crimes against humanity. It has retained jurisdiction on the territory of the former Yugoslavia since 1991.

Every natural person who, regardless of their nationality of the countries involved in a conflict, planned, incited, gave orders, committed, suborned or helped to do that, will be brought to trial. Even an official position of a defendant, for instance the head of state, premier, or member of the government, did not exonerate from a criminal liability for committed crimes. Lack of both crime prevention or punishment of the guilty persons by superordinates, who could know or find out about committed crime was punishable by Tribunal. Working by order did not relieve anyone of responsibility (Statute..., art. 1–10).

The ICTY operates three Trial Chambers and one Appeals Chamber. The Tribunal encompasses sixteen independent and permanent judges and nine *ad litem* judges. They are chosen by the UN General Assembly for a four-year term. The Prosecutor acts independently as a separate Tribunal authority and is appointed by the UN Security Council upon nomination by the UN Secretary-General for four years, with an opportunity of re-election for the next term. The Registry is in charge of translation, publication of documents, proceedings support as well as record-keeping (Statute..., art. 11–17). Carla Del Ponte was considered the prosecutor who left an indelible imprint on the function of Tribunal. During her performance of functions, an indictment was issued for nearly one hundred people. In contrast to her predecessors, she was perceived as an uncompromising person who relentlessly pursues a goal. In 2009 she released reminiscences (del Ponte, Sudetic 2009).

The maximum sentence the Tribunal can impose is life imprisonment. It is worth mentioning that several countries decided to cooperate with international tribunals through agreeing to serve a sentence of imprisonment in their prisons. Countries which made a declaration or concluded an arrangement regarding support and cooperation appear on the list. The Tribunal, according to circumstances, opts for a particular country, where a sentenced person will serve their punishment (Śliwa 2008: 109).

**Table 1. Prosecutors of the International Criminal Tribunal for the former Yugoslavia (ICTY)**

<b>Chief Prosecutor</b>	<b>Term period</b>
Ramon Escovar Salom (Bolivarian Republic of Venezuela)	1993–1994
Richard J. Goldsone (Republic of South Africa)	1994–1996
Louise Arbour (Canada)	1996–1999
Carla del Ponte (Swiss Confederation)	1999–2007
Serge Brammertz (Kingdom of Belgium)	2008–2017

Source: Own elaboration on the basis of [www.icty.org.pl](http://www.icty.org.pl) [20.08.2018].

**Table 2. Judgement Enforcement Agreement**

<b>Country</b>	<b>Conclusion of an agreement date</b>
Italian Republic	6 February 1997
Republic of Finland	7 May 1997
Kingdom of Norway	24 April 1998
First Austrian Republic	23 February 1999
Kingdom of Sweden	25 February 1999
French Republic	25 February 2000
Kingdom of Spain	28 March 2000
Kingdom of Denmark	4 June 2002
United Kingdom of Great Britain and Northern Ireland	11 March 2004
Kingdom of Belgium	2 May 2007
Ukraine	7 August 2007
Portuguese Republic	19 December 2007
Republic of Estonia	11 February 2008
Slovak Republic	7 April 2008
Republic of Poland	18 September 2008
Republic of Albania	19 September 2008

Source: [www.icty.org](http://www.icty.org) [20.08.2018].

The United Nations Security Council (UNSC) perceived the ICTY as a tool of restoring peace and security in the Balkans. Interestingly, the ICTY was established at the time of an ongoing conflict. Taking into consideration the weaknesses of the actions of the Security Council owing to the situation in the Balkans, the effectiveness of the ICTY was questionable.

It neither prevented from subsequent crimes, nor had the advocacy from powerful countries. The Tribunal did not have any support from international force due to the fact that the Implementation Force (IFOR) did not have a mandate to seek the defendants. Furthermore, a realistic chance of making peace in Bosnia and Herzegovina disenabled prosecuting indictees (Kuzniar 2008: 323–324).

