TABLE OF CONTENTS

Acknowledgements

I am very grateful to my Faculty Adviser Dr. Armen Aivazian, whose contribution to the writing of this Master's Essay has been most valuable. He was very accurate supervising my work. I also appreciate Dr. Aivazian's willingness and eagerness to support my work by providing necessary information and relevant materials relating to the topic of the Essay.

List of Abbreviations

ICJ	International Court of Justice
NATO	North Atlantic Treaty Organization
UN	United Nations
ICTY	International Criminal Tribunal for the Former Yugoslavia
ICTR	International Criminal Tribunal for Rwanda
NGO	Non-Governmental Organization
CIJ	Coalition for International Justice
RPF	Rwandan Patriotic Front
ILC	International Law Commission
FRY	Federal Republic of Yugoslavia
ICC	International Criminal Court
UNDR	Universal Declaration of Human Rights
ICCPR	International Covenant on Civil and Political Rights
CIA	Central Intelligence Agency
ECHR	European Convention on Human Rights
HRW	Human Rights Watch
ISG	Institute for Study of Genocide

Abstract

Crimes against humanity and genocide which occurred in the Former Yugoslavia and Rwanda show that there is an urgent need to bring to justice the perpetrators of such acts, thus testifying to the world that the existing international law is viable enough to protect the basic human rights. This Master's Essay examines a relatively new development in the International Legal System, which was marked by the creation of the Tribunals for Rwanda and Former Yugoslavia by the United Nations Security Council. This study examines the structure, composition and jurisdiction of these Tribunals and whether they are sufficient. The chances of Tribunals to bring to justice all the perpetrators are discussed in detail. The obstacles and resistance these Tribunals usually face and the means used by these tribunals to overcome such difficulties are analyzed.

The creation of these tribunals indicates that the international community is not inert and that crimes against humanity are considered horrific acts, which the humanity would no longer tolerate. This study examines also trial of Milosevic at The Hague, which is an unprecedented case since Nuremberg. Finally, on the basis of the analysis of the Yugoslavia and Rwanda cases, possible ways of bringing the case of the Armenian Genocide before a UN-mandated international court is contemplated.

Introduction

The destruction of human beings has a long history. Murder, torture and mistreatment of the whole groups of people have become a central issue of our times. Genocide and mass murder took more lives during the 20th century than all wars combined. In the 21st century, the world seeks ways to end genocide forever, and build a more just and peaceful world. Through strong and effective international institutions, coupled with the political will, the world can put an end to this horrifying human rights crime.

The 20th century witnessed two World Wars, mass killings of colonial powers, the genocide of the Armenians and Jews, the mass destruction of lives in the Former Soviet Union. Multiple ethnic conflicts around the world make us believe that human beings are very far from being "civilized". Diplomacy moved to the back front giving way to violence, aggression, torture and mass killings. The past century has seen the worst violence in the history of mankind. In the past fifty years more than 86 million civilians, mostly women and children have died and more than 250 conflicts have erupted around the world. In addition to the victims who lost their lives, over 170 million people were deprived of their rights, their property and their dignity. And what is astonishing is that most of these victims have been simply forgotten and few perpetrators were held responsible for all these crimes.

Media coverage of genocide in Rwanda and ethnic cleansing in the Former Yugoslavia has shocked the world and focused the world's attention on the fate of victims, and once again invited international attention to such phenomena as war crimes, crimes against humanity and genocide. The latter this time was "paraphrased" as "ethnic cleansing".

The purpose of this MA Essay is to examine a relatively new development in the International Legal System, that is the creation of the Tribunals for Rwanda and Former Yugoslavia by the United Nations Security Council. These Tribunals are aimed to prosecute those who are responsible for war crimes and other serious violations of international humanitarian law, namely genocide in Rwanda from 1994 onwards, as well as in Former Yugoslavia from 1991 to 1999.

The Master's Essay addresses the following questions. What major international developments prompted and facilitated the creation of two ad hoc Tribunals, one for the Former Yugoslavia and the other for Rwanda? What is the structure, composition and jurisdiction of these Tribunals and whether they are sufficient? What are the chances of these Tribunals to bring to justice all the perpetrators? What kind of obstacles and resistance these Tribunals usually face? What are the means used by these tribunals to overcome such difficulties? Do these Tribunals get necessary backup from World Powers? Are there any plans for the creation of new similar Tribunals for other cases of mass crimes against humanity? What are the Tribunals' relationships with other international legal institutions? How justified are the claims of some analysts that the ICJ rules of Court are not democratic and the ICJ rulings favor NATO powers? Are these recent developments in any way relevant to the international recognition and punishment of the World War I Armenian Genocide?

This study will shed light also on the possible legal consequences of genocide and other crimes against humanity committed in other areas of the world, including the World War I Armenian Genocide.

The MA Essay is composed of three chapters. The first chapter deals with the historical perspective of the International Court of Justice and two ad hoc Criminal Tribunals for the

Former Yugoslavia and Rwanda. The second chapter gives the definitions of genocide, describes the role of the International Court of Justice in the enforcement of the Genocide Convention, adopted in 1948, explains individual criminal responsibility of Heads of States and brings complaints presented by Yugoslavia to hold ten NATO members accountable for their actions in the territory of the Former Yugoslavia. The last chapter refers to basic legal standards and practices of fair trial and focuses on Slobodan Milosevic's trail at The Hague. The MA Essay presents subsequent conclusions and findings.

The sources of this essay, including official documents, monographs and various studies, are to be found in the Internet, specialized books, journals and articles in English, French and Russian.

The materials used for this study are rather diverse. The concept of diversity mentioned here does not only refer to the different sources and Internet Web-sites, but also to the variety of opinions and views included in the Essay. They are not only of informative character, but also analytical. Information picked up from the Internet Web-sites was useful in depicting the same events in comparative analysis. That is, the materials were not one sided, which would naturally contradict to the methodology applied to this work (historical-comparative).

Actually, the literature used in the given study may be divided into several categories or groups:

- Official Web-sites
- Books
- NGO Web-sites
- News

The official sites are often one-sided. Usually, they are biased, though they have rather reliable and informative character. For instance, materials found in official sites of the United Nations, International Criminal Tribunals for Rwanda and the Former Yugoslavia were significant in providing general information about the historical developments of the Tribunals. In addition, these sites are updated enough to provide information about current events occurring in the field of prosecuting the perpetrators of the crimes against humanity. These sites also provide the opportunity for comparative analysis of two opposing official positions.

NGO Web-sites, namely Amnesty International and Human Rights Watch, provide valuable information for their impartiality; they are free of constraints imposed by official state organs. Human Rights Watch report on the genocide in Rwanda, which grew to become a huge volume, gave a full picture of the region in general, of the history of those ethnic groups (Hutu and Tutsi), and a detailed description of the conflict. NGO Web-sites allowed the use and analysis of ideologically varied commentaries, as well as the opinions of eminent scholars in the legal field. Another feature typical of non-official web-sites allows the reader to interactively participate in the virtual decision-making over the cases in question.

As this study in concludes with a postscript about a possibility of bringing the case of the Armenian Genocide to a UN-authorized international court, the following books in the relevant field were used. The volume 'The History of the Armenian Genocide' contains the results of twenty years of research and analysis in the field. The book claims that though the Armenian Genocide was not given such prominent treatment as the Jewish Holocaust, still haunts the Western world, and has assumed a new significance in the light of 'ethnic cleansing' in Bosnia. This study offers an authoritative analysis by presenting it as a case study of genocide and by seeing it as a historical process in which a domestic conflict escalated and was finally consumed

by a global war. The volume claims that many concepts, which became known worldwide after the World War II, already existed during the World War I Armenian Genocide. One of these notions is the 'crimes against humanity', which was first used after the horrifying events of 1915.

'A Crime of Silence' by Pierre Vidal Naquet attempted to send a message to the world community, that the massacre of 1.5 million Armenians in Turkey, on orders of the Young Turk Government, is still little known. To mark the 70th anniversary of the first genocide of the 20th century (this book was published in 1985), the Permanent Peoples' Tribunal held a special hearing in Paris. This particular book reproduces the evidence and papers delivered at the Tribunal's hearings and its subsequent verdict. The book concludes that the political repercussions of this genocide are still alive. The large Armenian communities currently leaving in the United States, France and elsewhere, will do anything that the world shall not forget what happened. More elements have continued to take direct action to ensure, eventually, some official recognition of and restitution for, the great crime that was perpetrated against the Armenian people.

The book 'Roots of Evil' by Ervin Staub, leaves a powerful impression on the reader, touching upon a broad humanity and a deep concern for human suffering. This book is an important, insightful and humane study. It is useful for those who seek to understand and prevent genocide. The book points to the variety of the underlying causes of the tragedies like the Armenian Genocide of the First World War and the World War II Holocaust of Jews. It brings together descriptions of the socio-economic, cultural, political, group and psychological aspects of evil, in order to provide a new and more comprehensive understanding of mass violence. This is a book that every caring human being should read.

However, the most updated and valid category of information used in this study has been the news provided by mass media (namely BBC and CNN), because the news are often void of a type of partisan censorship that is typical to other sources.

The Essay employs the historical - comparative methodology.

Chapter 1. The International Court of Justice in Historical Perspective

The International Court of Justice [ICJ]

The International Court of Justice or the World Court, as it is popularly known, is the principal judicial organ of the United Nations. It has two official languages (French and English) and its seat is at the Peace Palace in The Hague, Netherlands (Epps, 1998, p. 296).

The Court has a dual role. It settles in accordance with international law the legal disputes between States, and gives advisory opinions to the United Nations and its specialized agencies (http://www.icj-cij.org). The Court is composed of 15 judges, including a President and Vice President, elected to nine-year terms of office by the United Nations General Assembly and Security Council sitting independently of each other. It may not include more than one judge of any nationality. Elections are held every three years for one-third of the seats, and retiring judges may be reelected. The Members of the Court do not represent their governments but are independent magistrates. Also they cannot engage in any other occupation during their term in office. The judges must possess the qualifications required in their respective countries for appointment to the highest judicial offices, or be jurists of recognized competence in international law. When the Court does not include a judge possessing the nationality of a State party to a case, that State may appoint a person to sit as a judge ad hoc for the purpose of the case (http://www.icj-cij.org).

The jurisdiction of the Court covers all matters provided for in the United Nations Charter or in treaties or conventions in force. In cases of doubt as to whether the Court has jurisdiction, it is the Court itself that decides.

The procedure followed by the Court in disputable cases is defined in its Statute, and in the Rules of Court adopted by it under the Statute. The proceedings include a written phase, in which the parties list and exchange pleadings, and an oral phase consisting of public hearings at which agents and counsel address the Court. After the oral proceedings the Court deliberates in a separate room and then delivers its judgment at a public sitting. The judgment is final and without appeal. The Court decides in accordance with international treaties and conventions in force, international custom, and the general principles of law and, as subsidiary means, judicial decisions and the teachings of the most highly qualified publicists. The ICJ makes its rulings by having a vote of all judges, and the majority vote wins.

The advisory procedure of the Court is open only to international organizations. On receiving a request, the Court decides which States and organizations might provide useful information and gives them an opportunity of presenting written or oral statements. The Court's advisory procedure is otherwise designed for contentious proceedings, and the sources of applicable law are the same. In principle the Court's advisory opinions are consultative in character and are therefore not binding as such on the requesting bodies. Certain instruments or regulations can, however, provide in advance that the advisory opinion shall be binding.

But how justified are the claims of some analysts that the ICJ rulings are not democratic and the Court usually favors NATO powers?

James Pione, the author of an article called “Is the International Court of Justice Just?” questions the presence of democratic principles in the World Court. He claims that if we threw a detailed look at the way the judges are elected to the ICJ, this could seem unfair. The United States, United Kingdom, and France are permanent members of the Security Council, which gives three of the most powerful NATO nations a lot of power. This amount of power for NATO

countries gives them the ability to heavily influence the outcome of an election of judges to the ICJ. Also, the permanent members of the Security Council have veto powers for admission of a State into the Council, so the NATO powers may easily keep "undesired" nations out. This gives them more opportunities to get more votes for their candidates in the ICJ. In other words, it is in their hands whether a candidate loses or gets a seat in the ICJ (http://www.iacenter.org/warcrime/21_just.htm).

Another observation carried out by James Pione is that there is a large trend of cases that are being judged in favor of NATO powers. The ICJ recently tried the case of Yugoslavia vs. NATO members where Yugoslavia attempted to prove that the NATO bombing of Yugoslavia in 1999 was an illegal use of force that violated the Genocide Convention. The ICJ found that the actions of NATO are not genocide and found that it did not have jurisdiction to rule on the case.

