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A CRITICAL ANALYSIS ON THE LEGACY AND LEGITIMACY OF ICTY THROUGH THE LENS OF TADIC CASE

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Abstract

ICTY (International Criminal Tribunal for Former Yugoslavia) was established in the year 1993 by resolution 827 of the United Nations Security Council. It is an ad hoc tribunal formed with an intention to bring justice and punish the preparators of the war crimes committed on the land of Former Yugoslavia. Moreover, this tribunal also aims at reconciliation of Balkans in the region. As mentioned above, ICTY was formed in the year 1993 and it formally ceased to exist in the year 2017 stating that it has completed the objective of its formation and has indicted all the persons responsible for war crimes at Former Yugoslavia. But then this tribunal is also criticized for its lengthy trials, biasness and controversial decisions as almost all the decisions of the trial chambers have been gone to the appeals. Thus, delaying the justice for the victims. The first case to be tried at ICTY was the Tadic Case which had also went into appeal and the final judgement came in the year 1999, which imposed 25 years of imprisonment for Tadic. This case is considered to be a landmark judgement as it shaped the formation of International Humanitarian Law, it challenged the legacy and legitimacy of ICTY and its decision-making process. This article will be critically analyzing the legacy and legitimacy of ICTY while discussing about certain provisions of UN Charter which establishes the legitimacy of ICTY and the challenges for the legacy of the tribunal. Lastly, the research paper will throw light on the Tadic case elaborately.

Key Words: ICTY, Tadic, Legacy, Legitimacy, Individual Criminal Responsibility, Subject Matter Jurisdiction, Armed Conflict.

Introduction

The International Criminal Tribunal for Former Yugoslavia, popularly called as ICTY was established in the year 1993 by the United Nations Security Council by resolution 827. It was formed with an aim and purpose to prosecute the war crimes that have been committed in the Former Yugoslavia in the lieu to gain access powers. It is an ad hoc tribunal, which means it has been established for certain purpose and once the purpose is attained it ceases to exist. Similarly, ICTY ceased to exist in year 2017 and it indicted total 161 persons for the war crimes committed in Former Yugoslavia. The jurisdiction of ICTY stretches over crimes such as the grave breaches of Geneva Conventions, violations of law or customs of war, genocide and war against humanity. Moreover, the utmost sentence which can be awarded by ICTY is life imprisonment.

There are various other components attached to this ad hoc tribunal such as the Chambers (Trial and Appeals), Registry and the Office of Prosecutor. The ICTY charter which has been formed in the consonance with the United Nations has a retrospective effect. It means, though the tribunal was formed in the year 1993 it will have the powers to punish all the war crimes committed in the Former Yugoslavia since 1991.

The first case to be tried at the ICTY was the Dusko Tadic Case in the year 1994 and the final judgement of the case came in the year 1999 from the Appeals chamber. This case is important from the ICTY perspective because it challenged the legitimacy and legacy of ICTY, the subject matter jurisdiction, individual criminal responsibility and nature of armed conflict in Former Yugoslavia. Moreover, not just from the view of ICTY but this case has shaped the International Humanitarian Law as major war crime against humanity were committed by Tadic. Ultimately, he was given an imprisonment for 25 years in 1999. But then, ICTY has always been criticized for its lengthy trials, biasness and controversial decisions. Thus, questioning its ability and purpose for the reconciliation of Balkans in the region. Further, the decision provided by the trial chamber of ICTY in Tadic case in 1997 was challenged in the appeals chambers on the grounds that, the tribunal was not established legally and it lacked subject matter jurisdiction in this respective case. Moreover, the primacy provided to ICTY over the normal courts by resolution 827 of UNSC was considered to be unlawful. Thus, questioning the legitimacy of ICTY and its decisions.

