GAMES WITHOUT FRONTIERS: A BUREAUCRATIC CASE STUDY INTO THE ESTABLISHMENT OF THE INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA

Abstract: The apparently sudden move from inaction to the almost hyper-active multiplication of venues for international criminal justice creates a puzzle for decision-making theory. How best to explain this change? This article turns to bureaucratic theory, as developed by Graham Allison, which contrary to the constructivist approach, does not shy away from the idea that politics play a role in decision-making. To the contrary, “playing politics” is acknowledged and integrated into the theory, as indeed bargaining plays a central analytical role. The creation of the ICTY is thus analyzed from the perspective of the bureaucratic theory, and its political “games” examined in detail.

Keywords: International criminal law, decision-making, bureaucratic theory, power games, International Criminal Tribunal for the Former Yugoslavia.

Introduction

The idea of international criminal law—as a body of rules, as well as an institutionalized, permanent, independent, and international bureaucratic entity capable of undertaking trials for the prosecution of individuals accused of the most severe crimes resulting from war, or for the offense of genocide—has had a long and complicated, if not tumultuous, history. Though international relations have since the dawn of human societies been marked by conflict—some of it unimaginably bloody—so, too has the idea of justice, or at least some glimmer of morality had been, since the earliest, most storied and gruesome wars, a self-conscious aspiration of mankind (Thucydides, 1972: 402). A very inade-
quate history of international relations could point only to the few exceptions dotting the relative wasteland of prosecutions for the countless acts of barbarity committed over the centuries; yet, records exist in the Hebrew bible setting out norms governing the conduct of war, and so too do early-medieval Islamic codes, followed by later medieval just war norms, codify rules regarding a number of prohibited practices during armed conflicts (Weeramantry, 1997: 136-7). What was lacking, however, throughout this whole period, and indeed until the Allied war crimes trials of Nuremberg and Tokyo, was an institutionalized locus devoted to the prosecution of offenses resulting from war, and atrocities committed in the course of the conflict. Despite international efforts to codify international criminal law and to establish a court dedicated to prosecuting individuals, in the wake of the Nuremberg Tribunal’s undeniable political success, though Tokyo’s was less so (Shklar, 1964: 179), in particular at the UN level, (Maogoto, 2004; Cassese, 2002) the Cold war period yielded little in the way of tangible progress in achieving this aim.

In the 1990s, however, two ad hoc Security Council tribunals were established to prosecute individuals for crimes of genocide, crimes against humanity, and violations of the Geneva Conventions. Hybrid international courts, such as the Sierra Leone, Lebanon, East-Timor and Cambodia tribunals undertake prosecutions for some of these offenses. Most significantly, in 2002, the Rome Statute came into force, creating the International Criminal Court, the first permanent and genuinely international criminal tribunal (UN General Assembly, 1998). In June of 2010, state parties to the ICC agreed on a definition of the offense of aggression, last prosecuted after the Second World War, which will become operative in 2017 (Review Conference of the Rome Statute, 2010).

Thus, after several centuries of practically uninterrupted war resulted in little more than the refinement of rules of chivalry to govern the conduct of combatants, the atrocities committed by Nazi Germany’s bellicose expansionism—coming on the heels of failed attempts to prosecute Kaiser Wilhelm after World War I (Bass, 2000: 58-105)—prompted the victorious allies to undertake criminal prosecutions and to mete out punishment in retribution. Yet with respect to the establishment of a permanent judicial body, the tedious process of reformulations of policy as well as seemingly endless committee recommendations at the United Nations appeared to suggest that the future would be much like the past: replete with (apparent) good intentions but lacking in political will to commit to institutionalizing international criminal justice (Burns, 1994: 341).

Suddenly, however, after the cold war’s end, with secessionist conflicts
in Yugoslavia leading to civil war, an unexpected flurry of activity led to what quickly appeared to be an inexorable, inevitable, and inescapable development: the establishment, by the United Nations Security Council—which has jurisdiction over the maintenance of international peace and security, and had not previously been in any way involved in attempts to develop tribunals (UN Charter)—of an international criminal court, to prosecute “persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991.”

