

INTERNATIONAL LAW: The Legacy of International Criminal Tribunals and the Role of Communication

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As the field of international criminal law expands, the subject of legacy has become a key consideration for international courts and tribunals. While each international criminal institution faces different circumstances that affect its legacy, general themes and components of legacy may be observed based on their histories. As institutions such as the International Criminal Tribunal for the Former Yugoslavia (ICTY), International Criminal Tribunal for Rwanda (ICTR), and Special Court for Sierra Leone (SCSL) come to a close or approach the end of their mandates, the academic community and their staff members reflect on the history of these institutions and the legacy that they will leave behind. Examining legacy raises questions about what the ideal role of an international court is and what effects it can have politically, for victims, and on the peace and wellbeing of a nation. As legendary jurist Antonio Cassese wrote, “tribunals must leave something useful behind.”¹

Generally, these institutions are seen as steps towards an end to impunity and establishment of rule of law despite many obstacles. Critical evaluation, however, is important for the development and improvement of future institutions. Along with judicial proceedings, legacy projects and outreach programs protect the history of a court while supporting and strengthening a community. Ms. Sara Darehshori, a Senior Counsel with the International Justice Program and Human Rights Watch, stated that “outreach initiatives must be considered from the outset of a court’s operation,” and noted that the early ICTR was too internally focused on its legal objectives and did not devote as much time or resources to making the trial accessible to the public. “It did not occur to the Office of the Prosecutor to publicize its work,” Ms. Darehshori states, “given that most lawyers came from national systems and legal cultures in which the legitimacy of the court system is taken for granted and courts are generally accessible to the population.”² This quotation reflects one of the largest aspects of legacy that is often overlooked in the rush for a court to complete its formal mandate: outreach and the impact on the people of the affected region. Due to misunderstanding of international laws and miscommunication between the affected region and international community, courts also often face expectations beyond their mandate, leading to frustration and confusion. Therefore, a level of cooperation with civil society and outside actors is crucial to achieve justice for victims, to work towards healing beyond punitive justice, and to ensure that the efforts of the international community are as fruitful as possible.

Understanding and Defining Legacy

Legacy is defined as encompassing the broad, theoretical accomplishments of the courts as well as their material effects. The material legacy of a court refers to what it might physically

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¹Antonio Cassese. Report on the Special Court for Sierra Leone. Rep. Residual Special Court for Sierra Leone, 12 Dec. 2006. 61.

²Symposium on the Legacy of International Criminal Courts and Tribunals in Africa Rep. the International Criminal Tribunal for Rwanda, The International Center for Ethics, Justice, and Public Life, Brandeis University, Feb. 2010. 37.

leave behind. This can include its archives, facilities, and specific legacy projects implemented at the ground level. As defined by the ICTY, legacy is what “ the Tribunal will hand down to successors and others.”³ At an international discussion on the legacy of the SCSL hosted by the International Center for Transitional Justice (ICTJ), legacy was defined as what would live on after the completion of its judicial work: “its decisions, archives, prison, and courtroom.”⁴ Some of the broader aspects of legacy include a court’s contributions to international jurisprudence, such as protecting “victims’ rights to justice, strengthening the rule of law, and fighting impunity.”⁵ As international criminal law is a young and constantly evolving field of law, one of the important aspects of legacy is that each new tribunal will set a precedent for future international courts and international criminal justice.⁶ A court’s impact on broad social trends is referred to as its normative legacy. This normative legacy includes allowing victims of atrocities to establish a narrative, establishing greater accountability for crimes that have historically gone unpunished, and instituting rules that may be enforced in the future fight against impunity.⁷ The SCSL website describes that legacy means something different to each of the affected parties, from the people of Sierra Leone to future tribunals, or more broadly to the system of international justice.⁸ Although additional services are necessary to advance the healing and welfare of victims, this process in itself can have an intrinsic affect by providing a sense justice. Given these different interpretations, it is clear that a court’s final legacy can encompass a myriad of different elements and components of a tribunals work.

