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**PROBLEMATICS OF ENFORCEMENT OF THE  
INTERNATIONAL CRIMINAL COURTS' DECISIONS: A CASE  
OF THE INTERNATIONAL CRIMINAL TRIBUNAL FOR THE  
FORMER YUGOSLAVIA (ICTY)**

A dissertation to be submitted and presented to the school of law in partial fulfillment of the academic requirements for the award of a Bachelor's degree with honors in Law.

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**Kigali, August, 2024.**

## **DECLARATION**

I, SOUZA Y KOUMBE DAN JOEL, hereby confirms that the dissertation presented hereafter **‘problematics of enforcement of international criminal court decisions: a case under ICTY’** is my authentic work and has not been used nor presented by anyone else at any Universities for the award of Bachelor degree. As many sources were considered, references have also been included in footnotes and bibliography. This dissertation was guided under the supervision of **Mr. NDIYAYE UWIMANA Innocent**.

**Date** ..... / ..... **2024**.

**Signature** .....

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## **APPROVAL**

This dissertation entitled “**Problematics of enforcement of the international criminal court’s decisions under ICTY**’ is an authentic research of Mr. SOUZA Y KOUMBE DAN JOEL under my supervision as partial fulfilment of the academic requirements for the award of a bachelor degree with honours in law (**LLB**) at Kigali Independent University.

**Date** ..... / ..... 2024

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**Supervisor:** .....

**Supervisor: Lecturer NDIYAYE UWIMANA Innocent**

## **DEDICATION**

This dissertation is dedicated to:

To Almighty God

To my parents Emile SOUZA KOUMBA, Isabelle TINDI ITSIEMBOU spouse SOUZA.

To my beloved family among others: Alain SOUZA, Alain Christian MBADINGA, Ghislain MBOUGANA SOUZA, Armelle NANGA, Tanguy MAROGA MOUSSAVOU, Irene BOUKA, Zita TINDI, Natachat NZUNSA, Pelagie ILAMA, Erica TINDI, Rebecca, Merveille, Victoire de Christ, Anne Rachelle, Christy Shaddai, Denis Christopher, Dominique AGOGO, acquaintances and others.

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May God bless you all!

**SOUZA Y KOUMBE DAN JOEL**

## **LIST OF ABBREVIATIONS AN ACRONYMS**

- ARK:** Autonomous Region of Krajina
- BSA:** Bosnian Serb Army
- CSCE:** Conference in Security and Cooperation in Europe
- FRY:** Federal Republic of Yugoslavia
- Ibid:** Ibidem
- ICC:** International Criminal Court
- ICL:** International Criminal Law
- ICMP:** International Commission for Missing Persons
- ICRC:** International Committee for the Red Cross
- ICTY:** International Criminal for the Former Yugoslavia
- IHL:** international Humanitarian Law
- JAG:** Judge Advocate General
- LOAC:** Law of Armed Conflicts
- NATO:** Noth Atlantic Treaty Organization
- ODIHR:** Office for Democratic in Human Rights
- SCK:** Specialist Chamber for Kosovo
- UCMG:** Uniform Code of Military Justice
- UN:** United Nations
- UNPROFOR:** United Nations Protection Force
- UNSC:** United Nations Security Council
- US:** United States
- WWII:** World War Two

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## 1. General introduction

This theme problematics of enforcement of the International Criminal Court's decisions is a crucial area in the field of international criminal law.<sup>1</sup> The problematics of enforcement of the international criminal court's decisions arise when a perpetration of a most heinous crime is due within a particular territory especially committed individually. Thus, in seeing how to apply international criminal decisions to hold offenders accountable of their illegal act and given that atrocities severely harmed thousands of people in the former Yugoslavia, an elaboration of conceptual and definitions of challenges that occurred in that time will be due<sup>2</sup>.

## 2. Background of the study

In 1991 within the former Yugoslavia, a wind of separation blew upon with clashes between Croatian and Serbian people due to the fact that Croatia and Slovenia deliberately expressed their desire to withdraw from the former Yugoslavia. Further, in April 1992 with Macedonia and Bosnia Herzegovina that were also stricken by the same wind of independence, leading to separation<sup>3</sup>. The Former Yugoslavia in that time was unified by Josip Broz Tito, a proponent of communism that attempted on unifying the former Yugoslavia. In this perspective his leadership of communism went on benefiting the populations of his bloc until he deceased<sup>4</sup>. Further, Lazar Kolisevski that continued with the same leadership that distinguished them between others before the breakup of the Balkans<sup>5</sup>.

The former Yugoslavia experienced series of political tensions that led to Serbian expansion with a system portraying an ethno-national system<sup>6</sup>. Thus, the autonomy of certain States like Slovenia and Croatia was not favoured and evidenced while others like Serbia, Macedonia, Montenegro in the same socialist block would enjoy a preferential

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<sup>1</sup> Rome Statute of the International Criminal Court, Part1, establishment of the Court, Article 1, page 9, evident at Rome Statute (2).pdf, accessed on 07/03/2024.

<sup>2</sup> Part 1, establishment of the court, Article 1, evident at Rome Statute (2).pdf, accessed on 07/03/2024.

<sup>3</sup> What is the former Yugoslavia? Evident at [icty.org/en/about/what-former-Yugoslavia](http://icty.org/en/about/what-former-Yugoslavia), accessed on 07/03/2024.

<sup>4</sup> Background: TITO'S Yugoslavia, evident at <https://europe.unc.edu/background-titos-yugoslavia/>, accessed on 08/03/2024.

<sup>5</sup> Yugoslavia: a Year Without Tito, evident at [cia.gog/readingroom/docs/DOC\\_0000372469.pdf](http://cia.gog/readingroom/docs/DOC_0000372469.pdf), 7<sup>th</sup> April, 1981, accessed on 08/03/2024.

<sup>6</sup> The conflicts, evident at [Icty.org/en/about/what-former-Yugoslavia/conflicts](http://Icty.org/en/about/what-former-Yugoslavia/conflicts), accessed on 08/03/2024.

treatment<sup>7</sup>. This autonomous act of separating from the Former Yugoslavia was contested by Serbia refusing to acknowledge their sovereignty as a member of the block and to be author of their choices. This conflict also as cause of bad managements in the Political sector upon which leaders used nationalist rhetoric to extend a common Yugoslav identity and shed a sentiment of fear and mistrust among different ethnic groups starting from 1991 that occasioned the break-up<sup>8</sup>. The countries in their pursuit of sovereignty went further on their decisions as the plague was ravaging their territories day after days. The blaming act of Serbia upon which considerable attacks against non-Serbs were unjustly dominating. This leadership of the former Yugoslavia went on oppressing in the Balkans as Serbia was a mighty military country in that time engendered by the Country leader Slobodan MILOSEVIC who militarily financed the conflict<sup>9</sup>.

This pretended freedom that the Slovenia, Croatia and Bosnia and Herzegovina felt , experienced was poorly perceived by the other States especially Serbia that actively protested through arms the choice of independence of Croatia and Slovenia with firearms perpetrated through insurgent groups who lived in Croatia . Increasingly acted on this issue that brought the involvement international criminal decisions via the International Criminal Tribunal for the Former Yugoslavia in 1993 to handle the sarcastic situation that faced the Former Yugoslavia<sup>10</sup>. Further the powering force of the United Nations in that time to assist the conflicting States by undertaking a processes of deploying United Nations force keeping to help them finding a solution<sup>11</sup>. In this process, some other States joined to it to provide and assist the involved parties to the conflict such as the conference on security and cooperation in Europe (CSCE) that aimed at planning for the complete restoration from the chaos namely the United Nations Protection Force<sup>12</sup> (UNPROFOR). The peacekeeping mission created in

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<sup>7</sup> Vesna Pesic, Serbian Nationalism and the Origin of the Yugoslav Crisis, United States Institute of Peace, evident at <https://www.usip.org/publications/1996/04/serbian-nationalism-and-origins-yugoslav-crisis>, accessed on 08/03/2024.

<sup>8</sup> Robert M. Hayden, Imagined Communities And Real Victims: Self Determination And Ethnic Cleansing In Yugoslavia, evident at <https://www.ucis.pitt.edu/nceeer/pre1998/1994-807-20-Hayden.pdf>, accessed on 08/03/2024.

<sup>9</sup> ,Louis Sell, Slobodan Milosevic And The Destruction Of Yugoslavia, 2002, Page 450, Duke University Press, evident at <https://doi.org/10.2307/J.Ctv1198w3c>, accessed on 08/03/2024.

<sup>10</sup> Bridging the Gap in Srebrenica, Bosnia and Herzegovina, evident at <https://www.icty.org/en/outreach/bridging-the-gap-with-local-communities/srebrenica>, accessed on 09/03/2024.

<sup>11</sup> United Nations Protection Force (UNPROFOR), evident at <https://www.canada.ca/en/department-national-defence/services/military-history/history-heritage/past-operations/europe/canengbat-mandarin-harmony-cavalier-medusa-panorama.html>, accessed on 09/03/2024.

<sup>12</sup> Former Yugoslavia-UNPROFOR, evident at [https://www.un.org/peacekeeping/mission/past/unprof\\_b.htm](https://www.un.org/peacekeeping/mission/past/unprof_b.htm), accessed on 09/03/2024.

February 1992 to address the affected party in conflicting areas called United Nations Protected Areas (UNPA) of the former Yugoslavia as well other European countries that wished to support in solving the conflict<sup>13</sup>. Due to this reason, the General Secretary mandated his envoy, Cyrus Vance, former United States Secretary of State, as his Personal Envoy for Yugoslavia to proceed with a consensual agreement between the parties<sup>14</sup>. Knowing that many measures prior to this process were due to resolve the conflict as it took precedent, the US Secretary General on behalf of United Nations on his role got involved by putting all his efforts to make the parties reaching an agreement that would restore their dignity and integrity as their both shared a common past over a long time<sup>15</sup>. This idea of uniting them did not stop on these measures but also went further with the jurisdiction of the International Criminal Tribunal for the Former Yugoslavia (ICTY) to punish rapes, aggressions, genocides, war crimes massive deportations, inhuman treatment as well as other inflicted massacres<sup>16</sup>.

However, some negotiations took place manifesting the willingness to stop the conflict such as the Dayton Accords 21<sup>st</sup> 1995 where the presidents of Bosnia, Croatia and Serbia assembled to have an agreement on the ceasefire within the former Yugoslavia and to establish a lasting peace and free movement in territories. While on their way to peace, the United Nations armed fights permitted by the United Nations to fight against the insurgents Serbs 21<sup>st</sup> February 1992 under the resolution 743, prohibition of flying in the conflicting areas and followed by a military training of Croatian militaries by the retired US military under the control of the president Bill Clinton rendered public 6 May 1994 aiming at defeating the Serbians<sup>17</sup>.

The problematics of enforcement of the International Criminal Court's decisions played an important role in the resolving of challenges that faced the former Yugoslavia from the inception till the completion via all the mechanisms developed and put in force for the

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<sup>13</sup> Ibid.

<sup>14</sup> Bosnia-Herzegovina—Vance-Owen Agenda For A Peaceful Settlement Did The U.N Doo Too Little ,Too Late To Support This Endeavor?evident at <https://digitalcommons.law.uga.edu/cgi/viewcontent.cgi?article=1575&context=gjicl.accessed> on 09/03/2024.

<sup>15</sup> U.N Peacekeeping In ‘Yugoslavia’:Background,Analysis And Lessons Learned,David.A.Mosinski,1981,evident at <https://apps.dtic.mil/sti/tr/pdf/ADA274108.pdf> ,accessed on 10/03/2024.

<sup>16</sup>Samuel Tanner, The mass crimes in the Former Yugoslavia:Participation,Punishment,Prevention?june 2008,volume 90,Number 870,evident at [https://international-review.icrc.org/sites/default/files/irrc-870\\_5.pdf](https://international-review.icrc.org/sites/default/files/irrc-870_5.pdf),accessed on 10/03/2024.

<sup>17</sup> Ivo H Daalder, Decision to intervene: How the war in Bosnia ended ,1<sup>st</sup> December,1998,evident at [Brookings.edu/articles/decision-to-intervene-how-the-war-in-bosnia-ended/](https://brookings.edu/articles/decision-to-intervene-how-the-war-in-bosnia-ended/),accessed on 11/03/2024.

restoration of the integrity of each people by bringing them to a final conclusion upon which an agreement of cease-fire between the conflicting States<sup>18</sup>. That is why the Bosnian Serb political leadership boycotted the independence, the Serbian forces attacked Bosnia leading to four years of brutal ethnic cleansing, genocide, and crimes against humanity all up until 1995 when the Dayton Agreement was signed between the conflicting States.

Therefore, the enforcement of the International Criminal Court' decisions played an important role to address the inhuman challenges that faced the Former Yugoslavia.

### **3. SIGNIFICANCE OF THE STUDY**

This research will be of an important significance to different kind of persons like researchers equipping them with tangible skills for the academic and scientific edification. This research will constitute a companion tool for anyone looking to strengthen his/her research in both internal and external domains of jurisdiction in law, it will be a guide on the problematics, functioning of enforcement of international criminal decisions, it provides guidelines for Ad-hoc tribunals work and their jurisdictions.

#### **3.1. Personal interest**

This research is undertaken to complete the academic requirements for getting my bachelor's degree in Law (LLB). In addition, it helped me to increase in knowledge, skills, on the different problematics of enforcement of the International Criminal Tribunal for the former Yugoslavia and how it functioned.

#### **3.2. Social interest**

The result of this study is of an important need since it shows how decisions enforced in the former Yugoslavia conflict went through, a designed plan on how the conflict was solved as well as remedies due for the complete restoration of peace between countries party to the problem.

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<sup>18</sup> Fatou Bensouda, Judge Theodor Meron, The ICC and the Yugoslav Tribunal: Upholding International Criminal Law? of April 2, 2014, Evident at [Chathamhouse.org/sites/default/files/field//field\\_document/201404021ICCYugoslav\\_Tribuna1\\_0.pdf](http://Chathamhouse.org/sites/default/files/field//field_document/201404021ICCYugoslav_Tribuna1_0.pdf), accessed on 12/03/2024.

### **3.3 Academic interest**

This research will be due as one of the academic exigencies for the achievement of a bachelor degree in law. It is important to consider that this research constitutes an academic manual for future researchers who may find it helpful in their research.

### **4. Scope of the study**

The research is constituted in reasons of domain, space and time. Thus, the research will cover international law, international criminal law, international humanitarian law, the Rome Statute, the ICTY Statute and other instruments to be use in the course of the study while dissociated from the scope. The research reflects on problematics of enforcement of the international criminal court decision: a case of ICTY,1990 onwards as the breakup is known to be effective during this time.

### **5. Problem statement**

The UN security council resolution 808,827 of 1993 and all related decisions on the sarcastic situation that oppressed lives in Former Yugoslavia shew forth for the bringing to justice of individuals responsible for core crimes<sup>19</sup>. In the same dynamic, the resolution 771 of 1992 urged all the parties to the conflict to reach a cease fire agreement between them for the stability of the region and to respect International Humanitarian Law in order to hold accountable mass crimes authors to justice basing on reproached acts<sup>20</sup>. Also, the article 1 of the International Criminal Tribunal for the former Yugoslavia (ICTY) Statute portraying the competence to prosecute individuals culpable of international humanitarian law stipulates that ‘serious violations of International Humanitarian Law committed in the territory of the former Yugoslavia since 1991 in accordance with the provisions of the present statute’. This makes us understand the intransigent character of both the UN security council and other attached instances their concern to enforce criminal justice on crimes authors through the exercise of the (ICTY) leading us to problematics of enforcement of international criminal decisions<sup>21</sup>.

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<sup>19</sup> Un security council resolution 808 of 1993,evident at [https://www.icty.org/x/file/Legal%20Library/Statute/statute\\_808\\_1993\\_en.pdf](https://www.icty.org/x/file/Legal%20Library/Statute/statute_808_1993_en.pdf) ,accessed on 10/03/2024.

<sup>20</sup> Un security council resolution 771 of 1992,evident at <http://hrlibrary.umn.edu/peace/docs/scres771.html>,accessed on 10/03/2024.

<sup>21</sup> The ICTY Statute of 1993,article 1,competence of the international tribunal, evident at [ICTY statute\\_sept09\\_en.pdf](https://www.icty.org/x/file/Legal%20Library/Statute/statute_sept09_en.pdf) ,accessed on 08/03/2024.

Problematics of enforcement in a conflict like the massacre that oppressed the former Yugoslavia is of an important relevance, to see how decisions emanating from the International Criminal Tribunal for the former Yugoslavia (ICTY) are to be put in place in a way that grave breaches of International Humanitarian Law be severely punished<sup>22</sup>. In the cases that the (ICTY) encountered many criminal decisions got enforced on perpetrators for the purpose of justice. They represent a capital element in this dissertation for it helped the (ICTY) through its panel to handle the inhumane challenges that encountered the former Yugoslavia. International Criminal Court' Decisions seen as decisions rendered on crimes perpetrators after being convicted by the international criminal tribunal proved conclusive in the former Yugoslavia as many most odious crimes offenders faced justice<sup>23</sup>.

The former Yugoslavia after being victim of the deadly massacre received the support of the international community in the beginning to justice starting in 1993 with resolutions 808 and 827 of the United Nations Security Council as well as further sanctions to restore peace after the deadly challenges that threatened peace since 1991. These international criminal decisions were only enforced on individuals after full convictions of crimes upon which they were reproached by the International Criminal Tribunal for the Former Yugoslavia (ICTY)<sup>24</sup>. The problematics of enforcement of the international criminal court' decisions takes in consideration the idea that criminal penalties must be enforced on individual criminally liable to most severe crimes denoting the human virtue of the international tribunal to condemn irrational acts that attempted on destroying and unbalancing the former Yugoslavia society. Further this process of legally enforcing international criminal decisions in the Former Yugoslavia by the (ICTY) proved sufficiently that an International criminal eye was on any atrocities that could strike the Balkans as mechanisms to deal with those crimes were adopted and enforced on perpetrators<sup>25</sup>.

Therefore, the problematics of enforcement of the international criminal court decisions played a crucial role in the story of the world especially in the pursuit of the enforcement of penal decisions on crimes perpetrators in the Former Yugoslavia for crimes of war, crimes

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<sup>22</sup> The Rome Statute of 1998, articles 7, 8 and 9, evident at [Rome Statute \(2\).pdf](#), accessed 08/03/2024.

<sup>23</sup> Ibid.