The establishment of the International Criminal Tribunal for the Former Yugoslavia (ICTY) in 1993 paved the way for the creation of the International Criminal Tribunal for Rwanda (ICTR) the following year, and for the Rome Statute’s adoption in 1998, followed by its entry into force in 2002.

Creation of the International Criminal Tribunal for the Former Yugoslavia and the Bureaucratic Model of Decision-making

The apparently sudden move from inaction to the almost hyperactive multiplication of venues for international criminal justice creates a puzzle for decision-making theory. How best to explain this change? A first concern to the analyst of decision-making is the isolation of the decision and an understanding of its locus and participants. The ICTY was formally established by the United Nations Security Council, by an unprecedented (Burns, 1994: 349) use of its Chapter VII authority over threats to international peace and security (Boutros-Ghali, 1993: par. 19). The Security Council is composed of five veto-holding permanent member states: Great Britain, the United States, France, Russia and China.

The present analysis is two-fold, and focuses first on the U.S. decision-making process, then more briefly on the process and interests at the Security Council level. This study by no means seeks to ignore the legal and normative impetus to the creation of the ICTY, typically a province of constructivist scholarship, in which the decisions to establish international institutions are explained by the actions of norm entrepreneurs and the socialization of states (Finnemore and Sikkink, 1998). Theories of norm entrepreneurship, however, too frequently obscure the political motivations (Rajkovic 2010)\(^2\) that are, in

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\(^2\) Rajkovic writes: “First, key sources of international law, such as treaties and customs, did not arise independent of politics, but rather were made by and between different kinds of states—thus according to particular political advantages. Second, different types of international legal institutions, credited with an active role in global governance (e.g. the ICC or the WTO), did not arise in a political vacuum either: they owe their existence and continued function to the support and funding of key states” (Rajkovic, 2010: 1357).
the end, the sufficient condition for the establishment of new—and perhaps costly—insti-
tutions. Normative organizations, if all participants are equally held to new rules, are not adhered to when risks outweigh possible benefits (Simmons and Danner, 2010; Hathaway, 2002), as can be observed in the U.S. position—though instrumental in creating ad hoc international courts—over three administrations, not to become subject to the International Criminal Court’s jurisdiction, most recently reaffirmed in President Obama’s National Security Strategy (Obama, 2010). Bureaucratic theory, as developed by Graham Allison (Allison and Halperin, 1972; Allison, G. and Zelikow, 1999) contrary to the constructivist approach, does not shy away from the idea that politics play a role in decision-making; to the contrary, “playing politics” is acknowledged and integrated into the theory, as indeed bargaining plays a central analytical role (Allison and Halperin, 1972: 43-44). The bureaucratic politics paradigm recasts this type of activity as a “game” (Allison and Halperin, 1972: 46, 50) of which there are three types: decision games, policy games, and action games (Allison and Halperin, 1972: 46): where individual or organizational decision-makers are players, and in which activities lead to decisions, policy, and follow from (or proceed in the absence of) decisions by senior players (Allison and Halperin, 1972: 46). Bureaucratic theory is interested in outcomes, but the basic unit of analysis of the approach is the actions of a government (Allison and Halperin, 1972: 46). Actions occur within what Graham Allison and Morton Halperin call “action channels,” which are, in a manner reminiscent of the standard bureaucratic theory as developed by Max Weber (Gerth and Wright Mills, 1970), regularized sets of procedures for producing given classes of actions (Allison and Halperin, 1972: 45).

Three “organizing concepts”—perhaps best thought of as analytical questions—emerge from bureaucratic theory and drive the examination of the foreign policy decision: First, who plays? (Allison and Halperin, 1972: 46) Second, what determines each player’s stand? (Allison and Halperin, 1972: 47) Finally, how are the players’ stands aggregated, and how do they lead to decisions and actions? (Allison and Halperin, 1972: 47)