James Pione concludes that the International Court of Justice is a tool of powerful nations like the United States and the United Kingdom. Any important case is likely to be found in favor of a defendant NATO country. The ICJ is a mostly a NATO weapon against impoverished nations (http://www.iacenter.org.warcrime/21_just.htm).

An Independent Commission of Inquiry carried out some research and came to the same conclusion as James Pione. The Commission states that the ICJ rules in favor of NATO countries and it brings examples of the Court's rulings like Nicaragua, Libya and Iran, which have lost cases against the United States for various crimes. However, in 1984, the Court ruled against the

United States in favor of Nicaragua[1], but the US simply ignored the decision of the Court. (http://www.iacenter.org/warcrime/summary.htm).

The International Criminal Tribunal for the Former Yugoslavia [ICTY]

The Tribunal was established as a result of an international outcry over the shocking extent of war crimes committed during the Yugoslav conflict. At the same time, the UN Security Council determined that the situation in the former Yugoslavia constituted a "threat to international peace and security." Thus, in May 23, 1993, the UN Security Council adopted resolution 827, which created the Tribunal (http://www.thecenter-ptj.org/faq/kos_3.htm).

Its mission is to prosecute and try individuals who may be responsible for serious violations of international humanitarian law during the armed conflicts in the former Yugoslavia from 1991 onwards. The ICTY is located in The Hague, which is the administrative and diplomatic capital of the Netherlands, some 35 miles southwest of Amsterdam. The Tribunal receives most of its funding from United Nations member states' assessed contributions and voluntary contributions. Private, non-governmental organizations (NGOs) such as the Coalition

[1] On 9 April 1984, Nicaragua filed an application instituting proceedings against the United States of America, together with a request for the indication of provisional measures concerning a dispute relating to responsibility for military and paramilitary activities in and against Nicaragua. On 10 May 1984, the Court made an order indicating provisional measures. One of these measures required the United States immediately to cease and refrain from any action restricting access to Nicaraguan ports, and in particular the laying of mines. The Court also indicated that the right to sovereignty and to political independence possessed by Nicaragua, like any other state, should be fully respected and should not be jeopardized by activities contrary to the principle, prohibiting the threat or use of force and to the principle of non-intervention in matters within the domestic jurisdiction of a state. The Court also found that the United States had violated certain obligations arising from a bilateral Treaty of Friendship, Commerce and Navigation of 1956. It decided that the United States was under a duty immediately to cease and to refrain from all acts constituting breaches of obligations under customary international law and the 1956 Treaty, the amount of that reparation to be fixed in subsequent proceedings if the parties were unable to reach agreement.

for International Justice (CIJ) also lend support to the Tribunal through their work and material donations.

The Tribunal has three sections:

- The Judges Chambers
- The Office of the Prosecutor
- The Registry.

The Tribunal has 14 judges who are responsible for adopting and amending the Rules of Procedure and Evidence, reviewing indictments for possible confirmation, and hearing and deciding cases. The judges are divided into three trial chambers of three judges each and one appeals chamber of five judges. Judges are elected for four-year terms by the UN General Assembly from a list submitted by the Security Council. The President presides over the appeals chamber and has the power to communicate formally with the UN Security Council when a country refuses to cooperate with the Tribunal. The Statute also gives the Tribunal's judges the authority and responsibility to adopt rules of procedure and evidence to govern its proceedings. The Rules constitute an ambitious attempt to create a fully developed set of international rules for the conduct of pre-trial proceedings, trials and appeals. The Rules have been amended for a variety of reasons:

- To enhance the rights of the accused
- To help better protect victims and witnesses
- To take account of the views of the host country
- To improve the consistency, clarity and comprehensiveness of the Rules.

The Tribunal has jurisdiction over persons accused of serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991. The Tribunal

has no jurisdiction over States, legal persons or organizations (http://www.thecenter-ptj.org/faq/kos_3.htm).

In addition, the Tribunal competence is limited to the following group of crimes:

- grave breaches of the 1949 Geneva Conventions
- violations of laws or customs of war
- genocide
- Crimes against humanity.

As part of this jurisdiction, the Tribunal is authorized to prosecute leaders for their command responsibility. Such suspects can be indicted for ordering or planning violations of international humanitarian law and for failing to stop or punish such violations of which they were, or should have been, aware. The Tribunal has primacy over national courts, both in the former Yugoslavia and the rest of the world. It can request national courts to stop proceedings against a war crimes suspect and hand the suspect and evidence over to the Tribunal. Trials in absentia are not permitted. The Tribunal has jurisdiction over individuals only, in other words no prosecutions may be brought against juridical persons such as organizations and associations. No person can be tried twice for the same crime, and individuals tried before the Tribunal shall not be tried again for the same acts before national courts. However, individuals tried before national courts may be tried by the Tribunal under specific circumstances when the characterization of the act by the national court did not correspond to its characterization under the Tribunal's Statute or conditions of impartiality, independence, or effective means of adjudication were not guaranteed in the proceeding before the national courts. In the event that the Tribunal tries an individual after a trial by a national court, the Tribunal in its deliberations shall consider any penalty imposed by the national court.

The responsibility for investigating alleged crimes, framing indictments, and prosecuting cases rests with the Office of the Prosecutor of the ICTY. The UN Security Council appoints the Chief Prosecutor for the ICTY for a four-year term.

The Registry is the administrative arm of the Tribunal. A Registrar appointed by the UN Secretary-General after consultation with the Tribunal President heads the Registry for the ICTY. The ICTY Registry performs a wide range of functions. These include such activities as procuring equipment, hiring personnel for the ICTY and handling financial matters.

The ICTY is not related to the International Court of Justice.

Whether the Tribunal is regarded as a step forward for international justice or not will probably depend on how many people are successfully prosecuted and whether perpetrators, the chief planners and strategists of the war are brought to justice (Epps, 1998, p. 316).

Statistics show that the Tribunal has publicly indicted 94 individuals in indictments, including 10 people who were indicted for genocide. However, some indictees have died or completed their trials, other indictments have been withdrawn. There have been 14 official convictions, 2 documented confessions, and 2 acquittals issued by the Tribunal. The first person that the Court tried was Duško Tadic, a low ranking member of the Serbian military, who was accused of a variety of crimes under the Statute (Epps, 1998, p. 315).

The International Criminal Tribunal for Rwanda [ICTR]

Recognizing that serious violations of humanitarian law were committed in Rwanda, the Security Council created the International Criminal Tribunal for Rwanda (ICTR) by resolution 955 of 8 November 1994 acting in accordance with Chapter VII of the United Nations Charter,. The purpose of this measure is to contribute to the process of national reconciliation in Rwanda

and to the maintenance of peace in the region. By resolution 977 of 22 February 1995, the Security Council decided that the seat of the Tribunal would be located in Arusha, United Republic of Tanzania. The International Criminal Tribunal for Rwanda was established for the prosecution of persons responsible for genocide and other serious violations of international humanitarian law committed in the territory of Rwanda between 1 January 1994 and 31 December 1994. It may also deal with the prosecution of Rwandan citizens responsible for genocide and other such violations of international law committed in the territory of neighboring States during the same period.

In 1994, the Security Council adopted Resolution 935 requesting that the Secretary General establish a commission of experts to examine evidence of serious violations of international humanitarian law in Rwanda, and to report to the Security Council on its findings. The commission concluded not only that grave breaches of international humanitarian law were committed in Rwanda by both sides, but also that there was overwhelming evidence of genocide perpetrated by Hutu elements against the minority Tutsis (http://www.igc.apc.org/cij/general.html).

The Tribunal consists of three Trial Chambers and the Appeals Chamber, which are composed of judges elected by the General Assembly from a list submitted by the Security Council. The judges are elected for a term of four years. They are eligible for re-election.

Three Trial Chambers and an Appeals Chamber are composed of 14 independent judges. No two of them may be nationals of the same State. Three judges sit in each of the Trial Chambers and five judges sit in the Appeals Chamber which is shared with the International Criminal Tribunal for the former Yugoslavia (http://www.ictr.org/ENGLISH/geninfo/structure.htm).

The Tribunal receives most of its funding from United Nations member states' assessed contributions, as well as voluntary contributions. Private, non-governmental organizations (NGOs) such as the Coalition for International Justice also lend support to the Tribunal through their work and material donations.

The reason why the Tribunal was created is the horrifying extent of the massacres that took place in Rwanda within three months --between 500,000 and one million Tutsis and moderate Hutus were killed. The Security Council determined at that time that the situation in Rwanda "continued to constitute a threat to international peace and security."

The Tribunal has jurisdiction over individuals accused for genocide and crimes against humanity committed in Rwanda between 01 January 1994 and 31 December 1994. The Tribunal has primacy over national courts, both in Rwanda and the rest of the world. It can request that national courts stop proceedings against a suspect and hand the suspect and evidence over to the Tribunal. Trials in abstentia are not permitted. The Tribunal has jurisdiction over persons only. No prosecutions may be brought against juridical persons such as organizations and associations. No person may be tried twice for the same crime, and individuals tried before the Tribunal are not to be tried again before national courts. However, individuals tried before national courts may be tried by the Tribunal in the event that the characterization of the act by the national court does not correspond to the characterization under the Tribunal's Statute or conditions of impartiality, independence, or effective means of adjudication were not guaranteed in the proceeding before the national courts. In the event that the Tribunal tries an individual after a trial by a national court, the Tribunal in its deliberations will consider any penalty imposed by the national court (http://www.igc.apc.org/cij/general.html).

The ICTR shares certain common elements with, but is not identical, to the International Criminal Tribunal for the Former Yugoslavia. The Statute of the Rwanda Tribunal is similar to that of the ICTY, and the two Tribunals share the same Chief Prosecutor and the same five-judge appeal chamber. They each have separate Registrars and Deputy Prosecutors.

The ICTR is not related in any way to the International Court of Justice. The ICTR focuses on bringing the leaders and instigators of the genocide to justice, leaving the government of Rwanda to deal with others who may have participated in these crimes. The government of Rwanda is conducting its own investigations and trials of those suspected of committing crimes, but with over 120,000 people jailed awaiting trial, and a legal system virtually destroyed during the war, it will be difficult for the Rwandan government to resolve all of these cases (www.ictr.org).

Chapter 2. Crimes against Humanity and International Community

The Varying Definitions of Genocide

The first great genocide of the 20th century dates back to the First World War when at least 1,5 million Armenians were annihilated despite the protests of Western diplomats. The massacres of Armenians was called the most colossal crime of all ages by the examining American Military Mission's report to the US Congress (Boyajian, 1972, p. 114). As the genocide of the Armenians was beginning, the Allies issued a joint declaration, where they condemned the assistance of the authorities of the Ottoman Turkey in the massacres. It was for the first time in the 20th century, when the concept of 'crimes against humanity and civilization' was used. Actually, it was the introduction of the universally accepted principle of 'crimes against humanity'. This was a declaration, where the Allied governments made a public announcement, which said "…they will hold personally responsible all members of the Ottoman government and those of their agents who are implicated in such massacres" (Dadrian, 1995, p. 216). This declaration created a new framework of international law by inaugurating the term 'crimes against humanity'. In addition, this concept, later on, served as a legal yardstick to prosecute the top strata of Nazi leadership at Nuremberg, under an emerging international law. Subsequently, the concept of 'crimes against humanity' was fully embraced by the United Nations, where it formed the core of the preamble of the Convention on the Prevention and Punishment on Genocide.

Another concept that takes its origins from the Armenian Genocide Era was the term 'concentration camps' (Boyajian, 1972).

It was not until World War II that the problem of genocide was addressed by international law. Before the World War II no treaty made genocide an international crime. The

horror of the Holocaust of World War II propelled the nations of the world to declare genocide a punishable crime under international law. On 9 December 1948, the General Assembly adopted the Convention for the Prevention and Punishment of the Crime of Genocide. "Genocide" was a new word, coined after the events of WW II, and according to the definition of the 1948 Convention, involves the intent to destroy, in whole or in part, a national, ethnical, racial or religious group as such. Genocide may manifest itself in:

- killing members of the group
- causing serious bodily or mental harm to its members
- deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part
- forcibly transferring children of the group to another group.