## II Chosen ICTY trials

Bringing Slobodan Milošević to the ICTY was a breakthrough in its activity. On 22 May 1999, the Tribunal issued an unprecedented indictment and an arrest warrant against Yugoslavia's leader, still being in power, and four politicians holding high-ranking positions within the state. The defendants were accused of violations of the laws or customs of war and crimes against humanity in Kosovo (The Prosecutor..., 22.05.1999). After successful presidential elections on 24 September 2000, Vojislav Koštunica, the existing dissident, became a chief of state. The Yugoslavia's government agreed to deliver the former leader and Milošević, besides Kosovo, was charged with crimes in Bosnia and Herzegovina (The Prosecutor..., 22.11.2001) and Croatia as well (The Prosecutor..., 27.09.2001). For the first time in history, the former head of state was brought to justice. However, it is worth pointing out that the trial itself was not well-prepared, despite a great deal of time. For nearly seven months, prosecutors were not able to find a connection between Milošević and crimes committed by the Serb army. On 11 March 2006, Milošević was found dead in the Hague's prison. A heart attack was formal evidence. Eventually, the proceedings were discontinued (The Prosecutor..., 14.03.2006). Some of the people who occupied high-profile positions are often considered heroes in countries of the former Yugoslavia, hence bringing them to justice appears to be a complicated issue. The European Union played an important role here, which subordinated membership negotiations with particular countries to cooperation with the ICTY.

The trial of General Ante Gotovina was another issue which sparked considerable controversy. In 1990, after foreign legion and creation of paramilitary force in Latin America, Gotovina came back to Croatia. A year later he got promoted taking part in a Serbo-Croat war as a commissioned officer. In 1994, Gotovina was appointed General (Bartop 2012: 105). In 1991, the Republic of Serbian Krajina (RSK) appeared, where the Serbs were half of the population. The constitution was passed the same year. President of Croatia Franjo Tuđman made a decision of regaining Krajina. Croatia launched the Operation Storm (*Operacija Oluja*). Next to General Ante Gotovina, military operations were mounted by Generals Mladen Markač and Ivan Čermak (Hodge 2006: 193).

On 4 August 1995, the greatest gamble of the Croats started during the Balkans war. In 72 hours, the Croatian forces covered the area from Kostajnica and Petrinja to Gračac and Knin. During military operations, soldiers of Croatian army and police murdered, tortured and forced

Croatian Serbs to leave the territory (Bjelajac, Žunec 2009: 254). The operation caused from 350 to over 2500 civilian casualties, Croatian Serbs in majority. When it comes to military losses, Croatia, supported to some extent by the Bosnian police at the back, lost between 174 and 211 soldiers, according to different estimates, and over 1000 were injured. Serbia sustained a loss of 560 dead soldiers and about 4000 were taken captive (*Human Rights Watch...*).

In 1996, General Ante Gotovina intended to be discharged, nonetheless, the President of the Republic of Croatia, Franjo Tudman appointed him Chief of the Army Inspectorate. Gotovina had carried out his duties by 2000 when he was forced to retire by president Stjepan Mesić with an explanation that he should not sign political letters criticising the cooperation between Croatia and the International Criminal Tribunal for the former Yugoslavia. On 21 May 2001, the ICTY indicted Gotovina on crimes against humanity and war crimes which were committed during Storm Operation, including murdering at least 350 Serbs from Krajina and banishing about 200 000 of them. In 2001, the ICTY issued sealed indictments to the Croatian government seeking the arrest of Ante Gotovina who hid himself from the arms of the law (The Prosecutor..., 21.05.2001). Croatia was not eager to cooperate with the ICTY. The European Union made the surrender of Gotovina a precondition for Croatia's accession to the EU. On 16 and 17 December 2004, European Council set a deadline for accession negotiations with the EU, scheduled to start on 17 March 2005 bearing in mind the necessity of Gotovina's appearance. Two days before this date, European Council considered Croatia not to meet the basic demand and that is why the date of next agreements was postponed (Koźbiał 2008: 44–48). In June, ICTY's chief prosecutor Carla Del Ponte informed representatives of United Nations Security Council about lack of involvement from Croatian government in Gotovina's capture. She claimed that country authorities deliberately interfered with the course of justice. Furthermore, she noted that there are suspicions of Gotovina's active support from other people, including country authorities. Several years of search, Gotovina was captured by Spanish police and special forces in the Canary Islands in 2005. Surprisingly, Gotovina's adherents organized some charity events in order to raise money for his defence (Żarna 2001: 197–210). On 3 October 2005, two months before the general's arrest, chief prosecutor Carla Del Ponte considered Croatia to cooperate with the ICTY (Szczepański 2009: 121–138). In accordance with Krzysztof Koźbiał, this decision seemed to be inconsistent; on the one hand, Zagreb was required to cooperate fully with the ICTY in the Hague and Gotovina's surrender and on the other, negotiations started before his capture (Koźbiał 2008: 49).