Players in the situation that came to a head over Yugoslavia’s dissolution in the early nineties, moreover, include a wider variety of actors than in the domestic sphere, and includes states (primarily the five permanent members of the United Nations Security Council, international non-governmental organizations (INGOs), and the international media.) The decision under study was made at and by the United Nations Security Council, but it is important to note that it was not inevitable that the decision be made before that particular forum, or in that way; indeed, it would have been possible that the Security
Council member states adopt different policies to address the problem in Yugoslavia, and decide—as they did in 2003 with Iraq—to engage in unilateral armed conflict (as conversely, the United States could have elected to seek a judicial solution—or a series of them—to the problem of terrorist attacks committed in September 2001). The international nature of a situation to be addressed by decision-makers, or its institutional locus does not present an insurmountable challenge to the bureaucratic theory, which was itself developed to analyze a pivotal international standoff between the U.S. and the Soviet Union during the Cuban Missile Crisis. Solutions were—as history has shown—not obvious at that time, nor was the decision ultimately taken in 1993 at the Security Council a direct result of standard operating procedures. The interest of the most influential actors however, had a great deal to do with their pre-existing positions and interests (Allison and Halperin, 1972: 48), as well as with a perhaps irresistibly tempting international vacuum left by the dissolution of the U.S.S.R. Interests, in the bureaucratic theory, are subdivided into national security interests (viewed subjectively by each player), organizational interests, domestic interests and personal interests (Allison and Halperin, 1972: 48). Organizational interests are particularly salient in the bureaucratic conception of choice, as other interests are perceived to be satisfied when the organizational interest—translated by budgets, increased jurisdiction, power and mandates (Allison and Halperin, 1972: 49)—is met (Allison and Halperin, 1972: 48). Players’ stands, thus, are determined by their institutional commitments, as is their initial conception and eventual grasp of the problem (Allison and Halperin, 1972: 49). Of particular importance to the case under study, however, is Allison’s proposition that states with government systems that are relatively open as a result of an electoral process depend (and this should logically hold even more strongly during Presidential elections) on the approval of a greater number of outside players, and are accordingly much more vulnerable to pressures from this wider circle. In such instances, major players are forced into a wider conception of their own interests (Allison and Halperin, 1972: 49).

It is important to add that the bureaucratic model acknowledges the existence and the importance of what Allison and Halperin call “shared attitudes,” a set of beliefs widely shared by most players, some with practical implications, others of a broader normative nature (Allison and Halperin, 1972: 56). This point generally addresses attitudes that “fuel bureaucratic politics,” assumptions about alliances, capabilities, intentions, and causes (as well as influence) over behavior of other states. What the United States should do (such as, at one time, halt the spread of communism) and how it should be done (though it is on this point that the most ink is spilled and forests are decimated, as it is far from clear that there is any automatic consensus about how to act—as the very existence
of decision-making theories clearly shows—nonetheless broad consensus does exist regarding range of normatively acceptable actions), and finally, what is in the national interest are values that exist—whether or not they are actually believed by individual actors, and even if they are vague—and those images, beliefs and attitudes shape players’ interpretations of what other nations do and why (Allison and Halperin, 1972: 56). When discussing the national interest, it is essential to remember that the types of broad beliefs described above will be reflected in the arguments and actions of government players, as they are, posits Allison (with a nearly sociological approach reminiscent of constructivist views of socialization), beliefs required by the bureaucracy (Allison and Halperin, 1972: 59).

A final, complementary point should conclude this section: actions and perceived intentions of other countries matter inasmuch as they influence domestic politics (Allison and Halperin, 1972: 59).

Applying the Bureaucratic Model to the Establishment of the ICTY

This section will examine the players, as well as the decision, policy and action games that led to Security Council Resolution 808 (1993).