This is one of the most widespread definitions of 'genocide'. Social scientists (and especially victimologists) developed a number of genocide definitions. Frank Chalk and Kurt Jonassohn (1990) worked out the following definition: "Genocide is a form of one-sided mass killing in which a state or other authority intends to destroy a group, as that group and membership in it are defined by the perpetrator" **(**http://www.isg-ags.org/definitions/def_genocide.html)**.** Israel W. Charny (1994) offers his own definition: "Genocide in the generic sense is the mass killing of substantial numbers of human beings, when not in the course of military forces of an avowed enemy, under conditions of the essential defenselessness and helplessness of the victims" **(**http://www.isg-ags.org/definitions/def_genocide.html)**.** Steven T. Katz (1994) defined genocide as following: "…the concept of genocide applies only when there is an actualized intent, however successfully carried out, to physically destroy an entire group." Raphael Lemkin's definition of genocide

varies from that of the UN's and sound as the following: "genocide is a coordinated plan of different actions aiming at the destruction of essential foundations of the life of national groups, with the aim of annihilating the groups themselves" **(**http://www.usip.org/oc/sr/sr990107/sr990107.html)**.**

It is obvious that definitions may vary in wording or slightly in meaning but the basic requirement, that is the presence of 'intent' from the part of the perpetrator, for a crime to be accepted as 'genocide' are kept untouched.

The twentieth century has been called "The Century of Genocide." Genocide and other mass murders have taken more lives than war during the past century. Despite the international community's pledge of "Never Again," the world has again and again witnessed the horrors of genocide. But genocide can be prevented, halted and punished - with the necessary international institutions and political will. The word "genocide" was introduced by the jurist Rafhael Lemkin. In 1944 he proposed the term "genocide" to denote the destruction of a nation or an ethnic group, from the ancient Greek word "genos", which means race or tribe and the Latin word "cide", which means killing (Staub, 1989, p. 7). On December 11, 1946, the General Assembly of the United Nations passed a resolution that said: "Genocide is a denial of the right of existence of entire human groups." (Staub, 1989, p. 7). The initially proposed definition of genocide implied the destruction of racial, religious, political and other groups. However, the Former Soviet Union and some other nations objected to the inclusion of political groups as victims of genocide, claiming that the definition should points at the destruction of racial, national and religious groups.

The Distinctions between war crimes, crimes against humanity and genocide

Sometimes it is difficult to grasp the difference between these three types of crimes and initially it is easier to take for granted the direct meaning of the words.

War crimes are grave breaches of provisions of the 1949 Geneva Conventions constituting war crimes in international armed conflict and includes a list of 26 other acts considered to be serious violations of the laws and customs applicable to international armed conflict. War crimes are defined as violations of the laws or customs of war, such as murder, ill-treatment, deportation, forced labor, rape, sexual slavery, enforced prostitution, or any other form of sexual violence, and destructions not justified by military necessity (http://motlc.wiesenthal.com/text/x14/xr1496.html). War crimes cover atrocities committed during armed conflicts while crimes against humanity and genocide are violations of international law but not war crimes.

Crimes against humanity are distinguishable from other categories of crimes by their inhumanity, and this is the reason why they were designated as crimes against "humanity". Crimes against humanity cover those specifically listed prohibited acts when committed as part of a widespread or systematic attack directed against any civilian population. Such acts include:

- Murder
- Extermination
- Enslavement
- Torture
- Deportation or forcible transfer of population
- Imprisonment or other severe deprivation of physical liberty
- Rape, sexual slavery, enforced prostitution, forced pregnancy and the like

- Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender or other grounds that are universally recognized as impermissible under international law.

Genocide, as was explained in the beginning of this Chapter, means any of the following acts committed with the intent to destroy, in whole or in part, a national, ethnical, racial or religious group as such. It includes:

- Killing members of the group
- Causing serious bodily or mental harm to members of the group
- Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part
- Imposing measures intended to prevent births within the group
- Forcibly transferring children of the group to another group.

Thus, these categories of crimes often overlap with each other. Interestingly it is possible to meet the same types of crimes in all three categories which sometimes make it difficult to distinguish what is what. War crimes can also be regarded as crimes against humanity, since the planning and carrying out of aggression prepares the conditions for inhumane offences against human rights **(**http://motlc.wiesenthal.com/text/x14/xr1496.html). However, crimes against humanity are distinguishable from genocide in that they don't require an "intent to destroy in whole or in part a national, ethnic, racial or religious group as such". Instead, crimes against humanity require only that the action be targeted against a group in a systematic manner or in accordance with a policy that is widespread **(**http://www.thecenter-ptj.org/faq/kos_3.htm). For crimes against humanity and genocide, the existence of armed conflict is not required, unlike war crimes, from which we can conclude that both types of crime can take place in times of war as

well as in times of peace. And, subsequently, these two types of crimes are punishable irrespective of whether they are committed in time of peace or war.

Whatever the differences are, all three categories of crime described above are considered to be violations of international law and may bring a state and individuals to (criminal) responsibility.

As has been said, one of the most important issues in making a statement that genocide has occurred is the requirement that there must be "intent" to commit genocide. The intent is at times difficult to prove without documentation, such as written policies, orders, or express statements. The specific intent must be one to destroy in whole or in part a national, ethnical, racial or religious group as such (Scheffer, 1998, pp. 3, 4). Because genocide is a crime of intent, the real question here is not the result but the purpose of the offender. Even if only a few are killed or injured, the crime is genocide if the intent is to destroy the group 'in whole or in part'. It becomes logical that with large numbers of victims it is much easier to prove the intent while with a small number it becomes rather difficult, because in such a case other kinds of evidence are necessary, including genocidal speeches and declarations, destruction of cultural and religious symbols accompanying the acts of violence and so on.

It is difficult to imagine any kind of authority exterminating their residents spontaneously and without any definite scheme. Before doing something one should know how, when and where. For instance, during 1960s and 1970s, the imposition of restrictions on reproduction in India, through forced sterilization do not constitute genocidal policy, because the intent was not to destroy the particular group but to restrict growth of its size. While policies implemented against Jews are clearly genocidal, because there was a presence of the intent to eliminate them as an ethno-religious group.

Many experts consider criteria of genocide deficient in various respects. For instance, it excludes the physical destruction of certain groups, namely political or social classes, including the middle classes (such as the former soviet Kulaks) and the intelligentsia who have regularly been the victims of extensive killing programs (http://www.ess.uwe.ac.uk/comexpert/I-II.htm#II.I).

The crime of genocide and its relevance to the events in the Former Yugoslavia and Rwanda

The Case of Rwanda: An International Trial After an International Failure to Intervene

Within thirteen weeks after April 6, 1994, at least half a million people died in the Rwandan genocide, perhaps as many as three-quarters of the Tutsi population **(**http://www.hrw.org/reports/1999/rwanda/Geno1-3-01.htm). At the same time, thousands of Hutu were murdered because they opposed the killing campaign and the forces that directed it.

Antecedents of the people who at present are known as Hutu and Tutsi settled the region more than two thousand years ago. Originally organized in small groups they joined in building the state of Rwanda. They developed a single language, Kinyarwanda, created a common set of religious and philosophical beliefs, and crafted a culture, which express itself in song, dance, poetry and rhetoric. They cherished the same heroes and paradoxically even during the genocide; the killers and their targeted victims sang the same songs.

In early times, as well as now, most people in the region were cultivators who raised small stock and sometimes cattle. When Rwanda emerged as a major state in the eighteenth century, its

rulers measured their wealth in the number of their cattle. Though Rwandan institutions were shaped by pastoralists and cultivators, the real power of the ruler derived mainly from control over the military and over cattle (http://www.hrw.org/reports/1999/rwanda/Geno1-3-09.htm).

As the Rwandan State grew in strength and sophistication, the government elite became more clearly defined and its members began to think of themselves as superior to ordinary people. The word "Tutsi", which first described the status of an individual- a person rich in cattle- became the term that referred to the elite group as a whole and the word "Hutu" –meaning originally a subordinate or follower of a more powerful person- came to refer to the mass of the ordinary people**.** Most people married within the occupational group in which they had been raised. Sometimes Hutu and Tutsi intermarried but this practice declined in the late nineteenth and early twentieth centuries as the gap widened Tutsi elite and Hutu commoners.

The Belgians who replaced Germans after the World War I supported Tutsi until 1950s. Then, faced with the end of colonial rule, decolonization, the colonial administrators began to increase possibilities for Hutu to participate in public life. They appointed several Hutu to responsible positions in the administration; they began to admit more Hutu into secondary schools and conducted elections for advisory government councils. In November 1959, several Tutsi assaulted a Hutu sub-chief. As the news of the incident spread, Hutu groups attacked Tutsi officials and the Tutsi responded with more violence. Several hundred people were killed before the Belgian administration restored order (http://www.hrw.org/reports/1999/rwanda/Geno1-3-09.htm).

The governance of Hutu in the region brought Rwanda to economic decline and widespread growth of corruption. Political leaders, intellectuals and journalists started to demand

reforms. Democracy began one of the most wanted phenomena both within Rwanda and elsewhere in Africa.

By 1990 President of Rwanda was losing popularity among Rwandans when Rwandan Patriotic Front (RPF) attacked from Uganda. At first the rebels were not serious but the President and his colleges decided to exaggerate the threat in order to pull Hutu dissidents back to his side. For more than three years the elite worked to divide the population of Rwanda into "Rwandans", those who supported the President and "ibyitso" meaning Tutsi minority and Hutu who opposed to him According to the facts provided by Internet sources, those in power were prepared to use physical attacks as well as verbal abuse to achieve their ends. They directed massacres of hundreds of Tutsi in mid-October of 1990 and in different periods before the 1994 genocide. Massacres of Tutsi and other crimes remained unpunished. Exclusion of crimes committed because of political reasons from the list genocide crimes was a mistake as most of the crimes against humanity carried out today are taking place mainly for political reasons. And one of the evidences is the genocide committed in Rwanda.

In July 1992 the Rwandan government and the RPF signed a cease – fire, called Arusha Accords, but the progress to peace was barely visible. Three days later dozens of Tutsi and members of parties opposed to Habyarimana were massacred. At the end of October the second part of the Arusha Accords was signed. Though peace talks continued the Rwandan army was preparing for the further war (http://www.hrw.org/reports/1999/rwanda/Geno1-3-11.htm). On February 8, 1993, the July 1992 cease-fire was violated and subsequent massive attacks took place. In July 1993, after a year of negotiations Habyarimana was still looking for ways to avoid signing the final peace treaty. He was threatened by the World Bank that international funds for

his government would no longer be supplied if he did not sign the treaty. With no other source of funds available he was obliged to sign the treaty on August 4, 1993.

By late March 1994, Hutu Power leaders massacred a massive number of Tutsi and Hutu opposed to Habyarimana (the President of Rwanda). They had soldiers and militia ready to attack the targeted victims in the capital, as well as other places of the region. On April 6, the plane carrying the President was shot down, a crime for which the responsibility has never been established. But still a small group of his close associates decided to execute the planned extermination. Hutu government officials and leaders of political opposition were murdered thus creating vacuum in which gaining control becomes easier. It was much like a campaign that was carried out very carefully (http://www.hrw.org/reports/1999/rwanda/Geno1-3-02.htm). On May 19, 1994 the events were described as the following "The killings in Rwanda is a human rights tragedy of unprecedented dimensions" (http://www.hrw.org/reports/1999/rwanda/Geno1-3-02.htm). The use of violence against political opponents, the identification of all Tutsi with the RPF, the ideology of Hutu power, growth of insecurity, the training of the militia all worked together to prepare for genocide. The government of Rwanda still does not publish the number of victims died during the whole period of the genocide but one UN expert stated that only in 1994 within several months about 800.000 people were killed (http://www.hrw.org/reports/1999/rwanda/Geno1-3-04.htm). But official sites of Rwanda give numbers from 500.000 to one million.

The UN's role here it was not only slow but also stingy. It seems that UN was either incapable or unwilling to intervene at an early stage of the atrocities. It showed itself impotent and unable to put sanctions and prevent the commitment of the genocide (Institute for Study of Genocide (ISG) Newsletter). The United Nations peacekeeping expenses increased by 370

percent from 1992-1993 (http://www.hrw.org/reports/1999/rwanda/Geno1-3-05.htm). It was determined to keep the costs of the Rwandan operation as low as possible, which meant limiting the size of the force.

The question whether it was genocide or not could be answered affirmatively, because, as has been mentioned in the genocide definition section, there should be intention of doing it. From the evidence described above it is clear that the crimes committed in Rwanda are much like a campaign and the goal of these massacres were to seize the power, to eliminate those who are against the President and its associates. Atrocities carried out in Rwanda are considered to be the violations of fundamental customary law and perpetrators are to be punished in the International Criminal Tribunal for Rwanda, created to bring to justice those who are guilty in directing and committing horrible crimes against humanity, in this case the population of Rwanda.

As for the United Nations peacekeeping forces, they again missed the chance of being recognized as potentially reliable in internal and international conflicts. Lack of human and financial resources do not allow peacekeeping forces to reach its ultimate goal-to be recognized eligible by the international community. The issue of weakness of the UN peacekeeping forces was raised also after the failure in Somali but as we can judge from the Rwandan genocide it did not prove the opposite. In other words, it still has much space to improve its position and reputation in the field of peacekeeping operations.