Challenges to the Legacy of ICTY from 1993 to 2017

The term 'legacy' is an ambitious word in its own way. It is defined as the impact of certain events or actions on an individual's life. It is determined that legacy can only be adjudicated ex post facto¹. But in exceptional cases, there are instances where the legacy is discussed during the lifetime of the subject. Such is the matter with ICTY which was formed in the year 1993 and formally ceased to exist in 2017. During its tenure it was praised for its work, its contribution in the field of International Criminal Law and acting as a precedent in setting up of International Criminal Court.² Moreover, to understand the legacy of ICTY we need to understand what events led to the formation of ICTY.

The land of Former Yugoslavia had seen the ethnic conflict become prominent after the World War I. Its population comprised of south Slavic Christians as majority and Muslims as minority³. The initial ethnic conflict was seen between Serbs and Croats, where the former committed mass crimes against Croats and Muslims. But later, after World War II in 1945, Former Yugoslavia was reestablished under Tito who suppressed nationalism⁴. But after his death in 1980, the tensions regarding ethnicity heated up. This resulted in the Yugoslavian Wars and the establishment of ICTY in 1993.

These wars were fought between 1991 to 2001 and were a series of separate but related wars based on ethnic conflicts, wars of independence and insurgencies. This all eventually led to the breakup of the Former Yugoslavia into 6 independent nations namely, Slovenia, Croatia, Bosnia, Herzegovina, Montenegro, Serbia and North Macedonia⁵.

But there were certain grounds on which the legacy of ICTY was challenged such as;

¹ Mia Swart, *Tadic Revisited: Some Critical Comments on ICTY*, 3 GOETTINGEN JOURNAL OF INTERNATIONAL LAW 985-1009 (2011)

² Dr. Kristen Campbell and Dr. Sari Wastell, *Legacies of the International Criminal Tribunal for Former Yugoslavia*, GOLDSMITH COLLEGE, UNIVERSITY OF LONDON (2011)

³ Kenneth .A. Rodman, *How politics shapes the contribution of justice: Lessons from ICTY and ICTR*, 110 AJIL UNBOUND 234-239 (2016)

⁴ Ibid

⁵ Kenneth .A. Rodman, *How politics shapes the contribution of justice: Lessons from ICTY and ICTR*, 110 AJIL UNBOUND 234-239 (2016)

Subject matter jurisdiction of ICTY

The subject matter jurisdiction of ICTY was first time challenged in the case of Dusko Tadic. This was the first case to be tried by the tribunal and the final judgment was delivered in 1999 by the appeals chamber. As mentioned earlier, this tribunal indicted total 161 persons and the maximum punishment which it can award was life imprisonment. In Former Yugoslavia war crimes such as genocide, crimes against humanity and grave breaches of Geneva Conventions were observed. Thus, all such crimes were punished according to article 2⁶, 3⁷, 4⁸ and 5⁹ of the statute of the ICTY tribunal. All the persons indicted by the tribunal were punished under the same.

The subject matter jurisdiction was challenged on lines that all the crimes committed in the Former Yugoslavia were not committed in the course of international armed conflict. Thus, article 4 and 5 of the ICTY Statute cannot be applied for the indictment of the persons. Moreover, article 2 and 3 can only be applied for the international armed conflict and such was not the case in the Former Yugoslavia. According to them it was the case of internal armed conflict¹⁰. Therefore, ICTY lacks jurisdiction in certain cases decided by it. Moreover, it was also argued that the security council through its resolution 827 had exceeded its jurisdiction and had provided the tribunal powers to try the offences of internal armed conflict. Thus, justifying its actions with the support of Nuremberg's decision¹¹.