A Historical Account of the Creation of the ICTY

The idea of establishing an international criminal court did not emerge for the first time in response to the war in Bosnia-Herzegovina in the early nineties, but in fact had, since the experience of Nuremberg, been explicitly on the United Nations agenda, with the United Nations international law commission laboring at drafting a code of offenses as well as an institutional framework for decades (Maogoto, 2004). The offense of genocide had been established since 1948 (Power, 2002; Bass, 2000), but it had little in the way of institutional support, as the crime could only be prosecuted within states, or by a tribunal established pursuant to the consent of states. Moreover, and significantly, the Genocide Convention faced nearly intractable obstacles before the United States Senate, which refused to ratify the document until 1987, under the Reagan administration, expressing fears that such an international document would not only improperly constrain U.S. sovereignty, but could be employed maliciously (by the cold war rival U.S.S.R.) to threaten prosecutions against the U.S. for practices of racial violence and exclusion that were still taking place at that time (Power, 2002; Leblanc, 1984). Indeed, the U.S.-based Civil Rights Congress—of which Paul Robeson was a prominent member (and investigated by the House Committee for un-American Activities as a Com-
munist front (Horne, 1987; Unites States. Congress, 1947))—filed the first ever petition, charging genocide on behalf of the African American people against the government of the United States (Patterson, 1970). The attempt was not only unsuccessful, it was not even acknowledged by the United Nations; the concern, however, for U.S. senators that the U.S. could eventually incur liability, was likely not dulled by initiatives such as that—however political rather than legal in nature—of the Civil Rights Congress.

Although an international criminal court was not established during the cold war, the idea of a judicial institution to address crimes of war, and indeed the crime of aggression—described by the Nuremberg judgment as the “supreme international crime”—remained sufficiently salient as a political tool, and was created informally on two occasions as a form of protest, in the context of Bertrand Russell and Jean-Paul Sartre’s “popular” tribunals judging French and American actions in Vietnam (Mégret, 2002: 1266).

Finally, after the first Gulf War, both Margaret Thatcher and George HW Bush called for the creation of a special UN court to try “Iraqi war criminals,” (Hazan, 2004: 9; Bass, 2000: 210; Cassese, 1996: 9) an initiative that does not appear to have been taken seriously for all its rhetorical heft. German efforts seemed more resolute, with German foreign minister Hans Genscher leading the initiative of the (then twelve) European Community states to petition United Nations Secretary General Javier Perez de Cuellar to “examine the personal responsibility” of Iraqi leader for acts of genocide (Hazan, 2004: 10); political will, however, did not sustain the effort, and some have speculated that European states were concerned that any real judicial intervention would allow Saddam Hussein to note Western support for Iraq as a counterweight against Iran, and assistance in arming his regime in conventional as well as chemical weapons (Hazan, 2004: 10).

Though throughout the cold war period it emerges that international courts could not, as a matter of realpolitik, be relied upon to exercise a legal or political function without backfiring, the idea of international justice remained available, if only in a latent state.

Inadequate Attempts to Address Armed Hostilities in the Territory of the Former Yugoslavia.

In June 1991, Slovenia seceded from Yugoslavia, followed by the republics of Croatia and Bosnia–Herzegovina. Fighting erupted in the latter two territories, prompting a United Nations arms embargo (Power, 2002: 249), followed
by the deployment of European peacekeepers, assistance in the delivery of humanitarian aid, as well as the imposition of economic sanctions (Power, 2002: 251). The media’s increased coverage of the war, and its framing of the conflict as a one-sided infliction of barbarity (by the Serbs) against defenseless civilians (Bosnian Muslims) created the impression that not only solutions short of armed intervention could do nothing to alleviate the humanitarian situation, but that a judicial process ought to be established, as a matter of urgency to show international resolve (Power, 2002: 247-249; Bass, 2000: 207-214; Hazan, 2004: 11-25).

The Saliency of the Events Unfolding in the Former Yugoslavia (Principally in Bosnia-Herzegovina) and the Influence of Junior Players in Pursuing Substantial Change: The Role of the Media, Prominent Non-Governmental Organizations (both National and International), and Public Relations

There exists a consensus in the literature regarding the process leading towards the establishment of the ICTY that media framing was indispensible in maintaining salient coverage of events in the former Yugoslavia, as well as shaping a political as well as what would eventually become a judicial response.