<sup>24</sup> UN security council resolution 827 of 1993, evident at [https://www.icty.org/x/file/Legal%20Library/Statute/statute\\_827\\_1993\\_en.pdf](https://www.icty.org/x/file/Legal%20Library/Statute/statute_827_1993_en.pdf), accessed on 08/03/2024.

<sup>25</sup> Ibid.



against humanity, crimes of aggression and crimes of genocide that civilians of that part of the globe endured<sup>26</sup>.

## **6. Research questions**

1. To what extent the decisions of the International Criminal Court for the former Yugoslavia were enforced?
2. What are the mechanisms that can be instituted to ensure effective enforcement of the international criminal tribunal decisions?

## **7. Research Hypotheses**

1. The enforcement of the international criminal decisions for the former Yugoslavia faced different challenges such as political intimidation and administrative weaknesses.
2. Legal and institutional mechanisms that could be adopted to ensure effective enforcement of the international criminal tribunal decisions.

## **8. Research objectives**

In this research, two different objectives are evident especially, general and specific objectives.

### **8.1. General Objective**

The objective of this research will be: shedding light on the problematics of enforcement of the International Criminal Court' decisions under International Criminal Law in Former Yugoslavia. It also encompasses all the relevant challenges, mechanisms used by the ICTY for peace.

### **8.2. Specific Objectives**

1. To Critically analyze the problems related to the enforcement of the decisions for the former Yugoslavia.

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<sup>26</sup> United Nations, International Criminal Tribunal for the Former Yugoslavia, evident at <https://www.icty.org/>, accessed on 09/03/2024.

2. To propose mechanisms meant to effectively guarantee the enforcement of International Criminal decisions.

## **9. Research methodology and techniques**

Research methodology can be referred to the way by which the research problem is addressed. In another term, the research methodology is essential and powerful tool by leading man towards progress<sup>27</sup>.

This research introduces research techniques in the documental technique especially in collection of findings, examination of collected data and its elaboration from the first concept up to the last one. For the success of the dissertation, this documentary technique have made possible to exploit the informations for the sake of research methods.

### **9.1. Research techniques**

Al through this research, the following techniques will be exploited.

#### **9.1.2. Documentary techniques**

The documentary technique is another data process meant for analysis of documents referring to this research. Therefore, several journals, books and dissertations were red.

### **9.2. Research Methods**

During this research, the next methods will be exploited.

#### **9.3. Doctrinal method**

The doctrinal research methodology relies on any research performed through law documents. As long as this work aligns with the concept, the researcher elaborates an analysis described with legal norms contained in primary sources, conventions and laws. The aim of this method is to put together essential instruments such as laws, books and journals to procure exploited sources by identifying the principal theme with it interconnections.

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<sup>27</sup> Pandley, Dr Meenu Mishra Pandey, Research methodology: Tools and techniques, evident at <https://www.euacademic.org/BookUpload/9.pdf>, accessed on 11/03/2024.

The elaborated method is of a crucial importance as it facilitates to detect ambushes as well as questions to the enforcement of the international criminal tribunal for the former Yugoslavia and provides answers to existing issues. Therefore, in doctrinal method we have findings, literature, case laws and commentaries.

#### **9.4. Analytical method**

The analytical method is method that focuses on critical analysis of a particular domain. It gives an assessment of a certain key concept with ideas to comprehend and provide solutions to challenges. Therefore, it makes us capable to understand the encountered problems with the purpose of proposing remedies in the research.

#### **9.5. Comparative method**

The comparative method is the process of critically analyzing several bodies of law to see how settlement of legal challenges could be treated in order to perfect the research. We compare international jurisdiction with national systems in a manner to address international criminal offenses.

### **10. Subdivision of the study**

This present work is subdivided in three main chapters namely the preliminary stages starting from general introduction to subdivision of the study. Chapter one focusing on literature review extracted from various texts books, definition of key concepts, internet, findings from different authors and summary. Chapter two reflecting on challenges of the problematics related to the enforcement of the ICTY's decisions as long as Chapter three is concerned with the mechanisms that can be adopted for effective enforcement of the ICTY's decisions. Therefore, the study ends by the general conclusion, recommendations and Bibliography.

## **CHAPTER 1: CONCEPTUAL AND THEORETICAL FRAMEWORK**

The problematics of enforcement of the international criminal court's decisions find sense when the perpetration of a most heinous crimes is due within a particular territory especially committed individually on one or more people<sup>28</sup>. The study of problematics of enforcement of the international criminal court's decisions involves the implication of both international criminal and domestic courts to address challenges that afflict innocents in a given territory like the breakup of the former Yugoslavia that occurred<sup>29</sup>. The area of our study reflects on the International Criminal Court Tribunal for the Former Yugoslavia (ICTY) to address inhuman atrocities that opposed the Serbian forces against the Croats, Slovenians and Bosnian Herzegovinians from 1990 onwards. It finds its way in the international criminal decisions applied on the core crimes authors after being proven guilty of such crimes by the tribunal<sup>30</sup>. Therefore it is highly needed in the field of international criminal law to understand the problematics of enforcement of international criminal court decisions in order to address core crimes and restore peace.

### **1.1. Definitions of key concepts**

This section covers the definitions of key concepts such as enforcement, international criminal court, international criminal court's decisions, international criminal tribunal for the former Yugoslavia, jurisdiction of international criminal law, immunity under international criminal law, prosecution under international criminal law, international humanitarian law, the notion of core crimes, jurisdictional conflicts and universal jurisdiction.

#### **1.1.1. Enforcement**

The term enforcement refers to the application of decisions of challenges encountered while facing specific problems. This concept as large as it is also brings us to understand the challenges faced during the enforcement of ICTY's decisions in the Former Yugoslavia

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<sup>28</sup> Trying individuals for genocide, war crimes, crimes against humanity and aggression, evident at <https://www.icc-cpi.int/>, accessed on 11/03/2024.

<sup>29</sup> The United Nations, International Criminal Tribunal for the former Yugoslavia, evident at <https://www.icty.org/en/about/what-former-yugoslavia/conflicts> , accessed on 11/03/2024.

<sup>30</sup> Ibid.

conflict that evidenced the violation International Humanitarian Law at a large scale<sup>31</sup>. Moreover, this principle on the international scenes never stopped on manifesting with International instances such as the United Nations through the United Security Council in its competence especially<sup>32</sup> in times of international conflicts facing challenges gravest crimes that require the application of treaties like the Geneva conventions of 1949, the Rome statute of the 17 July 1998 when it comes to international criminal offenses especially in the case of the Former Yugoslavia that represents the socle of this study.

The enforcement numerously used in international criminal conflicts such as the case of the Former Yugoslavia from 1990 to 1992 denotes important functions for the maintenance of international peace and security, pacific settlement of disputes and the regulation and use of force in international criminal conflicts.

### **1.1.2 International Criminal Court**

The purpose of having an international criminal court to try perpetrators of gross crimes predates the second world war consequences due between the allies and the Soviet Union. Meanwhile the idea being evident went through some elaboration namely just after the WWII to punish the odious acts that took place fifty years ago. In 9 December 1948 the General assembly gathered<sup>33</sup> to decide about the negative impact of mass crimes orchestrated during the second world war recognizing that severe inhumane treatments victimized thousands of civilians adopted the resolution 260 notably the convention on prevention and punishment of the crime of genocide. Supporting that, the general assembly drafted a statute on international crimes in 1951 further reviewed in 1953 that will be under the jurisdiction of an international

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<sup>31</sup> CHAO YI, The Role of International Criminal Law in the Global Legal Order, page 1, of 2015, evident at [The Role of International Criminal Law in the Global Legal Order.pdf](#), accessed on 15/03/2024.

<sup>32</sup> United Nations Charter. Chapter VII: Action with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression, Articles 39 and 40, evident on <https://main.un.org/securitycouncil/en/content/repertoire/actions#:~:text=It%20allows%20the%20Council%20to,restore%20international%20peace%20and%20security%22>, accessed on 15/03/2024.

<sup>33</sup> Preparatory commission of the International Criminal Court, proceeding, UN doc PCN ICC, 2001, /L.1/Rev1, evident at <https://documents.un.org/doc/undoc/ltd/n01/286/10/pdf/n0128610.pdf>, accessed on 12/03/2024.

criminal court to prosecute violators of this statute as well as measures to be applied once liable<sup>34</sup>.

Since this period the settlement of the international criminal court had been sequential in the year 1989, the general assembly ordered the resume to work of the elaboration of the international criminal court as severe offenses were evident without punishment, the request of Tadeusz in march,8,1995 as rapporteur of the human right commission for the former Yugoslavia disruption resulting in an odious massacre targeted against Bosnian Croats occurring in the beginning of the 1990s<sup>35</sup>.

Just after the elaboration of the drafted statute ordered by the general assembly, the new statute for the prosecution of international crimes on individuals criminal liability got ready in 1994 and submitted to the General Assembly. This did not stop at this level, went further with the creation of an Ad-hoc international criminal tribunal to have a strategic research on the missions of the ICC supported in two meetings in 1995. These meetings could be presented to the international diplomatic conference of 1998 in Roma to ratify the drafted provisions between States of the world<sup>36</sup>.

### **1.1.3. International Criminal Court decisions**

The term International Criminal Court's decisions refers to all decisions enforced by the International Criminal Court<sup>37</sup> (ICC) whether directly or indirectly. The 17<sup>th</sup> July, one hundred twenty (120) countries decided to adopt the jurisdiction of an international court to try individuals criminally liable to gravest crimes<sup>38</sup> namely crimes of genocide, crimes of war, crimes of aggression and crimes against humanity<sup>39</sup>. This idea appearing as the first of all times

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<sup>34</sup>Rome Statute of the International Criminal Court of 1998, evident at [Legal.un.org/icc/general/overview.htm](https://www.legal.un.org/icc/general/overview.htm), accessed on 12/03/2024.

<sup>35</sup> Question of the violation of human rights and fundamental freedoms in any part of the world, with particular reference to colonial and other dependent countries and territories, June 1978, evident at [hrlibrary.umn.edu/commission/country52/9-yug.htm](https://hrlibrary.umn.edu/commission/country52/9-yug.htm), accessed on 13/03/2024.

<sup>36</sup> Understanding the International Criminal Court, 2020, evident at <https://www.icc-cpi.int/sites/default/files/Publications/understanding-the-icc.pdf>, accessed on 14/03/2024.

<sup>37</sup> Rome statute, Understanding the International Criminal Court, page 6, evident at [Rome Statute \(2\).pdf](#), accessed on 14/03/2024.

<sup>38</sup> Article 17 of the Rome Statute, evident at [Rome Statute \(2\).pdf](#), accessed on 14/03/2024.

<sup>39</sup> Chapter XVIII, Penal Matters, Rome Statute Of The International Criminal Court, Rome, 17 July 1998, evident at [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XVIII-10&chapter=18&clang=\\_en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-10&chapter=18&clang=_en), accessed on 18/03/2024.

to have an international criminal court to condemn breaches of international humanitarian law over perpetrators of these crimes right in the aftermath of the entry into force of its Statute named as the Rome Statute on July 1998. This movement of international criminal decisions is also consecutive to severe atrocious acts that took place in the far East ,Europe with the Nazis war in November 1945 to October 1946 and the disintegration of the Former Yugoslavia that oppressed civilians in 1991-1992 at a large scale to have an international criminal court' decisions on authors of core crimes<sup>40</sup>.

The United Nations seen in that time as the strong international power attempted on handling these considerable offenses by deciding<sup>41</sup> to have an international criminal court that will have precedent over perpetrators of cores done in the Former Yugoslavia. The ICC decisions as the result of the international community to enforce criminal decisions on criminals enforced numerous decisions namely two (2) sentences coupled with 161 persons indicted for gravest crimes<sup>42</sup>. This conduct of the ICTY showed practically its involvement in the pursuit of justice over atrocities that the Former Yugoslavia faced resulting in its disintegration.

## **1.2 Establishment and jurisdiction of the International Criminal Tribunal for the Former Yugoslavia**

Just after experiencing a sery of gravest crimes in the 1990s, the Former Yugoslavia attracted the attention of the international community to address the challenges that negatively affected its populations<sup>43</sup>. This attention was captivated by the perpetration of core crimes namely crimes of aggression, against humanity, crimes of war, crimes of genocide<sup>44</sup> targeted on the non-Serb citizens living within the territories of the socialist block upon which they were all constituted by the establishment of an Ad-hoc international criminal tribunal for the former

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<sup>40</sup>Ibid.

<sup>41</sup> UN Security Council Resolution 827, 25<sup>th</sup> 1993, evident at [https://www.icty.org/x/file/Legal%20Library/Statute/statute\\_827\\_1993\\_en.pdf](https://www.icty.org/x/file/Legal%20Library/Statute/statute_827_1993_en.pdf), accessed on 18/03/2024.

<sup>42</sup> Paul Tavernier, The experience of the International Criminal Tribunals for the former Yugoslavia and for Rwanda of December 1997, page 3, evident at <https://international-review.icrc.org/sites/default/files/S0020860400077718a.pdf>, accessed on 20/03/2024.

<sup>43</sup> The role of International Community in conflict situation: which way forwards? Evident at [Journals.openedition.org/balkanologie/511?lang=en](https://journals.openedition.org/balkanologie/511?lang=en), accessed on 23/03/2024.

<sup>44</sup> War-crimes-in-yugoslavia-and-the-development-of-international-law, evident on <https://www.cambridge.org/core/services/aop-cambridge-core/content/view/B6596CC3840C9131AFA920D1C7BB919A/S0002930000017693a.pdf/war-crimes-in-yugoslavia-and-the-development-of-international-law.pdf>, accessed on 23/03/2024.

Yugoslavia to individually prosecute most heinous criminal crimes authors. The ICTY established in 2002 with its seats in the Hague after approving the Rome Statute of 1998 and other supporting manual serving as the support on which international criminal proceedings in the territories of the former Yugoslavia must be strongly punished as the conflict generated enormous consequences<sup>45</sup>.

The ICTY in its quality of international criminal justice enforcer was made up of three different chambers namely the pre-trial, the Trial and the Post-trial chamber which constituted the administration<sup>46</sup>. Each chamber was constituted of three judges, a registry, six Ad litem judges acting as deputies associated by the chamber of legal support hired by the registry general to give a hand to judges in the exercises of their functions to put in evidence the truth. Supporting that, the legal support tribunal assists<sup>47</sup> in investigation processes with the forensic personnel in ballistic, exhumation in the search of paternity between victims of rapes, DNA analysis in cases HIV infections on victims especially in forced sexual intercourses between rapers and raped people, in search of deported family. These chambers are controlled by the president and vice president of the court elected for a two-year mandate renewable once who is accountable to the UN security council by submitting an annual report and biannual assessments enlightening the advancement of the court as requires the Un resolution 1534 of 2004<sup>48</sup>. Indeed, the administration of the ICTY was of a capital importance as it could address the most heinous crimes perpetrated in the territories of the former Yugoslavia in the 1991 onward leading to a lasting peace between citizens.

### **1.2.1. The mandate of the International Criminal Tribunal for the Former Yugoslavia**

The mandate of the ICTY at the international criminal scene proved essential for the implementation of justice on those responsible for international criminal law during the former Yugoslavia conflict<sup>49</sup>.

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<sup>45</sup> ICTY manual on developed practices, evident at [icty.org/x/file/About/Reports/%20and%20Publications/ICTY, Manual\\_on\\_Developed\\_Practices.pdf](https://www.icty.org/x/file/About/Reports/%20and%20Publications/ICTY_Manual_on_Developed_Practices.pdf), accessed on 24/03/2024.

<sup>46</sup> Chambers, evident at [Icty.org/en/about/chambers](https://www.icty.org/en/about/chambers), accessed on 24/03/2024.

<sup>47</sup> Chambers legal support, evident at [Icty.org/en/about/registry/chambers-legal-support](https://www.icty.org/en/about/registry/chambers-legal-support), accessed on 25/03/2024.

<sup>48</sup> Completion strategy, evident at <https://www.icty.org/en/about/tribunal/completion-strategy>, accessed on 26/03/2024.

<sup>49</sup> Mandate and crimes under ICTY jurisdiction, evident at <https://www.icty.org/en/about/tribunal/mandate-and-crimes-under-icty->



The mandate of the ICTY explains the prosecution of individuals who go against the Geneva conventions of 1949 namely breaches of laws of war, perpetration of the crime of aggression, genocide and against humanity<sup>50</sup>. The United Nations Security Council resolution 808 of 1993 on the prosecution of violators of gravest crimes in the former Yugoslavia was launched after observing a negative considerable impact of atrocities within them. Populations being affected by those inhuman acts were subject to forcible deportations, rapes, slaughters, crimes of genocide targeted against non-Serbs, mass killings in regions like Banja luka, potocari, Belgrade, Zagreb and more aiming at cleansing the territories from every foreigner as for some Serb separatists Croats and Bosnians were filling up the region to the point the society resembled to a non-Serb region<sup>51</sup>.

In addition, the ICTY mandate through the article 1 and 6 grants right to prosecute individuals breaching IHL norms in the region by enforcing criminal judgements on them<sup>52</sup>. This mandate also goes to high ranking officers of the region specifically political and military leaders whenever culpable of the most heinous crimes in the former Yugoslavia to be sued<sup>53</sup>. The ICTY was held for a specific time namely 1993 onwards to hold perpetrators accountable before the court that is situated seated in the Hagues, Netherlands<sup>54</sup>. The coming of the ICTY through its mandate at the international level shew that no place for impunity is left to corrupt the society as the plague left a chaos making innocent to suffer from it. The United Security Council (UNSC) on this initiative has several times accompanied the exercise of the ICTY for a successful implementation of justice upon those alleged with the most heinous crimes. The UNSC participated in the selection process of the tribunal officers to fairly and effectively render justice on offenders, granting some funds for the functioning of the court, training of personnels, protection of victims and witnesses and necessary support that could be need for the success of the implementation of international criminal justice in former Yugoslavia<sup>55</sup>.

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[jurisdiction#:~:text=The%20Tribunal%20has%20authority%20to,genocide%20and%20crime%20against%20humanity,accessed 27/03/2024.](#)

<sup>50</sup> Ibid.

<sup>51</sup> [Resolution 808 of the UNSC of 1993](#), evident at [https://www.icty.org/x/file/Legal%20Library/Statute/statute\\_808\\_1993\\_en.pdf](https://www.icty.org/x/file/Legal%20Library/Statute/statute_808_1993_en.pdf), accessed on 28/03/2024.

