

Sławomir Redo

Academic Council on the United Nations System

s@redo.net

ORCID ID: <https://orcid.org/0000-0003-2018-4217>

Commentary
on the Judgment of the International Criminal Tribunal for the Former
Yugoslavia (ICTY) of 29 November 2017
(Case No. IT-04-74-T)¹

I. This criminological commentary has been rendered on the grounds of the following facts.

In case of *Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić and Berislav Pusić*, the six Croat alleged war criminals before the Tribunal were charged with crimes that met its Statute's disposition concerning the alleged acting of participating in a Joint Criminal Enterprise (JCE). According to the bill of indictment, its goal was to permanently remove the Muslim population from Herceg-Bosna.

All six defendants entered a 'not guilty' to each of the 26 offences brought against them. In particular, all the defendants denied the displacement and/or confinement of civilians, murder and destruction of property during attacks, ill-treatment and criminal damage during eviction operations, ill-treatment and harsh conditions in detention, the wide-spread and almost systematic use of detainees to carry out work on the frontline and even to serve as human shields at times, as well as murder and ill-treatment associated with this work and with the use of human shields and, finally, the displacement of detainees and their families from the territory of Herceg-Bosna following their release.

1 Judgment of the International Criminal Tribunal for the Former Yugoslavia Prosecution of Persons Responsible for Serious Violations of International, Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991.

The Tribunal found them guilty and sentenced them to various individual terms of imprisonment, ranging from ten to 25 years. Upon hearing the guilty verdict carrying a 20 years custodial sentence one of the defendants, Slobodan Praljak stated: “Judges, Slobodan Praljak is not a war criminal. I reject your verdict with contempt!” Thereupon, in the courtroom, he committed suicide by taking poison².

II. The Tribunal’s verdict discussed here raises several questions. The first is whether the act carried out by Slobodan Praljak was Socratic³? The second is whether, given the absence of any stated purpose to the custodial sentence handed out by the ICTY, (e.g. incapacitation, retribution, redress for a victim, rehabilitation, as a general deterrent⁴) it is possible to learn how the suicide of Slobodan Praljak and the ongoing imprisonment of the other members of the JCE might have generally impacted on, or resonated in, the post-war societies of Croatia, Bosnia & Hercegovina and other Balkan countries? And especially, whether the suicide committed by one of the convicted – presumably to demonstrate that the atrocious ethnic cleansing of the 1990s was not criminal – has frustrated the intended preventive effect of his 20 year custodial sentence, yet the other custodial sentences have constructively affected the war-torn Balkan societies as the result?

Following the answers, this commentary considers the educational recommendations ensuing *de lege ferenda* for a global Culture of Lawfulness (CoL) – a concept known outside of the United Nations, and now readapted by the United Nations Office on Drugs and Crime, under the recommendations of the Thirteenth

2 “On 29 November 2017, Mr. Praljak committed suicide in Courtroom 1, ICTY. During the public pronouncement of the appeal judgement, the Appeals Chamber confirmed his conviction and affirmed his sentence of 20 years of imprisonment... Soon thereafter, Mr. Praljak passed away” (Statement on the independent review regarding the passing of Slobodan Praljak, ICTY, 31 December 2017, <http://www.icty.org/en/press/statement-on-the-independent-review-regarding-the-passing-of-slobodan-praljak> (29.11.2018)).

3 R. A. Duff, Socratic Suicide?, “Proceedings of the Aristotelian Society”, New Series, vol. 83 (1982 – 1983), pp. 35-47; E. Durkheim, *The Rules of the Sociological Method*, The Free Press, London-New York-Toronto-Sydney 1982, p. 102; S. Redo, E. W. Pływaczewski, A. Langowska, P. Alkowski, A Socratic Contribution to Culture of Lawfulness for Teaching Criminology, “Białostockie Studia Prawnicze”, *idem*.

4 There is no fixed list of purposes of international criminal sentencing. By and large, major human rights instruments do not address them. It is not possible to assess how the sentencing objectives guide the determination of a particular sentence. In the majority of cases it seems that the purposes are only *pro forma* listed at the beginning of the sentencing part of the judgment, with no explanation what they entail and no clear link to the rest of the sentencing argumentation (see further: L. Kurki, *International Standards for Sentencing and Punishment*, (in:) M. Tonry and R. S. Frase (eds.), *Sentencing and Sanctions in Western Countries*. Oxford University Press, Oxford 2001, pp. 331-378; B. Hola, *Sentencing of International Crimes at the ICTY and ICTR. Consistency of Sentencing Case Law*, “Amsterdam Law Review Forum” 2012, vol. 4, no. 4, p. 6).