The conflict, before it became mediatized, and framed as a narrative of atrocities, had been viewed by the Bush administration as a matter for Europeans to demonstrate their nascent strength and authority. “Yugoslavia,” wrote Secretary of State James Baker, “was as a good a first test as any” (Power, 2002: 259). Moreover, the Bush administration had overcome its “Vietnam complex” in Iraq, and wished to focus on domestic and economic issues (Power, 2002: 261). The problem had not yet presented the senior players of the Bush administration with the urgency required to initiate a decision or policy game. Europeans viewed matters differently, emphasizing instead that the fact that they had—in contrast to the Americans—peacekeeping troops on the ground, which justified preferring diplomatic attempts to broker peace. Thus European concern—while mischaracterized as simple weakness and ineffectual actions (such as in Samantha Power’s narrative, 2002: 259)—focused on negotiated settlement for the safety of European troops and for an ultimate resolution of the conflict (Hazan, 2004: 10-11).

In August 2002, however, media reports of concentration camps and images suggesting conditions reminiscent of Nazi places of detention during the Holocaust (Power, 2002: 269; Bass, 2000: 210; Hazan, 2004:12-13) refocused the issue of the Yugoslav conflict significantly, shifting the characterization of the hostilities from a civil war to a bloodbath, and thus the problem of Yu-
goslavia (and how to address it) became sharply more salient, and the junior players, in this instance the media, forced a decision game on the agenda of the Bush administration, then in the midst of an election campaign and thus more vulnerable to outside pressure, and accordingly obliged to adopt a wider conception of its own interests (Allison and Halperin, 1972: 49).

In addition, the Bosnian state committed efforts to shape public opinion, hiring Washington firm Ruder Finn Global Public Affairs in June 1992, whose director, James Harff, expressed pride that his firm had succeeded in “putting Jewish opinion on our side,” a claim that is made intelligible by the concern in the early nineties that Croatian and Bosnian Muslim persecution of Jews in particular (though targeted were of course also Serbs and Roma) during World War II might tarnish their image and credibility in appealing to the world (and U. S.) opinion (Johnstone, 2002: 70). The camp narrative was central in what could be called (borrowing a chapter subheading from Samantha Power’s A Problem From Hell) a successful operation of “advocacy and analogy.”3 Such a process is evidenced by the French Doctors of the World (Médecins du Monde, not to be confused with Médecins sans frontières) billboard campaign which juxtaposed photographs of Slobodan Milosevic and Adolph Hitler accompanied by the text “Speeches about ethnic cleansing, does that remind you of anything?,” and showing a photograph of an extremely thin man, apparently behind a barded wire fence, accompanied by the text, “A camp where they purify ethnic groups, does that remind you of anything?” (Johnstone, 2002: 74; Hazan, 2004: 49).

Thus the issue of Yugoslavia acquired saliency as a problem requiring decision and policy games once the framing developed by junior players such as the media, NGOs, and public relations firms hired by foreign states, shifted from a civil war somewhere in Eastern Europe (as was often erroneously reported) to a repetition of unmentionable crimes in the midst of Europe in the waning days of the twentieth century. This occurred in an open system of government, where bureaucratic theory predicts that senior players will have to adjust their conceptions of interest to junior players, in particular where elections are involved, and are, as they were in August 1992, soon to take place (Allison and Halperin, 1972: 49).

Decision and Policy Games: How Stands Shifted, and Why

The U.S. attitude towards the former Yugoslavia presents a particular

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3 Holocaust analogies are of course not unproblematic in international relations. See (Desch, 2006: 106).
post-cold war historical twist of fate. 1992 was an election year, and Bill Clinton, running against George H. W. Bush, immediately seized upon camp images to promise armed intervention against the Serbs in his campaign speeches (Power, 2002: 274). Clinton “slashed,” writes Samantha Power, “at what he saw was Bush’s Achilles’ heel,” that is the administration’s idleness and lack of response to what Clinton was calling genocide (Power, 2002: 274). In addition, candidate Clinton had called for those responsible for crimes against humanity to be brought to justice (Bass, 2000: 214). Once elected, however, Clinton’s calls for intervention gave way to more considered policy, in particular after Secretary of State Warren Christopher toured European capitals, receiving a cool reception from leaders reluctant to put their peacekeepers at risk (Bass, 2000: 214). Clinton thus shifted his policy position—entering a new decision and policy game—once his position moved from that of a junior player, a presidential contender, to the most senior player, the President of the United States. Having made campaign promises advocating strong, unambiguous responses to actions in Bosnia-Herzegovina, the decision game was already in play, but State Department players (in particular Warren Christopher), presented modified policy (as opposed to decision) options; thus the policy of establishing a war crimes trial—in lieu, as some have argued (bass, 2000: 215; Hazan, 2004: 22) of the more complicated, risky, and internationally divisive policy of intervention—was adopted and successfully accomplished in February 1993. A war crimes trial—impossible to establish in the cold war period—was moreover entirely consistent with the type of legalistic beliefs—where legalism is understood as both a political ideology (one that is incidentally shared—and intersubjectively understood, as the constructivists would put it—in the U.S. bureaucracy) and a policy approach to international relations that counts as included in the shared attitudes described by Allison and Halperin in how American players view the national interest (Allison and Halperin, 1972: 56).