The International Criminal Tribunal for the Former Yugoslavia

As the first international criminal tribunal since the Nuremberg trials, the ICTY set many precedents for international law. Founded in 1993 in response to a war involving multiple parties, the court was faced with determining who was at fault for which crimes, and informally was expected to put an end to the violent attacks against civilians. While it was successful in some respects, infamous attacks such as the massacre at Srebrenica occurred after the founding of the court. The ICTY’s neutrality was aided by the fact that it prosecuted members of all groups involved, however this decision sometimes led to bitterness for the parties of the former Yugoslavia. Doctor Rachel Kerr, a Senior lecturer at King’s College London in the Department of War Studies, examines the role of the ICTY in establishing peace in the region. Kerr asserts that the tribunal’s judicial legacy includes “substantial inroads into substantive law issues, in particular with regard to the definition of genocide, the application of ‘grave breaches’ provisions, the elucidation and expansion of the laws applicable to non-international armed conflict, the definition of crimes against humanity and the nature of command responsibility” as well as setting a precedent for international law.⁹ As one of the first international tribunals,

³“Assessing the Legacy of the ICTY.” ICTY. 24 Feb. 2010.

⁴International Experts Gather in Freetown to Discuss Legacy of the Special Court for Sierra Leone.”

⁵Ibid.

⁶UN-ICTR. External Relations and Communication Outreach Unit. *ICTR’s 20th Anniversary Commemoration and Website Launch in The Hague. United Nations International Criminal Tribunal for Rwanda*. N.p., 5 Dec. 2014.

⁷Magdalena Spalińska, Helena Eggleston, and Rada Pejić-Sremac, eds. “20 Years of the ICTY: Anniversary Events and Legacy Conference Proceedings.” United Nations International Criminal Tribunal for the Former Yugoslavia. ICTY Outreach Program, 2014. 7, 22.

⁸“Legacy Projects.” The Special Court for Sierra Leone, the Residual Special Court for Sierra Leone.

⁹Rachel Kerr, “Peace through Justice? The International Criminal Tribunal for the Former Yugoslavia.” *Journal of Southeast European & Black Sea Studies* 7.3 (2007): 373-385. Academic Search Premier. Web. 378.

however, the ICTY initially put less emphasis on victim integration and outreach, which may have hindered its legacy for the affected people.

One of the main functions of an international court is to pursue justice on behalf of affected groups, but this is also often the most contentious aspect of the tribunals. The ICTY made substantial contributions to the jurisprudence of international law, but a critique of the ICTY is that it failed to provide true justice for victims and did not adequately impact national reconciliation in the former Yugoslavia.¹⁰ Peter van der Auweraert, a member of the International Organization for Migration, stated that the legacy of the ICTY is also the “legacy of the international community which has invested all its resources in punitive justice.”¹¹ Clearly this is a natural function of the tribunal’s structure, but it also indicates that perhaps there should be greater attention paid to supplementary programs that are restorative rather than punitive in nature. Nataša Kandić, founder of the Humanitarian Law Center, does note that the tribunal’s work was important for the people in the regions of the former Yugoslavia as a way to establish a factual narrative of events. Without these facts, the people would have been deprived of the opportunity to come to “autonomous conclusions” and would have instead been left to rely on secondary sources.¹² The proceedings of the tribunal and the transparent access to its findings were pivotal to its ability to prevent future crimes, end impunity, and establish justice.