In March 2008, after two years of arrest, the trial of Gotovina and two other Croat generals, who lead in Oluja, began. On 15 April 2011, the court found Ante Gotovina and Mladen Markač guilty, sentencing them to 24 and 18 years respectively. In jurisdiction of the sentence, Gotovina was declared guilty of persecution, commanding, which triggered murderers, raids, brutal treatment and participation in repression aimed at Serb citizens of the Republic of Croatia. The allegation of mass deportations was dismissed (Trial Judgement..., 15.04.2011). Government authorities officially moved away Gotovina, and what is more, condemned crimes committed by his soldiers on Serbs. During the announcement of a verdict, the services for the intention of Gotovina's exculpation took place in all the churches throughout Croatia. The sentence itself was considered a great disgrace to Croats. On 16 November 2012, Gotovina and Markač were acquitted on appeal by the Appeals Chamber of the ICTY (In the Appeals Chambers..., 16.11.2012). Many Croats regard Gotovina as a war hero whereas Serbs perceive him as a murderer. On 1 July 2013, Croatia joined the European Union as its 28<sup>th</sup> member state.

The trial of Bosnian general Radislav Krstic was the most spectacular. During war in Bosnia, he was the Chief of Staff of the Drina Corps of the Army of the Serb Republic of Bosnia-Herzegovina. In July 1995, he was, among other officers, in command of the Srebrenica massacre. During the trial of Gen Krstic, the ICTY prosecution played a tape which was allegedly the recording of an intercepted conversation between Gen Krstic and Maj Obrenovic which indicated Krstic to order mass execution (Honig, Both 1996; Stover, Peress 1998; Delpla, Bougarel, Fournel 2012).

On 30 October 1998, the ICTY indicted Krstic for genocide, crimes against humanity and war crimes against the Bosnian Muslims committed between 11 July and 1 November 1995 (*The Prosecutor...*, 30.10.1998). On 2 December 1998, Krstic's car was disabled by road spikes and he was pulled through his car window and taken into custody in a joint SAS-Navy SEAL operation launched by SFOR. It brought about diplomatic tension between NATO and Russian Federation. It was triggered by the manner in which Krstic was detained as it took place in an area of Bosnia patrolled by the Russian SFOR contingent, which was not apprised of the operation. Krstic was taken into custody in Scheveningen by the ICTY (*Srebrenica Drina...*).

The trial of Radislav Krstic at first instance halted on 2 August 2001. The Trial Chamber found him guilty as charged and sentenced him to 46 years' imprisonment (Trial Judgement..., 2.08.2001). In second instance

trial, the Appeal's Chamber dismissed the appeal on some issues. On 19 April 2004, they pronounced him not guilty of genocide, but affirmed his guilt as an aider to genocide. Consequently Krstić's involvement was redefined and term of imprisonment was shortened to 35 years in prison (Trial Judgement..., 19.04.2004). In December 2004, Krstić was transferred to the United Kingdom in order to serve his sentence in Wakefield. On 7 May 2010, three Muslim inmates attacked Krstić, cutting his throat. Krstić survived (Wainwright 2011). Poland had signed the agreement with the ICTY before and Krstić could serve out his sentence there. Krstić was informed about this decision but did not exercise the right of appeal. On 3 December 2012, the district court in Warsaw, composed of judge Igor Tuleya, agreed that Krstić could serve his prison sentence in Poland. (Postanowienie Sądu Okręgowego...).