Lastly, while throwing light on the subject matter jurisdiction of ICTY it was held by the appeals chamber that it was not necessary to distinguish between the nature of armed conflict for the application of articles 2, 3, 4 and 5 of the ICTY Statute¹². Moreover, it was also stated that the crimes committed in the Former Yugoslavia since 1991 were considered to be of international character as it involved the federal Yugoslavian army in the conflict and it involved the lieu of powers while

⁶ Article 2 of the ICTY Statute- Grave Breaches of the Geneva Conventions of 1949

⁷ Article 3 of the ICTY Statute- Violation of the laws or customs of war

⁸ Article 4 of the ICTY Statute- Genocide

⁹ Article 5 of the ICTY Statute- Crimes against humanity

¹⁰ Dr. Kristen Campbell and Dr. Sari Wastell, *Legacies of the International Criminal Tribunal for Former Yugoslavia*, GOLDSMITH COLLEGE, UNIVERSITY OF LONDON (2011)

¹¹ Cmd. 6964 (1946). The International Military Tribunal held that Article 6(c) of its Charter treated acts as crimes against humanity only if they were committed in execution of, or in connection with the Second World War, pages 64-5

¹²F. Mégret, 'The politics of International Criminal Justice', 13 EUROPEAN JOURNAL OF INTERNATIONAL LAW (2002) 5, 1261.

resulting the civilians as the victims of such conflict¹³. To prove the nature of armed conflict of an international character, the effective control test was applied as provided by in the case of Nicaragua.V. USA¹⁴. Under this test, if the actions conducted were attributed to a foreign state and there is intentional display of power and authority by the means of jurisdiction and state functions which led to the break up of foreign state then the nature of conflict is international in nature. As the war crimes led to the break off the Former Yugoslavia into 6 nations, it was deemed as an international conflict.

Individual Criminal Responsibility imposed by ICTY

According to article 7 of the ICTY Statute, it talks about the individual criminal responsibility¹⁵. So according to this concept it means that, the individuals who are indicted by this tribunal are solely responsible for the crimes committed by them. Moreover, they cannot take the opportunity to mitigate, delegate or use the power of their position to get away from the individual criminal responsibility.

According to article 7 (1), it states that whoever has planned, instigated, ordered, committed, abetted or aided in planning or execution of any offence mentioned in article from 2 to 5 of the ICTY statute will be solely responsible for that offence.

Whereas, according to article 7 (2), it states that whichever position the accused is either as a head of the state or the government during the commission of the offence, such cannot be used to relieve oneself from the criminal responsibility or mitigate the responsibility as a whole.

According to article 7 (3), it states that any of the acts committed mentioned under article 2 to 5 by the subordinates of the accused does not provides or acts a chance to relieve himself from the criminal responsibility knowing the fact that he had the reasonable knowledge of such crime and he had failed to take reasonable action against the same.

Lastly, article 7 (4) states that, punishment cannot be relieved on the notion that the accused acted on the pursuant of the orders of the superiors but it can be mitigated if the tribunal feels that it is the need

¹³ Ibid

¹⁴ 1986 I.C.J. 14

¹⁵ Article 7 of ICTY Statue- Individual Criminal Responsibility

and demand of the justice. Thus, all the persons indicted by this ad hoc tribunal were made punishable as the sole criminals responsible for their individual actions in the Former Yugoslavia. Therefore, this is considered to be one of the prime reasons in the lengthy and delay trials of ICTY.

Primacy of ICTY over National Courts

The concept of primacy of ICTY over normal courts is provided under article 9 of the ICTY Statute¹⁶. It is mentioned under article 9 (2) of the statute. It states that, ICTY shall have primacy over the normal courts and any stage or procedure it may direct the national courts to work according to the statute and international norms as practiced by the tribunal. This provision was embedded with a sole purpose to prove that the nature of crimes committed at Former Yugoslavia were of international character. Thereby, providing more powers to the tribunal as compared to the national courts.

Since, the establishment of ICTY in 1993 to its formally ceasing in 2017 there have been cases in the tribunal challenging the legitimacy of ICTY on the above-mentioned challenges. Such challenges have not only questioned the legitimacy of ICTY but they have also caused unnecessary delays in justice delivery, lengthy trials and controversial decisions. This is because at every instance, the tribunal had to prove its nature of existence and its purpose.