The Case of Yugoslavia: An International Trial After an International Intervention

Now let's look at the war in the Former Yugoslavia and see what is the relevance of genocide to it.

More than four years of war have turned once beautiful Yugoslavia into a living nightmare and into one of the bloodiest battlefields in Europe's recent history http://www9.cnn.com/WORLD/Bosnia/history/html). The former Yugoslavia consisted of six republics and two autonomous regions. Today Bosnia and Herzegovina, Croatia, Slovenia and Macedonia are independent nations. Serbia and Montenegro comprise the remnants of Yugoslavia **(**http://www.friendsofbosnia.org/edu_bos.html).

The Balkan crisis was not built in a day and the conflicts in this region have deep roots. The rivalries between Serb, Croat and Muslim communities in Yugoslavia date back centuries. The Serbs are Orthodox Christians, the Muslims are Serb descendants who converted to Islam under Ottoman rule and the Croats are of the Roman Catholic faith. The Serbs want to create a "Greater Serbia", establishing territorial ties with Serbia and Croatian areas. Muslims tend to favor n ethnically mixed state for Bosnia. Croats, loosely allied with the Bosnian Muslims, hope to stake their own areas of Bosnia **(**http://www9.cnn.com/WORLD/Bosnia/key/groups.html).

Created after the World War I, the country was known as the Kingdom of Serbs, Croats and Slovenes. The name Yugoslavia was adopted in 1929. During the World War II, Josip Tito, a partisan leader, led the resistance against the Nazis, driving them out of Yugoslavia. After Germany's defeat, Tito reunified Yugoslavia merging together Slovenia, Croatia, Bosnia, Serbia, Montenegro, Macedonia, along with two self-governing provinces of Kosovo and Vojvodina **(**http://www.historyplace.com/worldhistory/genocide/bosnia.htm). After the war, Tito was

elected as a leader to the newly created Yugoslav Federation. He was a strong leader who managed to keep ethnic rivalries under control. After his death in 1980 and the collapse of the Soviet Union, a blow of democracy reached Eastern Europe, including Yugoslavia. Without strong leadership and the subsequent changes in the government Yugoslavia began to crumble and ethnic divisions reemerged (http://www9.cnn.com/WORLD/Bosnia/history/html).

By the 1980s a new Serbian leader named Slobodan Milosevic arose. Being a former communist he had turned to nationalism and religious hatred to gain power. Through his control of the media and the party apparatus, he was able to become the most powerful figure in Yugoslavia. One of his first acts was to change the constitution of Serbia and to void the autonomy of Kosovo. Thus, the long–standing tensions between the Serbs and Muslims in Kosovo resurfaced. Orthodox Christian Serbs in Kosovo were in the minority and claimed that the Albanian Muslim majority was mistreating them. Political unrest in Kosovo eventually led to its loss of independence and domination by Milosevic (http://www.historyplace.com/worldhistory/genocide/bosnia.htm).

In June 1991, Slovenia and Croatia both declared their independence from Yugoslavia, which soon resulted in civil war. The national army of Yugoslavia made up of Serbs controlled by Milosevic entered Slovenia but failed to suppress the separatists there and withdrew after only ten days of fighting. Milosevic instead focused its attention on Croatia where 12 percent of the population comprised Orthodox Serbs (http://www.historyplace.com/worldhistory/genocide/bosnia.htm). Serbian forces undertook savage military actions in response to Croat independence thus cleansing a third of Croatia.

In 1992 the Bosnian Muslims and Croats, fearing the drive for a Greater Serbia, called for a referendum for Bosnian Independence. Propaganda from Serbia that Muslims are extremist

fundamentalists caused many Bosnian Serbs to support Milosevic's plan for ethnic cleansing as a means of creating Greater Serbia **(**http://www.friendsofbosnia.org/edu_bos.html). The actions of the Serbs were labeled as "ethnic cleansing", a name which was immediately picked up by the international media (http://www.historyplace.com/worldhistory/genocide/bosnia.htm). Thus, Bosnian Serbs began their siege of Sarajevo. Muslim, Croats, and Serb residents opposing to the idea of creating Greater Serbia were cut off from food, utilities, and communication. More than 12.000residents were killed, 1.500 of them children. Throughout Bosnia a systematic policy of "ethnic cleansing" (a polite term for genocide) was carried out in order to establish a "pure" Serb republic. Entire villages were destroyed, thousands of people were driven out of their homes, kept in camps, raped, tortured, deported or executed. More than 200.000 Bosnians out of a 4.4 million population were killed. Millions of people were deported or forced to leave their homes. Sixty percent of all houses in Bosnia, half of schools and a third of hospitals were damaged or destroyed **(**http://www.friendsofbosnia.org/edu_bos.html)**.**

Throughout 1993, Serbs in Bosnia freely committed genocide against Muslims confidant that the UN, United States and the European Community would not undertake military actions. In 1994 when bloody massacres were broadcast by the international news media military intervention against the Serbs became inevitable. The first seize-fire imposed by the NATO was violated and exactly at this point the worst genocidal activities of the four-year-old conflict took place. UN peacekeepers stood helplessly while Serbs systematically selected and slaughtered nearly 8.000 men and boys between the ages of twelve and sixty. This was the most horrifying mass murder in Europe since World War II.

On August 30, 1995 military intervention by the NATO in the form of massive bombing campaign made the leaders to think of peace talks. After three weeks of negotiations, a peace

accord was declared, known as Dayton Peace Accord. Terms of the agreement included partitioning Bosnia onto two main parts known as the Bosnian Serb Republic and the Muslim-Croat Federation. The agreement also called for democratic elections and declared that war criminals would be handed over for prosecution (http://www.historyplace.com/worldhistory/genocide/bosnia.htm).

Like in Rwanda the UN peacekeeping forces again failed to stop killings in Bosnia. UN personnel were aware of massive violations of human rights and humanitarian law committed by the Bosnian Serb nationalists, yet it did nothing. In the history of UN's peacekeeping operations they never succeeded in protecting civilian population from. The UN, however, seriously undertook its obligation to at least investigate war crimes, genocide and crimes against humanity in the former Yugoslavia establishing the International Criminal Tribunal.

The Role of the ICJ in the Enforcement of Genocide Convention

Contemporary international law states that serious violations of human rights are matters of international concern. Because of the great concern expressed by the international community for finding peaceful solutions to all problems, multiple institutions were established and even more bilateral, multilateral treaties were signed among states. The United Nations International Law Commission (ILC) developed a dominant doctrine, which states that: "According to the law of state responsibility, the obligation on states to respect and protect the basic rights of all human persons is the concern of all states, that is, they are owed *erga omnes*"

The Genocide Convention was the first modern human rights treaty. It was adopted on December 9, 1948, one day earlier than the Universal Declaration of Human Rights, and came into force on January 12, 1951 (http://www.usip.org/oc/sr/sr990107/sr990107.html). As its title

suggests, it is concerned with both prevention and punishment. Convention of Prevention and Punishment of the Crime of Genocide was adopted by Resolution 260 (III) A of the United Nations General Assembly, which stated that genocide was a crime under international law, and established a set of common standards that should serve humanitarian and civilizing purposes (http://www.ess.uwe.ac.uk.comexpert/html,http://www.fletcher.tufts.edu/multi/texts/BH225.txt).

But, in our days the world constantly witnesses the deficiency of the Genocide Convention and, subsequently, the weakness of international law. In general, the effectiveness of international law was barely apparent.

Despite the fact that the UN General Assembly approved the Genocide Convention, it still remains to individual member states to adopt or ratify it. Even though the majority of states ratified it, many others, including the United States, have not done so. This is explained by the questions of national sovereignty, which are rather delicate. For instance, the United States has refused to approve the treaty because it does not want to give any foreign power the right to question its actions (Rossel, 2000, p. 2). Apparently, this is one of the reasons that weaken the force of international law. Another problem that exists in the context of international law is the rulings of the World Court (i.e. ICJ). Its rulings are not binding and the Court has no power to force a state to submit. Seymour Rossel (2000) brings the example when American hostages were taken captive in Iran in 1979. This case was brought before the ICJ. The Court ruled that "…the hostages should be returned and the arguments between Iran and the United States should be settled by negotiations between the two governments." What Iran did, it simply ignored the ruling of the Court and the latter had no power to enforce its rulings. Why then should huge resources be spent on educating and keeping millions of lawyers and judges whose rulings and professional opinion will be almost of zero significance? It means, the whole system is imperfect

and the core of the problem are not lawyers and judges. For the purposes of our analysis, it will be helpful to give the definition of what is a 'system'. A system is a group of separate constituents, which act in accordance with each other. If one of these constituents is damaged or out of order, then the whole system suffers. So, when we see that some of the parts of the international legal system are imperfect, then the whole system of the existing international law should be revisited.

A number of things are said and done in the name of the international law. But a close look may reveal the reality, which is far from being in the scope of the concept of the international law. Very often people even do not realize or distinguish what is meant the international law. Additionally, states and governments acting in accordance with the international law, may be asked a logical question: How do you define what is the definition of the concept of International law. Who decides what is law and what is not? And, eventually, who guards the guardians? The creation of more and more international tribunals is not what should be done for the sake of bringing justice in this world. The reason is that the world community should first and foremost learn to prevent horrifying crimes against humanity and not to punish them, when the lost lives are no longer possible to save. Whether the two Tribunals, for Rwanda and the Former Yugoslavia, will have success, are yet to be seen. Ideally, establishment of such institutions should be aimed at not only punishing the perpetrators and actors committing inhumane crimes, but also to prevent future crimes. Those who think that it is possible to achieve justice by means of such institutions seem very naïve. The role of such tribunals is rather related to struggle for power and authority rather than for peace and justice. The Essay has already referred to the problem of bias in the ICJ rulings, and additionally, in one of its sections will discuss the same problem, lack of objectivity, in the ICTY, concerning namely Milosevic's trial.

The United Nations, since the adoption of Genocide Convention in 1948, have been unsuccessful in prosecuting cases of genocide due to the lack of enforcement powers (http://www.munfw.org/archive/47th/ga2.htm). For example, the UN Security Council hesitated to use the word 'genocide' when massacres in Rwanda were taking place. Boutros Boutros-Ghali, the former Secretary General, declared that if these events were called or accepted as 'genocide', then a military intervention was a must (http://www.usip.org/oc/sr/sr990107/sr990107.html. p. 10). Later, President of the United States Bill Clinton apologized saying that "…we did not immediately call these crimes by their rightful name: genocide." Was it merely a polite way of presenting his condolences to the people of Rwanda or something else? If this were a genuine voice of sorrow or regret, the bombing of Yugoslavia would not have happened.

The Genocide Convention as such was an almost forgotten memory, until recent times. And nowadays the right to make reservations should be eliminated completely. Why it is so, because there should be some clarity: either you are a party or not. There should not be something in between, this is not that case. It is ridiculous to think that the United States will ever give its agreement, in order another state might bring charges against it.

The principle of individual criminal responsibility of heads of state for crimes against humanity

History's first International criminal court was the Nuremberg and Tokyo war crimes Tribunals, created by the victorious Allies to bring to justice the individuals who were responsible for the worst crimes against humanity – crimes that killed more than fifty million people and shattered the lives of millions more. The Allies decided to take more rapid and

radical measure concerning immunity issues of heads of state and they planned to bring Adolf Hitler, the head of state of Germany, to justice for crimes under international law. In the spring and early summer of 1945 Great Britain, France, the United States and the Soviet Union began drafting Article 7 of the Nuremberg Charter, even when there was still some doubt whether Adolf Hitler was alive. This article expressly provided that the official position of defendants should not be considered as freeing them from responsibility or mitigating punishment (www.amnesty.org).

Although Hitler, Himmler and Goebbels escaped prosecution by committing suicide, many of the most remarkable German leaders were tried before the Nuremberg Tribunal (Scharf, 1999). And still, few cases are known when a leader of a certain country has been personally hold accountable for the committed crimes.

Political or criminal immunity or special privileges cannot be used as weapons for avoiding responsibility for torture, genocide and other crimes against humanity. The fundamental rule of international law that heads of state can be held responsible for crimes against humanity has been recognized in the Treaty of Versailles of 28 June of 1919. The Treaty states that immunities of heads of state under international law have limits.

The principle of individual criminal responsibility of heads of state for crimes against humanity has long been recognized as part of general international law. This fundamental rule of international law has been consistently reaffirmed for more than half a century by the international community. The evidence that this principle is part of customary international law includes resolutions of the United Nations General Assembly, international treaties and instruments, decisions of national courts, extradition requests sent and honored executive

officials, state proposals for international law scholars and statements by intergovernmental organizations (www.amnesty.org).