The case of General Ratko Mladić was the next that took the public aback. He was accused of carrying out 11 crimes. The "Butcher of the Baklans", as he was called, was a former Bosnian Serb General that led the VRS during the Yugoslav wars in the years 1992–1995. He was deemed in charge of the Srebrenica massacre. In 1995, his soldiers took over 8 thousand men and young boys to the forest and murdered them, allegedly on Mladić's order. Ratko Mladić led Siege of Sarajevo, which lasted over three years with the death toll of 10 000 people. On 24 July 1995, Mladić was indicted by the ICTY (The Prosecutor..., 25.07.1995) and on 14 November 1995 (The Prosecutor..., 14.11.1995).

He went into hiding since the end of the war in 1995. For the first years of Slobodan Milošević being a president, Ratko Mladić felt secure and with impunity. Then Milošević's disappeared. Americans offered 10 million for information concerning his whereabouts. He was captured on 26 May 2011 in Lazarewo, northern Serbia. Mladić had been using the pseudonym "Milorad Komadić". He had been hiding for 16 years. Following his arrest, Serbia agreed on Mladić's extradition to the Netherlands where came up before the International Criminal Tribunal for the former Yugoslavia. The trial lasted 530 days and 592 witnesses were interrogated. Finally, the ICTY convicted Mladić on 10 out of 11 charges and sentenced him to life imprisonment. Mladić himself did not hear the verdict as he was removed from the court after screaming at a judge (Trial Judgement..., 22.11.2017).

## Conclusions

The main objective of creation of the International Criminal Tribunal for the Former Yugoslavia was prevention of conflict escalation. Despite the fact that it was created during the war which ended with an



agreement in Dayton in 1995, the creation of the ICTY brought about de-escalation of the conflict to some extent in the former Yugoslavia and was deterrent.

The ICTY was the first such international court since the post-Second World War Nuremberg and Tokyo trials, which was established to prosecute serious crimes committed during the Yugoslav Wars, such as genocide and crimes against humanity, and to try their perpetrators. A total of 161 persons were indicted, in particular high-ranking politicians as well as generals and police commanders. There were 18 acquittals stood, whereas 37 had their cases terminated prior to trial completion owing to withdrawal of the indictments or the indictees died before or after transfer to the Tribunal. The ICTY's judicial decisions contributed to unprecedented development of international criminal law and experiences connected with its functioning became an incentive to the appearance of the International Criminal Court (ICC) in 2002. It was the first in history tribunal to prosecute individuals for the international crimes of genocide, crimes against humanity, and war crimes.

Despite a long period from the indictments of the suspects of violating human rights to their arrest, the ICTY activity is considered successful. Situation was so complicated, that the persons were perceived as national heroes in their countries and the authorities themselves unwillingly cooperated with the tribunal.

On the analysis of the nationality of persons being on trial, it could be concluded that Serbs were a dominant nation (nearly 2/3 indicted). This situation had an influence on the escalation of the conflict between Croats and Serbs. The trial of Ante Gotovina, who was sentenced by the court of first instance and found unguilty in the second, contributed to it as well. The role of the European Union ought to be taken into consideration here. The EU made the cooperation with the ICTY a precondition for Croatia's accession to the European Union.

On 22 November 2017, the International Criminal Tribunal for the Former Yugoslavia passes the last sentence at first instance on Ratko Mladic, the Serbian leader during the war in Bosnia and Herzegovina in the early '90s. It was a symbolic end of the institution which plenarily contributed to the development of international criminal law.

The symbolic end of the ICTY was Croatian General Slobodan Praljak's case. He was one of the Croats leader in Bosnia and Herzegovina, who, on 29 November 2017, drank a phial of poison moments after the judges had delivered their decision. During the public pronouncement of the appeal judgment the appeals chamber confirmed his conviction and affirmed Mr Praljak's sentence of 20 years of imprisonment for ethnic cleansing.

On 21 December 2017, the closing ceremony of the International Criminal Court for the Former Yugoslavia took place. The Secretary-General of the United Nations, Antonio Guterres said that the tribunal's activity ensures that the world will not forget, the history cannot be written again and the Balkan states have to deal with the past. It is essential in order to normalize mutual relations with neighbours (*Ponad 20 lat działania...*).

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