
VIOLENCE, GENDER AND WAR 5

“The Path Towards Justice for Victims of Sexual Violence”?

International Responses to Wartime Rape in the International Criminal Tribunal for the Former Yugoslavia (ICTY)

Galina A. Nelaeva, Dr. PhD.

Department of Modern History and International Relations, Tyumen State University, Semakova str.10, Tyumen 625003, Russia
nelaeva@yahoo.com

Initially submitted September 10, 2014; accepted for publication November 02, 2014

Abstract:

The question of wartime rape and sexual violence has been extensively covered in academic literature starting from the 1990s onwards. A myriad of articles and books has been published on the subject, covering various legal aspects surrounding international prosecution of wartime rape and sexual violence. It is emphasized that the UN ad hoc tribunals set up in 1993 and 1994 for the former Yugoslavia and Rwanda made an important breakthrough in relation to criminal prosecution of these horrendous crimes. For the first time in history, the tribunals established that these crimes could constitute crimes against humanity, war crimes and genocide. Political aspects of this phenomenon, however, are not so well researched. This article argues that international criminalization and prosecution of these crimes took place primarily due to the efforts of epistemic communities.

Keywords: ICTY, rape, epistemic communities

Introduction

The past few decades has seen the world of international criminal justice develop at a dramatic rate. Two *ad hoc* tribunals established in the 1990s by the UN Security Council (International Criminal Tribunal for the former Yugoslavia- ICTY and International Criminal Tribunal for Rwanda- ICTR) became the first tribunals after the post-WWII Nuremberg and Tokyo to judge individuals for international crimes. A number of other quasi-international tribunals was set up in places as diverse as Sierra Leone, Cambodia, East Timor and Lebanon, and with the adoption of the Rome Statute of the International Criminal Court in 2002, one could talk of the “dynamic development of international law” necessitated by “the dynamism of modern life” (Marochkin 2009: 704-705).

Given that this trend is likely to continue throughout the 21st century, with plans to establish international tribunals in other post-conflict settings, such as Democratic Republic of Congo (Human Rights Watch Press Release, 2011), and with the ongoing trials at the International Criminal Court, the need to examine the work of such institutions in order to avoid simplistic and even dangerous assumptions about the role of international criminal justice in post-conflict societies, is evident. A number of publications has emerged in recent

years, raising such considerations as high costs of international tribunals and relatively few trials (Wippman 2006: 861-881), dubious impact of the tribunals on the processes of post-conflict reconciliation (Hayden 2011: 313-330), remoteness of the tribunals from everyday life of the communities which they were meant to benefit (McGivern 2011: 28-36), inconsistent sentencing (often perceived as unfair/too light by victims) (Orentlicher 2010: 51-55), failure to provide protection to victims and witnesses (DeLPonte 2008), adverse effect that trials might have on the population (people can start sympathizing with the accused) (Lanegran 2007: 173), the role of tribunals in the restoration of national judicial systems and their potential to become models of good practice (Orentlicher 2008).

While the academic community and the practitioners do not have a consensus on the above-mentioned issues, it is unquestionable that an important contribution of the international tribunals, the ICTY and the ICTR in particular, has been made in the field of actual application of international criminal law. For the first time in history, the tribunals prosecuted such crimes as genocide (a category which was introduced in the United Nations Convention on the Prevention and Punishment of the Crime of Genocide in 1948) (Yusuf 2003: 211-224), torture as a crime against humanity and as a war crime, applying such doctrines as *joint criminal enterprise* (given that it was often difficult to prove the guilt of the defendants since they were not physical perpetrators) (Haffajee 2006: 201-221), elaborating elements of crimes and their scope.

This article looks at the experience of the ICTY in prosecuting rape and sexual violence. While both tribunals were unquestionably important in this regard, the reasons why it is the ICTY which is chosen for the analysis are several: first of all, it is the first international tribunal set up after WWII trials in Nuremberg and Tokyo. Secondly, the ICTY in its attempt to define the nature of the conflict in the former Yugoslavia, came to the conclusion that it was an international conflict (Prosecutor v. Tadić), thus it had a much broader range of sources of international humanitarian law to apply, since the majority of international conventions and regulations pertain to international armed conflicts. Thirdly, the Tribunal was set up under very difficult circumstances when the war was still going within the territory of the former Yugoslavia, thus, it had a slow and very difficult start. States which set up this institution were not willing to cooperate with it, and countries of the former Yugoslavia were reluctant to extradite suspects to stand trial. Nonetheless, it managed to develop a more or less coherent prosecutorial strategy in relation of wartime rape and had a number of important cases which became the starting point for further international trials of such crimes. The main argument of this article is that effective and extensive prosecution of rape and sexual violence in the case of the ICTY occurred due to the impact of the epistemic community of legal professionals working for the Tribunal (Chief Prosecutor, judges, Office of the Prosecutor), which chose the strategy out of pragmatic considerations or personal commitment.

Literature review: rape and sexual violence as international crimes

One sphere of the tribunals' work has been extensively covered in academic articles and in the media since the beginning of the 1990s: wartime rape and sexual violence as international crimes. While it is not the purpose of this article to present complete historiography of research on this subject, it is worth noting that the majority of the publications on this subject pertain to the legal scholarship. Early research of the problem of wartime rape in the Yugoslav conflicts dates back to 1992-1993. Researchers examine the testimonies of the victims in an attempt to demonstrate the link between the crime and the victims' ethnic origin (MacKinnon 1994: 73-81; Allen 1996). While this approach is

criticized for its narrow focus and for overlooking experience of women in other conflicts (Lindsey 2002: 60), it remained dominant not only in academic publications but also in the media and in the practice of the ICTY itself (Nadj 2011: 655-656). A significant number of researchers focus on legal difficulties and peculiarities of prosecuting rape and sexual violence internationally and put an emphasis on the insufficient attention given to this type of crimes prior to the 1990s. (Gardam & Jarvis 2001; Askin 1997; Askin 2003; Hoefgen 1999). It is hard not to notice the importance of the tribunals' jurisprudence on the evolution of rape as an international crime: prior to the 1990s criminalization of this type of conduct was at best insufficient. Not only these crimes were ignored and silenced in Nuremberg and Tokyo trials, they were hardly mentioned in the post-WWII international treaties. Geneva Conventions (1949) and two Additional Protocols prohibited "[o]utrages upon personal dignity, in particular humiliating and degrading treatment, enforced prostitution and any form of indecent assault" (Art.75, Additional Protocol I), also mentioning that "Women shall be the object of special respect and shall be protected against rape, forced prostitution and any other form of indecent assault" (Art. 76, Additional Protocol I). Rape was mentioned alongside such crimes as humiliating and degrading treatment and enforced prostitution (Art. 4, Additional Protocol II). What was missing, however, was recognition of rape as a violent crime. It was not until the time when the ICTY and ICTR Statutes were adopted, that rape was explicitly included in the Statutes as a crime against humanity and prosecuted.

