

Susan L. Woodward
 Does Kosovo's Status Matter?
 On the International Management of Statehood 1

Sabrina P. Ramet
 The Dissolution of Yugoslavia:
 Competing Narratives of Resentment and Blame 26

Marie-Janine Calic
 Ethnic Cleansing and War Crimes, 1991–1995 70

Julie Mertus
 Findings from Focus Group Research
 on Public Perceptions of the ICTY 107

Alina Mungiu-Pippidi
 Hijacked Modernization:
 Romanian Political Culture in the 20th Century 118

AUFSÄTZE / ARTICLES

SUSAN L. WOODWARD
 Does Kosovo's Status Matter?
 On the International Management of Statehood 1

SABRINA P. RAMET
 The Dissolution of Yugoslavia:
 Competing Narratives of Resentment and Blame 26

MARIE-JANINE CALIC
 Ethnic Cleansing and War Crimes, 1991–1995 70

JULIE MERTUS
 Findings from Focus Group Research
 on Public Perceptions of the ICTY 107

ALINA MUNGIU-PIPPIDI
 Hijacked Modernization:
 Romanian Political Culture in the 20th Century 118

The method of "ethnic cleansing" comprises a broad variety of techniques, and its purposes have varied in different historical and geographical contexts. It formed a continuum, ranging from pressure to emigrate, to population transfer and mass expulsion, and, eventually, to genocide. Whereas in some cases, "ethnic cleansing" was aimed at the physical destruction of an ethnic community (for instance, in Srebrenica), there are other cases the objective was limited to the conquest of a strategically or economically important region through expulsion of the unwanted population, but without a clear intent to exterminate that community in whole or in part. In conclusion, "ethnic cleansing" should not *per se* be identified with genocide.

Julie Mertus*

Findings from Focus Group Research on Public Perceptions of the ICTY

Abstract: Our research suggests continuing difficulties faced by the ICTY in establishing its legitimacy in the states over which it exercises oversight. Only some of these problems derive from pre-existing political orientations in support of the parties which organized and carried out violations of international humanitarian law. Other problems are more closely related to the ICTY's own procedures, to a lack of clarity regarding the purposes of the ICTY, and to the issue of communication between the ICTY and its local publics.

Whereas the evidence drawn from opinion surveys is very useful in relation to the study of perceptions of the Tribunal, this kind of material has two major disadvantages. It is limited in the main to assessing public perceptions along only one dimension, that of "trust", and does not probe the kinds of reasons which respondents might give for trusting or distrusting International Criminal Tribunal for the former Yugoslavia (ICTY).

Viewed in relation to the aims and aspirations of the Tribunal, particularly in relation to perceptions of justice, this is a serious limitation. What is more, these crude indicators do not suggest significant specific respects in which the activity of the Tribunal might conceivably be changed in order to enhance either public trust, or perceptions of its contribution to justice. The team determined that the published survey data should be supplemented by additional material which would offer a rather more rounded and multidimensional understanding of the formation of perceptions in this area, and elected to conduct a small study using "focus groups".

Why Focus Groups?

Focus group interviewing is a well-established research method which is particularly well-suited to obtaining several perspectives about the same topic.¹

* Professor Julie Mertus, J.D., School of International Service, International Peace & Conflict Resolution (IPCR) Faculty, American University, Washington, D.C.

"A group of individuals (is) selected and assembled by researchers to discuss and comment upon, from personal experience, the topic which is the subject of the research."¹

The main purpose of focus group research is to draw upon respondents' attitudes, feelings, beliefs, experiences in a way which would not be possible using other methods, for example, observation, one-to-one interviewing, or questionnaire surveys.

*These attitudes, feelings and beliefs may be partially independent of a group or its social setting, but a more likely to be revealed via the social gathering and the interaction which being in a focus group entails.*²

The choice of focus groups as a method was chosen because it permitted the relatively spontaneous expression of ideas by respondents, and it could be managed within the rather limited resources available to the team. The method is particularly valuable in that it allows spontaneous resort to the language which interviewees use about an issue to an extent often difficult to achieve in more formal and controlled interview situations.