Transitional justice is “an approach to achieving justice in times of transition from conflict and/or state repression”¹³ using judicial and non-judicial measures. While an international tribunal has an immense opportunity to promote transitional justice, it cannot do so without additional mechanisms and efforts. Kerr states that the proceedings of the ICTY have been “central” to the transition to peace, but there has been criticism of inefficiency of the tribunal’s process and the lack of tangible impact on peace and reconciliation.¹⁴ On the other hand, this could also be an unavoidable consequence of a court that follows a war, in which each party will see their treatment as unjust compared to their former opponent. It is unclear how far the court can go to promote reconciliation while also providing justice in a way that is as neutral and as apolitical as possible. Kerr asserts that “the nexus between peace and justice is to be found in the contribution that justice can make to the process of establishing sustainable peace.”¹⁵ The role of criminal trials in this process is important for establishing individual responsibility, deterring future events, providing a sense of justice for victims, establishing rule of law, removing perpetrators from the peace process, and providing an impartial record. Other factors strongly impact this process, for example one observer stated that “[w]hether societies come to value tribunals as an equitable and effective way to confront their violent paths may ultimately depend more on the approval of a nation’s leaders than in anything an outreach programme can do”¹⁶ While it is important for a tribunal to reach the people in an affected region, unrealistic expectations that transcend the mandate of the tribunal excessively may distract from the main obligations of the court and its ultimate legacy.

As an international tribunal, it is necessary to consider the unique history of the region. Changes and policies that are seen as impositions or that are not integrated into the community

¹⁰Spalińska, Eggleston, and Pejić-Sremac, eds, "20 Years of the ICTY: Anniversary Events and Legacy Conference Proceedings," 26.

¹¹Ibid. 84.

¹²Ibid. 44.

¹³“What is Transitional Justice?” International Center for Transitional Justice.

¹⁴Kerr, "Peace through Justice? The International Criminal Tribunal for the Former Yugoslavia," 374.

¹⁵Ibid. 379.

¹⁶Ibid.

will likely be less effective and not meet the needs of the community. Dan Saxon, a former prosecutor for the ICTY, explores the legacy of the ICTY in the region of the former Yugoslavia and the broader role of the court in his essay "Exporting Justice: Perceptions of the ICTY among the Serbian, Croatian, and Muslim Communities in the Former Yugoslavia." He critiques the practicality of some of the goals of the tribunal and what was hoped would be its legacy. For example, it is often assumed that the creation of an ad hoc tribunal will help to restore or foster the rule of law; Saxon argues that since "the former Yugoslavia has no history or tradition of a strong independent judiciary" such an establishment was perceived as a Western imposition rather than an organic process based in the lived experience of many residents.¹⁷ For an international tribunal to have a lasting, positive impact on the domestic rule of law and judiciary, it must take steps to encourage local initiatives, policies, and adaptations.

The International Criminal Tribunal for Rwanda

The ICTR was established shortly after the ICTY in response to the devastating Rwandan genocide in 1994. The tribunal was based in Tanzania in an effort to bring the proceedings of the trial closer to the affected region than the ICTY had been. However, as with the ICTY, outreach was not an initial prerogative of the tribunal, which alienated the tribunal from the reality of Rwanda. Another factor that disadvantaged the tribunal was that it did not prosecute certain groups, which diminished its perceived legitimacy. Both the ICTY and the ICTR were criticized for the length of their proceedings and the cost of the trials, a particularly pressing concern when almost half of Rwanda lives in poverty and limited resources must be allocated with care. Part of the positive legacy of the ICTR is its effect on the region, in particular the victims, the academic community, and the judicial system. Not only did the ICTR establish specific regional programs, such as legal journals or moot court exercises, it also helped to raise the profile of international law.¹⁸ Some of the difficulties it faced centered on the task of integrating the court and international criminal law into the African education system and the domestic courts. Major difficulties in this respect include a lack of communication or clear practice on how to address conflicts between international and domestic law as well as a metaphorical "'wall'...separating international and domestic law."¹⁹ Professor Yitiha Simbeye of the Open University of Tanzania and Consultant Legal Officer of the International Refugee Rights Initiative in Kampala stressed the importance of the archives of the tribunal; in her opinion, access to the archives was crucial to the jurisprudence of the tribunal trickling down to the national courts.²⁰ She additionally noted that there was a need for more education programs on the subject of international criminal law in order to strengthen international legal prospects in the region's future. New institutions that contribute to this goal and could be used as resources include the African Court of Human and Peoples' Rights and the Open University of Tanzania's new International Criminal Law Center.²¹ The transfer of the jurisprudence of the ICTR to the local judicial systems is an essential part of the ICTR's legacy and its long term effect on the region. As Sir Dennis Byron,

¹⁷ Dan Saxon, "Exporting Justice: Perceptions of the ICTY among the Serbian, Croatian, and Muslim Communities in the Former Yugoslavia." *Journal of Human Rights* 4 (2005): 559-72. Print. 562.