A significant number of publications were produced by the tribunals' employees, where they analyze their own experience at various levels of tribunals' work. These publications are an invaluable first-hand source, which merits more attention (For example, Goldstone 2000; Goldstone 2004; Mose 2005; Cassese 1996; Fenrick 2001).

Especially important are the insights of the ICTY and ICTR professionals clarifying what kind of difficulties the tribunals encountered, how they came up with particular interpretation of key concepts. When it comes to cases of rape and sexual violence, especially important are writings by Patricia V. Sellers, former Legal Advisor for Gender Crimes at the ICTY. She clarifies, for example, how the Tribunal, which contained an express prohibition of rape in its Statute (Article 5g), in Rule 96 extended the scope of the crime to include other types of sexual assaults. "Accordingly, the Prosecutor has interpreted sexual assaults to be an "umbrella phrase" that refers to a range of prohibited types of sexual conduct or acts. Although the term itself has no precedent in international law, the Prosecutor thus posits that sexual assault under international conventional and customary law may consist, among other acts, of forcible sexual penetration, indecent assault, enforced prostitution, sexual mutilation, forced impregnation, and forced maternity" (Sellers, Okuizumi 2001: 52). In a more recent article, she gives a detailed comparative analysis of three incidents of wartime female slavery: the crimes committed against the so-called "comfort women", women who were driven to sexual slavery by the Japanese army during WWII (Henson 1999), the slavery endured by Bosnian women in the Foca region during the Yugoslav conflict, and the crimes against women in Sierra Leone. What is more important, she compares the judicial response to these crimes by the ICTY and the Sierra Leone Special Court, pointing to the weak points in the Tribunals' approaches. She notes that, "inconsistencies and a lack of legal parallelism permeate to different degrees, the ICTY and SCSL judicial decisions" (Sellers 2011: 136).

Research of the political aspects of the tribunals' work and their rape and sexual violence jurisprudence in particular, is, unfortunately, scarce. Researchers attempt to explain why it was the ICTY that spent a significant amount of time and invested resources into prosecution of such crimes, while other international and quasi-international bodies have a more modest account in this regard. In the light of the adoption of Security Council

Resolution 1820 where sexual violence was conceptualized as a tactic of war and an impediment to peace, attempts have been made at determining the need for the Security Council to act (Anderson 2010: 244).

Some researchers have questioned the validity of such institutions in general, by analyzing the decisions and the verdicts, and reaching completely opposite conclusions. James Meernik, a US professor of Political Science, for instance, thinks that the ICTY is not a politically biased institution and generally adheres to international criminal law standards (Meernik 2003: 140-162), while a Russian scholar E.Guskova, on the contrary, believes that the ICTY is biased against the Serbs (given that the total amount of years that the defendants of Serbian ethnicity have to serve is higher than that of all other defendants of other ethnic origins) (Guskova 2009: 252-253).

Often researchers share a normative agenda, raising the question whether international criminal tribunals are in general capable of preventing future atrocities (Rudolf 2001: 655). Jack Snyder and Leslie Vinjamuri claim that “neither the Yugoslavia nor the Rwanda tribunals has had a demonstrable effect on reducing atrocities globally or on altering the calculations of combatants in conflicts in East Timor, Chechnya, Sierra Leone, or other war sites” (Snyder, Vinjamuri 2003: 20). Thus, they conclude, “trials do little to deter further violence and are not highly correlated with the consolidation of peaceful democracy” (Snyder, Vinjamuri: 43).

Given that the story of international prosecution of rape and sexual violence is far from over (even if it is hard to expect any groundbreaking decisions on the part of the ICTY and the ICTR anymore), it appears necessary to look back at the ICTY experience in order to analyze the process of international prosecution of this kind of crimes and the driving forces behind it.

Explaining international criminalization of sexual violence

It is almost taken by granted by the academic community that the international criminalization and extensive prosecution of rape and sexual violence was due to the efforts of women activists putting pressure on the tribunals and raising public awareness on the matter (Pilch 2003: 100). This argument falls within the framework of transnational advocacy networks theory developed by Margaret Keck and Kathryn Sikkink (Keck, Sikkink 1998). While it is difficult to disagree with an observation of Daniela Nadj, that “In the 1990s, wartime rape rapidly assumed transnational importance for feminists of all persuasions- it provided a pivotal moment for feminist interventions into discourses of war, violence and culture. At the same time, the reports of mass rape coincided with the realization by the international community that women’s rights were human rights, thus giving way for a sustained feminist campaign for the criminalization of sexual violence as a preferred way of addressing past wrongs” (Nadj 2011: 647), when one looks closer at the process of the prosecuting sexual violence at the ICTY, the impact of women’s groups on criminal trials is not so obvious.

Another explanation offered in literature was that the crimes committed in the former Yugoslavia were unprecedented in history: women were raped with the purpose of impregnation, and kept in detention camps until it was too late to terminate the pregnancy. These crimes shocked the international community even before the Tribunal had been set up (Salzman 2000: 63-93). Presenting rapes committed in the course of the Yugoslav conflict as unique risks downplaying rapes committed in other conflicts. “Focusing on women’s ethnicity endorses the concept of ethnicity as a ‘marker’ of women, identifying them, or rather objectifying them, as the possession of a particular man, family or group (Lindsey 2002: 76).

Another possible explanation for the international prosecution of rape has to do with certain features in the epistemic community surrounding the tribunals--namely, legal professionals, judges, prosecutors, and legal representatives in the Tribunals who shared a willingness to prosecute rape in the 1990s, where in the past, wartime sexual violence had been ignored or silenced.