Typically it is difficult to ensure the representativeness of focus groups. Ideally we would have conducted focus groups in all parts of the former Yugoslavia, yet we only had funding and researchers available for sets of focus groups in Sarajevo, Banja Luka, Belgrade and Novi Sad. In each case, we targeted college students as a separate group and social activists as another group. The focus group results are limited, given these circumstances, but nevertheless, they have enabled us to formulate a typology of responses to the ICTY which conveys clearly the variety of concerns which people in the region have about the work of the Tribunal. In this way they may be valuable as a means of orienting subsequent and more systematic research.

The results are also extremely useful in that they show the diversity of ways in which these ICTY concerns are articulated in association with other aspects of their political environment.

From the public discussions on the ICTY in Serbia and Bosnia-Herzegovina, critiques emerged which fall broadly into nine categories:

- A) the role of the ICTY in processes of reconciliation,
- B) perceptions of bias in the ICTY,
- C) perceptions that the ICTY contributes to continued conflict in the region,
- D) perceptions of conflicts between international and domestic legal jurisdiction,
- E) critiques of the conduct of trials before the ICTY,
- F) the failure of the ICTY to protect the rights of suspects and of witnesses,
- G) doubts concerning the ICTY's political interest,
- H) the role of prominent trials as public spectacles, and
- I) lack of communication between the ICTY and domestic institutions.

A. The ICTY Does Not Promote Reconciliation

The goal of reconciliation is not generally an integrative part of legal processes, and with the exception of South Africa's Truth and Reconciliation Commission (TRC), has not been a major part of most post-war fact-finding efforts. Nonetheless, it is often articulated as one of the purposes of the ICTY, and this goal is received with mixed reactions in the region. One position simply expresses that hopes for the ICTY in contributing to reconciliation were misplaced:

Many people had the wrong expectations of the ICTY. They thought it was to promote reconciliation. That wasn't its role and that is not the way it is acting. (Novi Sad)

To the degree that reconciliation is accepted as a goal, some controversy remains with regard to the question of who is obligated to carry it out. Some respondents see an international role as less than appropriate:

We must first reconcile ourselves, then we can begin to think about reconciliation. (Sarajevo)

Other respondents reject demands for reconciliation on the grounds that they themselves committed no violations, and consequently do not share in obligations to reconcile:

What do you mean with reconciliation? I do not have to reconcile with anyone because I did not hurt or offend anyone! Why would I reconcile when I did not do anything to create this war or hurt anyone!? (Banja Luka)

At the opposite end of the spectrum is the perspective that reconciliation can only be possible when the conditions leading to conflict are removed, and

¹ The following account of focus group interviewing is based upon Anita Gibbs, "Focus Groups", in: *Social Research Update*, Issue 19, Winter 1997, available at <<http://sru.soc.surrey.ac.uk/SRU19.html>>.

² Richard A. Powell, cited in Gibbs, *ibid.*, p. 2.

³ Richard A. Powell/Helen M. SINGLE, "Focus groups", in: *International Journal of Quality in Health Care*, 8 (1996)5, pp. 499-504, p. 499.

⁴ available at <<http://intqhc.oxfordjournals.org/cgi/rapid/08/5/499>>.

Gibbs, "Focus Groups" (above fn. 1), p. 3.

that the incompleteness of the ICTY's criminal enforcement is a barrier to reconciliation:

My expectations of the ICTY are 70-80 percent fulfilled. These are not empty words, but Radovan Karadžić and Ratko Mladić really need to be arrested. That is [the] 20-30 percent that lacks for the tribunal to complete my expectations. That fact prevents the reconciliation here. I believe that the reconciliation is possible but while Ratko Mladić and Radovan Karadžić are free—there will be no reconciliation among people. I believe that they are Republika Srpska's war heroes and they might become bigger heroes if not caught. (Sarajevo)

Whether the goal of reconciliation is broadly accepted or rejected, domestic perceptions tend to regard the ICTY's role in the process as either misplaced or incomplete.

