THE CONTRIBUTION OF THE INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA TO INTERNATIONAL LAW AND TO THE PEACE AND SECURITY IN THE TERRITORY OF FORMER YUGOSLAVIA

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Abstract

The achievements of the International Criminal Tribunal for the former Yugoslavia are worth focusing on, for their positive effects on the change in the understanding of global justice and on the improvement of international law, especially international humanitarian law, international criminal law and human rights as well as peace and security in the territory of former Yugoslavia. However, the extent of this contribution in the long-term is assumed to be obscure if not ambiguous. Therefore, the basic aim of the study is to examine the extent of the political and legal importance of this tribunal on international law and the territory of the former Yugoslavia, thus the Balkans and international society generally. The most important contributions will be presented in the light of key cases held in the Tribunal, Tribunal's Statute and various conventions with respect to this manner. As a result, inspite of the discussions on the legal basis and effectiveness of theTribunal, the Tribunal's legal precedents can be said to have constituted a development in international politics and law, principles, norms and procedures; served the expansion of the ambit of substantive and procedural jurisprudence of the law of armed conflicts; contributed to the institutionalization of international criminal justice system and of human rights norms; played a crucial role in the creation of other international criminal courts and took part in the establishment of efficient and fair international trials which is of crucial importance to the peace in the Balkans and the whole world for the future.

Keywords: *The International Criminal Tribunal for the former Yugoslavia, International Humanitarian Law, InternationalCriminal Law*

Introduction

Along both with their advantages and disadvantages *vis a vis* national courts [1] and controversial legal basis all international courts have a certainly essential role in the development of international law which primarily aims at maintaining and restoring international peace and security. Because the atrocities in the territory of former Yugoslavia shocked the conscience of people everywhere and the crimes committed

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1 The advantages and disadvantages of international courts vis-a-vis national courts has been explored in various studies.

were so serious and heinous that they affected humanity as a whole, regardless of state borders, they were acknowledged as an erosion of the international community and the stability of international security system. Thus, the International Criminal Tribunal for the former Yugoslavia (ICTY) has been decided to be established as one preceding instance of these courts. This tribunal, the ICTY, was the first international war crimes tribunal after the tribunals of Nuremberg and Tokyo and the first war crimes court which has been decided to be established by the United Nations Security Council [2] (UNSC), as an enforcement measure pursuant to the Chapter VII powers of the UN Charter[3] in its Resolution 827 of 25 May 1993 for the purpose of prosecuting persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1 January 1991.[4] The ICTY, which has concurrent jurisdiction with national courts but have primacy over them, was, according to its Statute, empowered to exercise jurisdiction over grave breaches of the Geneva Conventions of 1949 (Article 2), violations of the laws and customs of war (Article 3), genocide (Article 4) and crimes against humanity (Article 5) allegedly perpetrated in the former Yugoslavia. According to the Resolution 827 of 25 May 1993, the UNSC noted that the ICTY was established in the belief that an international tribunal would "contribute to ensuring that such violations are halted and effectively redressed". The Council's action can be said to have presented, both politically and legally, a revolutionary experince in the sense that, by the end of the Cold War, for the first time through a long period of history, had it become possible for the Council's

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2 The creation of the International Criminal Tribunal for the former Yugoslavia has led to a discussion of the United Nations' competence. For the discussion on this issue, See Mohammed Bedjaoui, The New World Order and the Security Council. Testing the Legality of its Acts, Dordrecht, Boston and London, 1994. See also Fenrick, W.J. 1995. "Some International Law Problems Related To Prosecutions Before The International Criminal Tribunal For The Former Yugoslavia" Duke Journal Of Comparatıve & International Law, Vol. 6(1): pp. 103-127. See also Greenwood, C. 1996. International Humanitarian Law and the Tadić Case, 7 European Journal of International Law, pp.265-283.

3 With the Resolution 827 of 25 May 1993, the Security Council determined that the situation in the former Yugoslavia, and in particular in Bosnia and Herzigovina constituted a threat to international peace and security under Chapter VII of the United Nations Charter. In the same Resolution, the Security Council decided to "establish an international criminal tribunal for the sole purpose of prosecuting persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia between 1 January 1991 and a date to be determined by the Security Council upon the restoration of peace and to this end to adopt the Statute of the International Tribunal annexed to the Secretary-General's report." (The Security Council later amended the the International Criminal Tribunal for the former Yugoslavia Statute.)