Anatomy of the Policy Game and its International Dimensions

Contrary to the perplexingly inaccurate accounts of the U.S. working tirelessly and alone against European opposition to a judicial mechanism designed to address events in the former Yugoslavia, as in (Bass, 2000: 215) influential account, the idea of instituting a war crimes trial (which, as outlined above, had been tepidly advanced by the European Community in relation to alleged Iraqi war crimes) had never been the exclusive province of Americans.

A not unsubstantial amount of jockeying for the position of pride as initiator of the first war crimes tribunal since Nuremberg took place from the moment it seemed that the Clinton administration would not endanger Euro-
pean troops on the ground, but was nonetheless constrained to act as a result of its uncompromising stand regarding crimes against humanity and genocide at the decision game stage, during and after the U.S. Presidential elections. Even before this emerged as the inevitable solution—one that would exact the lowest cost for Clinton—Lawrence Eagleburger, the US Secretary of State, chose to mark the waning days of the Bush administration, in December 1992, by causing a diplomatic firestorm. Eagleburger startled many by making an unexpect-
ed speech in Geneva during the International Conference on the Former Yugo-
slavia, in which he demanded the prosecution of named individuals—among them Slobodan Milosevic—for war crimes. This intervention shocked those assembled ostensibly to support the negotiation efforts led by Cyrus Vance and Sir David Owen (known as the Vance-Owen plan), who listened in disbelief as the possibility of making future (diplomatic) progress virtually vanished with each word of Eagleburger's oratory (Hazan, 2004: 30-31). Though as we have seen, legalism was a genuine belief and a meaningful normative policy tool for the Americans, the British and the Europeans experienced the Eagleburger's outburst as a deep betrayal. French diplomats expressed profound exaspera-
tion, claiming that they were being employed as troops at the bidding of the Germans and Austrians (whose early recognition of Croatia had contributed to fanning the flames of war, but whose World War II actions prevented them from intervening themselves), as the Americans staked “out the moral high ground to avoid getting wet while we take all the hits in Bosnia” (Hazan, 2004: 33). In any event, Eagleburger had forced the hand of his successor—though the bureaucracy did not marshal a single human or material resource to act in any way on Eagleburger's words (Power, 2002: 292)—but by then the impetus was in motion for the establishment of a court. It was a matter, then, of which state might take credit for it, in what we could imagine as an action game at the United Nations level. French foreign minister Roland Dumas had been one of the early proponents of a war crimes prosecution, though his advocacy had left French President François Mitterrand cool until the French learned that the Italians were preparing a proposal for a tribunal (Hazan, 2004: 34). In January 1993, President Mitterrand publicly expressed his support for a war crimes prosecution days before President-elect Clinton was to be sworn into office. The following weeks, the two states engaged in “an opportunistic steeplechase” to circulate the final draft for an ad hoc court at the United Nations Security Council (Hazan, 2004: 36). There were, despite the fact that now two perma-
nent members of the U.N. Security Council were elbowing each other to take credit for a resolution that would create an international court for the first time since Nuremberg, concerns that such a document could harm both French and American interests. The French were concerned about eventual testimony against its military (Hazan, 2004: 36), while Americans were hostile to the idea
of the precedent to be set by a proposed provision regarding military command responsibility (Scharf, 1997: 69). These concerns were very similar to the type of prudential reasons that had bogged down the United Nations attempts to establish a permanent court—to be established by treaty, and ratified by a sufficient number of states, in accordance with the Vienna Treaty on Treaties—over the preceding four decades. The decision and policy games had already been played, however, and bureaucratic theory would explain the adoption of the tribunal despite these serious concerns by the opportunities presented by the creation of a new bureaucracy at the international level, and the subsequent games to be played over mandates, missions, influence, and power.