Epistemic community and the rape trials

The term “epistemic communities” was offered by Peter Haas who defines them as a “network of professionals with recognized expertise and competence in a particular domain and an authoritative claim to policy-relevant knowledge within that issue-area”. For Haas, members of epistemic communities share normative and principled beliefs (which serve as a basis for collective action by its members); they need to share causal beliefs, “which are derived from their analysis of practices in their domain.” They have shared notions of validity (methods by which knowledge is validated in the domain of their expertise) and a common policy enterprise (a set of common practices) (Haas 1997: 3-4). These shared notions of validity and common interests distinguish epistemic communities from other types of groups, such as feminist networks. The latter include members who do not necessarily possess an authoritative claim to policy-relevant knowledge (whereas epistemic communities are not necessarily goal-driven and do not employ the same strategies as activists). Members of transnational advocacy networks and epistemic communities do interact with one another, though, as often switch from one group to the other. Haas also emphasized that in epistemic policy coordination, an important dynamic is *uncertainty*: “the forms of uncertainty that tend to stimulate demands for information are those which arise from the strong dependence of states on one another’s policy choices for success in obtaining goals and those which involve multiple and only partially estimable consequences of action” (Haas 1997: 3-4).

Therefore, the epistemic community of legal experts not only had an impact on the negotiations leading to the establishment of the Tribunal and approval of its subject-matter jurisdiction; it also directly participated in drafting Rules of Procedure and Evidence. Especially important is Rule 96, which removed defenses normally accepted in national jurisdiction, such as consent of the victim and prior sexual conduct of the victim, and stated that corroboration of victim’s evidence shall not be required. Judges were instrumental in extending the scope of the crime by prosecuting it under other provisions of the Statute where it was not included, such as torture or genocide.

The Commission of Experts, appointed by the UN Security Council to investigate crimes committed in former Yugoslavia and later Rwanda, noted in its reports, inter alia, widespread and systematic cases of rape. States definitely needed information since the Tribunals had to be established quickly and their Statutes had to be approved. The second prediction is that the epistemic community had an impact on the actual prosecution when rape was prosecuted as a war crime and as torture, which was not explicitly provided for in the Statutes.

ICTY: setting up the Tribunal

While the process of the establishment of the ICTY has been well-documented (Cassese 1996), it is worth noting that a careful look at the documents and statements dedicated to the issue of atrocities in the Yugoslav conflict reveals that politicians looked at the conflict as a

security threat in “new Europe”,¹ as something that was unacceptable for Europe, and compared the events in Yugoslavia to the events of the WWII (Nelaeva 2011: 100-108). This Europe-centered approach was also typical for the media coverage, presenting the conflict as something unique and horrendous.

One important institution leading to the establishment of the ICTY is often overlooked in academic articles: the Commission of Experts (hereinafter the Commission) established by the UN Security Council Resolution 780 in October 1992. Five persons were appointed by the Secretary General to identify and document possible violations of international humanitarian law in the territory of the former Yugoslavia. The Commission, however, did not receive significant support from the states. Michael Scharf (a former Attorney-Advisor for the United Nations Affairs at the US Department of State) recalls that, “The United Kingdom and France, believing that the pursuit of war criminals might damage prospects for a peace settlement, made no secret of their preference that the Commission be limited to a passive group that would analyze and collate information that was passed to them” (Scharf 2006: 6). States were reluctant to pass on information to the Commission, and looked at it rather like an impediment to negotiating peace settlements (Scharf, Morris 1998: 41).

The Commission’s work was financed by the United Nations (the UK and France were against setting up a separate budget for the Commission). The funding was insufficient which prompted the Commission to ask UN Member-States and non-state foundations for help. Open Society Institute and McArthur Foundations, for example, provided significant help for setting up a Commission’s documentation center. Voluntary donations enabled to conduct thirty-four investigations in the field. After the Commission’s President, Frits Kalshoven (a law professor from the Netherlands) resigned in protest in September 1993, explaining that the Commission did not have political support from the governments, a new President was appointed, M. Cherif Bassiouni, a US legal expert of Egyptian origin, who actively supported the idea of international criminal justice and setting up a permanent criminal court. He set up a documentation center and database at DePaul University in the US.

A number of local and international NGOs cooperated with the Commission. They helped to collect information about crimes, talked to the survivors. Their help was important, even though, as the former Senior Legal Advisor to the Prosecutor and former member of the Commission of Experts, William Fenrick, remarked, that “I would say there was a lot of information and a lot of discussion about sexual assaults in Bosnia. That is very different from saying there was a lot of evidence which was suitable for use in a criminal trial.”² Richard Goldstone, former ICTY Chief Prosecutor, noted such international NGOs as the ICRC, Human Rights Watch, and the Lawyers’ Committee for Human Rights, Amnesty International, which cooperated with the ICTY (Goldstone 2004: 380-384).

Findings of the Commission were corroborated by the Human Rights Commission’s Special Rapporteur, Tadeusz Mazowiecki, who in his report talked about mass rapes committed in Bosnia-Herzegovina against Muslim women. He alleged that the authorities were aware of what was happening, but no steps to stop these crimes were taken (Situation of Human Rights in the Territory of the Former Yugoslavia, para. 84). Thus, rape and sexual violence were highly visible and well documented even before the Tribunal had been set up.

Several problems of practical and financial nature impeded the completion of the Commission’s work. For instance, mass graves exhumation was not finished. Rape and sexual

¹ Statement of Mr. Eagleburger, US Secretary of State, “The need to respond to war crimes in the former Yugoslavia”, December 16, 1992, in Cassese 1996, Document 12 : 55-57.

² E-mail correspondence with William Fenrick. April 25, 2006. On file with the author.

violence instances, however, were documented in much more detail which can be one of the reasons why these crimes were from the very start high on the agenda of the ICTY. In November 1993 two new Commissioners were appointed to replace Kalshoven and deceased Opsahl (a Commissioner from Norway who died of a heart attack): Hanne Sophie Greve (a judge from Norway) and Christine Cleiren (a professor from the Netherlands). These two women dedicated significant time to investigate and document cases of rape and sexual violence. “Commissioner Cleiren took on the task of organizing an investigation into rape and sexual assault. Under her direction, a forty member all-female team of attorneys, mental health specialists and interpreters interviewed 223 women in seven cities in Bosnia and Croatia who had been victims of or witnesses to rape. Meanwhile, Commissioner Hanne Sophie Greve was made “Rapporteur for the Prijedor Project,” under which she conducted an in-depth investigation into the ethnic cleansing of the Prijedor region of Bosnia. From some four hundred interviews of witnesses to the destruction there, Greve was able to document how the Serbs in Prijedor had carefully prepared their campaign before Bosnia declared independence on April 6, 1992” (Scharf 2006: 10).