<sup>52</sup> [ICTY Statute](#), articles 1 and 6, evident at [ICTY statute\\_sept09\\_en.pdf](#), accessed on 01/04/2024.

<sup>53</sup> [ICTY Statute](#), preamble, evident at [ICTY statute\\_sept09\\_en.pdf](#), accessed on 01/04/2024.

<sup>54</sup> [ICTY Statute](#), Article 8, evident at [ICTY statute\\_sept09\\_en.pdf](#), accessed on 03/04/2024.

<sup>55</sup> [Support and donations](#), evident at <https://www.icty.org/en/content/support-and-donations>, accessed on 03/04/2024.

Therefore, the mandate of the ICTY for the prosecution of offenders of core crimes was of a capital importance to stop the horrible acts that threaten the peace across the region as a large number of civilians were martyred innocently<sup>56</sup>.

### **1.3. Jurisdiction under International Criminal Law**

The International Criminal Law is the branch of International Law that deals with the perpetration of the most heinous crimes, the regulation of States behaviors, and whose individuals can be authors at the national or international level<sup>57</sup>.

In international Criminal Law, a series of international crimes are taken into account leading to the violation of international norms. These crimes are crimes of genocide, of aggression, crimes of war and crimes against humanity committed in a specific territory of a State. On this, it constitutes a breach of International Criminal Law. It also expands in the area of ways through which those breaches were conducted and the judgement to be implemented on crimes offenders as only individuals are to be accounted for to reproached allegations<sup>58</sup>. Those most heinous crimes only happened in a given territory and are prosecuted once found convicted of them by criminal tribunals or international court if domestic courts are incompetent of assessing the reproached crime on the offender. They are meticulously treated by competent authorities from the pre-trial, trial and post-trial stage to prove the violation of international criminal law. Finally in the international criminal law, a number of international principles must be respected to not be liable on the core crimes perpetration especially *jus cogens* in prohibition of slavery, inhuman tortures, rapes, killings and any other sort of mistreatments<sup>59</sup>.

#### **1.3.1. Immunity under international criminal law**

Immunity is the privilege enjoyed and allocated to specific persons for the exercise of a duty and whose recognition is given by domestic and international law for the exercise of their

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<sup>56</sup> United Nations, International Criminal Tribunal for the former Yugoslavia, About the ICTY evident at <https://www.icty.org/en/about>, accessed on 05/04/2024.

<sup>57</sup> International Criminal Law, evident at [https://www.law.cornell.edu/wex/international\\_criminal\\_law](https://www.law.cornell.edu/wex/international_criminal_law), accessed on 05/04/2024.

<sup>58</sup> Ibid.

<sup>59</sup> *Jus cogens*, evident at [https://www.law.cornell.edu/wex/jus\\_cogens#:~:text=Jus%20cogens%2C%20or%20compelling%20law,English%20term%20%E2%80%9Cperemptory%20norm](https://www.law.cornell.edu/wex/jus_cogens#:~:text=Jus%20cogens%2C%20or%20compelling%20law,English%20term%20%E2%80%9Cperemptory%20norm), accessed on 07/04/2024.

authority from any restrictions and pressure. This privilege is only given to diplomats, parliamentarians, United Nations officials and high dignitary persons in countries<sup>60</sup>.

Immunity is a privilege attributed to special persons for the exercise of their functions and that is not to be seen unrelievable once liable of prohibited acts, offenses or international crimes. It is allocated but also can be subject of relief in circumstances of breach of international conventions, statutes and other international instruments aimed at regulating the relationship of individuals in society. For some officials in the world, they seen as superior to norms due to the high official rank they enjoyed by making abstraction of legal norms for the benefit of their own satisfaction<sup>61</sup>.

This bring them to the prosecution for reproached crimes after committing and being liable to alleged acts before a competent legal jurisdiction like Radovan Karadzic that went beyond the authority that was attributed to him by ordering the massacre of a big number of innocents in the territory of Belgrade. Radovan Karadzic committed war crimes and crimes of genocide and attempt on having an arrangement with Richard Holbrooke by saying that if he withdraws from his position of high military officer, I will not be liable to the crimes he perpetrated while on power. Radovan confused by trusting the US diplomat Richard on the so-called immunity that he would enjoy even if he happens to be prosecuted by the international criminal tribunal for the former Yugoslavia, he will not be found guilty for he is attributed immunity. Meanwhile, this process of immunity regarding Radovan did not went further as the offer and so-called immunity that was raised by Richard did not process even if the immunity was discussed by them and some officials of the tribunal. In addition, Radovan under the pressure of the reproached crimes by the ICTY argued the prosecution of the tribunal on him for according to him the issue was discussed by some members of the UN security council and that basing on this offer of Richard he is entitled to immunity and could not be tried<sup>62</sup>.

The court after ruling over the case, searching on the somehow document pretending to allocate immunity to Radovan Karadzic, found that the document upon which he leaped was by no means relevant to the immunity he was seeking for<sup>63</sup>. Moreover the court after a deep

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<sup>60</sup>The practical guide to humanitarian law, Immunity, evident at <https://guide-humanitarian-law.org/content/article/3/immunity/>, accessed on 07/04/2024.

<sup>61</sup> Article 27,2 of the ICC Statute.

<sup>62</sup> Ibid.

<sup>63</sup> Dapo Akande, Immunity and International Criminal Tribunals, December, 2008, evident at <https://www.ejiltalk.org/immunity-and-international-criminal-tribunals/>, accessed on 08/04/2024.

assessment of the case supported its decision on it by saying that any immunity agreement in regarding accused people indicted for crimes of genocide, crimes of aggression, crimes of war and crimes against humanity is null and void under international criminal law<sup>64</sup>.

Therefore, the court after strongly elaborating the question of immunity regarding Radovan Karadzic did not agree on the exemption of the perpetration of atrocities committed by him and condemned with the strongest energy the crimes reproached to him<sup>65</sup>.

### **1.3.2. Prosecution under international Criminal law**

Prosecution under international criminal law refers to the process of trying to the court individuals liable of the most heinous crimes like war crimes, genocide, crimes of aggression and crimes against humanity to criminal competent jurisdiction to be judged by the justice. This process is only done by the ICC as the one which has mandate over international criminal crimes and to address them legally<sup>66</sup>.

Consecutive to the atrocities that took place in the territories of the former Yugoslavia, an important need of holding crimes offenders to an international criminal court for crimes committed on July 17<sup>th</sup> 1998 by 120 States in Rome and to have Statute that codifies it<sup>67</sup>. In that day as states gathered in Rome to see how odious crimes can be punished as impacts were considerable in the globe after the Former Yugoslavia massacre and beyond. The ICC being established in 2002 with its seats in the Hague, had its statute evident called the Rome Statutes to prosecute individuals responsible for serious crimes across the globe<sup>68</sup>. This Statute has for prerogatives to prosecute crimes authors through international criminal means like the International Criminal Court or its Ad-hoc tribunals as it was the case in the former Yugoslavia and other IHL violations perpetrated across the world. The international criminal prosecution enters into play once notified of International Humanitarian Law or any other prohibited actions by the international community either by domestic jurisdictions or after a referral by

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<sup>64</sup> ICTY Statute, article 7,2, evident at [ICTY statute\\_sept09\\_en.pdf](#), accessed on 09/04/2024.

<sup>65</sup> Ibid 55.

<sup>66</sup> Ibid 51.

<sup>67</sup> Rome Statute, preamble, evident at [Rome Statute \(2\).pdf](#), accessed on 09/04/2024.

<sup>68</sup> Rome Statute, what is the international criminal court? page9 of the Rome Statute, evident at [Rome Statute \(2\).pdf](#), accessed on 10/04/2024.

the Un security council on the violation of international humanitarian law. The United Nations Security council supports the ICC in its fight against core crimes to address them<sup>69</sup>.

To proceed, the ICC to start the prosecution must first verify the relevancy of the committed crimes, if they coincide with the most heinous crimes especially the crime of war, crimes against humanity, crime of genocide and the crime of aggression to be subject to prosecution<sup>70</sup>. This preliminary stage can be done by domestic courts especially the country where the offense occurred, by the international criminal court after receiving a referral from the UNSC to undertake investigations overseen by the Office of the prosecutor general. This office is independent of its actions pertaining gravest crimes, it checks the authenticity of the most heinous crimes through available evidences and starts investigations once appropriate with arrest warrants and refer the offenders to the panel of judges to further assess the case supported with the proves presented by the prosecutor general<sup>71</sup>.

In addition, to the pre-trial stage, a second stage is due after being investigated by the prosecutor general to further prove beyond a reasonable doubt the liability of the offender to alleged crimes. At this stage the bench of judges must provide sufficient provisions to justify the guilt brought before their panel for assessment through legal means. This process may also be subject additional investigations to assert the commission of acts be thou in conformity of the reproach core crime or to bring more light on the issue to be treated. This step of supplementary investigation being conclusive leads to the issuance of a verdict then a sentence can be enforced. However, the sentence being enforced cannot exceeds a thirty years term and can be subject to appeal by both the defence side and the prosecutor<sup>72</sup>.

The appeal can only be effective after the seating of five judges that have been involved in the trial as well as in the pre-trial chamber. After these two first stages, comes the post-trial stage that deals with the pronouncement of the final verdict by the panel of judges over the offender basing on charges brought against him<sup>73</sup>.

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<sup>69</sup>[Rome Statute](#), relationship of the court with the United Nations, article 2, evident at [Rome Statute \(2\).pdf](#), accessed on 13/04/2024.

<sup>70</sup> [Rome Statute](#), articles 5,6,7 and 8, page 10-11, evident at [Rome Statute \(2\).pdf](#), accessed on 13/04/2024.

<sup>71</sup> [Trying individuals for genocide, war crimes, crimes against humanity and aggression](#), Office of the prosecutor, evident at <https://www.icc-cpi.int/about/otp>, accessed on 13/04/2024.

<sup>72</sup> *ibid*

<sup>73</sup> *ibid*

Therefore, the prosecution under international criminal law, necessitates a broad approach over gravest crimes committed as allegations must be reliable, proven and examined. It does not rely on imaginary facts that do not occur but only in violations of IHL norms in order to be sentenced accordingly<sup>74</sup>.

#### **1.4. International Humanitarian Law**

Important struggles have been due to understand customs ,partakers and rules of wars as the impacts of gravest crimes were numerous<sup>75</sup>.Meanwhile, It was not evident until the second part of the world war II that international conventions structuring warfare,combining norms and protections of victims of armed issues took precedent<sup>76</sup>.

The International Humanitarian Law (IHL) is this branch of International Law that regulates relations between States, international organisations through norms. It is the branch of public international law that consists of rules in times of armed conflicts, go deep in humanitarian grounds, by assisting persons who are not or are no more directly participating in hostilities and to prevent ways and strategies of warfare<sup>77</sup>.In a large manner, IHL aligns with international conventions and customs of norms especially rules considered by States in their regular practice followed by obligations.

This aggregate of norms like the prohibition to injure or kill civilians that can no more take part in the war is specifically seen to handle humanitarian problems stemming directly from armed conflicts, whether of an international or non-international character<sup>78</sup>.By consequence Durfour, a promotor of IHL practices affirmed that ‘we need to see through examples as vivid as those you have reported ,what the glory of the battlefield produces in terms of torture and

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<sup>74</sup> Post world war II developments, evident at <https://www.britannica.com/topic/international-criminal-law/Post-World-War-II-developments>,accessed on 15/04/2024.

<sup>75</sup> Elchin Mamedov,ICRC, What are the origins of International Humanitarian Law? , evident at <https://blogs.icrc.org/ilot/2017/08/07/origins-international-humanitarian-law/>,accessed on 16/04/2024.

<sup>76</sup> Ibid.

<sup>77</sup> Ibid.

<sup>78</sup> ICRC,International Humanitarian Law, Answers to your questions, December 2014, evident at <https://www.icrc.org/sites/default/files/external/doc/en/assets/files/other/icrc-002-0703.pdf>,accessed on 16/04/2024.

tears<sup>79</sup>.’Therefore, IHL is meant to regulate behaviours between parties to international conflicts through humanity principles for a protected and safe world<sup>80</sup>.

### **1.5. The notion of core crimes**

Core crimes refer to most severe International Criminal offenses condemned by the International Criminal Law. These criminal offenses known as core crimes are violations of crimes of war<sup>81</sup>, crimes against humanity<sup>82</sup>, crimes of genocide and crimes of aggression<sup>83</sup> targeted on human beings and whose jurisdiction falls under the International Criminal Court (ICC)<sup>84</sup>. The speed growth of the International Criminal Law has boosted an important jump facilitating its codification at the global scale for generated impacts severely deprived the mankind integrity across many regions of the world namely the Former Yugoslavia that was negatively impacted from 1990 onward.

That is why an expectant need to have an Ad-hoc tribunal for the Balkans perpetrators of the most heinous crimes went forward to condemn inhumane acts committed in the afflicted regions such as Krajina, Potocari, Zagreb and more. The region faced serious IHL breaches namely ‘Violations of the laws or custom of war, including murder, ill-treatment or deportation of civilians in occupied territory, murder or ill-treatment of prisoners of war,

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<sup>79</sup> ICRC, Humanitarian work during the Chaco war, September 6, 2025, evident at <https://www.icrc.org/en/document/humanitarian-work-during-chaco-war>, accessed on 18/04/2024.

<sup>80</sup> British Red Cross, Introduction to International Humanitarian Law, evident at <https://www.redcross.org.uk/about-us/what-we-do/protecting-people-in-armed-conflict/international-humanitarian-law#Universal>, accessed on 19/04/2024.

<sup>81</sup> Bryan Garner, Black’s Law Dictionary, 9<sup>th</sup> edition, West Group 2009, 1720.

<sup>82</sup> Convention on the prevention and punishment on the crime of genocide, evident at [https://www.un.org/en/genocideprevention/documents/publications-and-resources/Genocide\\_Convention\\_75thAnniversary\\_2023.pdf](https://www.un.org/en/genocideprevention/documents/publications-and-resources/Genocide_Convention_75thAnniversary_2023.pdf), accessed on 25/04/2024.

<sup>83</sup> Rome Statute, Crimes within the jurisdiction of the court, Article 5, evident at [file:///F:/Rome%20Statute%20\(2\).pdf](file:///F:/Rome%20Statute%20(2).pdf), accessed on 29/04/2024.

<sup>84</sup> Rome Statute, Jurisdiction, Admissibility and Applicable Law, part 2, article 5, page 10, evident at [file:///F:/Rome%20Statute%20\(2\).pdf](file:///F:/Rome%20Statute%20(2).pdf), accessed 29/04/2024.

killing of hostages, plunder of public or private property, wanton destruction of municipalities and devastation not justified by military necessity<sup>85</sup>”

Yet, the influences of gravest crimes oppressed populations in the Former Yugoslavia, The United Nations through its peacekeeping missions was minimised on acting with the ICRC for the pursuit peace. In 1991<sup>86</sup>, the International Committee of the Red Cross took an important step by involving in the massacre of the Former Yugoslavia providing assistance to victims of war especially giving protection to prisoners, wounded, tracing of families, providing shelters to deported civilians as well as other form of protections required by the International Humanitarian Law.

## **1.6. Jurisdictional conflicts**

The identification and elaboration of jurisdictional conflicts between the ICTY and national courts can be evident in the implementation of core crimes judgements<sup>87</sup>.

It takes into account cases, challenges where both jurisdictions affix their authority on the same infringement ,exploring tangibly the legal involvement of possible solutions to address these issues that affected thousands of victims in the former Yugoslavia<sup>88</sup>. In jurisdictional conflicts, an important need is to understand which jurisdiction is to act on the matter as it question of relevancy in international criminal law. Supporting it, many cases regarding the ICTY massacre took place specifically in times of investigation and indictments on persons criminally liable to determine which among the ICTY and national courts fit for a case as both of them share competencies in core crimes. It brings to know that a primacy is given over the international criminal tribunal for the former Yugoslavia (ICTY) upon related cases to enforce justice as the rule 9 of the rule of procedure of the ICTY says<sup>89</sup>.

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<sup>85</sup> Geneva Conventions of 12 August 1949, article 6, evident at <https://www.icrc.org/sites/default/files/external/doc/en/assets/files/publications/icrc-002-0173.pdf>, accessed on 28/04/2024.

<sup>86</sup> ICRC, The ICRC and the conflict in the former Yugoslavia, International Committee of the Red Cross, page 1, evident at <https://international-review.icrc.org/sites/default/files/S0020860400071011a.pdf>, accessed on 28/04/2024.

<sup>87</sup> Colonel James Burger, chapter xviii environmental aspects of non-international conflicts: The experience of Former Yugoslavia, evident at <https://digital-commons.usnwc.edu/cgi/viewcontent.cgi?article=1526&context=ils>, accessed on 29/04/2024.

<sup>88</sup> International Criminal Tribunal for the Former Yugoslavia ,evident at [worldwithoutgenocide.org/genocides-and-conflicts/bosnia/icty](http://worldwithoutgenocide.org/genocides-and-conflicts/bosnia/icty), accessed on 29/04/2024.

<sup>89</sup> ICTY Statute, Article 9(1), evident at [ICTY statute\\_sept09\\_en.pdf](#), accessed on 30/04/2024.



Meanwhile in certain circumstances, the ICTY under the rule 11 of the rule of procedure of the tribunal can transfer a case to national courts if necessary and that a such case will be fairly treated according to the international criminal standards such as the Rome Statute that can be subject of a monitoring during the first up to the last phase of the trial like the prosecutor v Radovan Stankovic that was handed over to the Bosnian court to be criminally affixed with offenses for crimes against humanity and violation of customs of war committed against innocents<sup>90</sup>. That is why the ICTY requested domestic courts to hand over cases from affected regions to assess them.

### **1.7. Universal Jurisdiction**

Universal jurisdiction plays a crucial role in the implementation of international law in prosecuting through domestic courts individuals who are convicted of breach of international norms<sup>91</sup>.

Universal jurisdiction as an entrusted authority to national courts helped in the enforcement of international justice where serious IHL norms have been violated to address challenges<sup>92</sup>. During the former Yugoslavia breakup a big number of crimes were committed such as crimes of war, against humanity, of genocide and crimes of aggression threatening the stability of populations from 1991 onwards. In universal jurisdiction, States desiring to prosecute violations of International Humanitarian Law. They have to provide evidences such as territoriality, nationality, interests and any other elements justifying their prosecution of the said individuals to be accountable before their jurisdiction<sup>93</sup>.

