

# Book review

## Justice in between resistance and co-operation

Victor Peskin (2008) *International Justice in Rwanda and the Balkans: Virtual Trials and the Struggle for State Cooperation* New York: Cambridge University Press.

The long-awaited arrest on 21 July 2008 of Radovan Karadžić – the former Bosnian Serb leader facing charges of genocide, crimes against humanity and war crimes – and his first appearance before the International Criminal Tribunal for the Former Yugoslavia (ICTY) on 31 July 2008 represent a pivotal development in Serbia's relationship with the ICTY. As with Slobodan Milošević and Ante Gotovina, the Karadžić case illustrates the centrality of state co-operation with the Tribunal for the arrest and transfer of war crimes suspects. It turned out again that the respective soft power of the EU and the ICTY, combined with major changes in Serbian politics – particularly the political will of Boris Tadić to reconnect Serbia with the legacy of Zoran Đinđić – were instrumental in ending the impunity of heads of states and war criminals.

Karadžić's trial certainly represents a huge challenge for the ICTY. Until now, the ICTY's results may be seen for the most part as unconvincing: Milan Babić committed suicide in custody; prime suspect Slobodan Milošević died in Scheveningen after an overall unsatisfactory four-year trial; the Kosovo Liberation Army (UÇK) commander Ramush Haradinaj was acquitted after the judges noted prosecution complaints of witness intimidation throughout the trial. The Karadžić trial provides the ICTY with the possibility to redeem itself, while it also gives observers the opportunity to glimpse beyond the courtroom and look for a comprehensive picture of tribunal politics.

Based on field research and interviews conducted in the targeted states, the tribunals and at key international sites, Victor Peskin's new book *International Justice in Rwanda and the Balkans* looks behind the scenes, focusing on the tribunal-state struggle over co-operation in the pursuit of accountability – a mostly overlooked issue in the tribunal literature. In the absence of enforcement powers of their own, the ICTY and the International Criminal Tribunal for Rwanda (ICTR) rely on their own capacity to build political authority in order to convince the states implicated in war crimes and genocide to comply.

The distinction between compliance and co-operation is at the centre of Peskin's argumentation: 'compliance' is about a state's submitting to a tribunal's orders, whereas 'co-operation' is about a state's embrace of international justice norms and a strengthening of the rule of law. Of course, co-operation involves deep societal changes *vis-à-vis* international justice. This obviously goes beyond compliance and requires a long-term approach, encompassing the complexity of relations between law and changes in society and politics. Peskin points out that this goal has not yet been realised in the targeted states. In this regard, he envisions future retrospective studies on the long-term effects of the tribunals.

Going beyond the usual tribunal studies – where legal approaches dominate – the book takes a comprehensive approach to an explanation of the politics of state co-operation by considering the three main actors: key international community actors; the targeted states; and the tribunals themselves. The author's focus on the political strug-

gles and negotiations over co-operation is two-fold: first, between tribunal, powerful actors in the international community – especially the US and the EU – and the states complicit in atrocities – the former Yugoslav republics and Rwanda; and, second, within the arena of the domestic politics of these states. Due to such internal divisions being less visible under an authoritarian regime, as in the Rwanda case, the book focuses in this respect on Serbia and Croatia. The author also takes into account the existing splits within the international community, as well as within the tribunals and their three main divisions: the judicial chambers; the Office of the Prosecutor; and the Registry.<sup>1</sup>

The courtroom trial is the focal point of the individual defendant's guilt or innocence, while the author's compelling concept of 'virtual trials' or 'trials of co-operation' concentrates on the power struggles between the tribunal and the targeted states over whether they facilitate investigations, indictments and prosecutions. Another added value of this outstanding book is its comparative nature: the case study chapters compare the effectiveness of the two tribunals' respective strategies in the state-tribunal battle over co-operation. This review focuses on the Balkans chapters, but it is noteworthy to mention that the book's analysis of the ICTR demonstrates how the efficacy of a tribunal's soft power is not a foregone conclusion but something that has to be developed and can be squandered.

The Serbian and Croatian case studies are each divided into two parts: the struggle between the ICTY and the two states, first during the authoritarian period, thus from the establishment of the ICTY in 1993 until Milošević's fall from power in October 2000 (Chapter 2) and, for Croatia, until the death of Franjo Tuđman in December 1999 and the electoral victory in January 2000 of the democratic coalition led by Ivica Račan (Chapter 4); and, second, during Serbia's and Croatia's respective transition toward democracy, hence from 2000 through to mid-2007 (Chapter 3 for Serbia and Chapter 5 for Croatia). The author also devotes four chapters to analysing the relationship between the ICTR and the Tutsi-led Rwandan government (Chapters 6 to 9).