4 Before Resolution 827, on 22 February 1993, the United Nations Security Council had decided to set up an international tribunal for the prosecution of people responsible for serious violations of international humanitarian law perpetrated in the territory of the former Yugoslavia since 1991 and requested the United Nations Secretary-General to submit a report including proposals for the effective implementation of the decision. The UN Secretary-General had submitted such report on 3 May 1993. Finally on 25 May 1993 the United Nations Security Council, acting under Chapter VII of the United Nations Charter, inter alia approved the Report, decided to establish the ICTY, and to this end to adopt the Statute annexed to the Report. (See Report of the Secretary-General, Pursuant to Paragraph 2 of Security Council Resolution 808 (1993), S/25704, 3 May 1993 (Secretary-General's Report).

members to reach a political agreement on a measure that would have been unimaginable in the epoch of "East- West" ideological struggle. (Maogoto, 2009, p.66). This, though not a direct achievement of the Tribunal, is an indicator of the crowning transformation among the states and thus, as a more crucial point for the present study, the understanding of international law.

From this point on, the main assumption of the study is that the ICTY did contribute to international law and to the restoration of peace and security in the territory of the former Yugoslavia; however, the extent of this contribution or its effectiveness in the long-term is believed to be obscure if not ambiguous. (UN ICTY, ICTY Global Legacy 2011 Conference)[5] Although the Tribunal's contributions to international law and to the peace and security in the former Yugoslavia will be introduced separately from each other, they should not be evaluated differently, for, they are actually expansive enough to be effective on both international law and on the peace and security in the former Yugoslavia. The aim of the study is not whether such a court contributes positively to the peace and security, because it is believed that, importance and necessity of an international criminal court in providing and maintaining peace and security is in any case obvious; but the aim is rather entirely unique developments of ICTY, since it is a tribunal which is in some points a revolutionary precedent for the future courts.

Therefore, in the context of this study, the most important contributions will be presented in the light of key cases held in the Tribunal, Tribunal's Statute and various conventions with respect to this manner in order to evaluate the extent of the contributions. On the other hand, matters such as the establishment and the legal basis of the Tribunal, its general features, organisational structure or the criminal procedure, information about the conflicts in the former Yugoslavia will be excluded from the study. Besides, the negative evidences or opponents' opinions about the ICTY that "it remained outside the scope of criticism and that the international community failed to recognise how the sides used it to pursue their own objectives, and the ICTY, let alone contributing to the peace and security, on the contrary have perpetuated conflict", (Cassese, 2003, p.326-27) will be given reference to merely when required, for, undertaking these elements would not satisfy the target of this study.

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5 If the contributions had not been obscure, it would not have been found necessary and beneficial by the ICTY to convene a conference with the title of "The Global Legacy of the ICTY", in The Hague on 15 and 16 November 2011. This conference has the aim of bringing together academics, international judges and practitioners, state representatives, and members of civil society, to explore the effect of the Tribunal's work on international humanitarian law and international criminal procedure, the potential of its jurisprudence to shape the future of global justice and the advancement of human rights. The participants and invitees of the Conference included the Tribunal's Principals, Judges, senior Tribunal staff, the Security Council Working Group on the ad hoc Tribunals, the Rule of Law Unit from UNHQ, representatives of the national academic and legal community from the former Yugoslavia, non-governmental organisations, international organisations, and organs of the European Union, legal counsellors of embassies in The Hague, representatives of universities, international law associations, think tanks and international law scholars. (UN ICTY, ICTY Global Legacy 2011 Conference)

The Contribution of the International Criminal Tribunal for the Former Yugoslavia to the Peace and Security in the Territory of Former Yugoslavia: Establishing the Truth, Bringing Justice, Holding Accused Responsible, Giving Victims a Voice