Legitimacy of ICTY from the lens of United Nations Security Council

The term 'legitimacy' can be defined as conformity to the rules and regulations. The legitimacy of ICTY can be understood from the lines of resolution 827 and certain articles of the UN Charter which have prompted the purpose of establishment of the tribunal. The resolution 827 was adopted in 1993 with an aim to establish ICTY to take prompt actions against the war crimes taking place in the Former Yugoslavia as it posed as threat to the international security and peace¹⁷. It was formed with a purpose to end the war crimes in the region and bring justice to the victims of such crimes. Moreover, this tribunal was legitimately formed with the help of chapter VII of the UN Charter and was considered

¹⁶ Article 9 of ICTY Statute- Concurrent Jurisdiction

¹⁷ Marco Milanovic, *The impact of ICTY on Former Yugoslavia: An Anticipatory Postmortem*, 110 THE AMERICAN JOURNAL OF INTERNATIONAL LAW 233-259

Article 39 of the UN Charter states that, the security council is envisaged with the responsibility to look towards the threat to peace, breaches of peace and acts of aggression and to decide what measures needs to be taken in accordance of Article 41 and 42 in order to restore international peace and security¹⁹. Now when it comes to Article 41 and 42 of the UN Charter, the former states that the security council is given the responsibility to apply the measures which does not involves armed forces so as to give effect to its decision and for the same can seek help of the members of the United Nations²⁰. Whereas, the latter states that if any actions taken under the perview of article 41 seems to be inadequate than the security council can take other necessary measures with the help of members of United Nations²¹.

These 3 articles mentioned above clearly states that establishing a tribunal in consonance to the events taking place in Former Yugoslavia were on the lines of the UN charter and the measures suggested by it. This is because when it comes to chapter VII, the intention of it is mainly diverted in 2 directions, *jus ad bellum* (refers to circumstances in which the force is used constructively) and *jus in bello* (refers to how the hostilities or situation of warfare in conducted).²² In the case of establishment of ICTY, the United Nations Security Council referred to opt for the jus in bello concept rather than using force. This can be traced back to the notion that, United Nations believes in peace keeping rather than peace enforcement²³. Thus, justifying its actions of peace keeping force.

Moreover, according to chapter VI of the UN Charter, it talks about the various methods to settle international disputes. So now, when it comes to the use of force under article 2 (4) of the UN

¹⁸ Chapter VII of UN Charter- Action with respect to threats to peace, breaches of the peace and acts of aggression.

¹⁹ Article 39 of the UN Charter- The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.

²⁰ Article 41 of the UN Charter- The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.

²¹ Article 42 of the UN Charter- Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations.

²²Rosalyn Higgins, *The New United Nations and Former Yugoslavia*, 69 ROYAL INSTITUTE OF INTERNATIONAL AFFAIRS 465-483

²³ Ibid

Charter²⁴, it refrains its member states from using force against the territorial integrity and independence of the state and the only possibility under which it can use force is in the act of self-defense as mentioned under article 51 of the same²⁵. Thus, from this it can be implied that UN itself believes in opting for other measures rather than force in order to ensure international peace and security²⁶.

As far as when it comes to the events in Former Yugoslavia, initially which started as a civil war and the division of land into independent nations became an international conflict when certain nations from the land like Croatia and Slovenia were recognized prematurely by the members of UN and it turned a war of international character²⁷. Therefore, giving ICTY the powers to try the offences of international armed conflict.

So now, when it comes to the legitimate establishment of ICTY by UNSC, it can be concluded that under resolution 827 and with the help of UN charter it had been successfully established to render justice to the victims of war crimes in Former Yugoslavia and indict the persons responsible for the such crimes.