Moreover, in Serbia a law on Organization and Competent ices of Government Authorities was adopted to try any commission of crimes of war, against humanity in 2003 as consequences were numerous. This provision came to have jurisdiction of IHL breaches within the territory of the Former Yugoslavia to address the most heinous crimes authors irrespective of their nationality and ranks. This provision arose consecutively to the high

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<sup>90</sup> The International Criminal Tribunal for the Former Yugoslavia, Radovan Stankovic case, evident at <https://www.icty.org/x/cases/stankovic/ind/en/stan-3ai031208.htm>, accessed on 01/05/2024.

<sup>91</sup> International Justice Resource Center, Universal Jurisdiction, evident at <https://ijrcenter.org/cases-before-national-courts/domestic-exercise-of-universal-jurisdiction/>, accessed on 01/05/2024.

<sup>92</sup> Ibid.

<sup>93</sup> Repertory of practice of United Nations Organs, Charter of the United Nations, article 2(1), evident at <https://legal.un.org/repertory/art2.shtml>, accessed on 01/05/2024.

number of displaced people in in Serbia and within the other countries of the former communist bloc<sup>94</sup>. Universal jurisdiction finds its way in daily situations we encountered especially in core crimes commission in the society. It is neither a testament nor a theory upon which people can say I cannot allow my citizens to be prosecuted by any States<sup>95</sup>.

Further, universal jurisdiction promotes the protection of individuals against any inhuman treatment that may occur in society<sup>96</sup>. In the convention against torture and other cruel inhuman treatment regarding political and civil rights specifically in article 5 and 7, nobody is to be subjected to torture or degrading treatment. This aligns with the full respect of human beings as they have to be treated fairly before any unforeseen situations be thou harming or not harming they have right to be humanly treated<sup>97</sup>.

In this dynamic, States parties to this convention had to enforce justice on those liable to acts of tortures and other related acts to restore peace and that through their judicial and legislative power must put measures to minimise impacts. These impacts namely forcible displacement of individuals from a certain place to another, rapes, assaulting of innocents, mass killings and other forms of mistreatments that human beings may endure to ensure their security<sup>98</sup>. States enforcing justice upon indicted individuals have to be in compliance with its penal law provisions basing on the gravity, nature and other attached norms to affix the deserved judgement of crimes perpetrators as stated in article 4 and 5 of the convention against torture and other forms of degrading treatments on human beings. It is a firm assurance that universal jurisdiction is true impartial to be applied on any individuals that go against it, and on territories where its resolutions are ratified coupled with requirements to be prosecuted for violation of IHL principles<sup>99</sup>.

Therefore, universal jurisdiction plays a crucial role in the implementation of both international and criminal justice within the territories of states that are parties to it<sup>100</sup>.

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<sup>94</sup> OSCE, mission to Serbia and Montenegro The law on Organisation and competence of government authorities in war crimes proceedings, article 3, page 1, evident at <https://www.osce.org/files/f/documents/1/4/18571.pdf>, accessed on 02/05/2024.

<sup>95</sup> Ibid.

<sup>96</sup> Convention against torture and other cruel, inhuman or degrading treatment or punishment, evident at <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading>, accessed on 02/05/2024.

<sup>97</sup> Ibid.

<sup>98</sup> Ibid.

<sup>99</sup> Factsheet: Universal Jurisdiction, evident at <https://ccrjustice.org/home/get-involved/tools-resources/fact-sheets-and-faqs/factsheet-universal-jurisdiction>, accessed on 02/05/2024.

<sup>100</sup> Ibid.

## **1.8. Legal framework for the problematic of enforcement of ICC's decisions under ICTY**

The literature review on the problematics of enforcement of the International Criminal Court decisions under ICTY deeps into the legal framework structuring the relationship between international and national courts.

It emphasizes on the culpability of individuals on the most heinous crimes committed in the former Yugoslavia as it is of a capital necessity<sup>101</sup>. Important documents cover, the Rome Statute, the International Criminal Court Statute, the International Criminal Tribunal for the former Yugoslavia Statute and domestic legislation enforcing international requirements. These materials explore the principles of complementarity and priority to apply a coherent framework for the problematic of enforcement of the ICC's decisions under ICTY.

## **1.9. Historical Background of The International Criminal Court**

The purpose of having an International Criminal Court to try perpetrators of gross crimes committed predates the World War two<sup>102</sup>.

This purpose came to evidence in the aftermath of the WWII through the settlement of ad-tribunals, the far east tribunal and the Nuremberg tribunal for serious violations of International Humanitarian Law that took place. In this dynamic the United Nations had a commission to work on the elaboration of an international criminal tribunal that would be enforcing justice especially to condemn violators of core crimes across the globe from 1948 to 1954<sup>103</sup>. To the efforts of its elaboration in the 1950s, the idea to have an international criminal court went unproductive due to the evidence of the cold war between parties. Later in the pursuit of it from 1968 till 1974, a revival on importance on ICC came back to fight against the scourge of impunity that stroke the world<sup>104</sup>.

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<sup>101</sup> War crimes trials in former Yugoslavia, evident at [Hrw.org/reports/1995/Yugoslavia](https://www.hrw.org/reports/1995/Yugoslavia), accessed on 03/05/2024.

<sup>102</sup> United Nations, Office of legal affairs, evident at [untreaty.un.org/unts/1\\_60000/2/35/00003709.pdf](https://untreaty.un.org/unts/1_60000/2/35/00003709.pdf), accessed on 03/05/2024.

<sup>103</sup> The annual report of the international law commission of 1993, page 63, evident at [https://legal.un.org/ilc/publications/yearbooks/english/ilc\\_1993\\_v1.pdf](https://legal.un.org/ilc/publications/yearbooks/english/ilc_1993_v1.pdf), accessed on 04/05/2024.

<sup>104</sup> International Criminal Court, Preparatory commission of the icc, proceeding of 10<sup>th</sup> session, evident at <https://legal.un.org/icc/prepcomm/prepfra.htm>, accessed on 04/05/2024.

Serious atrocities coupled with grave breaches of the international humanitarian law kept on victimizing millions of people across the globe. For almost eighty-six million of civilians lost life, forced to be disabled, and even deprived from their rights, expropriated from their homes and belongings since the end of the World War two. The experience of these atrocities brought to a certain existence of international criminal justice from the international community with numerous mass crimes committed to be prosecuted. Therefore, the presence of ICC's jurisdiction on the international scene proves that the fight against impunity is a serious concern for a world that tackles most heinous crimes nowadays.<sup>105</sup>.

### **1.9.1. Case Of The Appeals Chamber Of Simatovic and Stanisic**

The Appeals Chamber gathered on the case Stanisic and Simatovic respectively head of security of the internal ministry and division security of Serbia were indicted on perpetration of murder, forcible deportation of non-Serb populations, inhuman tortures in Croatia and Bosnia and Herzegovina committed from April 1991 to December 1995. The judgement was rendered in this case by the Trial Chamber after being proved of alleged charges<sup>106</sup>.

Assessing the Stanišić's submission that the United States Decision is the most recent and preponderant interpretation of common law aiding and abetting liability and that it is directly relevant and supports submissions raised in Ground 1 of his appeal against his conviction for aiding and abetting crimes of genocide, of war and against humanity on non-serb populations in Croatia and Bosnia nad Herzegovina<sup>107</sup>. In addition, the motion being clear on the United States decision in bypassing the arguments raised in Stanišić's appeal and, therefore, does not relate to any variation of a ground of his appeal and the Appeals Chamber has not directed the parties to make additional submissions. Furthermore that the Appeals Chamber is not liable by the findings of other courts, including domestic courts coupled that Stanišić has not demonstrated that the United States given that two health examinations were done on Stanisic

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<sup>105</sup> Draft for international criminal court, in report of international law commissions, the work of 46<sup>th</sup> session, evident at <https://www.legal-tools.org/doc/39a534/pdf/>, accessed on 06/05/2024.

<sup>106</sup> Case of Jovica Stanisic and Franko Simatovic, evident at <https://www.icty.org/en/sid/11329>, accessed on 06/05/2024.

<sup>107</sup> Ibid.

to prove its innocence before the court. The court decision is appropriate in jurisprudence that must be considered by the Appeals Chamber for a fair determination of his appeal<sup>108</sup>.

Confirming that Stanišić has not presented a valid justification for the Appeals Chamber to admit the United States decision in accordance with his appeal request, the court rejected the motion.

Lastly, the Hague ordered that Stanisić and Simatović must stay under custody of 3 years additional to the 7 years already served for release in jail<sup>109</sup>. This supporting the irrelevancy of compromises between non-legal officer to perpetrators attempting to use of their prestigious ranks to make offenders to escape justice. It relates to the principle of command and superior responsibility that is a breach in the ICC statute namely in article 28<sup>110</sup>. It is important to note that whenever individuals enter into illegal compromises must face legal consequences as the law is not a respecter of persons.

### 1.10. Comparative studies

The literature review covers comparative studies between a range of jurisdictions to evaluate the implementation of the problematic of enforcement. The studies in this research document may seek to analyse activities of external and internal courts such as the ICTY and the former Yugoslavia national criminal courts in requiring a certain collaboration with the justice bench and prosecutors in the implementation of international criminal justice. By assessing different kind of approaches, scholars aim to identify brilliant practices for a good improvement<sup>111</sup>. This enlarges in a redress on issues linking the exogenous and endogenous courts for the efficiency

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<sup>108</sup> Appeal judgement of Jovica stanisić, evident at <https://www.irmct.org/en/news/appeal-judgement-prosecutor-v-jovica-stanisić-and-franko-simatović-scheduled-31-may-2023>, accessed on 07/05/2024.

<sup>109</sup> Ibid, page 24.

<sup>110</sup> Rome Statute, article 8, war crimes, evident at [Rome Statute \(2\).pdf](#), accessed on 07/2024.

<sup>111</sup> John B. Allcock, The International Criminal Tribunal for the Former Yugoslavia, page v-vi, evident at [https://d1wqtxs1xzle7.cloudfront.net/16695571/report-10g-libre.pdf?1390865053=&response-content-disposition=inline%3B+filename%3DThe\\_International\\_Criminal\\_Tribunal\\_for.pdf&Expires=1725955213&Signature=emFwXd1en3AH-hqNJCXKFJDYt9kkMFkSrnBbMwLqw6JNqdUaxUTTSMYWRkUm916GVgBIK--mjWzSLzLJsbObF1s5DIFigCe7J35Ush1P-IpPoGaDScoGdFIhFio3OorecQQH3OQ5xnngZXjREEWcAaCbQ9FXfz6W4ldg12w~9oL8x-v2djFAZwxMkOf-z7o14-yddBnF4eD4w77M9Si0w3I2zY4jQgB8POMYLQsYnfcThhOfVK~4zhDkCr4iK~~QEhNDwm0HkCGRVNW~FA~RguDrbydrkgeBA~7Ehj9~wU6UeA5Xh3~uQ5r~D5xqiWPPZ476x2w8sdrD1Xuz7jIg\\_\\_&Key-Pair-Id=APKAJLOHF5GGSLRBV4ZA](https://d1wqtxs1xzle7.cloudfront.net/16695571/report-10g-libre.pdf?1390865053=&response-content-disposition=inline%3B+filename%3DThe_International_Criminal_Tribunal_for.pdf&Expires=1725955213&Signature=emFwXd1en3AH-hqNJCXKFJDYt9kkMFkSrnBbMwLqw6JNqdUaxUTTSMYWRkUm916GVgBIK--mjWzSLzLJsbObF1s5DIFigCe7J35Ush1P-IpPoGaDScoGdFIhFio3OorecQQH3OQ5xnngZXjREEWcAaCbQ9FXfz6W4ldg12w~9oL8x-v2djFAZwxMkOf-z7o14-yddBnF4eD4w77M9Si0w3I2zY4jQgB8POMYLQsYnfcThhOfVK~4zhDkCr4iK~~QEhNDwm0HkCGRVNW~FA~RguDrbydrkgeBA~7Ehj9~wU6UeA5Xh3~uQ5r~D5xqiWPPZ476x2w8sdrD1Xuz7jIg__&Key-Pair-Id=APKAJLOHF5GGSLRBV4ZA), accessed on 08/05/2024.

of the International Criminal Court through the International Criminal Tribunal for the Former Yugoslavia to apply justice on the most heinous crimes perpetrators<sup>112</sup>.

In the comparative studies for this research many documental sources were used to both collect necessary data and to apply them accordingly for the efficiency of the research. This means that through the research various books, conventions and other instrument regarding the topic were given due consideration to meet the maximum of concerns namely in the enforcement of international criminal decisions on those responsible for gravest crimes across the globe<sup>113</sup>.

### **1.11. Some practical cases administered by the ICTY**

#### **Prosecutor V. Brdjanin Radoslav & Momoir Talic**

These administered cases aim at emphasizing on the work of the ICTY on its pursuit against humanity on those responsible for serious violation of international humanitarian law. The Prosecutor V. Brdjanin Radoslav & Momir Talic Case assessed by the Hague, 11 December 2002 JL/P.I.S /715-E by the Appeals Chamber Defines A Legal Test For The Issuance Of Subpoenas For War Correspondents To Testify At The Tribunal.<sup>114</sup>

Brdjanin was a political Bosnian Serb figure in the former Yugoslavia where he occupied the position of first vice president of ARK, minister of construction and later vice president of Sprska Republic. The autonomous region of Kragina (ARK) situated in the northern part of Bosnia and Herzegovina was the main region where the political figure breached IHL norms the most. While on its position of leader, aided and abetted for crimes against humanity especially forcible deportation, rapes, tortures and any other form of inhuman treatments targeted to evacuate non-serb populations from communist bloc during from 1992 to 1995. In areas like Banja Luka, Bosanski Petrovac, Sanski and others a considerable number atrocities were dominant making them to move from their habitual places to forced areas where their

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<sup>112</sup> Ibid page 7.

<sup>113</sup> Foreign and comparative law, evident at <https://unimelb.libguides.com/c.php?g=924154&p=6672644#:~:text=Comparative%20law%20is%20a%20legal,in%20at%20least%20two%20jurisdiction>, accessed on 08/05/2024.

<sup>114</sup> United Nations, International Residual Mechanism for Criminal Tribunals, evident at <https://www.icty.org/en/press/address-prosecutor-international-criminal-tribunals-former-yugoslavia-and-rwanda-mrs-carla-del>, accessed on 08/05/2024.

life would be threatened. Brdanin took advantage of his position in the autonomous regions of Krajina to orchestrate international humanitarian law breaches<sup>115</sup>.

The court after being informed of the odious acts perpetrated by Brdanin and his colleagues against the non-Serb populations, ordered an arrest warrant on him as it constituted a complete breach to Geneva conventions of 1949 whereby no right is given to violate the human integrity of individuals regardless of the social rank in the society<sup>116</sup>. The court after deeply assessing the allegations of Brdanin and his co-perpetrators pronounced a 30 thirty year term imprisonment for commission of crimes against humanity in Bosnia and Herzegovina against non-Serbs populations<sup>117</sup>.

Right after the disintegration of the Former Yugoslavia, the assembly of the Serbian people in Bosnia and Herzegovina decided to declare itself independent namely as the Bosnian Serb Republic of Bosnia and Herzegovina in January 1992<sup>118</sup>. Soon in the same dynamic, a particular plan to expel non-Serb populations from the restructured State by the leader Brdjanin Rodoslav in that time in charge of the Autonomous Region of Krajina situated in Bosnia and Herzegovina by creating a new army and paramilitary groups to facilitate him in his pursue of removing non-Serb citizens from the country. This strategy went further on committing crimes of war, crimes of genocide, crimes of aggression and crimes against humanity against the non-Serb citizen present in time in the Bosnia and Herzegovina during that operation<sup>119</sup>.

Moreover in the operation conducted by the leader Brdjanin and Momir Talic, they instigated, aided and abetted in the process of expelling by all means non-Bosnian citizen from their territory all this generating the implication of Talic in the gravest breaches of the International Humanitarian Law in Bosnia and Herzegovina. Talic is jointly charged with Rodoslav Brdjanin with considerable crimes prohibited by the Rome statute of 1998 for the following crimes.

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<sup>115</sup> Convicted war criminal Radoslav Brdjanin dies in Banja Luka, evident at <https://n1info.ba/english/news/convicted-war-criminal-radoslav-brdjanin-dies-in-banja-luka/>, accessed on 08/05/2024.

<sup>116</sup> Radoslav Brdjanin sent to Denmark to serve his sentence, evident at <https://www.icty.org/en/sid/8918>, accessed on 09/05/2024.

<sup>117</sup> Ibid.

<sup>118</sup> Karadzic Abdic Declaration of the Republic of Bosnia and Herzegovina of 22 October 1993, evident at <https://digital.case.edu/islandora/object/ksl:mps17-karadzicabdic199300>, accessed on 09/05/2024.

<sup>119</sup> Case information of Brdjanin, evident at [https://www.icty.org/x/cases/brdanin/cis/en/cis\\_brdjanin\\_en.pdf](https://www.icty.org/x/cases/brdanin/cis/en/cis_brdjanin_en.pdf), accessed on 10/05/2024.

- Genocide and complicity in genocide<sup>120</sup>;
- Persecutions,extermination,deportation and forcible transfer pertaining to tragic actions<sup>121</sup>;
- Torture of civilians<sup>122</sup>;
- Wilful killing<sup>123</sup>
- Important destruction of localities supported by military facilities such as fire arms<sup>124</sup>

These committed offenses of the two perpetrators amply justify the theory of evacuation of non serbians on the Bosnian and Herzegovina territories cleansing them from any foreigner in their localities as the Republic was newly reformed with new strategic plans aiming at conserving their culture,religion and life for safeguard of autonomy and dominion over non serbians.Talic in that time as commander of the fight corps of the Autonomous Region of Kragina for incorporating in group to remove the non serbians into the State which is in contradiction of the rule 65 of the ICTY also condemning him with principle of command responsibility<sup>125</sup>.

### **1.11.1. Dusko Tadic Case Prijedor It-94-1**

The case refers to wilful killing, inhuman treatment, wilfully causing great suffering associated to serious injury to body and health (grave breaches of the 1949 Geneva conventions) sentenced to twenty years of imprisonment. This case constituting a complete violation of IHL norms brings on the full grounds upon which Tadic was convicted and how the court dealt with him to be criminally punished for crimes against humanity ,genocide and aggression<sup>126</sup>

On 7 May 1997, Dusko TADIC was alleged of Crimes against humanity, violations of laws and customs of war. The Sentencing Judgment highlights that the crimes were made of mass

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<sup>120</sup> The ICTY's Statute,article 1,3(a-c),evident at [ICTY statute\\_sept09\\_en.pdf](#),accessed on 13/05/2024.