Even if the evidence was not always suitable for use in a criminal trial, Bassiouni referred to the investigation of rape and sexual violence as “unprecedented” because of the scope and methods used. He recalled, “About forty people participated- including female attorneys, female mental health specialists, male mental health specialists, female interpreters, and administrative support personnel. All the attorneys and mental health experts volunteered their time in support of the investigations, which resulted in interviews with 223 refugees- 146 from Bosnia-Herzegovina and 77 from Croatia- in seven cities” (Bassiouni, Manikas 1996: 94). He goes on by giving a typology of crimes of sexual violence committed in the former Yugoslavia: rape committed by individuals or small groups before fighting started in the area; rape committed in connection with fighting in the area; rape in detention (by soldiers, camp guards, paramilitaries, civilians); rape committed as part of ethnic cleansing (when women were detained and raped for the purpose of impregnation); and rape committed for the purpose of sexually entertaining the soldiers. Men were also victims of rape and sexual violence. Thus, not only ethnically-driven rapes were identified by the Commission, therefore, claims that there was something exceptional about Bosnian rapes remain unsubstantiated.

Given that the Commission had to end its activities prematurely (the work of the Commission was abruptly ended in April 1994), it was not able to complete its investigations. However, even during this fairly limited time frame (16 months), it was able to collect 65000 pages of documents, 300 hours of video recordings, and 3 300 pages of analysis (Bassiouni, Manikas 1996: 204). In its Final Report, the Commission noted that numerous violations of international humanitarian law were taking place in the territory of the former Yugoslavia. Rape was listed as one of them.³

Even if there was no reference in Resolution 780 to create an international tribunal, establishment of this Commission became the first step towards the ICTY (Bassiouni, Manikas 1996: 65).

ICTY: a slow start

The ICTY was set up by Security Council Resolution 827 in 1993. The Security Council acted in accordance with Chapter VII of the UN Charter. Given that it took the Security Council just one resolution to set up an international criminal tribunal the appropriateness of

³ Final report of the Commission of Experts. U.N. Doc. S/1994/674, May 27, 1994. URL: http://www.icty.org/x/file/About/OTP/un_commission_of_experts_report1994_en.pdf. See also, Report of the Secretary-General Pursuant to Paragraph 2 of the Security Council Resolution 808 (1993), S/25704 3 May 1993.

Chapter VII interpretation was thus questioned by some states (Bassiouni 1994: 1204). This approach (establishing a Tribunal under Chapter VII powers and not on the basis of a multilateral treaty) undoubtedly speeded up the process, which was important since the war was still going on the territory of the former Yugoslavia. Thus, it was only a handful of states-permanent SC members who made this decision without holding hearings in the General Assembly on the matter.

The Tribunal had a low and painful start and was frequently criticized by the media (Second Annual Report, ICTY, paras. 175-178). In his article written in 1994, at the very start of the Tribunal's work, M. Cherif Bassiouni warned of the possible hurdles lying ahead: failure of the former Yugoslav states to recognize the competence of the Tribunal, the necessity to have a "capable, committed and politically independent prosecutor", the availability of resources and funding, political support and cooperation by major governments, the necessity to clarify unsettled legal issues in the Statute, the ability to secure evidence, etc. (Bassiouni 1994: 1207). It has to be noted that practically all challenges enumerated in this article came true. One of the big problems at the very start was, for instance, appointment of the judges and the Chief Prosecutor and making sure that people who came from various legal systems and having different legal experience could work together as a team. In contrast to the quasi-international courts, the ad hoc tribunals did not include local judges. The process of appointing Chief Prosecutor was also long and politics-driven. The Security Council had to appoint the Chief Prosecutor upon recommendation of the Secretary-General. Several possible candidates were refused on accounts of their possible bias in favor of a certain ethnic group-party to the conflict. M. Cherif Bassiouni's candidacy was rejected due to his Egyptian origin. Finally, only in July 1994, Richard Goldstone, a South African lawyer, was appointed. However, as he himself remarked, he was not an expert in international humanitarian law, nor was he knowledgeable in the specifics of the Balkans (Goldstone 2000: 75).

In his memoirs Richard Goldstone mentioned about the problems the ICTY faced in the beginning: the Tribunal did not have permanent premises, there were not enough computers or phones, not enough experts who would be familiar with the Region. Besides, "the difficulties in recruiting staff were compounded by UN bureaucracy, It was even suggested that the initial foot-dragging in the UN Office of Legal Affairs was an attempt at politically motivated sabotage" (Kerr 2004: 54).

It was only in November 1994 that the first indictment was confirmed. Dragan Nikolić was indicted for violating articles 2,3, and 5 of the Statute for his actions in a detention camp in Eastern Bosnia (Prosecutor v. Nikolić). There were no rape charges in the indictment, however. Elizabeth Odio-Benito (ICTY judge 1993-1995) and Gabrielle McDonald (ICTY President 1997-1999, Judge 1993-1999) recalled how difficult it was in the beginning to make sure that rape and sexual violence were reflected in the indictments. Justice Odio-Benito recalled that, "<...>both Judge McDonald and myself had to really struggle to ensure that what happened to the women would be reflected in the indictments" (Odio-Benito, quoted in Sharatt 1999: 30-31).

Several other indictments were issued against individuals suspected in crimes committed in Omarska camp (North-West Bosnia). However, none of the accused held a high position during the conflict. By the time of the first trial (Prosecutor v. Dusko Tadic) there was a handful of individuals in custody of the Tribunal, and none of them held an important position in the course of the conflict. The only exception was a Croatian general Tihomir Blaskic, who surrendered voluntarily under US pressures on Croatia (Goldstone 2004: 383).

By 1997, 75 indictments were signed. The investigation of crimes started in Priedor (Bosnia), since there was sufficient amount of information collected by the Commission of Experts (Othman 2005: 172). This strategy of a “pyramid” favored by Goldstone (moving from low-ranking defendants to more important ones) was criticized by the Tribunal’s judges and the ICTY President of the time, Antonio Cassese, as a waste of Tribunal’s meager resources (Othman 2005: 171). However, given that the Tribunal started its work in the atmosphere of states’ unwillingness (or blatant refusal) to cooperate (Second Annual Report, ICTY, paras. 129-134), plus the processes of compiling an indictment was not an easy one (Goldstone 2000: 108), it does not come as a surprise that Goldstone preferred to issue “trial ready” indictments, where the guilt could be proven “beyond reasonable doubt”.