The United Nations Secretary-General in his report to the Security Council on the establishment of the International Criminal Tribunal for the Former Yugoslavia (ICTY) pointed out that the Statute of the ICTY should contain provisions with regard to the individual criminal responsibility of heads of state and other government officials.

It is generally agreed that an exception to functional immunity exists in cases where the individual is responsible for crimes under international customary law (http://www.ejil.org/journal/Vol12/No3/art2-04.html). The logic of this statement is that the state official, including a Head of State, is personally responsible for his or her crimes. There is a universally accepted principle, which was set in the Versailles Treaty and later on was proclaimed in the Chapter of the Nuremberg Tribunal, subsequently endorsed by the United Nations General Assembly. The same principle is now contained in Article 7 of the ICTY Statute and Article 6 of the ICTR Statute. The principle says:

Accountability of state officials derives from the emergence in customary international law of provisions based on the consciousness that certain acts (international crimes of individuals) cannot be considered as legitimate performance of official functions. These acts, on the one hand, entail the responsibility of the state, and on the other the individual criminal responsibility of the perpetrator.

But there is a huge debate whether this principle has turned into customary law. The first argument is that international agreements, which contain the above-mentioned principle, may contribute to the formation of custom, as they are one of the components that determine whether

or not a customary norm has come into existence (http://www.ejil.org/journal/Vol12/No3/art2-04.html).

The second argument is that the inclusion of this principle in the Statutes of the United Nations ad hoc Tribunals, ICTR and ICTY, cannot be considered simply as a treaty-based, then the Tribunals have a right to apply retroactive law. If this principle is accepted only as a treaty-based then the Tribunals have a right to apply retroactive law. In other words it will not be considered as a customary law and subsequently Heads of State and other senior state officials accused of crimes under the Statutes might not be recognized responsible for acts committed at any time prior to the adoption of the Statutes. As the drafting history of the Statutes of the two Tribunals shows, those who framed it intended to restate and entrust the Tribunals with existing customary law. And when the Statutes, already approved by the Security Council, came before the General Assembly for the election of judges and for adoption of the Tribunals' budgets, there was no objection concerning the fact that some of the provisions of the Statute were intended to apply international criminal or humanitarian law retroactively (http://www.ejil.org/journal/Vol12/No3/art2-04.html). The logic is that member states of the United Nations agreed only on the customary status of the rule, while functional immunity did not cover the crimes enumerated in the Statutes.

The Statutes of the two ad hoc Tribunals can be called retroactive in some way because they do not include the latest developments that took place in the field of international criminal law. These developments highlight the fact that even the functional immunity does not matter when we counteract with crimes under international customary law, that are crimes against humanity. Nowadays it is a widely disputable issue as there is a number of proposals to exclude

functional immunity in relation to crimes against humanity completely. It will be discussed below that functional immunity still exists and not only formally.

Though it was mentioned above that there is no functional immunity for crimes under international customary law still personal or diplomatic immunity should be recognized for official visits. For instance, foreign Heads of State who generally represent their nation in external relations, should not be arrested, even if they are on a private visit, unless it is proved by the competent authorities of the State that exercise jurisdiction. In other words, a Head of State should not be taken by surprise and in such cases a special requirement is needed to be met, which will contain a sort of warning that he or she may not be welcomed in a foreign country. Such kind of mechanism was designed in order to avoid abuses (http://www.ejil.org/journal/Vol12/No3/art2-04.html).

The Charge against NATO Leaders and Its Outcome

On April 29, 1999, an international team of lawyers representing the Federal Republic of Yugoslavia (FRY) introduced a complaint against ten NATO-member countries before the International Court of Justice (ICJ) in The Hague (http://www.oneworld.org/ips2/april99/23_02_095.html). As a basis for the jurisdiction of the Court, Yugoslavia applied to Article IX of the Convention on the Prevention and Punishment of the Crime of Genocide. Article IX provides that "Disputes between the contracting parties relating to the interpretation, application or fulfillment of the Convention shall be submitted to the International Court of Justice" (http://www.icj-cij.org/icjwww/ipresscom/iPress1999/ipresscom9933_iyus_19990602.htm). The countries

named in the complaint are the following: the United States, Britain, France, Germany, Italy, the Netherlands, Belgium, Canada, Portugal and Spain all are members of the NATO.

In its submission to the Court the FRY said that 10 countries named in the complaint have committed acts by which they have violated international obligations not to use force against another State, not to intervene in that State's internal affairs and not to violate sovereignty. The accusation claims that the air strikes carried out by the NATO against Yugoslavia violate the United Nations Charter, several treaties regarding the protection of civilians, the NATO treaty itself, the Geneva Conventions and the Principles of International Law recognized by the Nuremberg Tribunal. The latter states that "a person who planned, instigated, ordered, committed or otherwise aided the planning, preparation or execution of a crime shall be individually responsible for the crime, and the official position of any accused person, whether as Head of State or Government or as a responsible Government official, shall not relieve such person of criminal responsibility or mitigate punishment" (http://www.communist-party.ca/english/html/yugo_lawsuit_short.html).

The NATO members were charged with a long list of crimes, which include serious physical, health and psychological damages. Yugoslavia declared that both military and civilian targets underwent air attacks, causing many casualties: thousands of civilians, including more tan 200 children killed and more than 5.000 are seriously injured. In addition enormous damages are caused to schools, hospitals, radio and television stations, cultural monuments and places of worship (http://www.oneworld.org/ips2/april99/23_02_095.html). The apologies that NATO used to bring after every single bombardment of places of non-military significance were especially frustrating. The word 'accidental' became an adjective that served as 'panacea' for NATO's military actions. An accident implies something unforeseen. It will be wrong to think

that NATO did not foresee what would be the consequences of its bombings; the justifications do not seem to be credible. The phrase ‘humanitarian intervention’ completely contradicts to the bombing of Yugoslavia. The schools, hospitals, bridges, roads, railways, water lines, factories, communications facilities and other objects necessary for the basic functioning of society should not be the targets of destruction. NATO’s actions are difficult to justify. Of course, mass killings and deportations should have been stopped, but the means for that could have been less destructive.

The Security Council’s justification of NATO’s ‘humanitarian intervention’ determined that massive violations of human rights taking place within Yugoslavia constituted a threat to the peace, and thus it authorizes the enforcement action undertaken by NATO in order to put an end to these violations. It concludes that in cases like these a ‘humanitarian intervention’ by military means is permissible. There is an opinion, however, that the Bosnian conflict was a ‘civil war’ and not a serious threat to international peace and security. Alfred P. Rubin (1996/7) severely criticized both the United Nations and the NATO, arguing that it was the Security Council who determined the conflict in Bosnia as a threat to international peace and security: “If the Security Council can categorize events in such ways as to avoid limits on its own authority, a radical change in the structure of the United Nations must occur. If the Security Council were to use the case of Yugoslavia as a precedent, the United Nations might stand at the edge of collapse. The alternative is to regard the case of Yugoslavia as unique, applying to it universality of the rule of law and the notion of the sovereign equality of states on which the organization is based (UN Charter, Articles 1.1 and 2.1).

Perhaps the most interesting part in this 'story' is the decision of the International Court of Justice. Legal counsels of Canada and Belgium argued that ICJ lacked 'prima facie'[2] jurisdiction. Their claim was based on two sets of arguments. The first one is that Yugoslavia is not a full member of the United Nations and therefore it is not a state party of the ICJ. The second argument was based on the difference between the 'use of force' and 'genocide'. NATO was involved in the former, but no way in the latter (http://www.oneworld.org/ips2/may99/18_57_173.html).

The reasoning of the ICJ was concerning the case Yugoslavia vs. the United States of America. In its order, the Court first emphasized that it is "…deeply concerned with the human tragedy, the loss of life and the enormous suffering in Kosovo and all parts of Yugoslavia, which form the background of the dispute. The Court then pointed out that it did not automatically have jurisdiction over legal disputes between states, because the fundamental principles of its Statute say that it cannot decide between states without the consent of those States to its jurisdiction. Concerning Article IX of the Genocide Convention, the Court stated that both Yugoslavia and the United States of America are parties to that Convention. But when the United States ratified the Convention in 1988, it made a reservation, with reference to Article IX, which states: "…before any dispute to which the United States is a party may be submitted to the jurisdiction of the Court, the specific consent of the United States is required in each case." In this particular case, the United States stated that it had not given specific consent and that it would not do so. Thus, the Court concluded that it "…lacks jurisdiction even to accept Yugoslavia's application" (International Court of Justice: Press Communiqué, 1999, p. 1).

[2] A legal presumption which means "on the face of it" or "at first sight" or "at first face". Lawmakers will often use this device to establish that if a certain set of facts is proven, then another fact is established prima facie.

So what is the meaning of the Genocide Convention when member states are allowed to make reservations, which are of their basic needs? It may become a member to the Convention, and convince the others that it is for punishment and prevention of genocide as a crime under international law. But, meantime, it has a right to make reservations, which would demand its direct consent in case of accusation from another state. But why shall a perpetrator of any crime give his consent to face a trial? It would be naive to think that sovereign states would agree to be humiliated before the Court, and, subsequently, before the whole world. It rarely happens when individuals or even states plead themselves guilty, though the same individuals represent those states.

After all that was mentioned above, what is the meaning of the power granted to the International Court of Justice, 'World Court', to enforce the Genocide Convention, when it is up to member states to decide whether to ratify the Convention in full or to make reservations.

Press Communiqué (1999, p.p. 3-7) of the ICJ also brings opinions of some of the ICJ Judges, concerning the case Yugoslavia against the United States of America. All judges agreed that the observed cases were perhaps the most serious ones that have ever been brought before the Court. In this case the Court ruled in accordance with the ICJ Statute with great carefulness and precaution. Some judges claimed that the Court could meet at least some of the functions and not fully reject the application. One of the judges stated that "…it is illogical to dismiss all ten cases." It was mentioned above that the Federal Republic of Yugoslavia submitted ten applications, in other words, separate applications for each of ten NATO members. Another judge in his declaration, relating to the case, mentioned that the Court did not fully lack jurisdiction. Being confronted with a situation of great urgency, arising from the use of force

against and within Yugoslavia, the Court should have issued a general statement appealing to the Parties to act in accordance with their obligations under the United Nations Charter and all other rules of international law relevant to the situation (International Court of Justice: Press Communiqué, 1999).

In addition, the Court had a right to decide *proprio motu*[3]. For example, in the Statute of the International Criminal Court (ICC), newly created UN body, the Prosecutor can (her)himself decide how to behave in a particular case. The same power has the ICJ Prosecutor, but the evidences show that he or she failed to comply with that power.

This case definitely strengthen the position of those who claim that the ICJ is a 'weapon' of powerful states against weak ones. Perhaps it is a high time to rethink the order of the world and try to reconstruct the existing system of the international law. At least for its worthy future, for its respected reputation, the United Nations, particularly the International Court of Justice should change its attitude towards both great powers and weak states.

Chapter 3. Legal Problems Arising from the Extradition of Milosevic to the ICTY and His Trial

The Problem of Legal Standards and Practice

The Essay has touched many aspects of international fundamental law, trying to give the full picture of its nature, and eventually, to reveal whether these guidelines are applied to the real cases in the world affairs. The current section's objective is to describe what are basic legal standards and practices of the international law, namely fair trial criteria and the right to fair trial.

International courts and tribunals are considered the watch-guard for the protection of fundamental rights. They perform this function by the consensual agreement of states themselves. The right to a fair trial is a crucial guarantee in the ever increasing effort to create and maintain standards for human rights both at the international and the national level (Stapleton, 1999).

The right to fair trial is a norm of international human rights law designed to protect individuals from the unlawful and arbitrary deprivation of other basic rights and freedoms, the most prominent of which are the right to life and liberty of the person. (http://www.lchr.org/pubs/fairtrial1.htm). When this right is violated, people, who are innocent of any crime, face conviction, imprisonment and even execution. Thus, the justice itself loses credibility (http://www.amnesty.org/ailib/intcam/fairtrial/fairtria.htm).

The first international convention sanctioning completely and manifestly the human rights, is the Universal Declaration of Human Rights (UDHR), adopted by the General Assembly of the United Nations Organization on December the 10th 1948. This document contains some

---

[3] The Prosecutor has a right to decide on his own accord, in other words on behalf of his or her own consideration.

provisions concerning the concept of fair trial. It states that “any person is entitled, under entirely equable conditions, to fair and public hearing of the cause, by an independent and unbiased court, which shall decide either upon his or her rights and duties, or upon the legitimacy of any criminal charge against his or her”. The independence implies regulations able to ensure the freedom of decision. The impartiality refers to the judge’s personal attributes, to his intellectual and moral harshness, that is his duty is the enforcement of the law, and he frequently has to interpret law not depending on his own personal values, but following a neutrality (http://www.ccr.ro/Buletin%20CCR/theright.htm). The same document provides for the presumption of innocence and, within the criminal law, for the right of the accused to be informed about the nature and grounding of the charge. The language used in the session must be understandable to the defendant, otherwise costless assistance of a translator is required (http://www.ccr.ro/Buletin%20CCR/theright.htm).