The author examines the ups and downs of Serbia's and Croatia's co-operation with the tribunal. On the one hand, he scrutinises the most significant events, such as the 1995 Dayton Accord, the Kosovo conflict in 1999, Milošević's fall from power in October 2000, Zoran Đinđić's assassination in 2003 and the arrest of Gotovina in 2005. On the other hand, he rigorously analyses what happened in between, thus during the various shifts in domestic politics. The author presents evidence that state compliance significantly increased when it was related to conditionality deadlines – economic and political incentives such as: US economic aid; the lifting of sanctions; and the signing of a Stabilisation and Association Agreement; etc. – and decreased shortly after.

Very interestingly, Peskin shows that Serbia's co-operation with the ICTY during the Đinđić years (2000-2003) produced mixed results: for example, Milošević's transfer did not establish a government consensus over the need to co-operate. Contrary to what one might have expected, however, the return to power of Vojislav Koštunica (2004-2007) – well-known for his fierce opposition to the ICTY – corre-

1 The struggle inside the ICTY is also discussed by Florence Hartmann (2007) *Paix et châ-timent. Les guerres secrètes de la politique et de la justice internationales* Paris: Flammarion.

sponded with a new wave of surrenders and transfers to The Hague. Similarly, Croatia's co-operation did not follow a smooth path in the aftermath of Tuđman's death in 1999 – at times, the new coalition government was even more resistant than the Tuđman government had been when it came to arrest and transfers to The Hague.

Appropriately, the book also insists on the differences between the way Serbia and Croatia have approached the tribunal. Peskin points out that Croatia is indeed a critical case, because it has been for the most part in the shadow of Serbia and shifted from a victim – initially pressing for the creation of an international war crimes court – to a victimiser reluctant to comply. Following the author's overall argumentation, it can be said that the ICTY, first, increasingly gained international standing and legitimacy and, second, won its 'trials of co-operation' with the targeted states in the former Yugoslavia: of the 161 suspects indicted by the tribunal since 1993, only two remained at large by the end of July 2008.

The volume also discusses the highly sensitive peace-justice controversy: does the tribunal's strategy imperil or foster stability and democratic transition? Instead of taking a position on this issue, the author attempts to unpack the complex interplay between justice, peace and democratic transition. True, the sometimes aggressive strategy employed by the ICTY's chief prosecutors – particularly Carla Del Ponte – at times poses a threat to stability. However, as Peskin notes, Serbian and Croatian politicians were also playing the instability card in order to buy time and counter Del Ponte's shaming and other adversarial strategies for compliance. Despite her mostly being seen as uncompromising crusader, Del Ponte also used conciliatory strategies: when required, she offered concessions and sought compromises in order to establish working relations with targeted states and to lower the political costs of co-operation for these states.<sup>2</sup> That said, Peskin correctly notes that the tribunal had various reasons to avoid projecting a public image of negotiation. What matters in the end is that the strategy chosen by the tribunal has been designed to increase the prospects of co-operation.

The book's main conclusion, which applies to all its case studies, is that the tribunals rely essentially on international pressure in order to obtain co-operation. The second key finding is that domestic actors importantly shape a state's decision over whether to co-operate with the tribunal and bring war crimes suspects to trial. One of the solid merits of this book is the evidence it presents to demonstrate that a transitional democracy can withhold state co-operation as much as an authoritarian government. This goes against the accepted view that state resistance to international justice is limited to authoritarian regimes. The third main conclusion relates to the extensively discussed issue of the tribunals' soft power (Chapter 10). Here, the argument is that the chief prosecutor has significant capacity to act strategically in what the author calls 'trials of co-operation.' In these virtual trials, the prosecutor employs adversarial and conciliatory strategies in order to put pressure on defiant states and persuade them to fulfil their legal obligation to co-operate in full. Peskin pays close attention to what the tribunals and their chief prosecutors have done to enhance their soft power and ex-

2 See Carla Del Ponte (forthcoming) *Madame Prosecutor: Confrontations With Humanity's Worst Criminals and the Culture of Impunity* New York: Other Press; and my review of this book in Christophe Solioz (2008) 'Memoirs of a Snake Hunter' *Transitions Online* 14 May 2008.

plains why the ICTY has been more effective than the ICTR in developing and exercising this power. Peskin also notes that the tribunals' efforts to obtain co-operation raises ethical issues in so far as they are exercises that often have more to do with politics than law.

Victor Peskin's book ends with some stimulating comments on the future of international criminal justice. Here, the author includes an analysis of other models of state-tribunal co-operation that mix international and domestic jurisdictions, such as the Special Court for Sierra Leone, the East Timor and Cambodia tribunals and the International Criminal Court (Chapter 10). In his analysis of the International Criminal Court, Peskin explains why this court is likely to face even greater difficulties in its quest for state co-operation than either the ICTY or ICTR have experienced.

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