One important development in the field of gender-based crimes prosecutions must be noted: in April 1995 the Victims and Witnesses Unit was set up. Goldstone mentioned that he was stormed by letters from women’s organizations warning that the ICTY should not overlook crimes of rape and sexual violence, so he decided to appoint a gender advisor to the Prosecutor (Patricia V. Sellers) (Goldstone 2002: 280).

The tragedy in Srebrenica in 1995 showed that the ICTY was not a deterrent factor at all. In July 1995 the decision was made to issue indictments against Bosnian Serb leaders R. Karadžić and R. Mladić, though both remained at large for years to come.⁴

Therefore, the ICTY was not given much choice but to try for rape and sexual violence. At that stage it was impossible to hold trials that involved genocide or mass murders (since there was neither evidence available nor defendants in custody). It is worth noting, however, that even if there was sufficient evidence of the crimes of sexual violence, the ICTY was slow to come up with a coherent prosecution strategy. Justice Odio-Benito remarked the efforts on the part of Patricia V. Sellers and Richard Goldstone, directed at elaborating a coherent strategy of prosecuting for rape and sexual violence (Odio-Benito, quoted in Sharatt 1999: 30-31). Having female judges at the ICTY was important, though in the words of Patricia V. Sellers, “In general, in cases involving rape and sexual violence there was no dissent of male judges.”⁵

NGOs (such as *Medika Zenica*, the German-based NGO working in Bosnia) were helping the ICTY get in touch with potential witnesses. Other NGOs (both local and international) were also trying to help by looking for potential witnesses (Australian Committee of Investigation into War Crimes (ACIWC), American Serbian Women’s Caucus, etc.) (Durham 2001: 834).

It was at the time of Louise Arbour who replaced Goldstone as Chief Prosecutor that the policy of prosecution of rape and sexual violence normalized. “Now our policy and operations concentrate on normalizing the inclusion of sexual violence under our mandates <...>. The subject has become more like the air we breathe; it’s no longer disquieting, shocking, intrusive or invasive. We have developed a legal framework, an investigative methodology” (Sellers, quoted in Scharatt 1999: 55).

Towards a functioning criminal court

Louise Arbour replaced Goldstone as the ICTY Chief Prosecutor in October 1995. By this time, only seven out of seventy four suspects were in custody (by spring 1998, out of 205 arrest warrants only 6 were executed) (Third Annual Report, Annex). The problem of non-cooperation was rampant, thus the policy of the so-called “sealed indictments” was chosen.

⁴ Radovan Karadžić (former President of Republika Srpska, Bosnia) was arrested in July 2008 in Belgrade and Ratko Mladić (former Bosnian Serb military commander)- in May 2011 in a village in the north of Serbia.

⁵ Interview with Patricia Sellers. May 3, 2006. On file with the author.

“Sealed indictments” (secret indictments) were not known by the indictees. They were chosen in order to provide “an element of surprise that reduced the risks of injuries and deaths during arrests”; in addition, “the sealed indictments held the potential of ultimately being unsealed in a way that could embarrass NATO authorities into action” (Hagan 2003: 100-101). This policy was quite successful: from October 1997, nineteen persons were arrested and sent to the Hague (Fifth Annual Report, ICTY, paras 112-114).

The ICTY managed to make a transformation from a “paper tiger” to a functioning criminal court. Given that the time frame of the Tribunal is limited, it is highly unlikely that there will be any groundbreaking decisions concerning rape and sexual violence (although one has to wait for the end of the ongoing trials involving high-ranking officials). Since rape and sexual violence have already been addressed in a significant number of decisions,⁶ the ICTY is unlikely to invest time and resources into prosecution of rape and sexual violence. With the Tribunal’s current focus on individuals who held high positions in the conflict, proving rape and sexual assaults might prove problematic given that they were not physical perpetrators.

Even if it is up to *the states*’ to set up international institutions of criminal justice, it is up to the epistemic community to adopt the rules of procedure and evidence, to issue the indictments (and what kind of crimes will be added to the indictments), and, even more importantly, how to interpret the provisions of the Statute. Rape was explicitly included in the category of “crimes against humanity” but it was prosecuted as a war crime and genocide, as well as a crime against humanity under different provisions of articles 5 (ICTY) and 3 (ICTR) (torture, enslavement, persecution, inhumane acts).

The impact of the epistemic community (especially, women working for the ICTY and the ICTR) can be traced on every level of international criminal process: from early stages of investigation (and here one should not forget to mention the importance of the Commission of Experts), to the actual trial phase (the famous Akayesu trial, when the judges in an unprecedented move decided to have the indictment amended to add rape and sexual violence charges since after the questions by the judge from South Africa, Navanethem Pillay, it became clear that the witness had been a victim of rape). Given the time constraints, financial and other limitations that both tribunals faced in the course of their work, issuing an indictment becomes a strategic decision for the Prosecutor. And only due to the efforts of individual experts (mostly women, but not necessarily), such as justice Gabrielle K. McDonald, Elizabeth Odio-Benito, Navanethem Pillay, Patricia Sellers it was possible to prosecute rape and sexual violence as international crimes for the first time in history. The role of Patricia Sellers was also emphasized by Richard Goldstone who believed that many of the Tribunal’s initiatives were the result of her creative approach (Goldstone 2002: 280).

Problem areas

Recently the ICTY has produced a film “Sexual Violence and the Triumph of Justice”, and uploaded a lot of information on sexual violence jurisprudence on its website. While it is difficult to disagree that “The ICTY took groundbreaking steps to respond to the imperative of prosecuting wartime sexual violence. Together with its sister tribunal for Rwanda, the

⁶ The data as of mid-2011: since the Tribunal started its work, 78 individuals, or 48% of the 161 accused, had charges of sexual violence included in their indictments. 28 individuals were convicted. URL: <http://www.icty.org/sid/10586>

Tribunal was among the first courts of its kind to bring explicit charges of wartime sexual violence, and to define gender crimes such as rape and sexual enslavement under customary law” (Goldstone 2002: 280), what is troubling is that neither on the web-site, nor in the movie does the ICTY mention the difficulties that it was not able to overcome, in particular, the problem of prosecuting for rape and sexual violence in some cases, and not in others. As Diane Orentlicher in a report prepared by Open Society Justice Initiative and International Center for Transitional Justice, notes, “Even as the ICTY and other international courts have highlighted crimes of sexual violence in some cases, others “continue to be plagued by prosecutorial omissions and errors as well as by a tendency on the part of the judges to require that the prosecution meet higher evidentiary standards in these cases than in other types of cases.” Further, in many instances where sex crimes charges were warranted, they were absent from indictments, often for strategic reasons related to expediting trials and competing the Tribunal’s work. Thus here, as in other aspects of the ICTY’s work, its contribution have at once been incalculable and have fallen short of what many victims hoped for” (Orentlicher 2010: 72) (Orentlicher 2010: 72).