Regarding the judgements of the ICTY, the first impacts on the peace and justice to be thought of are the opportunity which it provided thousands of victims to be heard and speak about their suffering, establishment of an effective victims and witnesses programme and the Court's ending impunity for serious violations of international humanitarian law by holding individuals accountable regardless of their position. The big steps in cultivating the way to the Tribunal has brought on that, the question was no longer "whether leaders should be held accountable, but rather how best to ensure they would be called to account." (UN ICTY, About the ICTY: Achievements) It follows that because the purpose of an international criminal court is to determine the individual criminal responsibility of individual offenders, it does not focus on collective guilt, but to individual responsibility which can also be evaluated as a contribution to the creation of peace in the region. This also extends to the doctrine of criminal responsibility of superiors or command responsibility which will be detailed below. Individual/personal criminal responsibility and superior / command responsibility are the two bases for holding an individual criminally responsible which is reflected in the Articles 7(I) and 7(3) of the Statute of the ICTY (Mundis, 2003, pp.239-75). This Article adopts four principles of individual criminal responsibility: A person who planned, instigated, ordered, committed or otherwise aided and abetted the planning, preparation or execution of a crime within the jurisdiction of the ICTY; the official position of a person does not absolve him of criminal responsibility nor mitigate the sentence; superiors who knew or should have known that their subordinates were about to or did commit criminal acts are required to take reasonable actions to prevent or punish subordinates; otherwise, they may be held responsible for such acts and superior orders are not to absolve an accused of criminal responsibility but may mitigate punishment. ICTY has interpreted the requirement that the commander must be 'put on notice' literally. For instance, It decided in the Galić case that a commander could be held responsible for the acts of his/her subordinates only if he (the superior) had information in his/her possession which would put him/her on notice of possible unlawful acts by his/her subordinates in cases Galić and Delalić. (Prosecutor v Galić Case No. IT-98-29-A Trial Judgement, 5 December 2003, para 175, following Prosecutor v Delalić et al Case No. IT-96-21-A, Appeal Judgement, 20 February 2001, para 238). On the other hand, in Brdjanin case, (Prosecutor v Brdjanin Case No. IT-99-36-T, Trial Judgement, 1 September 2004, para 278), the knowledge has been decided to be presumed had the commander the means of obtaining the relevant information, but refrained from doing so (Kolb and Hyde, 2008, p.184).

Besides, holding accountable individuals who have violated international humanitarian law also strengthens institutionalization of respect for the rule of law which is more about the ICTY's contribution to international law. Furthermore,

strengthening the respect for the rule of law has also eventuated by virtue of its partnership with domestic courts in the region like transferring jurisprudence, evidence, expertise and knowledge for instance to the War Crimes Chamber of the State Court of Bosnia and Herzegovina, the War Crimes Chamber of the Belgrade District Court or the Croatian judiciary dealing with war crimes cases and cooperation of states and non-state actors. Moreover, although it is hard to establish the facts about a war, judgements in the ICTY have contributed to combatting denial, creating a historical record and even setting a proper forum for admissions of guilt. Additionally, the procedural contributions of the tribunal, some of which are in the areas of protective measures for witnesses, the confidentiality and disclosure of information relevant for the national security of states, guilty pleas of accused and duress as a defence, is also worth noting.

Such as the doctrine of command responsibility is expressed in Article 7 (3) of the ICTY Statute and in the Delalić case (Prosecutor v. Delaliç et al., Judgement, Case No. IT-96-21-T, 16 November 1998, para. 343)[6] we can also evaluate some decisions of the ICTY as pertaning to the applicability of general principles of law. For example, with respect to the defences available to the accused, the UN Secretary-General affirmed in the Report that the ICTY 'will have to decide on various personal defences which may absolve a person of individual criminal responsibility, such as minimum age or mental incapacity, drawing upon general principles of law recognized by all nations.' So, the ICTY has resorted to general principles of law on this matter. Besides; a rule on *non bis in idem* in Article 10; equality of the parties, fair trial, presumption of innocence in Article 21; the requirement of the judgements to be reasoned in Article 23 and some decisions some of which are Tadić, Decision on Jurisdiction (Prosecutor v. Tadić, Case No. IT-94-1-AR72, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995), Erdemović case (Prosecutor v. Erdemović, Sentencing Judgement, Case No. IT-96-22-T, 29 November 1996) or Furundžija (Prosecutor v. Furundžija, Judgement, Case No. IT-95-17/1-T, 10 December 1998), are also examples of resort to general principles of law by the ICTY which have appeared in decisions of the Tribunal and in articles of its Statute (Raimondo, 2008, pp.84-115). Briefly, the Tribunal provided a necessary development in broadening individual criminal responsibility to respond to modern international inter-ethnic conflicts such as that in the former Yugoslavia (Wagner, 2003, p.351-52).