United Nations Congress on Crime Prevention and Criminal Justice⁵. There in para. 7 this concept was mentioned *en passant* as a contribution to the UN 2030 Sustainable Development Goals (SDG) Agenda⁶ – a rallying mandate for all UN entities, with its pivotal SDG 16.

It promotes “peaceful and inclusive societies for sustainable development, [...] access to justice for all and [...] effective, accountable and inclusive institutions at all levels”. Finally, this commentary seeks to respond to the question, whether there is any constructive legacy which ensues from the ICTY verdict for a global CoL as a part of the 2030 Agenda?

III. The question whether or not the suicide had a Socratic character seems justified because Socrates’ self-inflicted death by poisoning was a genuinely progressive, altruistic act, committed for promoting universal values. Ever since these values have been stipulated by United Nations law, the suicide of the Convicted is not of the same ilk. However, since he rejected the ICTY verdict with contempt, the canon of *nemo iudex in sua causa* alone corroborates a non-Socratic character of his act.

Yet, despite this apparent finding, the comments on his self-inflicted death lend themselves to a dispassionate scientific classification as either “*un acte positif*” (“altruistic”) or “*un acte négatif*” (“fatalistic”)⁷. Accordingly, the following comments are reported below⁸.

“[T]he Croatian government offered condolences to Praljak’s family and said the ICTY misrepresented its officials in the 1990s. Prime Minister Andrej Plenković stated that Praljak’s suicide illustrated the ‘deep moral injustice towards the six Croats from Bosnia and Herzegovina and the Croatian people’. All party caucuses of the Croatian Parliament except the SDP [Social-Democratic Party – added] and GLAS [Civil-Liberal Alliance – added] issued a joint statement declaring that ICTY’s verdict did not respect the ‘historical truths, facts and evidence’, and that it was ‘unjust and unacceptable’, adding that through his suicide Praljak symbolically rejected the total injustice of the verdict. They expressed their condolences to the families of victims of crimes committed during the Bosnian War. Croatian president Kolinda Grabar-Kitarović expressed her condolences to Praljak’s family, calling him ‘a man who

5 A/RES/70/174, Annex, Doha Declaration on Integrating Crime Prevention and Criminal Justice into the Wider United Nations Agenda to Address Social and Economic Challenges and to Promote the Rule of Law at the National and International Levels, and Public Participation, 17.12.2015, <http://www.un.org/en/sections/documents/general-assembly-resolutions/index.html> (04.03.2018).

6 A/RES/70/1, Transforming our World: the 2030 Agenda for Sustainable Development, 25 September 2015, <http://www.un.org/en/sections/documents/general-assembly-resolutions/index.html> (04.03.2018).

7 Introduced by E. Durkheim in his landmark “Suicide” study (1895).

8 https://en.wikipedia.org/wiki/Slobodan_Praljak (29.11.2018).

preferred to die rather than live as a convict for crimes he did not commit'. Miroslav Tuđman stated it was a 'consequence of [Prajak's] moral position not to accept the verdict that has nothing to do with justice or reality'... 'while Croat Chairman Dragan Čović stated that Praljak had sacrificed his life to prove his innocence'. The Serbian politician Vojislav Šešelj commented that, although he was an enemy, it was a 'heroic move worthy of respect' and there should have been more such strong blows to the Tribunal".

On the other hand, "Serbian President Aleksandar Vučić said he would not mock Praljak's suicide but has criticized the reaction of Croatian officials, stating that it would have been unacceptable for him to praise a convicted war criminal as a hero or to denounce an ICTY verdict"... "[T]he Bosnian member of the Presidency of Bosnia and Herzegovina, Bakir Izetbegović, said that Praljak was led to suicide by the joint criminal enterprise". "Former ICTY judges Wolfgang Schomburg and Richard Goldstone commented that 'it is a tragedy that someone in such a situation has taken their own life'. Goldstone added: 'In a way, the victims are deprived of this deed. They did not get full justice.' Martin Bell described Praljak as a 'theatrical character' who 'died in a theatrical way'. Andrey Shary for *Radio Free Europe/Radio Liberty* noted that 'Praljak's samurai final act might evoke respect or sympathy', but 'individual perceptions of honor don't always coincide with correctness'. "*The Daily Telegraph*... journalist Harry de Quetteville opined that the defiant suicide was 'the most dramatic proof possible of a very uncomfortable reality: many in the Balkans refuse to accept that the horrific ethnic cleansing of the 1990s was wrong'... Finally, "[f]ormer US Ambassador for War Crimes Issues Stephen Rapp compared Praljak's suicide by poisoning to that of another war crimes convict, Hermann Göring, noting that in both cases the verdict nevertheless stands for all history⁹ in establishing the facts and in showing that the perpetrators of atrocities will be held to account"¹⁰.