B. The Tribunal Is Biased

Especially among respondents from Serbia and Republika Srpska, the legitimacy of the ICTY is undermined by the perception that its indictments concentrate on crimes committed by Serbs, with far less attention given to crimes committed against Serbs. Not all respondents attach to this view a rejection of the Tribunal's goal of creating a documentary record:

It would be great to see the whole truth. (Novi Sad)

However, several respondents argue that this "whole truth" is not available through the ICTY, which threatens the perception that justice can be achieved through it:

I don't see that what is happening at the Tribunal is justice. It is partial justice and that is not justice. (Belgrade)

To the degree that justice is seen as a precondition for reconciliation, the same perception also undermines hopes for reconciliation:

I do not know whether the ICTY is an institution that is supposed to work on the reconciliation issues, but if it is, then I do not see how it deals with such issues when all war criminals [...] are not being equally apprehended and accused. (Banja Luka)

The perception of bias is applied in two directions: first, it is applied to a general critique of the legitimacy of the ICTY, especially as a support that negates the legitimacy of the Tribunal because of what appear to be its political motivations. Often, this is tied to the perception that a permanent global criminal

court, such as the International Criminal Court (ICC), would be more legitimate than an *ad hoc* body like the ICTY:

It was very clear, from the beginning of its existence, that the tribunal is an illegal institution [...] [the] tribunal is going to create a new conflict by using the inappropriate terminology during its proceedings [war criminals, capture, arrest, kidnapping [...]]. This court should be dissolved since the new international court has been established [...] We can see that the tribunal has only one goal and that is to accuse only one national group for the genocide and create a negative stereotype of that group [...] the only solution is the ICC. (Banja Luka)

Other respondents tie the critique of perceived bias to concrete demands on the Tribunal, especially the demand that it prosecute violations committed by NATO during its bombing campaign in Serbia and Kosovo in 1999:

If Hague Court accepted to look into NATO's crimes, it would be seen as balanced, but its dismissal of crimes was detrimental to the notion of an independent court. (Belgrade)

Having NATO's actions examined would increase my trust in the ICTY. They are completely immune. Even examining their behavior is impossible. I wouldn't believe my eyes if I were to see that happen. (Novi Sad)

Here it might be observed that the perception of bias relies at least as much on local press coverage which emphasizes charges against members of a particular group as it does on an assessment of the balance of indictments filed or convictions obtained. In that sense, this is a clear instance in which effective publicity on the part of the ICTY could have an effect on the way the institution is perceived.

C. The ICTY Creates New Conflicts

Another line of critique directed at the ICTY is that its engagement fails to resolve political conflicts in the region, and may in fact contribute to their prolongation: One version of this critique argues that to the degree that people accused of crimes represent political movements which remain popular in one place while they are regarded as criminal another, prosecutions simply serve to intensify existing conflicts:

Those who are accused and are being prosecuted in the ICTY are heroes for one side and war criminals for the other. (Banja Luka)

Another line of critique argues that a consequence of high-profile prosecutions, the prosecution of Slobodan Milošević in particular, has been to offer continuous publicity and media presence to the accused. This attention has the effect of promoting the version of events which is offered in cross-examination and defense statements:

The way they are dealing with Milošević is unproductive. They are turning him into a hero. (Belgrade)

I wanted the Tribunal to teach this nation something, but the results are what Milošević wanted. (Belgrade)