Finally, the establishment of the ICTY has normative importance which is based on concerns for human rights for the overall development of the rules of international society and how they regulate state action. The human rights abuses' to be regarded as threat to international peace and security is important because it connotes

6 "The Trial Chamber concludes that the principle of individual criminal responsibility of superiors for failure to prevent or repress the crimes committed by subordinates forms part of customary international law."

confirming the recognition that individuals have rights beyond their state borders (Birdsdall, 2007, p.407-8).

The Contribution of the International Criminal Tribunal for the Former Yugoslavia to International Law: Enforcing International Humanitarian Law (Law of Conflicts), International Criminal Law and Strengthening the Rule of Law

The ICTY can be regarded as part of a general development process of emerging norms of international justice because many of the innovations of the Tribunal have also paved the way for the creation of other international criminal courts, such as International Criminal Tribunal for Rwanda, the Special Court for Sierra Leone and the International Criminal Court (ICC). Other contributions of the Tribunal which especially paved the way for other international criminal courts were, the establishment of the most modern court facilities and technical equipment in the world; unique legal aid system such as the creation of a group of defence attorneys highly qualified to represent accused in war crimes proceedings before international judicial bodies; and a judicial database of all its jurisprudence providing access to a vast amount of jurisprudence (UN ICTY, About the ICTY: Achievements).

Thanks to the huge corpus of jurisprudence, the development of both substantive and procedural international criminal law norms by having completed proceedings against accused persons for war crimes, crimes against humanity or genocide has been generated. Should we explore these developments at close range, as has been noted in the ICTY Global Legacy Conference, we can observe that in various cases of the Tribunal, the elements of offences, the impact of defences raised, the modes of criminal liability, and the scope of superior responsibility has been defined and an important role in the domain of gender crimes has been achieved. For example, the *Kunarac et al.* case (Prosecutor v. Dragoljub Kunarac et al., Case No. IT-96-23, Appeal Judgement, 12 June 2002, paras 106-124.; Prosecutor v. Dragoljub Kunarac et al., Case No. IT-96-23-T, Trial Judgement, 22 February 2001, paras 515-543.) depicted what constitutes enslavement as a crime against humanity and the relationship of gender crimes to the customary law. In the *Erdemović* case (Prosecutor v. Dražen Erdemović, Case No. IT-96-22-A, Appeal Judgement, 7 October 1997, para. 19) it has been determined that duress is not a complete defence to crimes against humanity or war crimes. As one of the modes of criminal liability in international trials currently, the joint criminal enterprise, which had further redefined in cases *Kvočka et al. (*Prosecutor v. Miroslav Kvočka et al., Case No. IT-98-30/1-A, Appeal Judgement, 28 February 2005, paras 79-119.), *Brđanin (*Prosecutor v. Radoslav Brđanin, Case No. IT-99-36-A, Appeal Judgement, 3 April 2007, paras 357-450.) and *Krajišnik* (Prosecutor v. Momčilo Krajišnik, Case No. IT-00-39-A, Appeal Judgement, 17 March 2009, paras 153-248) and later used in war crimes indictment for the first time against a sitting head of State Slobodan Milošević (See Prosecutor v. Slobodan Milosević et al., Case No. IT-99-37-PT,