IV. Answering this question in the negative may preclude the response to the second question, in so far as it involves the policy on the purpose(s) of the sentence handed down to Slobodan Praljak. However, this answer can neither obviate the impact of his suicide on general deterrence, nor of that deterrence's intended effect, possibly communicated through the imprisonment of others who, like him, had pleaded 'not guilty'.

9 This may be apparent reference that, indeed, not only Hermann Göring, but also Field Marshal Hajime Sugiyama (the Japanese General Staff and War Minister), and Prince Fumimaro Konoye, a former Prime Minister, committed suicide before appearing before the International Military Tribunal for the Far East ("The Tokyo War Trials", 1946-1948) and General Hideki Tōjō, the former Prime Minister considered to be the most important of the defendants, attempted suicide by a self-inflicted gunshot.

10 https://en.wikipedia.org/wiki/Slobodan_Praljak (29.11.2018).

In the absence of the explicitly stated purpose(s) of their imprisonment for the international humanitarian law violations in the verdict, one may only infer *a maius ad minus* that, indeed, general deterrence was one of them. Namely, that purpose was implicit in the creation of the ICTY by the United Nations Security Council. It explicitly stipulated that the tribunal shall “contribute to ensuring that such violations are halted”¹¹.

Additionally, this inference can be confirmed by statistical analysis. The analysis covered verdicts handed down by the ICTY (81 valid convictions), the International Criminal Tribunal for Rwanda (43 valid convictions), and the Special Court for Sierra Leone (8 valid convictions) handed down to 132 defendants altogether. The analysis (covering an unspecified period of time), showed that the three tribunals sentenced those most culpable¹² to longer prison terms, thus “giving effect to [the tribunals’] deterrent function”¹³.

V. The question on the deterrent effect of other imprisonment sentences handed down in the same ICTY case cannot be answered even in that way. This is due to lack of statistical analysis which would have investigated whether or not the suicide by the Convicted or the imprisonment of the other Convicted offenders had any effect on the rates of other suicides and homicide across the Balkans¹⁴, let alone of the impact that particular act on violent crime victimization, or on the perceptions of “right” or “wrong” through public opinion polls there. In their lieu, Balkan governmental officials, party politicians, lawyers and journalists opined the verdict of the ICTY, as reviewed above.

The review also suggests that an immediate general deterrent effect of the 20-year imprisonment sentence may have been confounded, if not extinguished, because of the choice made by the Balkan officials quoted above. They all expressed national sentiments, as well as doubts if not resentment, towards universal values. This *ex promptu* “rational choice” is, for most of them, the result of a cost-benefits assessment. In the immediate context of the suicide of the Convicted and effective imprisonment of the other tried JCE perpetrators (“national heroes”), the ensuing benefits may be tangible, but in the longer term they may also involve prospective costs.

11 S/RES/827, 25 May 1993, PP 7.

12 In terms of the severity of the crime, the number of counts on which they were found guilty, and the number of aggravating factors.

13 J. Meernik, Sentencing Rationales and Judicial Decision Making at the International Criminal Tribunals, “Social Science Quarterly” 2011, vol. 92, no. 3, p. 605.

14 Cf. for a fragmentary statistical analysis 1989-2003 of suicide rates in the Balkans in pre- and post-war time (in:) S. Selakovic-Bursic, E. Haramic, and A. A. Leenaars, The Balkan Piedmont: Male Suicide Rates Pre-war, Wartime, and Post-war in Serbia and Montenegro, “Archives of Suicide Research” 2006, no. 10, pp. 225–238.

VI. This then raises the question: Is there any constructive legacy of the ICTY verdict for education in a global Culture of Lawfulness as part of the United Nations Sustainable Development Agenda which ensues from Slobodan Praljak's self-inflicted death and from the other JCE offenders' effective imprisonment? In other words, is there any difference between the post-Second World War period and now in institutionally or – at least – conceptually, answering this question?