At least one new indictment has had the effect, probably unintentional, of keeping debates over the legitimacy of the Tribunal and the desirability of official cooperation with it alive. On 20 October 2003, the ICTY released an indictment against four high ranking military and police officers for crimes in Kosovo.⁴ The indictment charged the four on the basis of "joint criminal enterprise" and command responsibility rather than direct participation in criminal activity, and included a police commander on active duty, Sreten Lukić.⁵ The indictment was widely criticized by government officials as an ill-timed and unwelcome intervention into the pre-election campaign, and unified nearly all parties in their rejection of it. Prime Minister Živković openly speculated in an interview that the ICTY was actively contributing to the popularity of the parties of the former regime, and accused ICTY prosecutor Carla Del Ponte of "unconsciously participating in the elections on the side of Šešelji and Milošević."⁶ Whether Živković's provocative charge is a fair assessment or

⁴ The four officers charged were former military chief of staff Nebojša Pavković, former Priština Corps commander Vladimir Lazarević, former public security chief Vlastimir Djordjević, and Djordjević's successor Sreten Lukić. The indictment had been issued on 22 September, but was unsealed on 20 October. See ICTY, Case No. IT-30-70 (Pavković et al.), 22 September 2003, The Prosecutor of the Tribunal against Nebojša PAVKOVIĆ, Vladimir LAZAREVIĆ, Vlastimir DJORDJEVIĆ, Sreten LUKIĆ, *Indictment*, available at <<http://www.un.org/icty/cases-e/indictindex-e.htm>>.

⁵ <<http://www.un.org/icty/indictment/english/pav-031002e.htm>>.

⁶ ICTY, Case No. IT-05-87-PT, 21 June 2006, The Prosecutor against Milan MILUTINOVIC, Nikola ŠAINOVIC, Dragoljub ODANOVIĆ, Nebojša PAVKOVIĆ, Sreten LUKIĆ, *Third Amended Jointer Indictment*, available at <<http://www.un.org/icty/indictment/english/milo-3aj060621e.pdf>>.

⁷ Lukić was dismissed from his post in March 2004, on the assumption of power of a new government in Serbia.

⁸ "Zapad delimično snosi krivicu za popularnost ekstremista." [The West itself is Partly to Be Blamed for the Popularity of the Extremists], in: B92, *nesti dana*, 4 December 2003.

an effort to manipulate anti-ICTY sentiment, it points to a background fact which has remained unchanged: the Tribunal is not universally regarded as the ally of reformist political forces.

D. The Hague Tribunal Undermines Local Courts

Some respondents argued that the ICTY's exercise of its "primacy" over domestic courts deprives domestic courts of the ability to contribute to the prosecution of crimes committed during the period of conflict, and also limits the ability of legal institutions to explore connections between violations committed in an international context and crimes committed within the borders of states:

(...) while some [of the high-placed accused may be] tried in international courts, other executives and criminals should be tried in national courts. (Banja Luka)

After 1998, the ICTY refined its approach to focus its indictments on major violators and figures who held high military or political authority, though its early cases against low-level perpetrators remain as precedents. Also, since all of the countries of the region had elected post-war governments by the end of 2000, the capacity for legitimate domestic prosecutions has probably increased, though this capacity has not been realized everywhere.

All of the crimes which the ICTY has the authority to charge people with were also crimes under the Criminal Code of Yugoslavia, and remain crimes in the successor states: war crimes, crimes against humanity, and genocide. Domestic Criminal Codes also include some potential charges which the ICTY does not have the authority to level, such as promoting ethnic and religious hatred, aggression, and crimes against peace.⁷

E. Process Inefficient/Unfair

Respondents directed many critiques to the functioning of the ICTY in trials, especially in relation to its most prominent case, the prosecution of Slobodan Milošević. Criticisms were mostly directed to the perceived lack of fairness and efficiency in the proceedings, but there were some critiques directed to-

⁷ A detailed summary of the state of domestic law and the condition of the application of that law is offered by Vojin Dimitrijević (ed.), *Ljudska prava u Jugoslaviji 1999* [Human Rights in Yugoslavia, 1999], Beograd: Beogradski centar za ljudska prava, 2000.