Second Amended Indictment (Kosovo), 16 October 2001, paras 17-18, 53, 62-68; Prosecutor v. Slobodan Milosević, Case No. IT-02-54-T, Amended Indictment (Bosnia), 22 November 2002, paras 5-9, 24-26; Prosecutor v. Slobodan Milosević, Case No. IT-02-54-T, Second Amended Indictment (Croatia), 27 July 2004, paras 5-10, 26-28) was initially used in the Tadić Case (Prosecutor v. Duško Tadić, Case No. IT-94-1-A, Appeal Judgement, 15 July 1999, paras 195-229). Similarly, by interpreting the Statute's language regarding the requisite *mens rea* in the *Čelebići* case, the Tribunal has clarified the responsibility of superior (Prosecutor v. Zejnil Delalić et al. ("Čelebići"), Case No. IT-96-21-A, 20 February 2001 ("Čelebići Appeal Judgement"), paras 216-241.) and the nature of the required superior-subordinate relationship. (*Čelebići* Appeal Judgement, paras 242-267.) The Appeals Chamber has, in *Aleksovski* case (Prosecutor v. Zlatko Aleksovski, Case No. IT-95-14/1-A, Appeal Judgement, 24 March 2000, paras 151-152) considered the extent of the application of Article 4 of Geneva Convention IV, that a person may qualify as a "protected person" even where he/she is of the same nationality as his/her captors. It was the first time that a court recognised rape and other sexual violence as a form of torture and convicted an accused on this basis in the "Čelebići" case (Prosecutor v. Zejnil Delalić et al. ("Čelebići"), Case No. IT-96-21-T, Trial Judgement, 16 November 1998, paras 1253, 1262-1263; Prosecutor v. Zejnil Delalić et al. ("Čelebići"), Case No. IT-96-21-A, Appeal Judgement, 20 February 2001, para. 427). In this case, rape has been charged as a grave breach of the Geneva Conventions and a violation of the laws or customs of war. (Prosecutor v. Zejnil Delalić et al.("Čelebići"), Case No. IT-96-21-T, Trial Judgement, 16 November 1998, paras 475-496). Later in the *Furundžija* case, the specific elements of rape has been clarified and the definition of torture set forth. (Prosecutor v. Anto Furundžija, Case No. IT-95-17/1-A, Appeal Judgement, 21 July 2000, paras 109-114; Prosecutor v. Anto Furundžija, Case No. IT-95-17-T, Trial Judgement, 10 December 1998, paras 159-186) (UN ICTY, 2011. ICTY Global Legacy 2011 Conference). The definition of torture adopted which remains the same regardless of whether it is being charged as a grave breach of the Geneva Conventions, a violation of the laws and customs of war (under common Article 3 of the Geneva Conventions) or as a crime against humanity (as an underlying act of persecution) reflects the elements of the crime as in the 1984 Convention against Torture and Other Cruel, Inhumane or Degrading Treatment and Punishment ('Torture Convention'), a prohibition that the Tribunal considers has attained *jus cogens* status under international law (Roberts, 2009, p.755-58).

Kolb and Hyde states in their reference books "An Introduction to the Law of Armed Conflicts" that one other achievement of the ICTY is its being one of the accelerators of the development of the law of non-international armed conflicts in 1990s. This can clearly be observed in, for example Tadić, Galić, Furundžija and Krstić cases (Prosecutor v Tadić, Case No. IT-94-1-AR72, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995 paras 96–127; Prosecutor v Galić Case No. IT-98-29-A, Judgement, 30 November 2006, paras 79–90; Prosecutor v Furundžija Case No. IT-95-17/1-T, Trial Judgement, 10

December 1998; and Prosecutor v Krstić Case No. IT-98-33-T, Trial Judgement, 2 August 2001). After the ICTY, there has been a driving force towards the merger of both branches of the law, the law of international armed conflicts and the law of non-international armed conflicts, rougly civil wars, in customary international law. Many norms of the law of armed conflicts which had been applied solely in international armed conflicts have been extented also to be applied to internal armed conflicts. So, according to the ICTY, there has emerged a law of armed conflicts based on the protection of the human person rather than a law of armed conflicts based on state sovereignty. One noteworthy cause of this change is that, most conflicts are so mixed7 that separation of a conflict may be arbitrary because of the complication of deciding whether a particular armed conflict has an international or a non-international character and political delicacy. Furthermore, separating areas and actions according to the type of conflict might lead to a discrimination in the protection of people in need: On the one hand are people with problems who enjoy the the law of international armed conflict, and on the other are similar people with similar problems who lose most of the protective guarantees because of the low standards of the law of non-international armed conflicts. Thus, from an humanitarian point of view, the same rules should protect victims of both branches of law and the ICTY has extended the law of armed conflicts from international to non-international conflicts which has also increased the number of victims in need of protection. Likewise, the Security Council resolutions concerning the conflict in the former Yugoslavia called for respect of international humanitarian law in general, without distinguishing as to the type of armed conflict.8 From this point of view, in Tadić Case, the Appeals Chamber, by putting forward the requirements for the applicability of the grave breaches provisions of the Geneva Conventions, has clarified the legal criteria for distinguishing between international and internal armed conflict and established that most of the protective rules of international humanitarian law were applicable to non-international armed conflicts. Nevertheless, according to the same case, the violations of the law of armed conflicts are not always punishable by criminal sanctions. In order for a violation to be criminally punishable, the violation must constitute an infringement of a rule of international humanitarian law; the rule must be customary in nature or, if it belongs to treaty law, the required conditions must be met, the violation must be 'serious', that is to say, it must constitute a breach of a rule protecting important values, and the breach must involve grave consequences for the victim, entailing individual criminal responsibility of the person breaching the rule. (Prosecutor v Tadić, Case No. IT-49-1-AR72, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995, para 94).

