

Book Review: Rachel Kerr. *The International Criminal Tribunal for the Former Yugoslavia: An Exercise in Law, Politics, and Diplomacy*

Daniel C. Turack

Abstract.

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Book Review

Rachel Kerr. *The International Criminal Tribunal for the Former Yugoslavia: An Exercise in Law, Politics, and Diplomacy*. New York: Oxford University Press, 2004. Pp. 239, cloth. \$125.00 US.

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In her book, Rachel Kerr presents, through the operation of the International Criminal Tribunal For the Former Yugoslavia (ICTY), an integrated study of law and international politics in the maintenance of international peace and security. Although the tribunal was established as a tool of politics, it has administered justice in an apolitical fashion. Kerr's empirical examination explores the necessity of the ICTY's political status for the performance of its judicial function as an independent court.

After delineating the philosophy that led to the unique convergence of legal, political, and diplomatic dynamics, Kerr takes the reader along three distinctive paths: the UN Security Council's role in the areas of international peace and security, the development of international criminal justice through 1993, and the response of the international community to ongoing systematic violations of international humanitarian law—particularly those involving ethnic cleansing.

The ICTY has had to independently manipulate the political context in which it operates in order to fulfill its judicial mandate; hence the need to generate its own momentum. Kerr carefully charts the process of creating this innovative tribunal: its seat, its legal status and personality, its funding, its basic framework, and the transfer and detention of the accused. The core aspects of the ICTY's jurisdiction are explained. Questions answered here are whether the method of establishing this tribunal satisfies the requirement that it be "established by law" (62) and on what basis it is competent to exercise jurisdiction. A discussion of the primacy of the ICTY over national courts, as political or legally motivated, follows. As expected, Kerr assesses the topics of territorial, temporal, and subject-matter jurisdiction issues. She also covers a range of issues not directly pertinent to the operation of the tribunal but still related to its overall success, such as the dissolution of the Socialist Federative Republic of Yugoslavia and the growth of international humanitarian law. She highlights the consequences of legal decisions in the political arena. She also analyzes the ICTY's rules of procedure and evidence in relation to their impact on politics and on law. Specifically, issues of admissibility and disclosure of evidence and political considerations concerning victims and witnesses are amplified. Kerr's conclusion is that the "administration of justice was fair, impartial and expeditious" (113) but that this result was brought about by certain trade-offs.

To function effectively, the ICTY needed support from the states in the region, from other states, and from both intergovernmental and non-governmental organizations. Kerr sets out the legal framework for investigations and for international cooperation and judicial assistance at trial and explores the various levels of cooperation in practice to show the influence of politics and diplomacy at various stages. Interestingly, the examples of non-compliance by states and non-cooperation

by certain government leaders did not ultimately prevent the ICTY from achieving its successes. Politics and logistics apparently play a significant role in obtaining custody of an accused. Relying on national police authorities to make arrests, using international forces to effect detention, and encouraging voluntary surrender are all necessary for the tribunal to perform its functions. This balancing act is adroitly manifest in the role and function of the prosecutor, with a positive result (213).

The exercise of prosecutorial discretion is critical to the successful operation of the ICTY. Accordingly, this study discusses the relative styles of three chief prosecutors—Richard Goldstone, Louise Arbour, and Carla Del Ponte—and their interpretations of how their office was to function in terms of law and politics.

In the short term, Kerr argues, the ICTY has brought justice for both perpetrators and victims; it has accomplished both justice and peace. She also asserts that its activity has fostered reconciliation, but states that the latter aim has “not been fulfilled to the extent desired” (217). The long-term impact of the tribunal’s operations cannot be measured until more time has passed after the completion of its principal task. While the ICTY has performed admirably, it has been unable to apprehend and prosecute two of the primary perpetrators of the atrocities. As long as Radovan Karadžić and Ratko Mladić remain at large, the tribunal will have failed to provide justice.

There is a considerable literature on the ICTY, but Rachel Kerr’s treatment of the subject is innovative, insightful, and definitely worth the read.

Request PDF | On Apr 1, 2005, Jenny S. Martinez and others published *The International Criminal Tribunal for the Former Yugoslavia: An Exercise in Law, Politics, and Diplomacy* | Find, read and cite all the research you need on ResearchGate. Scholarly interest has reflected this focus on war crimes prosecutions, looking at the establishment of the ICTY and its workings (FatiÄ± 2000; Kerr 2004 encourages us to look beyond the 'success' of educational reform in BrÄko, which was designed to promote multi-ethnic integration, in order to analyse the way this was experienced and the local practices associated with it. The three books reviewed here seek to illuminate this conceptual and empirical The International Criminal Tribunal for the Former Yugoslavia: An Exercise in Law, Politics, and Diplomacy [Kerr, Rachel] on Amazon.com. *FREE* shipping on qualifying offers. The International Criminal Tribunal for the Former Yugoslavia: An Exercise in Law, Politics, and Diplomacy. "Likely to remain a useful account of this period of the development of the Tribunal, even as the story of the Tribunal evolves further, and the various theoretical and empirical literatures grow."--The Law and Politics Book Review. About the Author. Rachel Kerr is a Lecturer in War Studies, Kings College, London. Product details. Hardcover : 256 pages. Recent papers in International Criminal Tribunal for the Former Yugoslavia. Papers. People. Croatian and Serbian War Crimes, the International Criminal Tribunal for the former Yugoslavia, and the Judicial Systems of Serbia and Croatia. This study shows that the "general principles" as identified by international tribunals are rules of international law that regulate the conduct of the international community (substantive "general principles"), provide for rules of international law (procedural "general principles"), and guide the interpretation of international tribunals (interpretative "general principles"). "general principles" can be found in domestic law, and/or in international. The International Criminal Tribunal for the Former Yugoslavia: An Exercise in Law, Politics, and Diplomacy. Rachel Kerr. The establishment of ad hoc tribunals for the former Yugoslavia and Rwanda was followed by the adoption of the Rome Statute of the ICC in July 1998, the arrest of General Augusto Pinochet in London in October 1998, and the establishment of ad hoc tribunals in Cambodia, Sierra Leone, and East Timor, all of which pointed to an emerging norm of international criminal. The Tribunal was established as a tool of politics, but it was a judicial, not a political tool. This book provides a systematic examination of the Tribunal, what it is, why it was established, how it functions, and where its significance lies. The International Criminal Tribunal for the Former Yugoslavia. Daphna Shraga * and Ralph Zacklin **. 1. Introduction. Commission of Experts to report on the evidence of grave breaches of international humanitarian law in the former Yugoslavia. 2 The unspoken understanding was that this Commission would be a step towards the establishment of an international tribunal to prosecute individuals if the parties did not conform to Security Council resolutions. The establishment of the Commission served to illuminate the crimes which were being committed but did nothing to arrest them. Public opinion, particularly in the Western permanent members of the Security Council, demanded accountability and action.