The standards of a trial, when assessed in terms of fairness, are numerous, complex and constantly evolving. They may constitute binding obligations that are included in human rights treaties to which the state is a party. In order to avoid possible challenges to the legal nature of the standards employed in evaluating the fairness of a trial, monitors should refer to norms of indisputable legal origin:

- The laws of the country in which the trial is being held
- The human rights treaties to which that country is a party
- Norms of customary international law.

It is common knowledge that while constitutions and statutes generally provide for some measure of fairness in criminal proceedings, implementation by the courts is often not adequate (http://www.lchr.org/pubs/fairtrial1.htm).

Fair trial guarantees must be observed from the moment the investigation against the accused commences, until the criminal proceedings have been completed, including any appeal. The distinction between pre-trial procedures, the actual trial and post-trial procedures is sometimes not clear, and the violation of rights during one stage may well have an effect on another stage.

The Essay considers important to list the rights of all three stages of a trial.

Pre-trial rights include the following criteria:

- The right to liberty
- The rights of people in custody to information
- The right to legal counsel before trial
- The right of detainees to have access to the outside world
- The right to be brought promptly before a judge or other judicial officer
- The right to challenge the lawfulness of detention
- The right to trial within a reasonable time or to release from detention
- The right to adequate time and facilities to prepare a defense
- The right to humane conditions of detention and freedom from torture

Rights at trial include:

- The right to equality before the law and courts
- The right to trial by a competent, independent and impartial tribunal established by law
- The right to a fair hearing
- The right to a public hearing
- The presumption of innocence
- The right not to be compelled to testify or confess guilt

- Exclusion of evidence elicited as a result of torture or other compulsion
- The prohibition of retroactive application of criminal laws of double jeopardy
- The right to be tried without undue delay
- The right to defend oneself in person or through counsel
- The right to be present at trial and appeal
- The right to call and examine witnesses
- The right to an interpreter and to translation

Post-trial rights are the following:

- The right to appeal
- The right to compensation (http://www.lchr.org/pubs/fairtrial1.htm) and (http://www.amnesty.org/ailib/intcam/fairtrial/fairtria.htm)

The Essay will focus only on some of the rights to fair trial, which are considered to be the most relevant to the current study and to Slobodan Milosevic's case.

When a government charges a person with a criminal offence, the individual is placed at risk of deprivation of liberty or other sanctions. The right to a fair trial is a fundamental safeguard to assure that individuals are not unjustly punished The monitoring of trials is therefore an important part of the international effort to protect human rights. The right to observe a trial is an indispensable part of the right to a fair and public trial (Weissbrodt, 1998).

Article 9 (1) of the International Covenant on Civil and Political Rights (ICCPR) provides that "…everyone has the right to liberty and security of person". The liberty of a person has been interpreted in a narrow aspect, meaning freedom of bodily movement, which is interfered with when an individual is confined to a specific space, such as a prison or a detention facility. Security has been taken to mean the right to be free from interference with personal integrity by

private persons (http://www.lchr.org/pubs/fairtrial2.htm). The same document provides that, at the time of the arrest, anyone who is arrested should be informed of the reasons of the arrest and of any charges against him or her. A written arrest warrant is not unconditionally required, but the lack of a warrant may, in some cases, give rise to a claim of arbitrary arrest.

The right to be provided and communicate with counsel is the most scrutinized specific fair trial guarantee in trial observation practice, because it has been demonstrated to be the one that is most often violated. When a person is arrested, charged or detained, he or she must be promptly informed of the right to legal assistance of his or her choice. All persons arrested or detained should have access to a lawyer within 48 hours from arrest or detention. If the accused cannot afford his or he own counsel, the relevant authorities must provide a lawyer free of charge if the interests of justice so require. Whether or not the interests of justice require such an appointment depends primarily on the seriousness of the offence.

There is an accepted assumption worldwide that the decisions over cases ruled by the International Criminal Tribunal for the Former Yugoslavia, since its establishment, have not been the embodiments of fairness. The main reason perhaps is the difficulties faced by the ICTY, which were due in part to the fact that, unlike the Nuremberg trials, which took place after the cessation of hostilities, the conflict in the former Yugoslavia was ongoing during the Tribunal's deliberations. And, subsequently, it appeared to be impossible to respect and meet all the criteria of the fair trial.

One of the purposes of the ICTY is to do justice. At present, the Tribunal has stepped into a new phase, where the idea of an ongoing war cannot be brought as an excellent pretext for misconduct of fair trial, in respect with Milosevic and others. The Tribunal has to keep to internationally recognized standards for a fair trial. It is extremely significant not only in terms of

proving that the justice is not a forgotten concept but also because it is considered to be a kind of prototype for the newly created International Criminal Court (ICC), which is based on the basic provisions of the Tribunal's Statute, meantime regarding this entity as a unique model for its future work. Decisions of the Yugoslavia Tribunal, although not binding on the ICC, may and will have persuasive authority.

The Indictment against Milosevic and its Implications

With the advent of the 21st century, international law has also stepped onto a new phase. There was a time when the world was following the Yugoslav wars with breathless interest. Nowadays, in the same manner, it observes Milosevic's case in the International Criminal Tribunal for the Former Yugoslavia (ICTY). It is not only the lack of precedent that increases the world's concern over this case. In addition, it is for the first time, since Nuremberg, that a head of state or top government and military officials are charged with war crimes. Nuremberg and Tokyo trials are essentially the only precedents for the cases that the Tribunal in The Hague hears at present. Still, they are not quite the same. The Nuremberg tribunal was not an international court, because the judges were all from the 'big four' victor powers (Robertson, 2001, p. 1). The trial of the Former Yugoslav President Slobodan Milosevic by the United Nations war crimes court in The Hague poses a crucial test of the court's effectiveness, both in legal and political terms. Subsequently, the way the court deals with Mr. Milosevic's case will strongly affect the future work of the court itself. Also perceptions of the future generations regarding the court again depend on the ongoing trial. When upcoming generations assess the Hague court's legacy, they will be looking not only to its legal but also its political effects http://www.csmonitor.com/2001/0709/p13s1-coop.html). It is common knowledge that the

Nuremberg tribunal was extremely politicized, because it was the court of victorious allies. In the case of ICTY, international community expects to see it fully isolated from politics.

Aleksa Djilas (2001, p. 1), the author of an article "The Politicized Tribunal", claims that the western political control of the court hinders the process and spreads doubt of whether Milosevic has a chance of getting a fair trial. Balkan propaganda, Djilas continues, portrays the war crimes tribunal in The Hague as a political tool of the Western powers. Most Serbs believe that NATO members control the court and that the US manipulates the judges. Croatians share the similar views. These assumptions are based on the fact that the tribunal does not have its own police force, its indictments rely in part on evidence gathered by the US and other NATO intelligence services. These services give evidence only when their governments tell them to, and, naturally, they provide so much information, as they consider politically useful. Needless to say that the CIA would never send evidence that in any way incriminated US politicians, diplomats, generals or the CIA itself (http://www.globalpolicy.org/intljustice/tribunals/2001/0725icty.htm). It will be difficult to believe that any leader, diplomat or general serving a Western state is likely to appear in court at The Hague.

The second assumption of the court being politicized is that it received substantial funds from the US government directly in cash and donations of computer equipment. In 1994/1995, the United States provided $700.000 in cash and $2.300.000 worth of equipment (http://www.freerepublic.com/forum/a3b39c0fb1e1b.htm).

Another reason why the court can be considered politicized is that why, at the beginning, Milosevic was indicted only for crimes in Kosovo, leaving behind war in Croatia and Bosnia? Djilas (2001) claims that during the war in Bosnia, Milosevic was the only Serbian politician

who could control the Bosnian Serbs. It was announced in Paris, during the Dayton Peace Accords, that peace in Bosnia without Milosevic was impossible. But when the West realized that Milosevic was no longer the man, who they could do business with, the situation radically changed. Milosevic's subsequent arrest and extradition to the war crimes tribunal was an attempt to legalize and justify NATO's aggression against Yugoslavia (Hamilton, 2001, 1). This, of course, does not exclude Milosevic being a criminal, but meantime, the guilt of other similar criminals should not be omitted.

Milosevic's trial is expected to be a crucial test both for international law and international legal institutions. As Geoffrey Robertson stated, "The trial is going to be more the trial of the idea of international justice than the trial of Slobodan Milosevic, because international justice has never been tested" (http://newsvote.bbc.co.uk/hi/engli…/europe/newsid_1414000/1414322.stm). He continued that it would be a real test to see whether the judges appointed to this international criminal body [ICTY] can rise above the politics of their own countries and deliver justice.

The last time Slobodan Milosevic visited The Hague was for a peace conference 10 years ago. At that time he was still the president of Serbia. The Yugoslav wars were just starting and, subsequently, there was no war crimes tribunal (http://www.cnn.com/2…RLD/europe/06/28/milosevic.decade/html). It is a common knowledge that during wars, ethnic conflicts and the like, the role of the country leaders is not of the least importance. Thus, it will be probably helpful to bring some basic facts about Milosevic's life on political arena.

Slobodan Milosevic was born on 20 August 1941 in the town of Pozarevac in present-day Serbia. In 1964 he received a law degree from the University of Belgrade and begun a career in management and banking. Milosevic held various posts: from deputy director and general

director of a major gas company to the president of one of the largest banks (http://www.state.gov/www/regions/eur/990527_kosovo_indictment.html).

Since mid 1980s, Milosevic exercised significant political power in the territory of the former Yugoslavia. After its dissolution and the creation of the FRY, consisting of the republics of Serbia (including Voyvodina and Kosovo) and Montenegro Milosevic held his position as the President of Serbia and took under his direct control both political and economic aspects. Besides de jure powers, Milosevic had also extensive de facto control over numerous institutions, particularly mass media. The result was that all kinds of state agencies were responsive to Milosevic's authority (http://www.nesl.edu/center/balkan2.htm).

Perhaps Milosevic's extradition process has been one of those uncommon events that was awarded special attention from the whole world. Nowadays, the case of 'Milosevic et al' does not collect a large audience. Still, for those who hope to see the world in a better shape, Milosevic's trial is an exclusive opportunity to test the validity and actuality of the existing international law. There is an impression that the world is expecting to hear a negative answer to the following question: Has the international law and international community failed to achieve peace and justice in the world, even after sufferings of two World Wars and the famous universal pledge 'never again'?

Milosevic made history by becoming the first ever sitting head of state to be indicted for war crimes. Indictment of war crimes is only for his role in Kosovo. Before, the tribunal has convicted only soldiers who raped and killed and tortured, or the generals who gave them their orders (http://www.smh.com.au/news/0107/04/features/features4.html). But the Court expanded the existing charges. Throughout the 1990s Milosevic exercised policies, which destroyed

Yugoslavia. Hundreds of thousands of people were killed, millions were forced to leave their homes and wander the world as refugees. The primary targets in those policies were civilians.

Charges brought against Milosevic and his colleagues are crimes against humanity and genocide. In early September, the 'genocide' charge was also brought. According to the indictment "…Milosevic and his counterparts have planned, instigated, ordered, committed or otherwise aided and abetted in a campaign of terror and violence directed at Kosovo Albanian civilians" (http://www.state.gov/www/regions/eur/990527_kosovo_indictment.html). They bear direct responsibility for crimes that include deportation of 740,000 Kosovo Albanians and the murders of at least 385 individually identified ethnic Albanians (http://newsvote.bbc.co.uk/hi/engli…/europe/newsid_1403000/1403054.stm). The top Bosnian Serb leaders controlled by Milosevic were Radovan Karadzic and his military chief, Radko Mladic. They were twice indicted for genocide and crimes against humanity for the horror they brought to Bosnia. To this day, they remain at large.

One problem in presenting a case against Milosevic over the conflicts in Croatia and Bosnia was the fact that, as President of Serbia at the time, he had no formal legal responsibility for the activities of either the Yugoslav army or Serb paramilitaries in both republics. On the contrary, the Kosovo indictments were far from being problematic, because it is part of Serbia and Yugoslavia, and the former president Milosevic, as commander in chief of the Yugoslav army, had direct responsibility for the behavior of the Serbian security forces in the province (http://newsvote.bbc.co.uk/hi/engli…/europe/newsid_1402000/1402790.stm). On September 28, 2001, The Hague tribunal announced that Slobodan Milosevic would face new war crimes charges arising from the war in Croatia in 1991 (http://www.guardian.co.uk/yugo/article/0,2763,560133,00.html). The chief prosecutor Carla Del

Ponte had signed the indictment for Croatia. The deputy prosecutor, Graham Blewitt, said that the Croatia indictment did not include a charge of genocide, which is considered to be the tribunal's gravest crime. Earlier, Ms Del Ponte said that unlike Croatia, the Bosnia indictment would include a charge of genocide.