A number of other difficult issues were raised by Orentlicher (and not found anywhere on the ICTY web-site or in the movie), such as the issue of light sentencing, plea bargaining and early release. It is hard to comprehend (even for a person with training in international criminal law) how exactly verdicts are reached and why criminals who committed horrible crimes got an early release (or altogether acquitted) (Waterfield 2012). While the issue of plea bargaining could be explained by the necessity to speed up the proceedings (though its appropriateness is nonetheless highly questionable), the issue of early release is a lot more difficult to rationalize. As Orentlicher remarks in her research on Bosnia and Herzegovina, “ICTY sentences have on the whole been cause for profound disappointment and often anger <...> Even short sentences typically are not served in full” (Orentlicher 2010: 51).

Even if the question of wartime rape prosecution at the ICTR is subject to another research (Nelaeva 2010: 3-28), an interesting question is why it was the ICTY and not the ICTR that is widely acclaimed as an institution that committed much time and effort in the investigation and prosecution of rape and sexual violence. Several factors have been listed by researchers: belated response to crimes of sexual violence in Rwanda (it was not until 1996 when the conflict had already been over that the first reports on rape started to emerge); the Tribunal had been overburdened with work and the Office of the Prosecutor (OTP) was not willing to invest time and resources into investigating and prosecuting rape and sexual violence; lack of expertise on the part of the OTP and insufficient protection to victims and witnesses (Nowrojee 2005: 3-19).

Conclusion

In the early 1990s, the ICTY faced a number of political, logistical, financial and other problems, which impeded the high-quality investigations necessary for prosecution. War still raging in the territory of the former Yugoslavia made investigations very difficult. States were unwilling to cooperate with it. The Chief Prosecutor had to issue indictments based on the available evidence despite criticism on the part of the judges and the media. The available evidence was also the one gathered by the Commission of Experts. The Commission’s report created a strong case for trying those responsible for sexual assaults. The Prosecutor wanted to make sure that there was sufficient evidence to indict the accused, and “trial ready” indictments in those circumstances were possible only against relatively unimportant defendants.

The ICTY struggled with the problem of proving rape and sexual violence in cases when the defendant was not a physical perpetrator and the link between the crime and the acts of the high-ranking official was not always easy to establish. International criminal trials are not the same as national ones: international crimes should “shock the conscience of humanity”. The decision whether raped and sexual assaults belonged to the crimes that “shock the conscience of the humanity” was up to the legal professionals to make (to the Chief Prosecutor, in particular).

In conclusion I would like to note that even if the ICTY demonstrated the “triumph of justice” when it comes to rape and sexual violence cases (it is true that it produced more jurisprudence on this matter in five years than the international criminal courts in five hundred years), it is too early to claim that “the path towards justice for victims of sexual violence has now been clearly set.”⁷

Even if the Tribunal with its extensive case-law on rape and sexual violence influenced the detailed elaboration of this type of crimes in the ICC Statute (Hall-Martinez, Bedont 1999: 65-77), not only the danger of prosecuting for those rapes that are ethnically motivated (and part of a pre-planned policy) risks putting aside the evidence that does not fit this pattern, it also risks presenting one ethnic group as perpetrators and the other as victims (which hardly helps reconciliation efforts). As Daniela Nadj shows in her analysis of the *Kunarac* case, “two recurrent subjectivities emerge with extremely potent effect: first, the wife and mother, who needs ‘protection’ during times of both war and peace and is more object than subject of international law, and second, the ‘victim subject’, who is produced by colonial narratives of gender, as well as by notions of women’s sexual vulnerabilities. Moreover, attention is drawn to the legal modalities by which sexual violence is portrayed as a group harm directed against an ethnic community, rather than as a gendered harm against the woman” (Nadj 2011: 649).

Re-traumatizing the victims during international (and domestic) trials and putting their lives in danger (as well as “witness fatigue”) is a real concern as well (Mendeloff 2009: 592-623; Broneus 2008: 55-76).

Given that the trend towards international prosecution of crimes is likely to continue, I believe, institutions that will deal with these crimes in the future (and especially, the ICC) should first of all, have closer contacts not only with the population they are trying to bring justice to, but also with the colleagues working for other international criminal courts. Even though such meetings do take place, there is no international network of experts who would hold regular events in order to come up with certain internationally accepted standards in the field of rape and sexual violence prosecutions. Not only more comparative research of the Tribunals’ jurisprudence is necessary to achieve a certain degree of legal parallelism (despite differences in Statutes), it is also necessary to educate practitioners how to deal with such cases in the future.

The ICTY should thus strengthen its educational dimension: since the understanding that gender-based violence is a crime does not come automatically, it is necessary to educate the public (and in different languages, too) about the Tribunal’s achievements and failures in this field. Justice Florence Mumba believes that, “the international community has the responsibility first and foremost to persuade the political leadership of each member state to bring to the attention to their nations, to their people or their military forces as to what is going on and what is up to date in terms of cases like rape and other war crimes in the way we

⁷ ICTY film “Sexual Violence and the Triumph of Justice”. URL:
<http://www.youtube.com/watch?v=HZ4EM6iiq0k>

are trying to protect the women”,⁸ and I think that the ICTY should become an integral part of that “international community” with a task to disseminate information concerning gender-based crimes. For the Tribunal to “to deter future commission of such horrific crimes”,⁹ it is necessary to develop a coherent and comprehensive education program for the international judges, investigators and other professionals working in the field. Given the complexity of the legal texts (which are impossible to read without prior training in criminal law), and the length of the proceedings, the Tribunal should develop educational tools for the general audience as well, to make sure that its experience is not lost and forgotten.

Funding

The author received no financial support for the research, authorship, and/or publication of this article.