<sup>121</sup> The ICTY Statute article 2(4 e),evident at [ICTY statute\\_sept09\\_en.pdf](#),accessed on 13/05/2024.

<sup>122</sup> Ibid.

<sup>123</sup> Ibid.

<sup>124</sup> Ibid.

<sup>125</sup> The ICTY Statute, article 7(3),evident at [ICTY statute\\_sept09\\_en.pdf](#),accessed on 13/05/2024.

<sup>126</sup> Ibid page 27.



killings, beatings, and forcible transfer by Dusko TADIC as well as his participation in the attack on the town of Kozarac in opstina Prijedor, in the north-western of Bosnia and Herzegovina. Further in these allegations of crimes perpetration, we can understand that Dusko TADIC was a high-ranking author of human rights breaches, using his political chief of the local board of the Serb democratic party to enslave the maximum. He went on capturing non-Serbs in Bosnia and Herzegovina especially in the region of Prijedor in afflicting them with all kinds of mistreatments to vanish them from the locality he was in charge. Convicted of Crimes against humanity, he faced the court to be tried according to his odious acts May 7,1997. The sentence was constituted in killings, beatings, and forced transfer by Dusko TADIC as principal and accessory<sup>127</sup>.

The court being intransigent of the crimes committed by Dusko TADIC,orderd some restriction for effective enforcement of justice:

Except in extreme circumstances, the sentence of Dusko Tadic should not be commuted or otherwise reduced to a term of imprisonment less than 10 years from the date of determination of any appeal. Dusko Tadic is entitled to credit for 2 years, 8 months and 6 days of time already served at the date of his sentencing. The time he may serve pending the determination of any appeal will also be credited.

Upon assessment of the case, the trial Chamber, will suspend Tadic request until the determination time as the Appeals Chamber has considered and determined the parties. Therefore the court sentenced Tadic for a twenty year term of imprisonment for complete violations of the Geneva conventions of 1949 aligning with tortures,forcible displacements and killing of some muslim police officers while on power was rendered and served under the jurisdiction the tribunal<sup>128</sup>.

### **Partial Conclusion**

This chapter helped us in the sense that we could understand more about the dissertation topic especially in conceptual terms,the definition of key concepts that will help readers to know what the work is and the importance of the ICTY on the international criminal scene as the theme indicates.In this chapter we could also understand the history of the former Yugoslavia

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<sup>127</sup> Case of Dusko Tadic,evident at <https://www.internationalcrimesdatabase.org/Case/79>, accessed on 14/05/2024.

<sup>128</sup> Ibid.

especially the gravest crimes that occurred from 1991 onwards, the jurisdiction of the international criminal tribunal for the former Yugoslavia and its relationship with domestic courts in the pursuit of international criminal justice on individuals responsible for crimes of war, crimes against humanity, crimes of aggression and crimes of genocide. Meanwhile, a high importance will be to talk about the challenges to the problematic enforcement of the ICTY decisions that will make us have light on how breaches of IHL threatened the peace of populations and also the relationship between the international criminal tribunal and domestic courts that assisted in the implementation of international criminal justice in the region.

## **CHAPTER 2: CHALLENGES RELATED TO THE ENFORCEMENT OF THE ICTY DECISIONS**

The challenges to the enforcement of the ICTY decisions finds their way in all international criminal judgements that were to be enforced on mass crimes authors<sup>129</sup>.

Many challenges arose both internally and externally in issues of aggressions, genocides, crimes against humanity and crimes of war during the ICTY mandate from 1993 to 2017<sup>130</sup>. Some of the ICTY challenges were in indictments of most heinous crimes perpetrators to atrocities reproached to them whereby a huge need of important security and safety to minimise the plague of impunity that stroke the former Yugoslavia was required. In a general way the challenges to the enforcement of the ICTY decisions constituted a crucial period in the exercise of the international criminal tribunal in its mission of fighting against impunity even if it costed a lot in the implementation of international criminal justice for core crimes committed in former Yugoslavia<sup>131</sup>. Upon tangibility of these odious acts, we will be developing some challenges that affected decisions in the Former Yugoslavia in the following lines.

### **2.1. Challenges related to fair trial concerns**

The alarming situation in the former Yugoslavia put the court officials and government leaders to some concerns in prosecuting those responsible for gravest crimes as it ravaged thousands of innocents<sup>132</sup>.

The ICTY in its position of international criminal justice enforcer on the ravaging massacre ,decided to prosecute core crimes perpetrators for concerns it caused in the region by indicting

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<sup>129</sup> Post-war justice and durable peace in the former Yugoslavia, Measures for elimination of impunity, evident at <https://rm.coe.int/post-war-justice-and-durable-peace-in-the-former-yugoslavia-issue-pape/16806da71f> ,page 6-13, accessed on 15/05/2024.

<sup>130</sup> The ICTY and the rule of law, evident at <https://www.ruleoflaw.org.au/icty-rule-of-law/>, accessed on 16/05/2024.

<sup>131</sup> Indictment of Slobodan Milosevic, evident at <https://www.asil.org/insights/volume/4/issue/3/indictment-slobodan-milosevic>, accessed on 16/05/2024.

<sup>132</sup> United Nations, International Residual Mechanisms for Criminal Tribunals, investigations, evident at <https://www.icty.org/en/content/investigations-0>, accessed on 16/05/2024.

them basing on evidences though it seemed to not have an unbalance of power<sup>133</sup>. This process though welcomed in the region caused many political and tribunal officers to work partially in the implementation of international criminal justice on perpetrators. The take of Madeliene Albright stated that the non-full cooperation of Tudjman and Milosevic saying that their lack of cooperation is a roadblock to their full membership in the international community as both of them did not handed high perpetrators to the ICTY in order to be judged on offenses committed<sup>134</sup>. A few days before the trial of Tadic the tribunal modified the Article 2 of the Statute to the profit of some core crimes perpetrators. This reproachable behaviour went on occurring as some officers like Slobodan Milosevic, Radoslav Brdanin, Dusko Tadic and many others in Croatia, Serbia and Bosnia and Herzegovina who occupied prestigious positions were brought to justice<sup>135</sup>.

Also, in handing over criminals the foreign minister of Croatia Mate GRANIC denied that both Dario KORDIC and Ivica RADJIC by saying he had no idea of their whereabouts after being called upon by the tribunal to give the grounds of crimes. The Serbian leader Milosevic was author of crimes against humanity against non-Serb populations especially expelling them from Belgrade, Bosnia and Herzegovina and more but was not even tried neither did he surrendered his high officers to the international tribunal to be prosecuted for mass crimes in the region. This challenge on fair trial concerns targeted against non-Serbs was aimed at having a region where foreigners could not be part of<sup>136</sup>.

In response to the Serb insurgents on their leading atrocities, a strategy called the (pyramid strategy) aiming at holding them accountable for violations of human integrity specifically the most and mid-level offenders before the international criminal tribunal for the former Yugoslavia. The pyramid strategy as the concept defines it, was to take high and mid-level offenders in cities where gravest crimes were committed to the tribunal and beyond. In cities like prijedors where notorious perpetrators completely violated the Geneva conventions of 1949, omarska, Kerartem and Trnopolje that suffered the most in the massacre some survivors of the massacre were interviewed by the tribunal investigators in order to trace back IHL

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<sup>133</sup>Tyler Marshall, Los angeles times, Albright vows, new steps to arrest war crimes suspects, evident at <https://www.latimes.com/archives/la-xpm-1997-05-29-mn-63730-story.html>, accessed on 17/05/2024.

<sup>134</sup> Ibid

<sup>135</sup> Ibid page 30.

<sup>136</sup> Ibid page 32.

violators and issuing indictments against them with their co-perpetrators as crimes were organised<sup>137</sup>.

Further, the absence of fair treatment manifested in some judgement by the ICTY whereby it was indicted were given to correctional facilities that threatened their sentence. The case of Dragan OPACIC gives us an understanding of the non-security of accused after being sentenced by the tribunal. OPACIC after being charged with crimes of genocide pleaded to not be imprisoned in Bosnia and Herzegovina because of his nationality but to no avail, the request was rejected and he was detained in Bosnia and Herzegovina<sup>138</sup>.

Yet the fight against impunity the pyramid strategy proved conclusive but involvement of forensic science was needed to have fair trials<sup>139</sup>. A process of exhumation was launched by the office of the tribunal prosecutor on 7<sup>th</sup> July 1996 to practice an exhumation work in concentration camps to determine the causes and time on which deceases occurred. This process supported the mission of the international criminal tribunal to bring to account mass crimes authors basing on grounds presented by the prosecution. In 2001, the International Commission on Missing Persons (ICMP) started a process on identifying missing people with the help of national authorities like police officers and the support of survivors to facilitate the task assigned. This task that relied on determining the kinship of disappeared persons with their surviving parent focused on DNA recognition through teeth examination, osteological markers of sex and age at death and any other form of surgical procedures suitable for tracing of missing persons<sup>140</sup>.

The process went on generating a considerable number of evidences upon which many most heinous crimes offenders were alleged and further indicted by the tribunal to be held accountable<sup>141</sup>. Lastly, a sentiment of bias practiced to the benefit of core crimes perpetrators shew a semblance of justice enforcement on them<sup>142</sup>.

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<sup>137</sup> Ibid.

<sup>138</sup> Ibid.

<sup>139</sup> First exhumation by ICTY to begin in Srebrenica area, evident at <https://www.icty.org/en/press/first-exhumation-icty-begin-srebrenica-area>, accessed on 17/05/2024.

<sup>140</sup> Ibid.

<sup>141</sup> Summary of the International Commission on Missing Persons, evidente at <https://www.icmp.int/wp-content/uploads/2014/08/icmp-fsd-01-02-2-doc.pdf>, page 2-9, accessed on 18/05/2024.

<sup>142</sup> Partial impartiality: A review of alleged bias in the international criminal tribunal for the former Yugoslavia, evident at <https://nupoliticalreview.org/2016/04/25/partial-impartiality-a->

The international criminal tribunal for the former Yugoslavia in its mission to prosecuting crimes authors seemed to not delivering its services properly as many of high-ranking officials in Croatia and Bosnia and Herzegovina were not held accountable before the justice. The Croatian president Franjo Tudman did not surrender some mass crimes offenders from his camp to the ICTY to be prosecuted as he wanted not to see one of his members in jail like Ante Gotovina a General in Croatia that led the operation storm<sup>143</sup>.

The operation aimed at taking back the command of the territory of Krajina that Serb separatists by orchestrating some crimes against civilians first alleged for crimes against humanity and after proved innocent by the appeal chamber<sup>144</sup>. This directly seemed that criminal justice in the former Yugoslavia was only for mid-level offenders and not for high ranking authors as some of them enjoyed a preferential treatment before the justice while others could be prosecuted and sentenced for crimes committed by the tribunal<sup>145</sup>.

Also, the Serb president Tomislav Nikolic promoted the fact decisions of the ICTY were not fairly rendered as they rendered decisions politically when he said “It is now quite clear the Tribunal has made a political decision and not a legal ruling<sup>146</sup>.” Meaning that the ICTY instead of assessing cases brought to its jurisdiction fairly decided favour some perpetrators while victims were terribly plagued by the alarming atrocities.

In a certain way, the decisions implemented by the ICTY did provoke a resentment of partiality on the international criminal sphere while it was established to fairly apply justice on core crimes authors in the former Yugoslavia<sup>147</sup>.

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[review-of-alleged-bias-in-the-international-criminal-tribunal-for-the-former-yugoslavia/](#), accessed on 18/05/2024.

<sup>143</sup> Ibid page 34.

<sup>144</sup> Impunity for abuses committed during the operation storm and the denial right to refugees to return to Krajina, evident at <https://www.hrw.org/reports/1996/Croatia.htm>, accessed on 19/05/2024.

<sup>145</sup> Ibid.

<sup>146</sup> Svebor Kranjk, [Hague appeal frees jailed Croatian officers](https://www.reuters.com/article/world/hague-appeal-tribunal-frees-jailed-croatian-officers-idUSDEE8AF0A1/), evident at <https://www.reuters.com/article/world/hague-appeal-tribunal-frees-jailed-croatian-officers-idUSDEE8AF0A1/>, accessed on 19/05/2024

<sup>147</sup> Ibid

## 2.2. Challenges of selective justice

The selective justice in the Former Yugoslavia constituted a serious challenge in the punishment of those responsible for core crimes<sup>148</sup>.

The ICTY justice enforcement on persons responsible for gravest crimes appeared as a form of selective justice as many policies maker were not held accountable to their offenses<sup>149</sup>. The defence minister Nikola Selakovic stated 'bitter taste because no orchestrators of the policies of crimes against Serbs have been punished'. This comes to support that crimes were not fairly administered by the international criminal tribunal for the former Yugoslavia for crimes committed in their territories<sup>150</sup>. Most of the mass killings perpetrated in Bosnia and Herzegovina, Zagreb and other concentration camps were encouraged by external powers like the United States with cluster bombs to kill thousands of innocents in the regions.

The US went on providing some ammunitions such as rockets, clusters bombs to Serb leaders to kill massively their people<sup>151</sup>. The Serbian Republic take on this selective way on which some are judged and others no claimed that everybody must be judged without bias for crimes committed as only Serbs were prosecuted whereas those who promoted it are not prosecuted. The Serb government afflicted by the non-proportional situation stated 'each crime should be punished as well as each individual who took part in it'<sup>152</sup>. This stands to show the clear evidences that the ICTY worn a clothes of justice enforcer that was not even reflecting the color it was to be reflected. A semblance of criminal justice was portrayed by ICTY offices intending to fight against impunity while some cases remained silenced. The Radio Television Serbia (RTS) that received a bomb strike during the conflict was not addressed by the tribunal although it is a complete breach of the Geneva conventions article 54 August 12<sup>th</sup>, 1949 prohibiting the destruction of object means indispensable for the survivor of the population<sup>153</sup>.

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<sup>148</sup>Serbia accuses Hagues war crimes court of bias ,selective justice,evident at <https://webarchive.archive.unhcr.org/20230521042809/https://www.refworld.org/docid/5768ffa46.html>,accessed on 19/05/2024.

<sup>149</sup> Ibid

<sup>150</sup> Ibid

<sup>151</sup>Biased justice: Humanrightsism and the International Criminal Tribunal for the former Yugoslavia, evident at <https://engagedscholarship.csuohio.edu/cgi/viewcontent.cgi?article=1499&context=clevstlrev> ,page 8-9,accessed on 20/05/2024.

<sup>152</sup> Robert M Hayden,Serbia government says almost no crimes against Serbs no punished,evident at <https://www.voanews.com/a/serbia-government-says-almost-no-crimes-against-serrbs-punished/3255196.html>,accessed on 20/05/2024.

<sup>153</sup>Ibid.

Therefore, the selective justice on the pursuit international criminal justice for crimes committed in the Former Yugoslavia proved not satisfactory for serious issues subjected to be addressed by the court were not addressed.

### **2.3 Challenges of reconciliation**

Reconciliation in former Yugoslavia constituted a major challenge to the ICTY missions of peace enforcer between populations<sup>154</sup>.

The region being battered by the horrific massacre faced serious difficulties to coexist as many victims were traumatised of what they have experienced. People found themselves in an environment where peace seemed to not have its place due to various tortures, mass killings, forced displacement of civilians to concentrations zones and assaults of all kinds they endured during the conflict<sup>155</sup>. The ICTY preoccupied by the need of seeing individuals united launched a process of reconciliation in 2000. The project started in Croatia in the time of Franjo Tudman, Serbia and proceeded with some international organisations like ICRC AND UNHCR to get populations united. The process being challenging found some resistances with individuals inhumanly mistreated that did not trust the work of the ICTY and other organisation for they lost their loved ones and the process cannot bring back them to life<sup>156</sup>. Further, reconciliation was seen by some civilians as an elusive act whereby core crimes perpetrators were sentenced then returned to the society where they committed gravest offenses. It left victims to understand that a semblance was due on the accountability of criminals after receiving their judgement. Others after felt a difficulty to cohabit with criminals in the same society where a chaos took place thinking back on what just happened to them a few years ago<sup>157</sup>.

In addition, the process of reconciliation bore a garment of elusion as many localities were not benefiting from it<sup>158</sup>. In Srebrenica, Banja Luka and Portocari military leaders like Karadzic and Mladic as they were strong attempted on resisting the tribunal to be prosecuted under a fair

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<sup>154</sup>Janine Natalya, The ICTY and the challenges of reconciliation in the Former Yugoslavia, evident at [https://www.eir.info/pdf/16855?\\_gl=1\\*1txsfu4\\*\\_ga\\*otm5mjm2ntcxlje3mjm1ntcwnzy.\\*\\_up\\*mq.\\*\\_ga\\_8fmzen5rfx\\*mtcymzu1nza3ns4xljeumtcymzu1nza3ns4wljauma](https://www.eir.info/pdf/16855?_gl=1*1txsfu4*_ga*otm5mjm2ntcxlje3mjm1ntcwnzy.*_up*mq.*_ga_8fmzen5rfx*mtcymzu1nza3ns4xljeumtcymzu1nza3ns4wljauma), page 2, accessed on 20/05/2024.

<sup>155</sup>Ibid.

<sup>156</sup> Ibid.

<sup>157</sup> Ibid.

<sup>158</sup> Ibid.



trial. A certain unbalance of power seemed to prevail while indicting high ranking officers due to the fact that those leaders could rise against the court enforcers and local populations. Thus causing a sentiment of mistrust to the justice and led to the slowing down of it. Slobodan Milosevic and its subordinates did not avail for reconciliation knowing that doing it would lead to its fall and that its power could be extinguished. The international criminal tribunal having jurisdiction upon the reconciliation process, did not react accordingly in some high ranking officers in former Yugoslavia to enforce justice. This could be shown with Slobodan, Karadzic who after their indictment did not proceed with restoration of victims<sup>159</sup>.

Therefore, the process of reconciliation in the former Yugoslavia though persuasive went on many non-acceptances between separatists and victims who did not share same ideologies.

#### **2.4. Challenges of impunity**

Measures to be enforced to fight impunity in the Former Yugoslavia massacre were really needed for consequences were considerable in the affected regions<sup>160</sup>. Given that strategies made to help rescuing from this scourge of the most heinous crimes of an estimated amount of 438 000 refugees as well as other deported persons in the 1990s. Concerned by this plague, the United Nations High Commissioner for Refugees in 1992 under the resolution SCR/770 provided an assistance to victims of these atrocities that immensely harmed thousands of civilians.