Prosecutors of the ICTY expected to rely on documentary evidence, the testimony of witnesses and communication intercepts, probably provided by NATO. Thus, the second difficulty emerges: it relates to lack of access to electronic evidence gathered by the intelligence agencies of the United States and NATO countries.

Tribunal investigators interviewed thousands of survivors and refugees from the 1999 fighting in Kosovo. Their testimony is expected to be one of the pillars of the prosecution case. Prosecutors will also attempt to establish two other principles of authority in order to prove Milosevic's guilt. The first is his 'de jure', or legal responsibility as president of Yugoslavia for the actions of the army. The second principle is to demonstrate Milosevic's 'de facto' responsibility. It means to prove that, in reality or practically, he was the final authority at the top of Yugoslavia's military and security apparatus (http://newsvote.bbc.co.uk/hi/engli…/europe/newsid_1414000/1414322.stm).

Slobodan Milosevic has made two appearances at pre-trial hearings in ICTY, and on both occasions he has refused to recognize the legitimacy of the Court. He not only refused to plead either guilty or not guilty, but he also refused to appoint a defense lawyer. The court itself appointed a team of lawyers, but Milosevic again refused to recognize it (http://www.courttv.com/trials/news/0901/07_milosevic_ap.html). But the court announced that Milosevic would be defended against his will (http://www.freerepublic.com/forum/a3b98021c2f86.htm). These lawyers were to act as 'amicus

curiae', which literally is translated as 'friends of the court'. It means that these lawyers are not to defend the accused but will perform some of a defense counsel's tasks. Their role would be to challenge evidence brought in by the prosecution, cross-examine witnesses for the prosecution, point out possible evidence to the court and take other action deemed necessary to ensure fair trial (http://www.rnw.nl/hotspots/html).

In addition, Milosevic declared that he considers this "…tribunal a false tribunal and the indictments false indictments", so he has no need to appoint counsel to an illegal organ. Besides this, he declared that his trial is 'politically motivated'. Mr. Milosevic, who at the 1995 Dayton peace accords agreed to cooperate with the tribunal, considers the tribunal being illegitimate, for the sole reason that it has not been set up by the UN's entire membership in the General Assembly. But it is a weak point, because Chapter V of the UN Charter binds members "…to agree and carry out the decisions of the Security Council." Actually, it is the Security Council, which consists of 15 members, that makes most key decisions, while the task of the General Assembly is to make recommendations. Thus, Milosevic contradicts himself: he is against his earlier attitude toward both the Security Counsel and Dayton Peace Accords (http://newsvote.bbc.co.uk/hi/engli…/europe/newsid_1520000/1520039.stm).

Legal analysts claim that Milosevic may undertake a line of defense. He could challenge the presiding judge, Richard May, on the grounds that he is from Britain, and Britain was one of the leading participants in NATO's air campaign against Yugoslavia. Under the European Convention on Human Rights (ECHR), "…one of the key tests is not just the impartiality of a judge but the perception that he or she is impartial" (http://newsvote.bbc.co.uk/hi/engli…/europe/newsid_1420000/1420726.stm). But May's colleagues say that he would guarantee Milosevic's fair trial. Michael Mandel (2001), a law

professor, claims that the former Serb leader has about as much chance of getting fair trial from this court as he had of defeating NATO in an air war (http://www.globalpolicy.org/intljustice/tribunals/2001/0706milo.htm). Mandel says that when Milosevic questioned the legitimacy of the Court, it was not merely his tactics of defense. Milosevic also declared that "…this trial's aim is to produce false justification for the war crimes of NATO, committed in Yugoslavia". In fact, Milosevic was echoing the words of Michael Scharf, who wrote the original tribunal statute for Madeleine Albright, the former US secretary of state. Mandel (2001) brings Mr. Scharf's own words that "…the tribunal was widely perceived as a useful policy tool." He goes on claiming that the indictments would serve to isolate offending leaders diplomatically and to strengthen the international political will to employ economic sanctions or use force. It can be concluded that if the Tribunal in The Hague were an honest one, then Mr. Milosevic would be not the only government leader on trial. NATO's war was a conscious violation of international law and the Charter of the United Nations. It does not seem to be 'humanitarian intervention' as some call it. What was humanitarian about bombing Belgrade? The reason why the Statute of The Hague does not include 'aggressive war' as a crime is that the US did not want it. In the same manner it opposed to the inclusion of this crime in the Statute of the International Criminal Court (ICC). The US also refused to ratify the Statute of the ICC, because the veto power of the five permanent members of the Security Counsel does not work in the ICC. The main reason why the US is against the creation of this court is that it does not want any of its soldiers or citizens to be tried before it. The view that the NATO leaders planned and executed a bombing campaign, and moreover, they clearly realized that their actions are contrary to the most fundamental tenets of international law. In addition, they knew that the bombardment campaign would cause the death

of hundreds of civilian children, women and men. While Milosevic is indicted for the murder of 385 victims, the NATO leaders have killed at least 500. Can anyone explain whether hospitals, bridges, marketplaces, factories and the like had any military or strategic value? It tells about the fact that targeted places by the NATO had almost no military value at all. Mandel (2001) concludes that the only difference between Mr. Milosevic and the NATO leaders is that the Serb leader lost the war and stands now as an indicted war criminal, while the victors are 'un-indicted' war criminals (Mandel, 2001, p. 2). It is hard to believe that the NATO members would ever be indicted no matter for what crime. Despite the declaration of the presiding judge, Richard May, that Milosevic will have fair trial, Mandel is more than sure that it won't be the case (Mandel, 2001).

Legal analysts try to clarify what is the reason that Milosevic does not accept the jurisdiction of the Court. They claim that Milosevic has no chance of getting fair trial or at least it is his own (subjective) perception. That is why he finds that it is useless even to try to defend himself, no matter what will be the outcome.

Mandel is right in one aspect, when he claimed that not only Milosevic should be brought to justice, but also the NATO leaders. What refers to the creation of the ICTY and its illegitimacy, because it was established not by the General Assembly but the Security Council, it is a weak point. The reason is that the same Security Council also created the analogous Tribunal for Rwanda. It is obvious that Milosevic has chosen that kind of defense tactics. As was already mentioned, he agreed to cooperate with the ICTY and then he had not even questioned the legitimacy of the Tribunal. Probably, then he did not imagine that he would be ever sitting on the dock. It is illogical, nowadays, not to accept the Court as being legitimate. It would be better to change the line of defense and switch on some other point, which would seem more acceptable.

Ironically, Milosevic is tried because he lost the war and his power. There are no war crime indictments for winners and there will never be any (http://jurist.law.pitt.edu/issue_milo_zoran.htm). "That is why such tribunals have little to do with law in the sense of rules that apply equally to everyone. They truly are political courts established by the democracies" (Stanojevic, 2001, p. 1).

Therefore, Milosevic is fighting not a legal but political battle. He understands that much better than anyone else, but he also realizes that he would never win this political battle.

In conclusion, unlike the Rwandian case, which proceeds smoothly and will hardly face institutional challenges, several problems seem to be haunting the Yugoslavia Tribunal. First, in the Yugoslavian case, the representation of judges does not afford the Court with credibility and ultimately with legitimacy. Second, the incriminating evidence is extremely one sided. The Court is using evidence provided selectively by the plaintiffs. Third, the defense has not been clearly represented and built.

Conclusions

The International Court of Justice, the principal judicial organ of the United Nations, is an organ of international law. Today, there is no other judicial organ in the world, which has the same capacity for dealing with the problems of the international community as a whole, which offers member and non member states a wide range of opportunities for promoting the rule of law. The disputes, that have come before it, have covered the most varied aspects of public and private law, have concerned all parts of the globe and have tested various legal systems, as well as the internal law of international organizations.

The ICJ resolves legal disputes among states and assists international organizations to function effectively and justly in their various fields of activity, emphasizes and affirms the role of international law in international relations.

So far as the parties to the case are concerned, a judgment of the Court is binding, final and without appeal.

Despite the claims that the rules of the court are not democratic and they mostly favor the NATO powers, this particular entity has a genuine potential to settle legal disputes between states. It is unique in a sense that it is neither a political nor a legal institution. It is a body that is open not only to its member states but also to non-member states. In other words, any country may apply to the Court for advisory opinion. It is impossible to imagine the variety of fields and aspects that the Court dealt with and made its decisions.

The creation of two ad hoc Tribunals for the Rwanda and the Former Yugoslavia by the United Nations Security Council, was the result of an outcry by the international community, which was following those horrible events through mass media broadcasts. The structure and composition of both Tribunals are the very much like the International Court of Justice. The only

distinguishing feature is the jurisdiction. While the ICJ has jurisdiction over the states only, the two Tribunals have jurisdiction over individuals. In addition, jurisdiction is valid only in the territories of the Former Yugoslavia and Rwanda.

International law has a relatively recent origin and it is comprehensive enough. Reality proves that it is far from providing the range of legislation needed to resolve all international disputes and tensions. International law has been developed by the Western states, which is the best explanation why the international law is often interpreted according to their standards.

At present, international law is undergoing a serious test. The world is carefully watching Slobodan Milosevic's trial at The Hague, which is estimated to last for several years. This particular trial has no precedent since the Nuremberg and Tokyo trials. It means that since then, Milosevic is the first Head of a State tried in the war crimes Tribunal and charged with crimes against humanity and genocide. There is a general assumption that the Tribunal is politicized. It receives funds from the United States directly in cash and in the form of computer equipment. The main evidence and materials are to be provided by the CIA, which would never give any information without its government's permission.

The Nuremberg court and the present day Tribunals have much in common. But there are also huge differences. At the time of Nuremberg, the victorious allies controlled everything from inside; in other words the Court was extremely politicized. But it is said that political games are missing from today's international courts. That is the reason, why the international community expects to see a fair trial over Milosevic. It is logical that there should be opposing views and opinions in any aspect of life, and there is a lot of skepticism towards the Court being a political tool rather then a legal body, but still, the Tribunal has a real potential to conduct a trail, which would not be the embodiment of injustice and disillusionment. The problems that the Tribunal

faces at present are generally of institutional character. One of the problems haunting the Yugoslavia Tribunal is the representation of judges, which does not award the Court with credibility and legitimacy[4]. Second problem in the Yugoslav case is that the incriminating evidence is extremely one sided. The Court is using the evidence provided selectively by the plaintiffs. The third problem is defense, which has not been yet clearly represented and built. The reason is that Milosevic refused from lawyers' services, claiming that the Tribunal itself is illegitimate. Subsequently, the defense tactics and strategy were not clearly organized.

In summary, courts try cases but cases also try courts. The trial of Mr. Milosevic by the United Nations war crimes court in The Hague poses a crucial test of the court's effectiveness, either in legal or in political terms.

The Possibilities for the Creation of International Tribunal for the Armenian Genocide: A Postscript

Finally, on the basis of the analysis of the Yugoslavia and Rwanda cases, a note follows on the possible ways of bringing the case of the Armenian Genocide before the UN mandated International Court. As all we know, over the past 80 years, the Armenian nation has struggled to have the history of the Armenian Genocide brought to light and examined. Despite the scope of the disaster, the international community has only recently started to recognize its genocidal character. The recognition of the Armenian Genocide on April 16, 1984 by the 'Permanent Peoples' Tribunal' is a successful example of the international affirmation. This particular entity was established to at least partly overcome the moral and political failures of states to prevent and punish the perpetrators of the first genocide of the past century. Another reason why this

[4] The presiding judge of former Yugoslav President Milosevic is a former British prosecutor Richard May.

Tribunal exists, is the deep concern with genocidal attitudes in our world. Indeed, it is generally assumed that the acknowledging genocide itself is a fundamental means of struggling against genocide. The acknowledgement is itself an affirmation of the right of a people under international law to a safeguarded existence[5].

Considering the future possibilities for the creation of International Tribunal for Armenian Genocide, it should be mentioned first that only the International Court of Justice has a jurisdiction over states. If the Armenian Genocide is to be heard in the ICJ, the charges could be brought only against the state of Turkey, because the individual perpetrators are no longer alive or some of them have even faced retributive justice. Other international institutions like two ad hoc tribunals for Rwanda and Former Yugoslavia, and also newly created International Criminal Court (ICC) have no jurisdiction over states.