Understanding Tadic Case from the lens of ICTY

The case of Dusko Tadic was the first one to be tried for the international war crimes ever since the Nuremberg and Tokyo trials. The judgement of this case was given by trial chamber in year 1997 and it went into appeals. The final judgment came in the year 1999 by the appeals chamber who awarded 25 years of imprisonment for the accused on the lines of committing war crimes such as crimes against humanity in Former Yugoslavia and violating Geneva conventions particularly in the regions of Prijedor, Omarska, Trnopolje and Keraterm detention camps²⁸.

²⁴ Article 2 (4) of UN Charter- All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.

²⁵Theodor Meron, Oxford Academic, *The Challenges facing the International Criminal Tribunal for Former Yugoslavia* 115127 (2011) <https://doi.org/10.1093/acprof:oso/9780199608935.003.0011>

²⁶ S. Trifunovska, 'Fair Trial and International Justice: The ICTY as an example with special reference to the Milosevic case', RECHSTEINER MAGAZINE THEMIS (2003) 1, 3, 11.

²⁷ Ibid

²⁸International Criminal Tribunal for Former Yugoslavia- <https://ijrcenter.org/international-criminal-law/icty/case-summaries/tadic/>

In this case the accused was Dusko Tadic²⁹. He was a Bosnian Serb politician and also the member of the paramilitary forces. He was arrested in 1994 from Germany and was held responsible on several counts such as participating with the Serb forces and attacking and destructing and the Bosnian Muslims and Bosnian Croat residential areas in the Kozarac area. This was followed by the imprisonment of Muslims and Croats in the Omarska, Keraterm, and Trnopolje camps. Moreover, there was also participation in killings, torture, sexual assault of Muslims and Croats in and outside the camps. Thus, making this case the first sexual violence case to be tried at an international tribunal³⁰.

In the year 1997, the trial chambers convicted Tadic for crimes against humanity and violating Geneva conventions in the Former Yugoslavia and awarded him 20 years of imprisonment. But soon the case went into appeal wherein the Appeal chambers denied all the arguments of the accused and stated that conflict committed in the Former Yugoslavia was international armed conflict and imposed an overall control test so as to determine his actions and impose the charge of individual criminal responsibility on him. Further, the appeals chamber found the accused guilty on several other grounds apart from crimes against humanity and sentenced him to 25 instead of 20 years of imprisonment³¹.

Challenges put forward by Tadic Case to ICTY

There were various challenges put forward by Tadic case to ICTY at appeal chambers. These challenges questioned the legacy and legitimacy of ICTY and if were not answered in a concrete manner, they were going to act as a hurdle for other cases. So, the challenges put forward by the Tadic case are as follows:

- ***Subject Matter Jurisdiction***- The subject matter jurisdiction was challenged on lines that all the crimes committed in the Former Yugoslavia were not committed in the course of international armed conflict. Thus, article 4³² and 5³³ of the ICTY Statute cannot be applied for the indictment

²⁹ The Prosecutor .V. Dusko Tadic (IT-94-1-A)

³⁰InternationalCriminalTribunalforFormerYugoslaviahttps://www.internationalcrimesdatabase.org/Case/79/Tadi%C4%87/

³¹ International Criminal Tribunal for Former Yugoslavia- https://www.icty.org/en/features/crimes-sexual-violence/landmark-cases

³² Article 4 of the ICTY Statute- Genocide

³³ Article 5 of the ICTY Statute- Crimes against humanity

of the persons. Moreover, article 2³⁴ and 3³⁵ can only be applied for the international armed conflict and such was not the case in the Former Yugoslavia. According to them it was the case of internal armed conflict³⁶. Therefore, ICTY lacks jurisdiction in certain cases decided by it.

It was held by the appeals chambers that; the tribunal is an ad hoc tribunal which has been established with certain purpose. It has been established legitimately by resolution 827 of the United Nations Security Council and under Chapter VII of the UN Charter. Moreover, it was stated that, for the application of Article 2, 3,4 and 5 it is not necessary to look into the nature of armed conflict. Also, the war crimes committed in the Former Yugoslavia since 1991 disturbed the peace and security of the world.

