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978-0-521-76380-6 - Courting Democracy in Bosnia and Herzegovina: The Hague Tribunal's Impact in a Postwar State

Lara J. Nettelfield

Excerpt

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1 Introduction

Assessing the Impact of the International Criminal Tribunal for the Former Yugoslavia (ICTY) in Bosnia and Herzegovina

March 8, 2004: cold rain drizzled on a group of 50 women, many of them widows, gathered outside the gates of the United Nations (UN) compound in the Sarajevo neighborhood of Nedžarići, which housed the local office of the International Criminal Tribunal for the former Yugoslavia (ICTY). Each carried an umbrella in one hand, and with the other gripped a large cloth banner bearing the names of their husbands, sons, and brothers who had perished after the fall of the Srebrenica enclave. The town had been declared a UN safe area in 1993; however, in July 1995, Bosnian Serb and Serbian forces had overrun the town, killing over 8,000 Bosniak (Bosnian Muslim) men and boys who ended up in mass graves.¹ It was the single worst atrocity of the Bosnian war. The perpetrators would later try to hide the signs of their crimes, disturbing the bodies to move them to clandestine locations.

The reason for the public protest was the news of the recently drafted United Nations Security Council (UNSC) Resolution outlining the planned closure of the ICTY.² But at that time, in 2004, nine years after the end of the war, many of Srebrenica's clandestine graves had not yet been discovered. Srebrenica and its inhabitants would continue to experience unspeakable human suffering long after the war's end. "We are the families of the killed and the disappeared. Because of us the Tribunal was founded. Don't close it. Don't obstruct it. Let it dispense justice and truth," said a sign carried by the huddled protesters. They saw themselves as some of the court's original constituents who were, however, rarely asked about such important matters, and who were about to be let down yet again by the international community.

¹ In September 1993, Bosnian Muslim leaders voted to rename their community "Bosniaks" at the Second Congress of Bosniaks in Sarajevo. See Robert J. Donia, "The New Bosniak History," *Nationalities Papers* 28, no. 2 (June 2000), 351–358; Robert J. Donia, *Sarajevo: A Biography* (Ann Arbor: University of Michigan Press, 2006), xxi.

² There were two UN Security Council Resolutions addressing the closure of the ICTY around the time of the protest: UNSC Resolution 1503 (2003) (S/RES/1503, August 28, 2003) and UNSC Resolution 1534 (2004) (S/RES/1534, March 26, 2004).

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Figure 1.1. Members of the Mothers of the Enclaves of Srebrenica and Žepa, including Sabaheta Fejzić and Sabra Kulenović, protest the plan to close the International Criminal Tribunal for the former Yugoslavia, Sarajevo. March 8, 2004.

Photograph: Senad Gubelić, *Oslobodenje*.

Their protest illustrated the complicated and fraught relationship Bosnian citizens had with the Tribunal set up to prosecute genocide and violations of international humanitarian law in the countries of the former Yugoslavia. This and other similar groups had become increasingly critical of the court's work over the postwar years. Yet on this day, the women decided to send another message: beyond their disappointment and disillusionment, they felt this international institution had not finished its work in Bosnia and Herzegovina and should not close its doors.³ The court, despite significant flaws, was integral to the postwar goals of this small group of Bosnian citizens who chose to fight the cold on a wet March morning.

This book tells a story largely untold, about these women and other groups in Bosnian society who have been affected by the ICTY. It addresses the role that the court played in Bosnia's ongoing transition to democracy. In doing so, this study joins the growing body of research that examines how efforts to seek accountability for mass atrocities affect domestic developments in postconflict societies.⁴

³ The formal name of the country today is Bosnia and Herzegovina; I primarily use the short version "Bosnia" throughout. The country, recognized as independent in April 1992, was called the Republic of Bosnia and Herzegovina; its name was changed to Bosnia and Herzegovina by the December 1995 Dayton Peace Agreement (formally the General Framework Agreement for Peace, or GFAP) that ended the war.