A possible application for bringing the Armenian Genocide to the ICJ may be submitted by the Republic of Armenia, which is the member of the United Nations, by the representative bodies of Armenian Diaspora (which are, unfortunately, lacking), by NGOs, namely dealing with human rights issues, by the Organization of Human Rights Watch (HRW), by the Amnesty International, which is famous for its huge work in establishing the ICC and the like.

Nowadays, the fight against the crimes of genocide seem somewhat to lose priority, because the US-led international coalition has embarked on a global war against terrorism, which threatens the peace and security of the world. You might ask a question why should crimes against humanity, as well as the crime of genocide, be recognized as an international problem. Why not to treat it as an internal problem of every country, whether committed in time of peace

---

5 (**http://www.armenian-genocide.org/affirmation/recognition/66.htm)**.

or in time of war? The history shows that the genocide no matter where in the world may and does affect the vital interests of all civilized people. Its consequences can neither be isolated from nor localized in. Minorities or ethnic groups of one sort or another exist in almost all countries. Tolerating genocide is an admission of the principle that one group has the right to attack another.

However, there is hope that the world would someday earnestly turn its attention to the punishment of the past and present crimes against humanity.

LIST OF REFERENCES

Analysis: Milosevic's Trial Tactics (2001). (**http://newsvote.bbc.co.uk/hi/engli…/europe/newsid_1520000/1520039.stm**).

Analysis: The Charges Against Milosevic (2001). (**http://newsvote.bbc.co.uk/hi/engli…/europe/newsid_1400200/1402790.stm**).

Boyajian H., Dickran (1972). Armenia. The Case for a Forgotten Genocide. (Educational Book Crafters, Westwood, New Jersey).

Cobban, Helena (2001). Milisevic on Trial: Big Test for the Hague Court. (**http://www.csmonitor.com/2001/0709/p13s1-coop.html**)

Commission of Inquiry. Summaries of Selected Research Findings (2001). (**http://www.iacenter.org**).

Convention on the Prevention and Punishment of the Crime of Genocide. (**http://www.fletcher.tufts.edu/multi/texts/BH225.txt**).

Court-Named Lawyers to Ensure Milosevic Fair Trial (2001). (**http://ca.news.yahoo.com/010908/5/a384.html**).

Dadrian, N., Vahakn (1995). The History of the Armenian Genocide. Ethnic Conflict from the Balkans to Anatolia to the Caucasus. (Berghahn Books. Bush House, Merewood Avenue, Oxford, UK).

Deen, Thadif (1999). Politics: Yugoslavia Seeks World Court Ruling on Air Strikes. (**http://www.oneworld.org/ips2/april99/23_02_095.html**).

Department of Public Information (1998). Basic Facts about the United Nations. (United Nations Publication. New York).

Deutsch, Anthony (2001). Cipher War: Milosevic ti Face Genocide Charges. (**http://cipherwar.com/news/01/milosevic_0830.htm)**.

Djilas, Aleksa (2001). The Politicized Tribunal. (Institute for War and Peace Reporting). (**http://www.globalpolicy.org/intjustice/tribunals/2001/0725icty.htm)**.

Do Heads of state in Office Enjoy Immunity from Jurisdiction for International Crimes? The Ghaddafi Case Before the French Cour de Cassation. (**http://www.ejil.org/journal/Vol12/No3/art2-04.html)**.

Epps, Valerie (1998). International Law for Undergraduates. (Carolina Academic Press. Durham, North Carolina).

Ewelukwa, Uché (1998). The Practice of the International Criminal Tribunals for the Former Yugoslavia and Rwanda. The International Criminal Tribunal for Rwanda. (Irvington-on-Hudson, NY: Transnational Publishers). (**http://www.ejil.org/journal/Vol10/No1/br2.html)**

Genova, Jim (1995). Imperialist Roots of the War in Yugoslavia. (People's Weekly World). (**http://www.hartfold-hwp.com/archives/62/060.html)**

Hamilton, Douglas (2001). Milosevic's Trial and Selective Justice. (**http://www.globalpolicy.org/wldcourt/tribunal/2001/0409chom.htm)**.

Hamilton, Douglas (2001). Will Milosevic Get Fair Trial? The Jury's Out. (**http://www.balkanpeace.org/hed/archive/apr01/hed3026.shtml)**.

History of War in Bosnia. Historical Background (1996). (**http://www.friendsofbosnia.org/edu_bos.html)**.

Human Rights Watch (1999). (**http://www.hrw.org/reports/1999/rwanda/Geno.htm)**.

Institute for the Study of Genocide. International Association of Genocide Scholars (2000/2001). Social Scientists' Definitions of Genocide. (**http://www.isg-ags.org/definitions/def_genocide.html).**

International Affirmation of the Armenian Genocide. Recognition by International Organizations. Permanent Peoples' Tribunal, Verdicy of the Tribunal (April 16, 1984). (**http://www.armenian-genocide.org/affirmation/recognition/66.htm)**.

International Court of Justice. Press Communiqué 99/33 (1999). Legality of Use of Force (Yugoslavia v. United States of America). The Court Rejects the Request for the Indication of Provisional Measures Submitted by Yugoslavia and Dismisses the Case. (**http://www.icj-cij.org/icjwww/ipresscom/iPress1999/ipresscom9933_iyus_19990602.htm).**

International Criminal Tribunal for Rwanda. Questions and Answers (1998). (**http://www.igc.apc.org/cij/rgeneral.html)**.

Kosovo: Frequently Asked Questions (FAQ). Questions and Answers about the War in Yugoslavia (1999). (**http://www.mit.edu/people/petros/faq.html)**.

Lawyers Charge NATO Leaders Before War Crimes Tribunal (1999). (**http://www.communist-party.ca/english/html/yugo_lawsuit_short.html).**

Lawyers Charge NATO Leaders Before War Crimes Tribunal (1999). (**http://www.refuseandresist.org/other_fronts/051099charges.html).**

Mandel, Michael (2001). Milosevic Has a Point. (Toronto Globe and Mail). (**http://www.globalpolicy.org/intljustice/tribunals/2001/0706milo.htm)**.

Massimo De Angelis & Silvia Federici (1999). The War in Yugoslavia. On Whom the Bombs are Falling? (**http://www.midnightnotes.org/pamphlet_yugo.html)**

Milinkovic, Branko (1999). Conflict-Yugoslavia: NATO Accused of Genocide at World Court. (**http://www.oneworld.org/ips2/may99/18_57_173.html)**.

Milosevic Indicted for Croatia (2001). (**http://www.guardian.co.uk/yugo/article/0,2763,560133,00.html)**.

Milosevic Rejects UN's Lawyers (2001). (**http://www.courttv.com/trials/news/0901/07_milosevic_ap.html)**.

Milosevic Remains Defiant (2001). (**http://www.rnw.nl/hotspots/html/icty010830.html)**.

Milosevic Said to be Defended Against His Will (2001). (**http://www1.chinadaily.com.cn/news.wn/2001-09-11/3226**8.html).

Milosevic to Face Genocide Charges (2001). (**http://stacks.msnbc.com/news/621662.asp)**.

Milosevic to Face Genocide Charges (2001). (**http://www.guardian.co.uk/yugo/article/0,2763,544415,00.html)**.

Milosevic Trial Delays Build (2001). (**http://newsvote.bbc.co.uk/hi/engli…/europe/newsid_1517000/1517536.stm)**.

Milosevic Trial Puts Justice Itself in the Dock (2001). (**http://www.smh.com.au/news/0107/04/features4.html)**.

Milosevic: The Legal Battle Ahead (2001). (**http://newsvote.bbc.co.uk/hi/engli…/europe/newsid_1414000/1414322.stm)**.

Milosevic's Defence Options (2001). (**http://newsvote.bbc.co.uk/hi/engli…/europe/newsid_1420000/1420726.stm)**.

Museum of Tolerance Multimedia Learning Center (1990). Encyclopedia of the Holocaust. (Macmillan Publishing Company. New York, NY 10022). (**http://motlc.wiesenthal.com/text/x14/xr1496.html)**.

Pierre Vidal-Naquet (1985). A Crime of Silence. The Armenian Genocide. Permanent Peoples' Tribunal. (The Zoryan Institute, Cambridge).

Pione, James. Is the International Court of Justice Just? (**http://www.iacenter.org/warcrime/21_just.htm)**.

Press Urges Fair Trial for Milosevic (2001). (**http://www2.cnn.com/2001/WORLD/europe/07/04/milosevic.press/)**.

Problems of Enforcement of Decisions of the International Court of Justice and the Law of the United Nations. (**http://www.ejil.org/journal/Vol6/No4/art2-04.html)**.

Questions &Answers: Milosevic Trial (2001). (**http://newsvote.bbc.co.uk/hi/engli…/europe/newsid_1403000/1403054.stm)**.

Rubin, P., Alfred (1996/97). Dayton, Bosnia and the Limits of Law. (**http://www.srpska-mreza.com/library/facts/Rubin.html)**.

Schabas, William (1999). The Genocide Convention at Fifty. (**http://www.usip.org/oc/sr/sr990107/sr990107.html)**.

Scharf, P., Micharl (1997). Balkan Justice. The Story Behind the First International War Crimes Trial Since Nuremberg. (Carolina Academic Press. Durham, North Carolina).

Scheffer, David (1998). Responding to Genocide and Crimes Against Humanity. (**http://www.state.gov/www/policy_remarks/1998/980422_scheffer_genocide.html)**.

Stanojevic, Zoran (2001). How Milosevic Can Win. (**http://jurist.law.pitt.edu/issue_milo_zoran.htm)**.

Stapleton, Sara (1999). Ensuring a Fair Trial in the International Criminal Court. Statutory Interpretation and the Impermissibility of Derogation. (**www.nyu.edu/pubs/jilp/main/issues/31/pdf/31n.pdf)**.

Staub, Ervin (1992). The Roots of Evil. The Origins of Genocide and Other Group Violence. (University of Massachusetts at Amherst. Cambridge University Press).

The Balkan Tragedy (1995). Roots of the Balkan Troubles: A History of Ethnic Skirmishes. (**http://www9.cnn.com/WORLD/Bosnia/history/html)**.

The Balkan Tragedy (1995). Ethnic Rivalries. The Balkan Players: Who Are They and What do They Want? (**http://www9.cnn.com/WORLD/Bosnia/key/groups.html)**.

The History Place (1999). Genocide in the 20th Century. Bosnia-Herzegovina 1992-1995. 200.000 Deaths. (**http://www.historyplace.com/worldhistory/genocide/bosnia.htm)**.

The ICJ Considers Genocide. How Can the International Court of Justice Enforce the Genocide Convention? (**http://www.oz.uc.edu/thro/genocide/intro/intro-icj.html)**.

The ICJ Considers Genocide. Introductory Background and Context (2000). (**http://www.oz.uc.edu/thro/genocide/intro/introduction.html)**.

The ICJ Considers Genocide. What is the Law on Genocide? (**http://www.oz.uc.edu/thro/genocide/intro/intro-law.html)**.

The Man Judging Milosevic (2001). (**http://newsvote.bbc.co.uk/hi/engli…/europe/newsid_1420000/1420094.stm)**.

The Organs of the International Criminal Tribunal for Rwanda (2001). (**http://www.ictr.org/ENGLISH/geninfo/structure.htm)**.

Trial of Milosevic Could Unnerve Leaders in the US and Elsewhere (2001). (**http://www.freerepublic.com/forum/a3b39c0fb1e1b.htm)**.

UN Policy on Genocide.(**http://www.munfw.org/archive/47th/ga2.htm)**.

UN Tribunal Gives Milosevic Lawyers (2001).

(http://www.freepublic.com/forum/a3b98021c2f86.htm).

Universal Jurisdiction and Absence of Immunity for Crimes Against Humanity. Criminal Responsibility under International Law of Heads of State for Crimes Against Humanity (2000).

(http://www.amnesty.org).

Vasilescu, Bucur (2001). The Right to Fair Trial.

(http://www.ccr.ro/Buletin%CCR/theright.htm).

Weissbrodt, David (1998). Amnesty International Fair Trials Manual. (London, United Kingdom). **(http://www.amnesty.org/ailib/intcam/fairtrial/indxftm.htm).**

What is a War Crime? (2001).

(http://newsvote.bbc.co.uk/hi/engli…/europe/newsid_1420000/1420133.stm).

What is Fair Trial? A Basic Guide to Legal Standards and Practice (New York, 2000).

(**http://www.lchr.org/pubs/fairtrial1.htm)**.

What is the Definition of "Genocide?" (2001). (**http://www.thecenter-ptj.org/faq/kos_3.htm).**

Yugoslavia: The Milosevic Years (2001).

(http://www.cnn.com/2…RLD/europe/06/28/milosevic.decade/).