For the time being, in the United Nations, CoL is very skeletal. It cannot provide any answers that would satisfy governments and academics. Culturally-sanctioned suicides are the order of the day across the world. Their roots lie in legal cultures of the UN Member States, to which the Organization has very limited access. For instance, suicide as an act of murder and terrorism in some Islamic States is currently practiced by local militants who regard it as martyrdom in the context of war. "*Seppuku*", the ancient samurai ritual of suicide by self-disembowelment is still honourable in Japan, but formally outlawed since 1873. In the past century, *samurai* ideals, and the idea of *seppuku* along with them, have been revived during periods of patriotic nationalism, most prominently during World War II. During that era Japanese soldiers, equipped with both modern firearms and mass-produced swords, committed *seppuku* rather than surrender to enemy forces. The spirit of *seppuku*, if not the technical practice, was likewise epitomized by the so called *kamikaze* pilots who, with Japan facing defeat at the end of the war, deliberately piloted their explosives laden aircraft into allied naval vessels. In 1945, both soldiers and civilians alike committed *seppuku* in droves as an apology for having lost the war¹⁵.

Praljak committed suicide immediately after hearing the ICTY guilty verdict. For the tribunal, this act was a protest against the judgment of facts and the law¹⁶. Be that as it may, in the opinion of some commentators, the fact that the ICTY judges did not explicitly mention for what criminal policy purpose(s) the sentence was handed down is indisputable (this author only opined that general deterrence, i.e. "halting" the violations might be one of them, but there could also have been specific deterrence or retribution). This lacunae begs the penultimate question, whether other international criminal courts, primarily the International Criminal Court should through their sentencing guidelines pursue a much more incisive, constructive and informed criminal policy for the world, backed by their own Research & Development capacity, as well as by academic findings.

15 J. M. Pierre, Culturally Sanctioned Suicide: Euthanasia, Seppuku, and Terrorist Martyrdom, "World Journal of Psychiatry" 2015 vol. 5 no. 1, p. 4.

16 "[A] brilliant mind, a man who has been comprehensively educated, achieved [success] in many areas, a true 'homo universalis'" (A. Vladisavljevic, Praljak's Courtroom Suicide Anniversary Marked in Croatia, "Balkan Transitional Justice. Balkan Insight", <http://www.balkaninsight.com/en/article/anniversary-of-praljak-s-courtroom-suicide-marked-in-croatia-11-28-2018> 9 (29.11. 2018)).

Such guidelines should be informed by the sustainable development goals of the 2030 Agenda and analysed for their relation with particular criminal policy purposes, relevant to the verdicts by international criminal courts. For instance, the Agenda's crosscutting SDG 16 includes the promotion and enforcement of non-discriminatory laws and policies for sustainable development (16.b). The international criminal judgments, where appropriate substantiated *ratione materiae* with that goal, may add a new perceptive rationale to the Agenda. Even on the strength of that particular aim alone, there is a huge difference between the post-Second World War period and now, both institutionally and conceptually. Consequently, the legacy of the last ICTY verdict should encourage the International Criminal Court and other international criminal courts to draw on the Agenda's SDG 16 to form their sentencing guidelines *in spe*.

VII. Finally, one more question needs to be answered: Whether this author should have written this commentary focusing not on a single case of the ICTY-related suicide, but on genocide trials? After all, suicides are culturally sanctioned and in the entire 1993-2017 ICTY period only three such suicides happened¹⁷. In other words, should therefore the genocide and not the suicides, be *toute proportion gardée* more relevant to a global Culture of Lawfulness?

Exactly because genocide is unreservedly condemned worldwide and, over the years, has become such a relevant issue for a global CoL, culturally-sanctioned suicides, which are so idiosyncratic (especially the one discussed here), prompted this author to express his opinion. Interculturally, preventing such suicides from happening in international criminal justice cases should motivate governments and societies to do away with idiosyncratic regressive features of nationalistic cultures which sanction such self-destructive non-Socratic acts. They are detrimental to the restoration and maintenance of peace and to social progress, which has been mandated since 1945 by the United Nations Charter.

Now the implementation of the Charter can be assisted by advancing goal 16 of the 2030 UN Sustainable Development Agenda. May the last ICTY verdict, delivered a year ago amidst the dramatic circumstances of a courtroom suicide, be a call to incorporate the ICTY's legacy in international the criminal justice and crime prevention in a progressive manner, i.e. in a Socratic spirit worldwide.

17 Including two prison suicides: Slavko Dokmanović (Case no. IT-95-13a, <http://www.icty.org/case/dokmanovic/4>); Milan Babić (Case no. IT-03-72, <http://www.icty.org/case/babic/4>), (29.11.2018).