Bibliography

- AKSAR, Y.: *The “victimized group” concept in the Genocide Convention and the development of international humanitarian law through the practice of ad hoc tribunals.* Journal of Genocide Research 5, no. 2. (June 2003): 211-224. <http://dx.doi.org/10.1080/14623520305672>
- ALLEN, B.: *Rape Warfare: The Hidden Genocide in Bosnia-Herzegovina and Croatia.* Minneapolis, University of Minnesota Press, 1996.
- ANDERSON, L.: *Politics by Other Means: When does Sexual Violence Threaten International Peace and Security?* International Peacekeeping 17, No. 2. (April 2010): 244-260. <http://dx.doi.org/10.1080/13533311003625134>
- ASKIN, K. D.: *War Crimes Against Women. Prosecution in International War Crimes Tribunals,* The Hague, Martinus Nijhoff Publishers, 1997.
- ASKIN, K. D.: *Prosecuting Wartime Rape and Other Gender-Related Crimes under International Law: Extraordinary Advances, Enduring Obstacles.* Berkeley Journal of International Law 21, no. 2. (2003): 288- 349.
- BASSIOUNI, Ch. M.: *Former Yugoslavia: Investigating Violations of International Humanitarian Law and Establishing an International Criminal Tribunal.* Fordham International Law Journal 18, no, 4. (1994): 1191-1211. <http://dx.doi.org/10.1177/0967010694025004007>
- BASSIOUNI, M. Ch., MANIKAS, P.: *The Law of International Criminal Tribunal for the Former Yugoslavia.* New York, Transnational Publishers, 1996.
- BRONEUS K.: *Truth-Telling as Talking Cure? Insecurity and Retraumatization in the Rwandan Gacaca Courts.* Security Dialogue 39, no. 1. (2008): 55–76. <http://dx.doi.org/10.1177/0967010607086823>
- CASSESE A.: *The Path to the Hague. Selected Documents on the Origins of the ICTY.* The Hague. (1996).
- DEL PONTE, Carla (with Chuck Sudetic). *Madame Prosecutor: Confrontations with Humanity's Worst Criminals and the Culture of Impunity.* Other Press LLC (2008).
- DR Congo: *Establishment of a Specialized Mixed Court for the Prosecution of Serious International Crimes Common Position Resulting from the Workshop Held in Goma on April 6–8, 2011.* Human Rights Watch Press Release. 15 April 2011. URL:

⁸ “Sexual Violence and the Triumph of Justice”.

⁹ A remark by Justice Gabrielle K. McDonald in “Sexual Violence and the Triumph of Justice”.

<http://www.hrw.org/en/news/2011/04/15/dr-congo-establishment-specialized-mixed-court-prosecution-serious-international-cri>

DURHAM, H.: Women and Civil Society: NGOs and International Criminal Law. In Askin, K. D. & Koenig, D.M. (eds.). Women and International Human Rights Law. 834-Ardsley, New York, Transnational Publishers, 2001.

FENRICK, W. J.: *The crime against humanity of persecution in the jurisprudence of the ICTY*. Netherlands Yearbook of International Law 32. (December 2001): 81- 96.
<http://dx.doi.org/10.1017/s0167676800001173>

Fifth Annual Report of the ICTY (1998), A/53/219 - S/1998/737, paras. 112-114. URL: http://www.icty.org/x/file/About/Reports%20and%20Publications/AnnualReports/annual_report_1998_en.pdf

Final Report of the Commission of Experts. U.N. Doc. S/1994/674, May 27, 1994. URL: http://www.icty.org/x/file/About/OTP/un_commission_of_experts_report1994_en.pdf

GARDAM, J. G., JARVIS, M. J.: Women, Armed Conflict and International Law. The Hague/London/Boston: Kluwer Law International, 2001.

Geneva Conventions and Additional Protocols. URL: <http://www.icrc.org/eng/war-and-law/treaties-customary-law/geneva-conventions/index.jsp>

GOLDSTONE R.: *A View from the Prosecution*. Journal of International Criminal Justice 2. (2004): 380-384. <http://dx.doi.org/10.1093/jicj/2.2.380>

GOLDSTONE R.: *For Humanity. Reflections of a War Crimes Investigator*. New Haven & London, Yale University Press, 2000.

GOLDSTONE, R.: *Prosecuting Rape as a War Crime*. Case West Reserve Journal of International Law 34. (2002): 278-285.

GUSKOVA E.U.: *Deyatel'nost MTBU: sodержanie, rezultaty, effektivnost'*. Novaya i novejschaya istoriya, no. 5. (2009): 252–253 [E.U. Guskova. *Activities of the ICTY: contents, results, effectiveness*. Modern and Contemporary History, no. 5, (2009): 252-253].

HAAS, P. (ed.): *Knowledge, Power, and International Policy Coordination*. Columbia, S.C., University of South Carolina Press, 1997.

HAFFAJEE R. L.: *Prosecuting Crimes of Rape and Sexual Violence at the ICTR: the Application of Joint Criminal Enterprise Theory*. Harvard Journal of Law & Gender 29. (2006): 201- 221.

HAGAN, J. Justice in the Balkans. Prosecuting War Crimes in the Hague Tribunal. Chicago and London, University of Chicago Press, 2003. Ps. 100-101.
<http://dx.doi.org/10.7208/chicago/9780226312309.001.0001>

HALL-MARTINEZ, K., BEDONT, B.: *Ending Impunity for Gender Crimes Under the International Criminal Court*. Brown Journal of World Affairs 6. (1999): 65-77.

HAYDEN, R.: *What's Reconciliation got to do With It? The International Criminal Tribunal for the former Yugoslavia (ICTY) as Antiwar Profiteer*. Journal of Intervention and Statebuilding 5, no. 3 (September 2011): 313- 330.
http://dx.doi.org/10.1163/9789004241916_013

HENSON, M. R.: *Comfort Woman. A Filipina's of Prostitution and Slavery under the Japanese Military*. Lanham, Boulder, New York, Oxford, Rowman & Littlefield Publishers, Inc., 1999.

HOEFGEN, A.M.: *"There will be no justice unless women are part of that justice": Rape in Bosnia, the ICTY and "Gender Sensitive" Prosecution*. Wisconsin Women's Law Journal 14. (1999): 155-179.

KECK, M., SIKKINK, K.: *Activists Beyond Borders. Advocacy Networks in International Politics*. Ithaca and London, Cornell University Press, 1998.