7 The general understanding about whether a conflict is international or non-international depends on the stage of the conflict being considered; the actors involved; and the specific area where the fighting was taking place. Nevertheless, the international and non-international aspects are such intertwined that it is not easy to differenciate them.

8 For details, See, eg: UNSC Res 771 (13 August 1992) UN Doc S/RES/771 para [1]

Actually, the Prosecutor accepted that the concept of grave breaches was normally limited to international armed conflicts. He maintained, nevertheless, that the grave breaches provisions of the Geneva Conventions should be treated as applicable to the conflict in Bosnia-Herzegovina whatever the character of the conflict there, because the parties had accepted their applicability in an agreement concluded between them on 22May 1992 and in a number of subsequent unilateral declarations. The United States, however, went further and argued that the grave breaches jurisdiction under Article 2of the Statute was applicable to conduct in an internal armed conflict (Greenwood, 1996, p.268).

Through examining the conditions under which a conflict may be international, the Tribunal has also validated the requirement that grave breaches must be committed in an international armed conflict, and has drawn the contours of a necessary nexus between an international armed conflict and the grave breaches. To the effect that, by establishing the internationality of a conflict, the Tribunal has also clarified when grave breaches may be applied in practice. Thus, as being the first body, domestic or international, to systematically interpret who may benefit from the protection of the regime and apply the provisions after the appearance of 1949 Geneva Conventions and a new definition of 'protected person', it has brought new clarity to various aspects of the regime ranging from the general requirements for its application to the specific underlying crimes. Since not all the crimes committed during an armed conflict are subject to international humanitarian law, other crimes will have to be distinguished from crimes such as grave breaches. However there is not any clear guidance in the Geneva Conventions regarding this issue; at that point appears the need to 'operationalize' the grave breaches regime where the ICTY set forth the nexus between the alleged crimes and the armed conflict, which helped distinguish the crimes within the jurisdiction of the tribunal from other crimes (Roberts, 2009, p.743-44).

Conventions on the law of armed conflicts do not explicitly elucidate the answer to the question of what the status of a person who takes part in armed conflict but does not fulfil the conditions, is. Such persons are sometimes called 'irregular' or 'unlawful' combatants. According to the ICTY, such persons do not benefit the protections regulated by Geneva Convention III because they are not regular combatants. However, given that Geneva Conventions I–III and Geneva Convention IV were drafted to ensure that there were no gaps in the protections afforded, a person who does not fall within Geneva Conventions I–III falls within Geneva Convention IV. Therefore, the ICTY interpreted that under Geneva Convention IV irregular combatants were 'civilians' in Brdjanin case (Prosecutor v Brdjanin Case No. IT-99-36-T, Trial Judgement, 1 September 2004, para 125). As such they are entitled to protection if they fulfil the conditions of Article 4 of Geneva Convention IV. At this point, the provision must be recalled:

Persons protected by the Convention are those who, at a given moment and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of a Party to the conflict or Occupying Power of which they are not nationals. Nationals of a State which is not bound by the Convention are not protected by it.

Nationals of a neutral State who find themselves in the territory of a belligerent State, and nationals of a co-belligerent State, shall not be regarded as protected persons while the State of which they are nationals has normal diplomatic representation in the State in whose hands they are.