While in the process to fight the scourge of impunity for atrocious acts committed the Former Yugoslavia, the ICTY launched a training period to national courts officials to help them handle the heinous crimes perpetrated in the afflicted regions<sup>161</sup>. The training program being achieved in 2011, grouped thirty persons in the guardianship of the ICTY detention department to be fairly prosecuted and further tried for the perpetration of core crimes offenses across the Former Yugoslavia territories. In the dynamic of impunity, an aggregate of 126 defendants

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<sup>159</sup> Ibid.

<sup>160</sup> Ibid page 32.

<sup>161</sup> United Nations, International Criminal Tribunal for the Former Yugoslavia, weekly press briefing, of 26 October 2011, Martin Petrov statement, evident at <https://www.icty.org/en/press/weekly-press-briefing-26-october-2011>, accessed on 20/05/2024.

went under prosecution, released, 13 sent to endogen courts respectively to Bosnia and Herzegovina, Croatia and Serbia to criminally be judged<sup>162</sup>.

In addition, the president, judge of the international criminal tribunal for the former Yugoslavia stated in her report regarding the inefficacy the court through several lacks making to not fulfil their mission<sup>163</sup>. The president Gabrielle Kirk McDonald stated that the lack of funds, correctional premises, sufficient and sophisticated means to hold core crimes perpetrators did not favour the exercise of international criminal justice. These challenges made them to render justice on the means they have such as weakened national court of former Yugoslavia, absence of protection of witnesses and victims after testifying, non-cooperation with national states to be sued and many other related acts. The tribunal went on continuous struggles with the individuals indicted in the former Yugoslavia territories to enforce sentences on perpetrators<sup>164</sup>.

By consequence, the International Criminal Tribunal for the Former Yugoslavia immensely worked in the task assigned to it by holding accountable violators of most heinous crimes committed the Former Yugoslavia individually such as the Plavsic condemned with eleven (11) years for the perpetration of political persecution, racial and religious cleansing in many regions of Bosnia and Herzegovina such as Foca, Gacko, Bosanka, Banja Luka and more that resulted in conviction of racial and political persecution<sup>165</sup>.

#### **2.4.1 Milosevic case**

Th Serbian Slobodan Milosevic, former president of Serbia in 1990 who was went against international humanitarian law. in former Yugoslavia. He crimes of genocide, crimes against humanity resulting in forcible displacement of individuals to tortures concentration camps,

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<sup>162</sup> United Nations International Criminal Tribunal for the Former Yugoslavia, judgement list, evident at <https://www.icty.org/en/cases/judgement-list>, accessed on 21/05/2024.

<sup>163</sup> International Criminal Tribunal for the Former Yugoslavia: Making a difference or making excuses, evident at <https://www.icty.org/en/press/international-criminal-tribunal-former-yugoslavia-making-difference-or-making-excuses>, accessed on 21/05/2024.

<sup>164</sup> Ibid.

<sup>165</sup> International Criminal Tribunal for the former Yugoslavia, Plavsic case, evident at [Icty.org/x/cases/plavsic/cis/en/cis-plavsic-en.pdf](https://www.icty.org/x/cases/plavsic/cis/en/cis-plavsic-en.pdf), accessed on 21/05/2024.

plundering of public properties, inhuman assaults, unlawful confinement, exterminations, forced imprisonments and other forms of inhuman mistreatments<sup>166</sup>.

Slobodan Milosevic was convicted of these IHL breaches on May 1999 and later received on June 2001 an amendment of crimes of genocide, war crimes and crimes against humanity whose liability was proven. Further, on October 2001, Milosevic benefited a review of his commission of core crimes in the region where his proceeding would no longer progress making him to not be prosecuted while his co-perpetrators had to be advanced in proceedings. Still in the same movement many protests on behalf of Slobodan were occurring aiming at the release of the Serbian leader. These protests were promoting by the forces of the federal republic of Serbia resulting in 800 000 forcible deportations of innocents, mass killings, assaults and more to make non-serbs to be feared. Meanwhile the Serbian would be impartially prosecuted by the tribunal but was not given sufficient evidence of the crimes he committed<sup>167</sup>.

Moreover, he was to be culpable of 44 counts on sniper incident committed but was only given 26. This partial decision of the International Criminal Tribunal for the Former Yugoslavia brought to level of incapacity in prosecuting and enforcing criminal judgement on those responsible for it. It is to note that the non-ethical character made other core crimes perpetrators to see the tribunal as an instrument upon which strong persons can play with whereas the mandate demonstrates another principles to be applied<sup>168</sup>. The tribunal officers facilitated the non-application of criminal justice on Slobodan which completely opposite to the rules of procedure of the International Criminal Tribunal for the Former Yugoslavia and misused the Article 98 to justify their wrongdoing till the death of Slobodan.

Therefore, impunity in former Yugoslavia was a strong plague on which criminal justice was facing for the enforcement of international criminal justice on those responsible for IHL breaches<sup>169</sup>.

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<sup>166</sup> International Criminal Tribunal for the former Yugoslavia, evident at [https://www.icty.org/x/cases/slobodan\\_milosevic/cis/en/cis\\_milosevic\\_slobodan\\_en.pdf](https://www.icty.org/x/cases/slobodan_milosevic/cis/en/cis_milosevic_slobodan_en.pdf), accessed on 21/05/2024.

<sup>167</sup> Ibid page 32.

<sup>168</sup> Ibid.

<sup>169</sup> Ibid.

## 2.5. Domestic criminal proceedings challenge

The domestic criminal proceedings in the Former Yugoslavia raised a serious issue of cooperation between the ICTY and national courts in the pursuit of enforcement<sup>170</sup>.

This issue of non-compliance with national courts brought to level of non-satisfaction as the countries were unable to enforce criminal decisions failure to inadequate securities, premises and sufficient personnel to apply decisions though they had criminal competence<sup>171</sup>. It affected the enforcement of criminal proceedings during the fight against impunity for numerous cases upon which national courts did not favour the application of the International Criminal Tribunal for the Former Yugoslavia for reasons inconsistency of security<sup>172</sup>.

Due to this failure, a situation of evasion occurred namely Radovan Stankovic that was condemned for thirty-four (34) years imprisonment in Bosnia and Herzegovina after being convicted of rapes, inhuman torture and forced detention of muslim women in the high school of Foca and further escaped from prison while already sentenced by the ICTY<sup>173</sup>. In consequence, the International Criminal Tribunal for the Former Yugoslavia shew an important approach on the evasion of Stankovic from the prison by bringing him from where he was after evading to the prison premises through some coordinated strategies<sup>174</sup>.

Despite the fact that certain criminal offenses happened right in the aftermath of the massacre, several strategies came in to rigorously fight crimes that occurred in the territories of Bosnia and Herzegovina and even Croatia between 1993 and 1998. Thus provoking the creation of the special mass crimes court within criminal court to prosecute those responsible for it. These chambers condemning perpetrators of serious violations of the International Humanitarian Law as due in Former Yugoslavia states attaches to the idea of fighting against impunity by maximising the enforcement of criminal justice. In Bosnia and Herzegovina, a

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<sup>170</sup> Ibid.

<sup>171</sup> The ICTY Statute, concurrent jurisdiction, article 2, evident at [Rome Statute \(2\).pdf](#), accessed on 22/05/2024 .

<sup>172</sup> B. Swart, A. Zahar and G Sluiter, The Legacy Of The International Criminal Tribunal For The Former Yugoslavia, evident at [https://law.unimelb.edu.au/\\_data/assets/pdf\\_file/0012/1687278/Swart.pdf](https://law.unimelb.edu.au/_data/assets/pdf_file/0012/1687278/Swart.pdf), accessed on 22/05/2025.

<sup>173</sup> Stankovic case, evident at case, [www.icty.org/x/cases/Stankovic/cis/en/cis\\_jankovic\\_stankovic\\_en.pdf](http://www.icty.org/x/cases/Stankovic/cis/en/cis_jankovic_stankovic_en.pdf), accessed on 23/05/2024.

<sup>174</sup> ICTY, the prosecutor report, evident at [https://www.icty.org/x/file/About/Reports%20and%20Publications/CompletionStrategy/completion\\_strategy\\_23may2013\\_en.pdf](https://www.icty.org/x/file/About/Reports%20and%20Publications/CompletionStrategy/completion_strategy_23may2013_en.pdf), accessed on 23/05/2024.

large number of criminal codes, provisions and measure was adopted to deal with serious violation of international humanitarian law in affected localities<sup>175</sup>.

These war criminal chambers were focusing of mid-level crimes offenders as referred by the rule of procedure of the ICTY specifically rule 11 to address any mass crimes perpetrated in the country<sup>176</sup>. The war criminal chamber had a preponderant position on mid-level commission of crimes of war, against humanity and genocide to facilitate the prosecution of gravest crimes that seriously severed the stability with civilians. It gave a certain trust to populations that another way of seeing crimes offenders brought to account before the court and face their consequences after being proven guilty of alleged acts. This strategy faced numerous difficulties between court officers and offenders namely security and safety of witnesses as well as some other working conditions like computers, proficient record of proceedings, investigations facilities, sophisticated arms and many other equipments facilitating the pursuit of criminal justice within the country<sup>177</sup>.

## **2.6. Complementarity challenge with the ICTY**

The absence of complementarity in proceedings was a challenge when the ICTY tried uniquely high core offenses perpetrators severely and enforced light punishment to lesser ranking violators<sup>178</sup>.

Basing on its limitations, the international criminal court (ICC) seems to only adjudicate case involving high ranking violators of mass crimes while a large number of less ranking remain under the jurisdiction of national courts. By consequence, those less ranking perpetrators of odious crimes are not strongly taken in prosecution while every crime's author are prosecuted by national courts<sup>179</sup>. This brings us to understand that the international criminal court is not

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<sup>175</sup>Ibid.

<sup>176</sup> The ICTY rules of procedure, rule 11, evident at [Rules Of Procedure And Evidence.Pdf](#), Accessed On 23/05/2024.

<sup>177</sup> Ibid page 41.

<sup>178</sup> Report of the Bureau on stocktaking: General report of the bureau on stocktaking of the principle of complementarity: Bridging the impunity Gap ICC-ASP/8/51 Resumed in Eighth session 18 march 2010, evident at [https://asp.icc-cpi.int/sites/asp/files/asp\\_docs/ASP8R/ICC-ASP-8-51-ENG.pdf](https://asp.icc-cpi.int/sites/asp/files/asp_docs/ASP8R/ICC-ASP-8-51-ENG.pdf), accessed on 24/05/2024.

<sup>179</sup> The Rome Statute, Evidence, article 69, evident at <https://www.icc-cpi.int/sites/default/files/2024-05/Rome-Statute-eng.pdf>, accessed on 25/05/2024.

to neglect cases related to most serious crimes but to supplement the exercise of domestic courts in the fight against impunity as cases range from a higher to a lesser level<sup>180</sup>.

In response, both national and international courts work complementarily in the exercise of international criminal justice over mass crimes offenders. To proceed, a complex issue had precedent between the ICTY and domestic courts on the fight of impunity in the former Yugoslavia due to non-observation of complementarity between them<sup>181</sup>. In this dynamic, a primacy was given to international criminal courts once violations of international criminal law is due to condemn perpetrators. On this challenge seen as a weakness, a certain power of international court is wielded on national courts namely national courts must work in collaboration with the ICTY in the prosecution core crimes orchestrated. National courts bear a power to go onward with investigations in to core crimes that took place as long as it does not contradict with the Rome statute<sup>182</sup>.

This challenging situation centred on fairness of proceeding as the international tribunal was not to be compared with numbers of cases but the seriousness of gravest crimes committed by violators of international humanitarian law especially Geneva conventions of 1949 in the territory of the former Yugoslavia from 1991 onward. Meanwhile, making this process to the profit of national courts, comes then to the relevancy of the ICC through the ICTY seeing it as an international organ on its proceedings but rather on the ability to make national courts a certain success. This concept could remove partiality between institutions. Further with the primacy of the ICTY to prosecute the most heinous crimes violators, a large set of cases was handed over to domestic courts to address them. It is seen as an achievement for the for the mandate of delivering international criminal law to national criminal courts as they both share concurrent jurisdiction over mass crimes.

This mandate as it took its impulsion by the UN security council under the resolution 1503 to exercise international criminal sentences on individuals culpable of heinous crimes in the Former Yugoslavia like crimes of war, of genocide, crimes against humanity and crimes of aggression. This mechanism intended to enforce a coordinated achievement with domestic

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<sup>180</sup> Informal expert paper: The principle of complementarity in practice, evidentiary considerations, page 15-32, evident at <https://www.icc-cpi.int/sites/default/files/NR/rdonlyres/20BB4494-70F9-4698-8E30-907F631453ED/281984/complementarity.pdf>, accessed on 25/05/2024.

<sup>181</sup> Ibid.

<sup>182</sup> Ibid.

courts had a huge impact upon pursuit of international criminal justice towards the fight against impunity as it was due in Bosnia and Herzegovina, Croatia and more to strengthen the capacity of national courts in core crimes. Therefore the handing over of individuals culpable of core crimes brought to a compliance point in the exercise of international criminal penalties<sup>183</sup>.

## **2.7. Challenges related to the Specialist chamber of Kosovo**

After being victim of serious violations of IHL from 1998 to 2000, an office in Kosovo serving as specialist chamber was evident to prosecute mass crimes perpetrators<sup>184</sup>. In that dynamic, national courts were compelled to collaborate with the specialist chamber that was a subsidiary of the ICTY to hold criminals accountable of atrocities committed as the impact was heinous. The strategy to have that specialist court served as a support to domestic courts that in conflict were unable to facilitate the implementation of international criminal justice. The specialist chamber aimed at helping the ICTY in the pursuit of fighting against impunity especially leaders of the Kosovo liberation Army that orchestrated a range of crimes against humanity, war crimes and genocide like Hashim Taci, Ustria, Clirimtare, Adem Jashari and more<sup>185</sup>.

### **2.7.1 Lack of political local support**

The lack of local and political support for the specialist chamber of Kosovo constituted an obstacle to the exercise of its functions<sup>186</sup>.

The specialist chamber of Kosovo seemed to not answering to offenses brought to its jurisdiction as many of the judgements were not considered and others not given the minimum of treatments<sup>187</sup>. The Kosovo position on the prosecution of mass crimes authors was limited as the funds allocated to it were in major part given by the European Union making to restrict from any change if not in accordance with the allies power. This brought the Kosovo court officer to act according to prescribed orders of an external power that monitors its work given

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<sup>183</sup> Ibid.

<sup>184</sup> Sarah L. Ochs & Kirbi Walters, *Forced Justice: The Kosovo Specialist Chambers*, page 240-244, evident at <https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1586&context=djcl>, accessed on 26/05/2024.

<sup>185</sup> Sylvia Srteinger, *A new chapter for international criminal justice in the Balkans*, evident at <https://voelkerrechtsblog.org/the-kosovo-specialist-chambers/>, accessed on 26/05/2024.

<sup>186</sup> Ibid.

<sup>187</sup> Ibid.

that their government was not financially strong during the conflict. Numerous leaders of the Kosovo Liberation Army were sued for crimes of war, genocide or against humanity as orders were given by the international community to lead judicial activities<sup>188</sup>.

Further, the non-fair application of laws in the specialist chambers of Kosovo led to political challenges between Kosovar and the international community. The special representative of the secretary general, head of the United Nations Interim administration Mission (UNMIK) that the strategy the EU to dominate Kosovo has paved a system of mistrust to the justice due to the refusal of to national jurisdiction to address core crimes committed on offenders via partial reforms<sup>189</sup>. This led to many deprivations compromising the existence of criminal justice in Kosovo as some atrocities were committed by EU powers once truth attempted to prevail. In this, Oliver Ivanovic was assassinated as he tried to oppose to the fascinated justice of Kosovo where no chance for fair justice was given, absence of prosecution of high-ranking offenders and co-perpetrators to be held accountable of their acts<sup>190</sup>. This proved a total inefficacy of the war court chamber in Kosovo while in documents it appeared to be fair.

### **2.7.2. Challenge of Judicial tampering and intimidation in Kosovo**

The issue of tampering with international criminal officers and intimidation constituted a major challenge for the fight against impunity in Kosovo<sup>191</sup>.

This issue of tampering and intimidation with international criminal officials occurred during the implementation of criminal justice in Kosovo where some Kosovo Liberation Army leaders used of their high ranking positions to corrupt court officials and often threaten some witnesses to avoid being prosecuted for crimes committed<sup>192</sup>. People went on enduring odious sufferings while others known as crimes authors were free of their own movements by continuing on oppressing the weak through their high positions in the kosovar society as of the government was not showing adequate judicial measures to condemn those responsible for it. In the same perspective, the a report of twelve (12) complaints registered by the National

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<sup>188</sup> Ibid page 43.

<sup>189</sup> Ibid.

<sup>190</sup> Balkan transitional justice, evident at <https://balkaninsight.com/2024/06/28/kosovo-serb-politician-oliver-ivanovic-convictions-in-murder-trial-but-justice-not-done/>, accessed on 27/05/2024.

<sup>191</sup> Ristic, *Witness Security And Protection In Kosovo: Assessment And Recommendations* of 4 2007, evident at <https://www.osce.org/files/f/documents/d/7/28552.pdf>, accessed on 27/05/2024.

<sup>192</sup> U.S department of State, evident at <https://www.state.gov/reports/2023-country-reports-on-human-rights-practices/kosovo/>, accessed On 28/05/2024.



Preventive Mechanism against Torture demonstrating some mistreatments of detainees orchestrated by correctional services at the level of the pre-trial centre in Gjilan. By this, a certain practice of partiality was due by the justice over detainees, innocents willingly. As the domestic correctional services were in at the origin of such practices, many complaints were evident to unveil serious abuse against the alleged officials<sup>193</sup>.

In the complaint of Sabit JANUZY, it was claimed that no legal assistance was attributed to her while arrested by the official of the specialist chambers of Kosovo whereby no funds for the trial was secured for her defence since detained in October 2023. In this circumstances, the complaint reached the constitutional court of Kosovo to seek redress of and finally granted by the specialist chambers officers including the administrator president of the court Ekaterina TRENDAFILOVA<sup>194</sup>.