¹⁸ Symposium on the Legacy of International Criminal Courts and Tribunals in Africa 8

¹⁹ *Ibid.* 11.

²⁰ *Ibid.* 42.

²¹ *Ibid.*

the Honorable ICTR President stated, “it is only through such developments that the Tribunal’s legacy will be safeguarded.”²²

The proceedings of the ICTR make it clear that while outreach and legacy programs are not always seen as part of the primary function of a court, they are necessary for the court to reach its full potential and mandate. Mr. Roland Ammousouga, a Senior Legal Officer, ICTR Spokesperson and Chief of External Relations and Strategic Planning Section at the ICTR, spoke on the efforts of the tribunals outreach program in relation to legacy. He stressed the importance of outreach in fulfilling the tribunal’s mandate and expressed that “in order for the Tribunal to contribute to the restoration and maintenance of peace in Rwanda and the Great Lakes Region, as mandated by the UN Security Council, it is 'essential that the Rwandan population and the peoples of the African continent have a clear understanding of the work of the Tribunal.’”²³ One of the main struggles for the Rwandan outreach initiatives was the introduction of international law to a population that was not familiar with the concepts and institutions of international law. This gap in knowledge and background necessitated new and nontraditional forms of communication to reach the population.²⁴ Mr. Ammousouga specifically “called for prioritizing an outreach program that seeks to preserve and ensure the survival of the legacy of the ICTR in Rwanda, in the Great Lakes Region, and throughout the African continent, in order to ‘help to increase and sustain the awareness of current and future generations about the achievements and challenges of international criminal justice and its quest for the eradication of the culture of impunity.’”²⁵ This experience attests to the difficulties in communication that may arise for an international court and the necessity of versatile outreach programs. Programs that work with the community are a necessary component to ensure that the trials are effective and that the court achieves its long-term goals.

The Special Court for Sierra Leone

As a hybrid tribunal funded by voluntary contributions, the trajectory of the SCSL differed from the previous two tribunals. From the beginning, the SCSL put an emphasis on outreach and adapting to fit the needs of the people. Outreach projects and integration with the local population were aided by the hybrid nature of the court and its location in Freetown, Sierra Leone. This resulted in better education on both the tribunal and international criminal law itself, which in turn improved public opinion of the court. Thierry Cruvellier, a journalist and writer who studied the SCSL, notes that “while attention to its long-term legacy was not an explicit part of the Special Court’s mandate, its in-country presence and commitments reiterated by senior court officials led international policy makers and Sierra Leoneans to expect that it would have a significant impact on rule of law at the domestic level.”²⁶ As a hybrid court, the Special Court was anticipated to have a “demonstration effect,” in which it would act as a catalyst for improvements to the domestic legal system.”²⁷ The SCSL instituted programs that facilitated one-on-one integration of its international employees and local employees, which assisted in strengthening the domestic judiciary. The hybrid court model was pioneered in an effort to avoid

²² Ibid. 49

²³ Ibid 34.

²⁴ Ibid.

²⁵ Ibid. 35.

²⁶ Thierry Cruvellier, "From The Taylor Trial to a Lasting Legacy: Putting The Special Court Model to the Test." (2009): n. pag. International Center for Transitional Justice and Sierra Leone Court Monitoring Programme. Web. 3.