- **Primacy Over National Courts-** This concept is dealt under Article 9 of the ICTY Charter. It talks about concurrent jurisdiction. The primacy provided to the ad hoc tribunal over national courts comes under the lieu of Article 9 (2) of the charter³⁷. This is done while keeping in mind the international armed conflict and nature of crimes committed on the land of Former Yugoslavia. It is interesting to note that, the issue of subject matter jurisdiction and primacy over national courts overlap each other as they deal with the nature of armed conflict. The ICTY is provided with such primacy so as to avoid the conflict of interests and miscarriage of justice.

*(To understand the jurisdiction of ICTY and the nature of conflict in the Former Yugoslavia there was application of effective control test as provided in the Nicaragua.V. USA case. Wherein, it was stated that if the actions are attributed to foreign state and are displayed as intentional power and authority over a territory by the state functions which results in conflict and break up of a foreign state, this amounts to international armed conflict.) **

- **Individual Criminal Responsibility-** This concept is dealt under Article 7 of the ICTY Charter. Here the accused contended that the actions committed by his people of paramilitary, the punishment for the same cannot be imposed on him. It was further contended that, the actions committed by them are under there will and has nothing to with the accused in this

³⁴ Article 2 of the ICTY Statute- Grave Breaches of the Geneva Conventions of 1949

³⁵ Article 3 of the ICTY Statute- Violation of the laws or customs of war

³⁶ Dr. Kristen Campbell and Dr. Sari Wastell, *Legacies of the International Criminal Tribunal for Former Yugoslavia*, GOLDSMITH COLLEGE, UNIVERSITY OF LONDON (2011)

³⁷ Article 9(2) of ICTY Charter- The International Tribunal shall have primacy over national courts. At any stage of the procedure, the International Tribunal may formally request national courts to defer to the competence of the International Tribunal in accordance with the present Statute and the Rules of Procedure and Evidence of the International Tribunal.

case. Thus, article 7 of the ICTY charter has no applicability in this scenario. Answering the argument, it was held by the appeals chambers that, the actions of the subordinates are likely to represent the accused if he is aware of the actions of the subordinates and refuses to take any action to stop the same. In this case, the accused was aware of the crimes being committed by his people but denied to take any actions against it. Thus, he was held liable under Article 7 (3) of the ICTY Charter³⁸. Moreover, ICTY was established in the year 1993 but its charter has a retrospective effect as it punishes all the war crimes committed in Former Yugoslavia since 1991. Therefore, the accused is held liable under the purview of individual criminal responsibility for the actions of its subordinates.

- **Denial of Fair Trial-** It was contended by the accused in the appeals chambers that, he has been denied fair trial in the trials chambers in the way it was conducted. It was stated by accused that; the witnesses called to give testimony were unequal which impacted his case in the other way. Thus, stating that there was no equality of arms between the prosecution and the defense³⁹. Thus, violating Article 20 (1) and 21 (4) of the charter. In response to it the prosecution stated that, here equality of arms means procedural equality. So accordingly, this principle entitles both parties the same right to present their cases but it does not call for equalizing the material and practical circumstances of both the parties. Accordingly, it is contended that the claim of the Defense that it was unable to secure the attendance of important witnesses at trial does not demonstrate that there has been an inequality of arms as such was not due to procedural inequality. Moreover, it was stated by the prosecution that they have not violated Article 20 (1)⁴⁰ and 21 (4)⁴¹ of the ICTY Charter and the accused has been granted all the rights. This was also decided in the case of *Robinson.V. Jamaica*⁴² and *Wolf .V. Panama*⁴³.

³⁸ Article 7 (3) of ICTY Charter- The fact that any of the acts referred to in articles 2 to 5 of the present Statute was committed by a subordinate does not relieve his superior of criminal responsibility if he knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.