The intimidation practices in cases administered by the specialist chambers of Kosovo constituted a threat to witnesses while appearing before the courts<sup>195</sup>. For instance, many witnesses especially in the prosecution of Fatmir LIMAJ where some witnesses expressed intimidation concerns for their lives and for their families risking to be killed by Fatmir and his co-perpetrators just after testifying before the court against him. For others, being culpable of inhuman treatments in Kosovo and testify was terrifying in grounds of core crimes authors committed risking to be killed or banished from the ethnic group or killed<sup>196</sup>.

This wrong practice went on plaguing thousands of victims in the region as victims in that time were non well protected and sometimes delivered to their adversaries due to the total absence adequate domestic justice to be implemented on offenders. This plague of intimidation became a real challenge while assessing criminals before the justice and was almost a lifestyle to he who wanted to live. It was only through specific recommendations that such challenges were prosecuted by courts<sup>197</sup>. In addition the report of the former chief prosecutor of ICTY revealed practices of intimidations oppressing witnesses from testifying before the court the alleged offenses reproached on crimes perpetrators where the Kosovo

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<sup>193</sup> Report of the Ombudsman, the fact, page 2, evident at [https://www.scp-ks.org/sites/default/files/public/content/documents/updated\\_omb-case-2022-02thacietal-report-eng.pdf](https://www.scp-ks.org/sites/default/files/public/content/documents/updated_omb-case-2022-02thacietal-report-eng.pdf), accessed on 27/04/2025.

<sup>194</sup> Report of the Ombudsman, on the non-assistance of Sabit Januzy, evident at [https://www.scp-ks.org/sites/default/files/public/content/documents/omb-c-2024-02-01-reportoftheombudsperson.eng\\_.pdf](https://www.scp-ks.org/sites/default/files/public/content/documents/omb-c-2024-02-01-reportoftheombudsperson.eng_.pdf), accessed 28/05/2024.

<sup>195</sup> Ibid.

<sup>196</sup> Ibid.

<sup>197</sup> Ibid.

Liberation Army inhumanly mistreated thousands peoples, inflicting tortures on innocents, committing human organs trafficking, and exercising all sorts of inhuman treatments on non-Serbs and fled after<sup>198</sup>.

It put many to a certain vulnerability where a possible justice for them seemed unimaginable in their society regarding the series of crimes of wars, crimes against humanity and other international humanitarian violations striking innocents in the affected areas. A total fight against high raking officials and proletarians to assert a certain reason that was only gained through battles between them<sup>199</sup>. Still, the efforts put to fight against the scourge of intimidation proved unsatisfactory in trials specifically on victims where the majority received threats a few days before the trial from criminals risking to be killed as many of those core crimes authors were high military ranking and political leaders serving to influence witnesses from delivering evidences as committed during commission of the crime<sup>200</sup>.

### **Partial Conclusion**

After dealing with the problematics of enforcement of the International Criminal Tribunal for the former Yugoslavia, in how the tribunal ruled over the violations of IHL norms in the region, a crucial approach will be to go on mechanisms implemented by the tribunal to resort to a lasting peace for the stability between civilians.

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<sup>198</sup> Politico, Del ponte's hunt, evident at <https://www.politico.eu/article/del-pontes-hunt/>, accessed on 28/05/2024.

<sup>199</sup> Ibid.

<sup>200</sup> Ibid.

## CHAPTER 3: MECHANISMS TO BE ADOPTED FOR EFFECTIVE ENFORCEMENT OF THE INTERNATIONAL CRIMINAL COURT'S DECISIONS

After a large amount of monstrous acts committed in the Former Yugoslavia breakup, the world community in its position of global repressor decided to avenge<sup>201</sup> the blood of innocents who unjustly were killed by setting up a modern day-Nuremberg tribunal namely (ICTY) to prosecute persons culpable of most heinous crimes in the Yugoslavia conflict<sup>202</sup>. This need of international criminal justice being important for the inhuman treatments orchestrated in the affected regions will be developed in the next lines through international criminal solutions for the lasting peace in the Former Yugoslavia<sup>203</sup>.

### 3.1 Legal mechanisms

Legal mechanisms for the enforcement of criminal justice in former Yugoslavia was of a crucial necessity to punish gravest crimes offenders in the region<sup>204</sup>.

Legal mechanisms known as the form of justice enforcement on crime authors were the most to be used in the aftermaths of conflicts to apply justice. In the former Yugoslavia conflict, it was legal mechanisms of justice implemented on the most odious crimes perpetrators for crimes of aggressions, crimes against humanity, crimes of genocide and war crimes accountable before law that facilitated in restoration of peace<sup>205</sup>. These legal mechanisms enforced by the ICTY bore some particularities while applying it on crime authors such as prosecuting individuals culpable mass crimes, proving their liabilities for offenses committed against international criminal law and to implement justice upon allegations put against them<sup>206</sup>.

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<sup>201</sup> Report of the Security-General Pursuant to Paragraph 2 of Security Council Resolution 808, evident at [https://www.icty.org/x/file/Legal%20Library/Statute/statute\\_re808\\_1993\\_en.pdf](https://www.icty.org/x/file/Legal%20Library/Statute/statute_re808_1993_en.pdf), accessed on 29/05/2024.

<sup>202</sup> The United Nations resolution 827, of 1993 evident at [https://www.icty.org/x/file/Legal%20Library/Statute/statute\\_827\\_1993\\_en.pdf](https://www.icty.org/x/file/Legal%20Library/Statute/statute_827_1993_en.pdf), accessed on 29/05/2024.

<sup>203</sup> The Former Yugoslavia: The war and the peace process, evident at <https://www.sipri.org/yearbook/1996/05>, accessed on 30/05/2024.

<sup>204</sup> Ibid.

<sup>205</sup> Institutional mechanisms, evident at <https://arsbih.gov.ba/english/institutional-mechanisms/>, accessed on 30/05/2024.

<sup>206</sup> Stanford encyclopaedia of philosophy, evident at <https://plato.stanford.edu/entries/justice-retributive/>, accessed on 30/05/2024.

Meanwhile, through the abnormal acts due during the past conflict of the Former Yugoslavia, a new shape of legal mechanism aiming at restoring peace in the Balkans to guarantee the future rehabilitation, and standards of the law in the afflicted regions by giving a safe and legal environment in which people can cohabit, exchange and develop without any form of confrontation that can compromise their living in the society. In this perspective, a chance of reconversion in the normal life is possible after enduring the judicial punishment of the competent authorities specifically 60 persons released by the court after being subjected to their sentences, like Wijk, Kelder, Kartdt, Yarnell, Riegler, Choi, Rauschenbach and many other persons that were rehabilitated after going under their punishment for crimes committed during the massacre<sup>207</sup>. In addition, legal mechanism in the former Yugoslavia conflict facilitated the rescue of the region from the atrocities that were ravaging. In it, victims could get to a form of renewal of rights making them to be free from scandalous behaviours that could threaten them. Further, legal mechanism as part of the International Criminal Tribunal for the Former Yugoslavia (ICTY) priorities could have a preponderant role of law to enforce on those responsible for serious violations of norms and to prejudice them according to the gravity of their odious acts committed<sup>208</sup>.

### 3.1.1. Institutional mechanisms

Institutional mechanisms for the pursuit of international criminal justice were needed to reconstruct the Balkan society that was devastated by the mass crimes perpetrations in former Yugoslavia<sup>209</sup>.

Resulting from the Yugoslavia, a deep need of structuring a society where commission of the most heinous crimes could have a preponderant place to guarantee the peace and stability within the Balkans<sup>210</sup>. The United Nations Security Council under the resolution 808 to reform the Balkans through the establishment of the ICTY whose jurisdiction was to prosecute all violators of international humanitarian law in the region. This idea that institutions enforced

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<sup>207</sup> Lina Strupinskiene, Life after conviction at the International Criminal Tribunal for the Former Yugoslavia, page 4-9, evident at [https://watermark.silverchair.com/mqad010.pdf?token=aqecahi208be49oan9kxhw\\_ercy7dm3zl\\_9cf3qfkac485ysgaaa1ewggnnbgkqhkg9w0bbwagggm-miidogibadccazmgcsqgsib3dqehataebglghkgbzqmeas4weqqmdjo7vzzk2msk7xgrageqqiidbaftw2jm2vt\\_5q6zunihgu](https://watermark.silverchair.com/mqad010.pdf?token=aqecahi208be49oan9kxhw_ercy7dm3zl_9cf3qfkac485ysgaaa1ewggnnbgkqhkg9w0bbwagggm-miidogibadccazmgcsqgsib3dqehataebglghkgbzqmeas4weqqmdjo7vzzk2msk7xgrageqqiidbaftw2jm2vt_5q6zunihgu), accessed on 01/06/2024.

<sup>208</sup> Ibid.

<sup>209</sup> Ibid page 35.

<sup>210</sup> The former Yugoslavia, evident at <https://www.ictj.org/location/former-yugoslavia>, accessed on 02/06/2024.

legal mechanisms to restore the former communist bloc found its way on the implementation of legal reforms to avoid the same massacre again. Bosnia and Herzegovina, Croatia, Slovenia on one side while Serbia and Montenegro orchestrating inhuman treatments on the other side that further attracted the attention of the international community to bring a solution on mass killings they were facing<sup>211</sup>. We should note that institutional mechanisms participated to the settlement of peace between the belligerents as without it no lasting peace and restoration could be possible via legal institutions<sup>212</sup>.

Therefore the institutional mechanisms in the enforcement of justice proved conclusive to settle the massacre and restore the region from any inhuman harms<sup>213</sup>.

### **3.1.2. United Nations arm embargo**

Consecutive to the mass killings that took place in 1990s in the former Yugoslavia, the United Nations adopted an arms resolution namely an embargo on backing up of arms, and any forms of firing arms devices risking of being severely punished. All this to avoid an escalation of the conflict between the parties. The embargo in the former on military arms in the Former Yugoslavia took both the air and marine spaces to coordinate movements of fighting forces in the affected areas as a large quantity of innocents was victim of rapes, inhuman tortures, executions, forced displacement, mass killings, forced imprisonments and any other forms of mistreatment perpetrated on innocents<sup>214</sup>.

In this embargo known as the deny flight, no military helicopters either convoys or circulation of any float was able to navigate except any authorisation. This resolution 816 of the UN security council was also well received by the NATO forces who in that time helped in aerial assistance in the former Yugoslavia spaces in the deny flight operation such as a deployment of its forces to maintain the sure movement of civilians in the region, fix wing and rotary wing aircraft in the space and any required support for the security of the air space<sup>215</sup>.

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<sup>211</sup> Ibid.

<sup>212</sup> Completion strategy, evident at <https://www.icty.org/en/about/tribunal/completion-strategy>, accessed on 02/06/2024.

<sup>213</sup> The United Nations, International Criminal Tribunal for the Former Yugoslavia, what next? Evident at <https://www.icty.org/en/content/what-next>, accessed on 03/06/2024.

<sup>214</sup> UN arms embargo on Yugoslavia (FRY) evident at [https://www.sipri.org/databases/embargoes/un\\_arms\\_embargoes/yugoslavia/yugoslavia-1991](https://www.sipri.org/databases/embargoes/un_arms_embargoes/yugoslavia/yugoslavia-1991), accessed on 04/06/2024.

<sup>215</sup> Ibid.

Likewise in the maritime ways a range of sanctions was evident in the marines space to protect the territories from any attacks<sup>216</sup>.The marine embargo namely the operation sharp guard was a joint force of the North Atlantic Treaty Organisation (NATO) and western European countries to assist in the enforcement of the United Nations of prohibiting any non-authorised circulation on the former Yugoslavia seas against Serbia and Montenegro as the hostilities between them and non-Serbs was immense in terms of atrocities basing on the Un resolutions 713,757,787,820 and 943.To the success of this operation,the naval units could prevent the movement of unauthorised ships and to prevent the weapons importations from any sides<sup>217</sup> .

### **3.2. Enhancing witness protection and security**

The need of ensuring the protection of witnesses in former Yugoslavia constituted a major mechanism to the ICTY in the exercise of its functions<sup>218</sup>.

In the most crimes committed in the former Yugoslavia, an important need of witnesses protection and security was required to assert grounds of alleged crimes as this a right was given to any person for the pursuit of justice as well as their protection from any harm<sup>219</sup>.safety of witnesses played a crucial role in the criminal justice implementation especially on indictments of crimes perpetrators for crimes against humanity, crimes of war, crimes of genocide and crimes of aggression to hold them accountable.

This process really helped victims and witnesses in testifying according to what they experienced or saw so that court officers address odious acts committed in the former Yugoslavia namely some violations of International Humanitarian law perpetrated by criminals like rapes, forcible deportations of civilians, mass killings beheading of individuals, conducts of hostilities and any other inhuman treatments during the massacre, recording of evidences while indicted go under prosecution and sentences enforcements. The international

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<sup>216</sup> Nato,The crisis in Former Yugoslavia,evident at <https://jfcnaples.nato.int/page6322744/13-the-crisis-in-former-yugoslavia>,accessed on 04/06/2024.

<sup>217</sup> Ibid.

<sup>218</sup> United Nations,International Criminal Tribunal for the Former Yugoslavia,witnesses,evident at <https://www.icty.org/en/about/registry/witnesses>,accessed on 05/06/2024.

<sup>219</sup>The ICTY Statute,protection of victims,article 22,evident at [ICTY statute\\_sept09\\_en.pdf](#),page 14,accessed on 05/06/2024.

criminal tribunal enhanced measures of security for witnesses upon testifying of a particular commission of crimes to ensure a certain security and safety after testifying<sup>220</sup>.

These measures are protection of witnesses identity until he/she is put under the protection of the tribunal, non-disclosure of the witness identity and appropriate measures to facilitate the testimony of vulnerable witnesses. Indeed, these measures of safety and security are meant to lessen the risks witnesses of being harmed in the result testimonies presented for the fight against impunity for those responsible of IHL breaches in former Yugoslavia<sup>221</sup>.

Therefore, the efforts on having judicial reforms to redress odious crimes committed in the former Yugoslavia did not stop at this level but continued with many other reforms and plans to restore peace in the region both from external and internal domains<sup>222</sup>.

### **3.2.1. Promotion of judicial legal reforms**

The promotion of judicial reforms to solve the former Yugoslavia conflict proved necessary to reestablish a society free from human right violations through some legal reforms<sup>223</sup>.

In the process to judicial reforms, the International Commission on Missing persons (ICMP) to trace missing persons as well as the prosecution of individuals responsible for gravest crimes<sup>224</sup>. This promotion of legal reforms went on acting with the establishment of domestic courts such as the courts of Bosnia and Herzegovina made up with both national and international judges to hold accountable gravest crimes authors<sup>225</sup>.

Also in this dynamic, some indictments of 161 persons occupying prestigious rank in society coupled with the sentencing 326 persons in the Bosnian courts. Moreover, the Serbia government sought to reinforce the judicial system by promoting legal reforms to address challenges of IHL. The reinforcement of judicial reforms in Serbia started with the review of the constitution of 2006 in areas like the code of conduct for judges and prosecutors, courts organization and the high judicial council. This strategy was supported by the supreme court

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<sup>220</sup> Ibid.

<sup>221</sup> Ibid page 51.

<sup>222</sup> Ibid.

<sup>223</sup> Ibid.

<sup>224</sup> Ibid.

<sup>225</sup> Ibid.

president Vida petrovic Skiro, Dragana Boljevic and Jasmina the deputy general prosecutor to have a reliable judicial system<sup>226</sup>.

Indeed, this strategy aiming restructuring judicial legal reforms in balkans proved necessary consecutive to odious acts that threaten the peace in the region.

### **3.2.2. Training and capacity building of national judicial courts**

The training and capacity building of judicial national officers in the former Yugoslavia made a great advancement in the international criminal scene as domestic courts at time were unable to prosecute core crimes offenders by themselves<sup>227</sup>.

The lack of capacity on the side of national courts to prosecute of mass crimes authors attracted the support European Union to help them rendering decisions on gravest crimes perpetration<sup>228</sup>. The European Union being informed of the atrocious acts that threaten peace in the territories of the former Yugoslavia, decided to grant a four million euro project to strengthen the capacity building of domestic court in the prosecution of the most heinous crimes offenders. This project was led by the Organization for Security and Co-operation in Europe (OSCE), associated with the Office for Democratic and Human Rights (ODIHR) in relation with the International Criminal Tribunal for the Former Yugoslavia (ICTY) to equip domestic courts with all the possible means to render fair trial. The project was targeted on the training of court officers in processing good and fair trials to the highest level in their territories as they faced serious incapacities in this area<sup>229</sup>.

The domestic courts in former Yugoslavia with challenges of prosecution of indicted persons, Training of defense counsel, investigators and officers, facilitating analytical data to local populations, collection of evidences, surrendering of high-ranking military and political officers, witnesses and victims assistance before during and after the trial made the EU to to address the plague they encountered<sup>230</sup>. The project as announced by the EU took 18

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<sup>226</sup>Jelena Avramovic, Mission to Serbia supports reformers in developing new law on the judiciary of 23 September 2008, evident at <https://www.osce.org/serbia/57693>, accessed on 09/06/2024.

<sup>227</sup> The United Nations International Residual Mechanisms for Criminal Tribunals, Capacity building, evident at <https://www.icty.org/en/outreach/capacity-building>, accessed on 09/06/2024.

<sup>228</sup> Ibid.

<sup>229</sup> Ibid.

<sup>230</sup> Ibid.



consecutive months starting from May 2010 to strengthen their capacity to deal with international criminal crimes. Therefore the training capacity building of national judicial courts and defense officers really helped in the enforcement of international criminal justice on individuals responsible for breach of international humanitarian in the former Yugoslavia massacre<sup>231</sup>.

In a general way the training of court officers for the successful enforcement of international criminal justice equipped in the sense that trials could be fairly done as well as procedures. It raised a new standard in the development of international criminal law as the tribunal should be at the level and those portraying it<sup>232</sup>.

### **3.2.3. Strengthening Transitional justice**

The transitional justice standing for the act of addressing past atrocities with a certain approach that may be legal or not legal was an important practice used in the resolution of the former Yugoslavia conflict.

It may or may not depend on the context of the society we have at hand, all methods of dealing with a past of serious human rights except blanket immunity, from prosecution or indemnity for past for past criminal acts have to be considered as forms of justice stated Richard Goldstone<sup>233</sup>. In this view transitional justice can be seen as methods of enforcement of decisions, reconciliation, reparation of inflicted sufferings, truth oath and any other form methods to bring justice on.