Here, the term 'in the hands of' had been interpreted by the ICTY in the cases Tadić (Prosecutor v Tadić Case No. IT-49-1-T, Trial Judgement, 7 May 1997, para 579) and Delalić (Prosecutor v Delalić , Case No. IT-96-21-T, Trial Judgement, 16 November 1998, para 246) very widely: People who are in a territory which is under the control of adverse belligerent can be regarded as 'in the hands of the adverse belligerent'. Thus, not only people under arrest, but also whoever is under an occupied territory are encompassed in Geneva Convention IV (Kolb and Hyde, 2008 p.226).

Secondly, concerning the protection of civilians, as for the notion 'of which they are not nationals', the requirement that civilians have a separate nationality from the state into whose hands they fall had been interpreted loosely. Besides 'enemy civilians', stateless persons, persons from neutral states without diplomatic protection and persons whose effective allegiance lies with the adverse belligerent and who is in the hands of the opposed belligerent even if the nationality of the civilian and the belligerent is the same, are covered. In the conflict, persons were detainees in camps of the adverse forces, although their nationality was the same with that of the belligerent. As the qualifying condition for the application of the protections, the ICTY has applied the criterion of 'allegiance' to an adverse party to the conflict, or non-allegiance to the detaining party instead of 'nationality'. Thus, as the case shows (Prosecutor v Tadić Case No. IT-49-1-A, Appeal Judgement, 15 July 1999, paras 163–171) the protection of Geneva Convention IV was extended to captives on the opposite side of the conflict in Bosnia to the forces by whom they were held (Kolb and Hyde, 2008, p.224).

Since grave breaches regime or case law earlier than the ICTY regarding this regime provided little guidance, ICTY's identification of the elements of this offence is considerably important. For example the substance of torture and unlawful confinement of a civilian have been defined for the first time by the ICTY. Although unlawful confinement is not explicitly defined in the Geneva Conventions, in Delalić et al. Appeal Judgement (Judgement, Delalić et al. Case No. IT-96-21, Appeals Chamber, 20 February 2001), the ICTY has interpreted the offences in light of Articles 5 and 42 of Geneva Convention IV. The former provides that where an individual protected person is definitely suspected of or engaged in activities hostile to the security of the state, involuntary confinement would be lawful, otherwise it will be unlawful. Although the initial confinement of a civilian is lawful, it can become unlawful 'if the detaining party does not respect the basic procedural rights of the detained persons and does not establish an appropriate court or administrative board provided in Article 43 of Geneva Convention IV.' The detention or confinement of civilians is unlawful when a civilian or civilians have been detained in contravention of Article 42 of Geneva

Convention IV, or where the procedural safeguards required by Article 43 are not complied with in respect of detained civilians (Roberts, 2009:759-60).

ICTY also clearly pointed in the direction of a general prohibition of reprisals against civilian persons. Thus, the ICTY, in the Kupreškić case, considered that under customary international law all civilians are protected against belligerent reprisals in all circumstances (Prosecutor v Kupreškić, Case No. IT-95-16-T, 14 January 2000, Trial Judgement, para 527).

Conclusion

Surely, this study does not claim to cover all the contributions of ICTY exhaustedly: There can be found many other judgements and decisions which have further interpreted international law instruments and which have taken further steps than the ones touched upon in this study, but in order not to exceed the limits of the framework of the study and with the concern of being brief, they have been let out of our inquisition.

As a conclusion, in spite of its complications the ICTY is seen as an important step in the incorporation of new norms into the international order. The Tribunal's legal precedents can be said to have constituted a development in international politics and law, principles, norms and procedures which are strong indicators of changing norms and sensibilities; served the expansion of the ambit of substantive and procedural jurisprudence of customary international humanitarian law or the law of armed conflicts and reinforced its objectives by affording protection to civilians to the maximum extent; contributed to the institutionalization of international criminal justice system and of human rights norms for a globally just order; played a crucial role in the creation of the ICC and other criminal courts; achieved jurisprudential contribution to the clarification of the genocide, crimes against humanity and war crimes and by constituting the interaction of common and civil law procedures in its work and by establishing a system based on the highest standards of fairness and due process, it has marked an essential role in the efficient and fair international trials and in the future of the peace in the former Yugoslavia, Balkans and all around the world.

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