The ICTY was established by the Security Council without opposition, despite concerns expressed by China, Venezuela, and Brazil (Scharf, 1997: 62). This aspect of the game—best described as an action (or implementation game)—is worth at least a cursory examination. China was seeking most favored nation status with the U.S., and the French delegation made it clear to them that they ought not be seen to be siding with the “butchers” if they wanted to increase their international standing—accounts from the American perspective are similar ((Scharf, 1997: 62; Hazan, 2004: 37). The cold war rival, Russia, was in the process of privatization and liberalization; moreover, President Yeltsin, embattled and struggling with internal problems, was seeking U.S. political and economic support (Hazan, 2004: 37).

Thus on February 22nd, 1993, the Security Council passed Resolution 808, creating a Tribunal for the “prosecution of persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991.”

Conclusion

Graham Allison’s bureaucratic model of decision-making offers an unexpectedly fertile approach to the analysis and explanation of policymaking and policy adoption in international criminal law. This approach appears to offer promising avenues of analysis regarding the move to create and ratify the Rome Statute, and thus would be suitable for future research. As a working hypothesis, the International Criminal Court does not yet enjoy sufficient support by any senior player in the U.S., nor does it—if we extend the game to the Security Council, mutatis mutandis—offer opportunities of interest to critical Security Council member states (in particular China, Russia, and the United States) to launch policy games (domestically) that would result in truly universal international criminal justice. With the U.S. position still hostile to participation
in an international criminal court—and indeed recent empirical work by Alli-
son Danner and Beth Simmons demonstrates that democracies are not more
likely to join the ICC, thus contrasting with various liberal or constructivist
theories (Simmons and Danner, 2010)—other “senior players” (at the Security
Council) may be less comfortable offering the kind of “credible commitment”
required for membership in the court. Moreover, the loss of sovereignty such a
body implies may cause knee-jerk reactions in bureaucracies intent on expand-
ing—or at least maintaining—jurisdiction and mandates. Whether the disincl-
nation of powerful Security Council states to join the ICC is better explained
by bureaucratic theory, by a rational choice analysis of costs, or by a classical
realist examination of power and interests—as other states without Security
Council veto power have joined the ICC, which would not have been predicted
by the bureaucratic or rational choice theories—would be a research project
worth conducting in the future.
BIBLIOGRAPHY


IGRE BEZ GRANICA:
ULOGA BIROKRATIJE U STVARANJU MEЂUNARODNOG KRIVIČNOG
SUDA ZA JUGOSLAVIJU:

Rezime: Naizgled iznenadan prelaz iz dugotrajne neaktivnosti u gotovo
hiperaktivno umnožavanje sedišta sudova za međunarodno krivično pravo pred-
stavlja ozbiljnu zagonetku za teoriju odlučivanja. Kako najbolje objasniti ovu
promenu? Ovaj članak se oslanja na teoriju koju je razvio Grejem Alison, u kojoj
se poziva na ulogu koju igra birokratija. Njegova teorija, za razliku od konstruk-
tivističkog pristupa, se ne usteže od ideje da politika igra ulogu pri odlučivanju.
Naprotiv, “političke igre” su uzete u obzir i ugrađene u teoriju, pošto je aktivnosti
pregovaranja data centralna uloga u okviru analiza. Prema tome, u ovom radu se
stavranje MKSJ analizira iz perspektive teorije koja se poziva na ulogu birokratiju
u odlučivanju, a “političke igre” koje su bile prisutne u ovom procesu se prouča-
vaju do detalja.

Ključne reči: Međunarodno krivično pravo, teorija odlučivanja, birokrati-
ja, političke igre, Međunarodni krivični sud za Jugoslaviju.