

April 2008

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

Daniel C. Turack

Follow this and additional works at: <https://digitalcommons.usf.edu/gsp>

Recommended Citation

Turack, Daniel C. (2008) "Book Review: Rachel Kerr. The International Criminal Tribunal for the Former Yugoslavia: An Exercise in Law, Politics, and Diplomacy," *Genocide Studies and Prevention: An International Journal*: Vol. 3: Iss. 1: Article 11.

Available at: <https://digitalcommons.usf.edu/gsp/vol3/iss1/11>

This Book Review is brought to you for free and open access by the Open Access Journals at Digital Commons @ University of South Florida. It has been accepted for inclusion in Genocide Studies and Prevention: An International Journal by an authorized editor of Digital Commons @ University of South Florida. For more information, please contact digitalcommons@usf.edu.

Book Review

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

Reviewed by Daniel C. Turack, *Capital University Law School, Columbus, OH*

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

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

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

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

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

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

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

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