

**James Gow, Rachel Kerr, Zoran Pajić (eds.), Prosecuting War Crimes - Lessons and legacies of the International Criminal Tribunal for the former Yugoslavia, 2014. Pp. 264 US\$145.00 Hardback**

On July 1st 2013, twenty years after the establishment of the ad hoc tribunal for the former Yugoslavia, the Mechanisms for International Criminal Tribunals took over the workload of the ICTY as final step towards the completion strategy of this tribunal. "Prosecuting War Crimes" tries to analyse five sets of challenges the ICTY faced over its course of existence: 1) establishment of the Tribunal and its battle for survival, 2) cooperation with the post-Yugoslav countries in the development of the international law, 3) legitimacy of the ICTY internationally and locally in the region of the former Yugoslavia, 4) preparation for the completion strategy and 5) legacy of the Tribunal-i.e. lessons learned.

This book is intended to "understand the legacy the ICTY has so far bestowed, what might have been done differently and how its legacy might better be leveraged to serve goals of reconciliation and coming to terms with the past in the region". (pg. 7) Chapters 2 to 5 give a broader picture of the functioning of the ICTY and its achievements in the field of international law, politics and history. Chapters 6 to 11 concentrate on various case studies regarding the perception of the Tribunal in the region of the former Yugoslavia. Finally, the last chapter gives policy recommendations vis-à-vis reconciliation processes in the context of transitional justice.

The Hague Tribunal's ambitious objectives included contributing to the restoration and maintenance of peace, using the so-called "justice for peace" strategy in the region of the former Yugoslavia. Chapter 2, dealing with "the strategic purpose of the ICTY", accurately explains the way "'peace through justice' was expected to play a significant role in the region" (pg. 19) and describes the political impact of the tribunal. Chapter 5 states that one part of the Tribunal's "complex mission is generally taken to be the creation of an historical record" (pg. 88). This statement is rather strong because the ICTY listed among its achievements the objective of "establishing the facts"<sup>1</sup>, whereas the creation of an historical record was cautiously left to the historians. The ICTY uses facts in order to prove whether a certain accused is guilty or not, and is not aiming to construct general historical narrative about the past. Even though the Tribunal's *influence* on historical narrative is beyond any doubt huge (see, for example, Wilson, 2011), the author of the chapter only mentions the role of expert witnesses present at trials, but never truly explains the elements of "an authoritative historical record" (pg. 93) the ICTY created.

The volume's case studies are very diverse both methodologically and analytically. Chapter 8 explores the Bosnian Serb culture of denial through memorialisation practices in Prijedor, and in relation to the ICTY's historical record. Even though the authors confirm that "the Tribunal's 'authoritative record' establishes a limited version of truth" (pg. 134), in the same paragraph they claim that "the authoritative historical record of the Tribunal is believed to be indisputable and cannot be reasonably denied" (pg.135). The case of Gotovina et al. serves to depict Croatian attitudes towards the ICTY and the most recent past. In the first instance, the judgement condemning Generals Gotovina and Markač to 24 and 18 years of imprisonment challenged official historical narrative about the Homeland war and Operation Storm, but the later acquittal of both Generals was used to confirm the victorious role of the Croatia in the wars of the 1990s. One of the most interesting chapters analyses Serbian discourse related to the ICTY. Instead of concentrating on an elite-driven approach, the author describes a bipolar division in the public sphere where all the

space is "reserved" for pro-ICTY, pro-EU NGO activists and/or nationalist actors, while the majority is left without voice and media coverage. The voices of the majority need to be "able to engage with civil society [...] and present a credible opposition to the extremists and revisionists" (pg. 199). Finally, the chapter on Kosovo puts in relation the legitimacy of the Kosovar statehood project and developments of international criminal law.

The concluding chapter reflects on the possibilities of reconciliation by examining from the actual context of transitional justice performed in post Yugoslav states. The author notes that the victims' perspective is never put in the focus of the war crimes trial, as it tries to prove whether the accused is guilty or not yet the victims "expect much more beyond trials and sentencing of the accused by the ICTY and national courts" (pg. 231). Moreover, the way modern international humanitarian law punishes perpetrators has no deterrent effect. Finally, a more holistic approach to transitional justice is needed in order to set up restorative justice features like fact finding, truth-telling, empowerment and restitution (pg. 233). Even though the book deals with the legacies of the ICTY in the entire region of the former Yugoslavia, it finishes rather unexpectedly with the subchapter on "transitional justice prospects in Bosnia and Herzegovina" (pg. 235).

A quick look on the table of contents reveals how ambitious this project was set up to be. This might be one of its greatest weaknesses. The Tribunal still has many high-profile cases underway, which will be decisive in shedding light on the facts regarding the role of Republika Srpska and Serbia in the war in Bosnia (Mladić and Karadžić case), the role of Serbia in the war in Croatia (Stanišić and Simatović appeals trial, the Hadžić and Šešelj trials) or the role of Croatia in the war in Bosnia (Prlić et al. appeals trial). Therefore, the full picture about the Tribunal's legacy will be possible only once the Mechanism system has completed its work.

It is uncertain why the authors did not elaborate on the evident changes in strategy in the work of the ICTY (command responsibility vs. Joint Criminal Enterprise; the narrowing of standards of liability that resulted in acquittals of many high profile indictees such as Gotovina, Haradinaj or Perišić; and the ever-shorter descriptions of historical background information in the cases). In addition, the choice of the case studies was not adequately explained. For example, the analysis of judicial reform and institutional change was very well explained for Bosnia and Herzegovina (chapter 7), but was not mentioned for Serbia (War Crimes Council of Belgrade District Court, known as Special Court for War Crimes) or Kosovo (hybrid court backed by the EULEX mission). Moreover, perceptions in the region are not described for the Bosniak community, Bosnian Croats (leaving only perception of the Bosnian Serb community to represent Bosnia and Herzegovina), or the Macedonian one.

Another detail must be stressed here. A strikingly high number of the indictees' names are misspelled (for example five names on page 4) and there are factual errors related to the local actors (for example Nataša Kandić, a major human rights activist from Serbia, was assigned to the wrong NGO (pg. 111); the date of Medak pocket operation war is anticipated by two years (pg. 159). Although, of course, those mistakes do not hurt the integrity of the volume, they ironically mirror one of the main reproaches of the ICTY: disinterest in the local population of the region.

ANA LJUBOJEVIC

Institute for Advanced Studies Lucca, Italy

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<sup>1</sup> A list of Tribunal's achievements can be found at: <http://www.icty.org/sid/324>