The situation of the former Yugoslavia makes us understand that some mechanisms of enforcement of international criminal justice was taken into account to favour the end of the conflict between parties. Within the transitional justice system two particular sub elements are to be used in the exercise of the international criminal justice specifically categorised into a range of criteria such as one conducting to different conflicting results sometimes legal or non-

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<sup>231</sup> War crimes denial, failure to cooperate with national authorities hampering progress of former Yugoslavia Tribunal, Security Council told. Evident at <https://press.un.org/en/2017/sc12858.doc.htm>, accessed on 01/07/2024.

<sup>232</sup> Ibid.

<sup>233</sup> Goldstone, Richard: Past human rights violations Truth commissions and amnesties or prosecutions, evident at file:///C:/Users/hp/Downloads/m-selwood,+Journal+manager,+NILQ+51.2.2+Goldstone.pdf ,accessed on 01/07/2024.

legal. They naturally serve to redress authors of core crimes and rehabilitating the victim guided towards individuals, collective and international means<sup>234</sup>.

They are two specific kinds of transitional justice namely the retributive and restorative<sup>235</sup>. The transitional justice in the conflictual situation of the former Yugoslavia shew forth for the restoration of peace namely in indigenous methods like the testimonies of victims and witnesses and in the exogenous methods with the use of forensic science, courts investigations, prosecutions, and other means attached to facilitate the integration of peace between populations.

### **3.3. Institutional mechanisms**

Institutional mechanisms in the former Yugoslavia conflict to stop atrocities were capital to the settlement of peace in the Balkans as impacts were considerable<sup>236</sup>.

The United Nations Security Council (UNSC) and states parties to the Conference on Security and cooperation in Europe (CSCE) through the resolution 713 to help Former Yugoslav States to terminate the massacre they were facing. In that resolution, it was said that a support to come out from the horrific situation that former Yugoslav States endured should benefit from adequate help namely the UN secretary Javier Perez de Cuellar with the agreements of the conflicting states to help them terminate the conflict<sup>237</sup>.

#### **3.3.1. United Nations Peacekeeping Mission**

The UN secretary general being preoccupied by the situation mandated Cyrus Vance as his personal envoy for the assistance mission in former Yugoslavia to facilitate the restoration of peace between States<sup>238</sup>.

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<sup>234</sup> Ibid.

<sup>235</sup> Barton, Charles: Empowerment and Retribution in Criminal and Restorative Justice, Journal, evident at <https://www.rpforschools.net/RP/Barton%20Empowerment%20and%20Retirbution%20in%20Criminal%20and%20RJ.pdf>, accessed on 02/07/2024.

<sup>236</sup> Case study, Armed conflicts in the former Yugoslavia, evident at <https://casebook.icrc.org/case-study/case-study-armed-conflicts-former-yugoslavia>, accessed on 03/07/2024.

<sup>237</sup> Ibid.

<sup>238</sup> Un charter, The role of the United Nations, evident at [file:///C:/Users/hp/Downloads/httpsaphref.aph.gov.au\\_house\\_committee\\_jfadt\\_bosnia\\_bos\\_ch2.pdf](file:///C:/Users/hp/Downloads/httpsaphref.aph.gov.au_house_committee_jfadt_bosnia_bos_ch2.pdf), accessed on 03/07/2024.

The personal envoy Cyrus Vance, went on having meetings with the parties to the conflict especially the encounter in Geneva where the presidents of Serbia, Croatia and the general secretary of defense of Yugoslavia expressed a prompt peace agreement between them for the common benefit of their region. Some days after the meeting, States seemed to not cooperate with their will to stop the conflict concluding in a complete peace. The personal envoy kept on having other meeting in Former Yugoslavia to mediate the conflicting states in restoring peace between them even if some atrocities continue and afflicting thousands of civilians<sup>239</sup>.

Beyond that, the UNSC decided unanimously to approve under the resolution 721 of 1991 a peacekeeping mission in former Yugoslavia to terminate the massacre that was severing their populations<sup>240</sup>. The mission called UNPROFOR standing for United Nations Protection Force with aims to restore stability in former Yugoslavia in a way that atrocities be stopped. On January 2 of 1992, Boutros Boutros Ghali, new elected Un secretary general decided to send a military battalion of fifty officer to guarantee peace and prevent any securities issue that may occur in the region. The personal envoy seeing the advancement of the peacekeeping mission went on monitoring the efficacy of the military battalion to ensure security of populations for a lasting peace and restored society<sup>241</sup>.

### **3.3.2. The ICRC support**

The direct involvement of the ICRC in the Former Yugoslavia conflict constituted a necessity for serious IHL violations committed within the territories as its mandate states in the Geneva conventions of 1949<sup>242</sup>.

In its missions of humanitarian law enforcer, the ICRC since 1991 in compliance with its mission decided to take part in the ravaging situation that was affecting thousands of victims in the former Yugoslavia by delivering emergency assistance like the tracing of families with their deported ones, medical surgery and systematic treatments of war woundeds, educating

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<sup>239</sup> Ibid.

<sup>240</sup> UNSC resolution 721 of 1991, evident at <https://main.un.org/securitycouncil/en/content/resolutions-adopted-security-council-1991>, accessed on 04/07/2024.

<sup>241</sup> Ibid page 55.

<sup>242</sup> International committee of the red cross, Our mandate and mission , evident at <https://www.icrc.org/en/our-mandate-and-mission#:~:text=Our%20mandate%20under%20the%20Geneva,that%20protect%20victims%20of%20war>, accessed on 04/07/2024.

in the essentiality to have knowledge of the international humanitarian law and its consequences ,distributing foods and providing other relevant services in the region<sup>243</sup>.

In its mission of humanitarian assistance enforcer, the ICRC presented a neutral position in the exercises of the tasks assigned to it by helping the fighting parties to find a common agreement of the violation of the Geneva conventions of 1949 where a strong compliance of rules and customs of war must be respected. The ICRC went on numerous meetings with leaders of the former Yugoslavia namely Doctor Prodan the prime minister of Croatia, Lieutenant General Vladimir Vojvodic who had control of the direction of the medical centre of the Yugoslav People Army (JNA),Radisa Gacic federal secretary of labour,health,veteran affairs and Dr Mitrovic Minister of health of Serbia to agree on the involvement of the ICRC operations between their nations. By these meeting of the ICRC and the State parties in 1991, a number of agreements were signed by the head of States of the six Republics to observe the assistance their respective zones<sup>244</sup>.

They agreed on protected zones in their territories to stop the spread of confrontations between them, assistance of populations, respect of the ICR rules like the emblem , design and their free movement across the given zones for the exercise of humanitarian aid, forwarding allegations to any individual threatening the right of civilians and other, spreading the knowledge of international humanitarian law in the localities to ensure everyone is informed about the respect of humanitarian norms,discussing effect of the application within an international context and any required supports The direct involvement of the ICRC in the Former Yugoslavia conflict constituted a necessity for serious IHL violations committed within the territories as its mandate states in the Geneva conventions of 1949<sup>245</sup>.

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<sup>243</sup> The ICRC and the conflict in the former Yugoslavia, evident at <https://international-review.icrc.org/sites/default/files/S0020860400071011a.pdf>,accessed on 05/07/2024.

<sup>244</sup> Ibid.

<sup>245</sup> Ibid.

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### **3.3.3. Enhanced cooperation between States and courts**

Cooperations with states parties to the conflict and national court were important both for the implementation of justice and peace in the region<sup>249</sup>. The Balkans in their through their different courts need to cooperate with other States to recover from the heavy atrocities they went through in 1990s in domains of security, science and politics. The UNPROFOR standing for United Nations Protection Force was initiated to support the former Yugoslavia countries by securing the territories from any attacks of insurgents groups through fire arms and to prevent from threats. The (UNPROFOR) meant for a peacekeeping mission from 1992 to 1995

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<sup>246</sup> Ibid page 55.

<sup>247</sup> Ibid.

<sup>248</sup> Ibid.

<sup>249</sup> State cooperation with the international criminal tribunals for Yugoslavia and for Rwanda, Dagmar Stroh, evident at [https://www.mpil.de/files/pdf1/mpunyb\\_stroh](https://www.mpil.de/files/pdf1/mpunyb_stroh), accessed on 06/07/2024.

had protect civilians of the region from ground and air strikes that could harm the States directly<sup>250</sup>.

The Balkans received a military from the Atlantic North Treaty Organistaion (NATO) to provide military assistance to former Yugoslavia against any forms of direct oppressions framed with the Conference on Security and cooperation in Europe ( CSCE) held between the NATOs foreign ministers. In those encounters between the chiefs of diplomacy, questions that were raised gravied around the instability of the Balkans and how to rescue them from the massacre that plagued them. The mission was conducted both on grounds and air to secure the territories with sophisticated arms coupled with the support the national judiciary on their task to ensure the protection of individuals<sup>251</sup>. Surely, it is to note that the involvement of institutional mechanism of the UN in the Yugoslav massacre designed a pattern of stability and brought belligerents to a forcible acceptance in lasting peace between them although some of them would deny it.

The court's cooperation between Serbia and Montenegro to prosecute individuals culpable of International Humanitarian Law constituted a necessity to the restoration of peace in the region<sup>252</sup>. Serbia and Montenegro agreed of the prosecution of core crimes offenders present in their territories to be held accountable for commission genocide, war crimes, aggression and crimes against humanity basing on reproached acts. This cooperation between Serbia and Montenegro gave power on suing and enforcing international criminal judgement relying the ICTY Statute and the UNSC resolution 827 as well other practices attached to it<sup>253</sup>.

Moreover, a NATO mission aimed at implementing the Dayton agreement requesting a lasting peace in Bosnia and Herzegovina took place to apply resolutions of this accord<sup>254</sup>. The mission entitle IFOR standing for implementation force was in charge of the security of in all localities of Bosnia suffering from 1992 to 1995. The mission had its seat in Sarajevo, Bosnia where military strategies to secure the country were decided and further executed with other localities

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<sup>250</sup> United Nations peace keeping mission, evident at <https://peacekeeping.un.org/en>, accessed on 06/07/2024.

<sup>251</sup> NATO's role in bringing peace to the former Yugoslavia, evident at <https://www.nato.int/docu/comm/1997/970708/infopres/e-bpfy.htm>. accessed on 07/07/2024.

<sup>252</sup> Law on cooperation of Serbia and Montenegro with the international criminal tribunal for the former Yugoslavia, evident at [https://www.irmct.org/sites/default/files/documents/implementation\\_legislation\\_scg.pdf](https://www.irmct.org/sites/default/files/documents/implementation_legislation_scg.pdf), accessed on 07/07/2024.

<sup>253</sup> Ibid.

<sup>254</sup> Ibid.

like potocari, Mostar, Banja luka and Tuzla. In the result of this tragic situation strong links were developed b countries that participated in the peacekeeping mission to secure the integrity of affected States from the massacre.

Therefore, Enhanced cooperation between States and courts was a high necessity to the resettlement of peace between the parties to the conflict even if it costed a heavy involvement of all kinds.

### **3.4. Restorative justice**

As its concepts raises, the restorative justice is the form of justice that restores identities, fragilized relationships that were broken in one manner or another through tragic situations, it promotes fair solutions of challenges that oppressed people in conflicts by legal or non-legal means. In the restorative justice the targets which are finding solutions peaceful solutions and binding measure for the rehabilitation of victims in the society focus on commission of truth ,possible restoration, educative facilities in society as well as any other ways pertaining to the reparation of infringements<sup>255</sup>. The restorative justice played an important role in the enforcement of international criminal justice for over one hundred thousand (100 0000) of people got killed in the Bosnian massacre from 1992 to 1995 added to the genocide of 1995 where eight thousands of Bosnian Muslims went under inhuman treatments such as mass killings, rapes, deportations and other forms of scandalous treatments inflicted to them but thanks to the restorative justice were assisted<sup>256</sup>.

To proceed, humanitarian-aid came into Tuzla ,a town situated in Bosnia and Herzegovina to assist in response to atrocities that stroke thousands of victims in the region. The humanitarian could constitute in teams to provide assistance in protected areas like Srebrenica in the southern part of Bosnia where a considerable number of women was evident with children. Yet the restoration process began in the region, some truths on the origins of the massacre started to be unveiled especially on the Bosnian Serbs that killed, executed over eight thousand

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<sup>255</sup> Transitional justice tools: Reparations ,evident at <https://www.ushmm.org/genocide-prevention/simon-skjodt-center/work/ferencz-international-justice-initiative/transitional-justice/transitional-justice-tools-reparations>, accessed on 08/07/2024.

<sup>256</sup> Ibid.

(8000) of Bosnian Muslims of male sex coupled with imprisonments, tortures as well as forced displacements orchestrated<sup>257</sup>.

In the process of restoration, the gap that was created during the massacre, a system of reparation was evident on victims through many strategies. These strategies were performed in pecuniary, administratively and culturally like a compensation allowing victims to live and find an activity susceptible of ensuring their daily needs, measure promoting the coming back of deported people to be reconverted in their cultural homes and administrative facilities aiming at encouraging births ,constructions of memorials for deceased and the safeguarding of the resources for facilitating the reinsertion of the populations in the society.For the case of Bosnia and Herzegovina,a process of property restitution took place compared to a percentage of ninety five percent (95 %) of two thousand revendications recorded by the administrative authorities of those times.

Also, the initiative progressed with the implication of some international organisations such as the Humanitarian Law Centre that acted in the area of assistance to victims of odious crimes, with food, shelters, and medical aid for wounded during the conflict<sup>258</sup>,the Research and Documentation Centre that performer in Bosnia and Herzegovina to reconnect displaced families to their parents and relatives in places where they were found, death search for people who suddenly disappeared in the period of conflict via mechanisms feedback personnels in the field to facilitate the process and to help rebuilding the society that was already destroyed with strong administrative foundations for the benefit of all<sup>259</sup>.

In this dynamic,we should note that restoring the society is so crucial for the stability of our populations for citizens cannot be living unless a prior restoration is done after serious inhuman challenges they faced. Our society needs to be restored via peaceful means, such as reconciliation, resettlement of displaced people to their habitual places and other measures facilitating their return to the life they lived before the ethnic cleansing.

Therefore, an agreeable transition was highly required for a lasting peace between parties to the conflict.

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<sup>257</sup> Ibid.

<sup>258</sup> Lepa Mijic, A Long and Costly Path to the Truth, GLASJAVNOSTI, Aug. 13, 2001

<sup>259</sup> International centre for transitional justice, transitional justice in the Former Yugoslavia, evident at <https://www.ictj.org/sites/default/files/ICTJ-FormerYugoslavia-Justice-Facts-2009-English.pdf>,accessed on 06/06/2024.



### **3.5. Mechanisms of peace agreements between the parties to the conflict**

In efforts towards the implementation of mechanisms to be enforced for the re-establishment of peace in the Former Yugoslavia, the ICRC went on several meetings with the parties to the conflict to reach a peace compromise for the stability of the region. This besought stability costed a range of negotiations for it to be considered by the former leaders of the six different States of the broken communist bloc to restore from what affected them atrociously.<sup>260</sup>

Towards the mechanisms of agreement between the parties to the conflict, it was stated that wounded and sick should be treated properly in line with the 1<sup>st</sup> Geneva convention of 1949, prisoners of war should be treated as the 3<sup>rd</sup> Geneva convention requires, good treatment to civilians taken into hostage by the adverse party in line with the 4<sup>th</sup> Geneva convention and other respect of IHL norms to be respected by the parties<sup>261</sup>. These agreements between the parties put in evidence the desire to resettle peace between their populations as the impacts of the massacre were considerable in their countries. Therefore, the mechanism of peace of agreement between the six countries proved conclusive and resulted in a lasting peace between them<sup>262</sup>.

## **GENERAL CONCLUSION AND RECOMMENDATIONS**

### **1 General conclusion**

This chapter sought to examine the problematic of enforcement of the international criminal court decisions in the break-up of the Former Yugoslavia as it generated series of odious impact in the territories namely crimes of aggression, crimes of war, crimes against humanity and crimes of genocide. Referring to the perpetration of the most heinous crimes, a meticulous attention was paid to prosecute individuals culpable of gravest crimes in the former communist bloc throughout the International Criminal Tribunal for the Former Yugoslavia under the

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<sup>260</sup> Memorandum of understanding of 1991, evident at <https://www.peaceagreements.org/viewmasterdocument/1454>, accessed on 06/06/2024.

<sup>261</sup> Former Yugoslavia, Special agreements between the parties to the conflicts, evident at <https://casebook.icrc.org/case-study/former-yugoslavia-special-agreements-between-parties-conflicts>, accessed on 08/06/2024.

<sup>262</sup> Dayton accords, International agreement, evident at <https://www.britannica.com/event/Dayton-Accords>, accessed on 09/06/2024.

resolution 827 and whose the seats were in the Hagues, Netherlands. Regarding the post breakup of the Former Yugoslavia, the findings show tangibly that the mechanisms to be enforced for the effectiveness of international criminal decisions previously necessitated the involvement of the United Nations Security Council (UNSC) to have those gravest crimes addressed on those responsible for it. Therefore, the mechanisms of implementation in that conflict strongly helped both the UNSC and ICTY to condemn the commission of core international crimes that threatened thousands of victims in the Former Yugoslavia.

## **2. Recommendations**

Before closing the research, it would be necessary to suggest the following recommendations regarding the enforcement of International Criminal Court Decisions with national courts in condemning those responsible for serious violations of International Humanitarian Law in the Former Yugoslavia. The recommendations will seek to redress wrong practices by promoting a collaboration international and national courts, to fight against jurisdictional challenges and to ensure the implementation of justice on violators.

1. The International Criminal Tribunal for the Former Yugoslavia and domestic courts should coordinate their efforts to minimize similitudes in proceedings and to ensure effectiveness. This can be done by sharing proves, constant collaboration between investigators and adjudicators of the case and the coordination of arrests.
2. The international Criminal Tribunal for the former Yugoslavia and domestic courts should cooperatively work together to make sure justice is applied.

3. The United Nations Security Council should unilaterally and intransigently exercise its authority on afflicting States once proven culpable of international criminal offenses.
4. There should be a considerable respect of jurisdiction between the International Criminal Court and domestic Courts in the exercise of their duties in order to complement in jurisdiction especially to refer and defer cases once necessary on accountability for gravest crimes authors.
5. National judicial systems should be strengthened to facilitate the implementation of criminal justice on mass crimes perpetrators.
6. National courts' officers and other judiciary enforcers should be trained and equipped to minimize the criminal risks in the enforcement of sanctions on those responsible for gravest crimes.

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