- KERR, R.: *The International Criminal Tribunal for the Former Yugoslavia. An Exercise in Law, Politics, and Diplomacy*. Oxford University Press, 2004.
- LANEGRAN, K.: *The Importance of Trying Charles Taylor*. Journal of Human Rights 6, (2007): 165-179.
- LINDSEY, R.: *From atrocity to data: historiographies of rape in Former Yugoslavia and the gendering of genocide*. Patterns of Prejudice. Institute for Jewish Policy Research 36, no. 4. (2002): 59-78.
- MACKINNON, C.: *Turning Rape into Pornography: Postmodern Genocide*. In Stiglmeier, A. (ed.), *Mass Rape. The War Against Women in Bosnia-Herzegovina*. 73-75. University of Nebraska Press, 1994.
- MAROCHKIN, S. Yu.: *On the Recent Development of International Law: Some Russian Perspectives*. Chinese Journal of International Law 8, no. 3, (2009): 695-714.
- MCGIVERN, L.: *War Crimes Trials and Reconciliation in Bosnia*. MA thesis. Central European University, Budapest. 2011.
- MEERNIK, J.: *Victor's Justice or the Law? Judging and Punishing at the International Criminal Tribunal for the Former Yugoslavia*. Journal of Conflict Resolution 47. (2003): 140-162.
- MENDELOFF, D.: *Trauma and vengeance: assessing the psychological and emotional effects of post-conflict justice*. Human Rights Quarterly 3. (2009): 592-623.
- MOSE, E.: *Main Achievements of the ICTR*. Journal of International Criminal Justice 3, no. 4. (2005): 920-943.
- NADJ, D.: *The culturalisation of identity in an age of 'ethnic conflict' - depoliticized gender in ICTY wartime sexual violence jurisprudence*. The International Journal of Human Rights 15, no. 5 (June 2011): 655-656.
- NELAEVA, G.: *The Impact of Transnational Advocacy Networks on the Prosecution of Wartime Rape and Sexual Violence: The Case of the ICTR*. International Social Science Review 85, no. 1-2. (2010): 3-28.
- NELAEVA, G.: *Establishment of the International Criminal Tribunal in the former Yugoslavia (ICTY): Dealing with the "War Raging at the Heart of Europe"*. Romanian Journal of European Affairs 11, no. 1. (2011): 100-108.
- NOWROJEE, B.: *"Your Justice is Too Slow". Will the ICTR Fail Rwanda's Rape Victims?*. United Nations Research Institute for Social Development. Occasional Paper 10, 2005.
- ORENTLICHER, D.: *Shrinking the Space for Denial. Serbia and the ICTY*. Open Society Justice Initiative. New York, 2008.
- ORENTLICHER, D.: *That Someone Guilty Be Punished. The Impact of the ICTY in Bosnia*. Open Society Justice Initiative, International Center for Transitional Justice, New York, 2010.
- OTHMAN, M. C.: *Accountability for International Law Violations: the Case of Rwanda and East Timor*. Berlin, Springer, 2005.
- PESKIN, V.: *International justice in Rwanda and the Balkans. Virtual Trials and the Struggle for State Cooperation*. Cambridge, Cambridge University Press, 2008.
- PILCH, F. T.: *Sexual Violence: NGOs and the Evolution of International Humanitarian Law*. In Carey, H. F., & Richmond, O.P. (eds.) *Mitigating Conflict. The Role of NGOs*. 90-102. London, Portland: Frank Cass, 2003.
- Report of the Secretary-General Pursuant to Paragraph 2 of the Security Council Resolution 808 (1993), S/25704 3 May 1993.

- RUDOLPH, Ch.: *Constructing an Atrocities Regime: The Politics of War Crimes Tribunals*. International Organization 55, no 3. (2001): 655–691.
- Rules of Procedure and Evidence, ICTY. URL: <http://www.icty.org/sid/136>
- SALZMAN, T.: “Rape Camps”, Forced Impregnation, and Ethnic Cleansing. Religious, Cultural, and Ethical Responses to Rape Victims in the Former Yugoslavia. In Barstow, A.L. (ed.) *War’s Dirty Secret. Rape, Prostitution and Other Crimes Against Women*. 63-93. Cleveland, Ohio: The Pilgrim Press, 2000.
- SCHARF, M., MORRIS, V.: *The International Criminal Tribunal for Rwanda*. Irvington-on-Hudson, N.Y.: Transnational Publishers, 1998.
- SCHARF, M.: *Cherif Bassiouni and the 780 Commission: the Gateway to the Era of Accountability*. An Occasional Paper of the Frederick K. Cox International Law Center. (October 2006).
- Second Annual Report (1995) of the ICTY, A/50/365 - S/1995/728. URL: <http://www.icty.org/tabs/14/1>
- SELLERS, P. V., OKUIZUMI, K.: *International Prosecution of Sexual Assaults*. Transnational Law and Contemporary Problems 7. (2001): 46-80.
- SELLERS, P. V.: *Wartime Female Slavery: Enslavement?* Cornell International Law Journal 44. (2011): 115-142.
- Sexual Violence and the Triumph of Justice. ICTY film. URL: <http://www.youtube.com/watch?v=HZ4EM6iiq0k>
- SHARATT, S., KASCHAK, E. (eds.): *Assault on the Soul: Women in the former Yugoslavia*. The Haworth Press, Inc., 1999.
- Situation of Human Rights in the Territory of the former Yugoslavia. Report on the situation of human rights in the territory of the former Yugoslavia submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights, pursuant to Commission resolution 1992/S-1/1 of 14 August 1992. E/CN.4/1993/50, 10 Feb.1993.
- SNYDER, J., VINJAMURI, L. *Trials and Errors. Principle and Pragmatism in Strategies of International Justice*. International Security 28, no.3. (2003): 5-44.
- Third Annual Report of the ICTY (1996), A/51/292 - S/1996/665. URL: http://www.icty.org/x/file/About/Reports%20and%20Publications/AnnualReports/annual_report_1996_en.pdf
- WATERFIELD, B. *Croatian Hero Ante Gotovina acquitted of war crimes*. The Telegraph. 16.11.2012. URL: <http://www.telegraph.co.uk/news/worldnews/europe/croatia/9682855/Croatian-hero-Ante-Gotovina-acquitted-of-war-crimes.html>
- WIPPMANN, D. *The Costs of International Justice. Note and Comments*. The American Journal of International Law 100, no. 4 (Oct., 2006): 861-881.
- Prosecutor v. Dusko Tadic*, Case No. IT-94-1/AR72, Decision on Defense Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995;
- Prosecutor v. Dusko Tadic*, Case No. IT-94-1-A, Judgement, 15 July 1999.
- Prosecutor v. Dragan Nikolic*, Case No. IT-94-2-S, Judgment, 18 December 2003.