²⁷ Cruvellier, "From The Taylor Trial to a Lasting Legacy: Putting The Special Court Model to the Test," 28.

some of the pitfalls of the previous tribunals, but it is clear that this was not entirely successful. In particular, excessive spending and length of the trials continued to be a challenge.²⁸ Cruvellier states that for the Special Court “the cost-per-defendant ratio is not a significant improvement on the record of the ad hoc tribunals,” though the narrow mandate of the court did limit overall costs of the Special Court.²⁹ Therefore, while improvements are still necessary to improve efficiency of international tribunals, the SCSL sets a helpful precedent in terms of outreach, communication, and education within the community.

Binta Mansaray, Registrar at the SCSL, stated that she felt the ICTR had “created ‘unrealistic expectations’ regarding its capacity for effecting social change in the East African region.”³⁰ In her view, the ICTR was meant mainly to complement and support the domestic judiciary and many of the lower level cases should have been pursued in that venue. In terms of her own experience at the SCSL, she stated that “the SCSL also has a broad mandate to contribute to the consolidation of peace and to foster the rule of law.” Mansaray stressed the significance of context specific grassroots programs that were able to better reach the community and foster understanding of the rule of law. It was considered important from the outset of the SCSL to establish an Outreach Program in order to fulfill its broader mandate through “a robust public information and public education scheme.”³¹ Mansaray additionally made the point that rule of law cannot effectively stem only from the courtroom, but rather it must be a part of a larger campaign that provides information to the public and considers different ways of engaging target groups. In contrast to some of the critiques made of the ICTR, the SCSL has been relatively praised for its outreach; “its approach has been to engage the local population in the SCSL’s judicial work by holding town and village meetings and by continually disseminating information through video, radio, workshops, and written materials.”³² The use of outreach and media is an important factor in the legitimacy of the court and the transparency of proceedings, both of which affect the legacy of the court in the affected region and for the international community. In instances where there was not an active outreach program, the work of the court was often misinterpreted and used for political purposes; for example, the ICTY was at times used by different groups for “propaganda purposes,” which ultimately damaged efforts to foster reconciliation in the areas of the former Yugoslavia and impeded the prosecutor.³³ Therefore, by facilitating educational outreach and collaborative initiatives with local legal structures a court can present the facts of the situation in a way that will reach a broader audience.

Conclusions

While each court has a unique context and legacy, it is a general recommendation that international tribunals must actively prioritize outreach and a methodology that will involve people at the domestic level throughout the duration of the trials. Even the collaborative effort to create an international court can be an important step towards peace and the establishment of rule of law; Martin Ngoga, the Prosecutor General of Rwanda, emphasized that by acknowledging the Rwandan genocide and the experiences of the victims, the mere creation of the ICTR was a

²⁸Ibid 22.

²⁹Ibid 44.

³⁰Symposium on the Legacy of International Criminal Courts and Tribunals in Africa 25.

³¹Ibid. 39

³²Ibid. 37

³³Ibid. 37

political act of immense importance.³⁴ Such political effects are inevitable and must be taken into consideration, for example in the case of the ICTY prosecuting high ranking officials sent a political message and changed the political landscape. On the other hand, an international tribunal cannot be responsible for every aspect of establishing political peace and reconciliation in a region. Encouraging specific programs that work in tandem with international tribunals allow the tribunals to most efficiently and effectively achieve their mandate, while working with local resources. Use of outreach in the community helps to integrate the international resources into the affected country and to implement a comprehensive approach to protect and build the legacy of the court. One of the frequently expressed regrets in regards to legacy is that it was considered as an afterthought and was not prioritized in terms of time or budget allocation. Additionally, major problems to be addressed by future tribunals are the establishment of legitimacy, finding the support of states and civil society, and reducing the length and cost of the trials. Transparent trials that prosecute higher level offenders and members of different groups without prejudice help to establish legitimacy and benefit the international judicial legacy. In the future, it is essential that international tribunals ensure that their work is accessible, that they take measures to integrate the academic and judicial community of the nation, and that they are constantly evaluating and adapting to their context. Legacy is the reflection of all of a tribunal's years of investments by dedicated personnel and the international community, therefore it is important to consider legacy as early as possible and to take steps towards achieving valuable and lasting results.

³⁴Ibid. 46

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