³⁹International Criminal Tribunal for Former Yugoslavia-
https://www.icty.org/x/file/Legal%20Library/Statute/statute_sept09_en.pdf

⁴⁰ Article 20 (1) of ICTY Charter- The Trial Chambers shall ensure that a trial is fair and expeditious and that proceedings are conducted in accordance with the rules of procedure and evidence, with full respect for the rights of the accused and due regard for the protection of victims and witnesses.

⁴¹ Article 21 (4) of ICTY Charter- In the determination of any charge against the accused pursuant to the present Statute, the accused shall be entitled to the following minimum guarantees, in full equality.....

⁴² *Robinson v. Jamaica*, Communication No. 223/1987, 30 March 1989, U.N. Doc. CCPR/8/Add.1, 426.

⁴³ *Wolf v. Panama*, Communication No. 289/1988, 26 March 1992, U.N. Doc. CCPR/11/Add.1, 399

- *It has not been proved that victims are “Protected Persons’ under Article 2 of the ICTY Charter by the trial’s chambers-* Under this issue it was contented by the defense that, the victims as stated under article 2 of the charter are nowhere within the ambit of the protected persons⁴⁴. Thus, the accused cannot be charged with violation of Geneva Conventions. In response to it was stated by the prosecution applied the control test as given in the case of Nicaragua.V. USA to determine the nature of armed conflict and also stated that trial chamber has created an error for not applying the Geneva Conventions and principles of International Humanitarian Law which would have helped to apply the demonstrable link test. So, in the appeals chambers when the demonstrable link test was applied, it confirmed with the involvement of accused in the case at hand.

*(Demonstrable Link Test is used to understand the sources that act as a link between the preparator and a party to an international armed conflict so as to understand whether the victims of such action are the nationals of that particular land or not. This test was provided in the case of Nicaragua.V. USA where the matter of concern was the state responsibility.)⁴⁵ ***

Suggestions and Conclusion

The suggestions which can be provided are as follows:

- 1) ICTY should have opted for regional consultation while dealing with the matters of legacy such as it should have involved the civil society groups into the discussions of broader mandate.
- 2) ICTY should have tried to mobilize the local people and witnesses particularly in the ongoing prosecutions so as to speed up the proceedings.
- 3) It was the responsibility of UN to encourage ICTY to intensify its networks so as to build the judicial and legal approach in the disturbed region.
- 4) Lastly, ICTY should have opted to make a centralized coordination team so as to answer the queries regarding the legacy and legitimacy of the same.

International Criminal Tribunal for Former Yugoslavia (ICTY) was established with a purpose to

⁴⁴ Article 2 of ICTY Charter- Grave breaches of Geneva Convention 1949

⁴⁵ International Criminal Tribunal for Former Yugoslavia- <https://www.refworld.org/cases,ICTY,40277f504.html>

bring justice to the victims of the war crimes committed in the land of Yugoslavia. It ceased to exist in 2017, but behind it left many questions in the minds of people regarding its legacy and legitimacy. This is because it has always been in minds due to its controversial decisions, lengthy trials etc. But looking it from a different perspective, ICTY is considered to be the first ad hoc tribunal and is considered to have been acting as a precedent for the establishment of International Criminal Court. Moreover, it has shaped the International Humanitarian Law in its actual sense today. Eventually coming to the legacy and legitimacy of the tribunal, it can be denoted that the legacy of ICTY has been perpetually established by its charter itself. The legitimacy of the same has been proved by the UN Charter in its subsequent articles. Now, when it comes to the Tadic Case, it is considered to be the first case to be tried at ICTY and also has contributed significantly for the development of IHL. This case has challenged ICTY at each and every notion. Thus, making the picture of this ad hoc tribunal crystal clear for the world. Lastly, ICTY has been successful in rendering justice to the victims and awarding punishments to the accused. It has not withered away from its purpose of establishment while dealing with the dilemma of its own existence.

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➤ **ICTY Websites**

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