⁴ See especially Eric Stover and Harvey M. Weinstein, eds., *My Neighbor, My Enemy: Justice and Community in the Aftermath of Mass Atrocity* (Cambridge: Cambridge University Press, 2004); Kristen Cibelli and Tamy Guberek, *Justice Unknown, Justice Unsatisfied?: Bosnian NGOs*

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Utilizing an interdisciplinary approach – drawing on survey research, oral histories, archival materials, and ethnography – it shows how the court has advanced Bosnia's processes of democratization in ways underappreciated by many current analysts. The court has facilitated social movements and the creation of new institutions, and has ultimately changed attitudes about accountability. While Bosnia's polity is fragile and, for many, the future is in question, this study illustrates some of the positive legacies of international justice.⁵

UN Security Council Resolution 827 created the ICTY on May 25, 1993, to address violations of international law in Southeastern Europe.⁶ The resolution states that the court is intended to “contribute to the restoration and maintenance of peace.”⁷ The ICTY would later describe its achievements in language similar to the spirit of the Security Council Resolution that founded it: “holding leaders accountable, bringing justice to victims and giving them a voice, establishing the facts and developing international law and strengthening the rule of law.”⁸ The architects of the ICTY assumed that the court would have a substantial impact in the region.

Speak about the International Criminal Tribunal for the Former Yugoslavia (Boston, MA: Tufts University, 2000) <www.hrdag.org/resources/publications/justicereport.pdf> (accessed July 20, 2009); Human Rights Center and the International Human Rights Law Clinic, University of California, Berkeley, and the Human Rights Center, University of Sarajevo, “Justice, Accountability and Social Reconstruction in Bosnia and Herzegovina: An Interview Study of Bosnian Judges and Prosecutors,” *Berkeley Journal of International Law* 18, no. 1 (2000):102–164; James Meernik, “Justice or Peace: How the International Criminal Tribunal Affects Societal Peace in Bosnia,” *Journal of Peace Research* 42 (2005): 271–290; John Hagan and Sanja Kutnjak, “The Politics of Punishment and the Siege of Sarajevo: Toward a Conflict Theory of Perceived International (In)Justice,” *Law and Society Review* 40, no. 2 (2006): 369–410. For a review of the literature, see Leslie Vinjamuri and Jack L. Snyder, “Advocacy and Scholarship in the Study of International War Crimes Tribunals and Transitional Justice,” *Annual Review of Political Science* 7, no. 1 (2004): 345–362. See also Mark Osiel, *Mass Atrocity, Collective Memory and the Law* (New Brunswick, NJ: Transaction Publishers, 2000); Carlos Santiago Nino, *Radical Evil on Trial* (New Haven, CT: Yale University Press, 1996); A. James McAdams, ed., *Transitional Justice and the Rule of Law in New Democracies* (Notre Dame, IN: University of Notre Dame Press, 1997); Neil Kritz, ed., *Transitional Justice: How Emerging Democracies Reckon with Former Regimes*, 3 vols. (Washington, DC: United States Institute of Peace Press, 1995); and Naomi Roht-Arriaza and Javier Mariezcurrena, *Transitional Justice in the Twenty-First Century: Beyond Truth versus Justice* (Cambridge: Cambridge University Press, 2006).

⁵ See, for example, Srećko Latal, “Bosnia Heads for the Bottom, not Europe,” Balkan Investigative Reporting Network (BIRN), *Balkan Insight*, July 14, 2009, <www.balkaninsight.com/en/main/blogs/21070/> (accessed July 14, 2009); and Paddy Ashdown and Richard Holbrooke, “A Bosnian Powder Keg,” *The Guardian*, October 22, 2008.

⁶ UN Security Council Resolution 808 (1993) (S/RES/808, February 22, 1993) first set up the framework for the court, <www.un.org/Docs/scres/1993/scres93.htm> (accessed July 14, 2009).

⁷ The full text of UN Security Council Resolution 827 (1993) (S/RES/827, May 25, 1993) can be found at <www.un.org/Docs/scres/1993/scres93.htm> (accessed February 24, 2009).

⁸ International Criminal Tribunal for the former Yugoslavia, Achievements, <www.icty.org/sid/324> (accessed February 24, 2009). An early version of the ICTY's web site, now offline, listed its mission as, “to bring to justice persons allegedly responsible for serious violations of international humanitarian law; to render justice to the victims; to deter further crimes; and to contribute to the restoration of peace by promoting reconciliation in the former Yugoslavia.”

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Extra-legal influences were as much a part of the rationale for its establishment as upholding the international rule of law.

The women in front of the UN compound on that March day, like many advocates of international justice, initially had much hope about the court's potential and promise for the region. Optimism had surrounded the ICTY and other similar judicial institutions created after the end of the Cold War. The massive geopolitical realignment that occurred at the time enabled the expansion of transitional justice instruments in countries moving toward democracy. "Transitional justice" became the umbrella term for methods to address mass atrocities and human rights violations in these changing societies, such as international tribunals, truth and reconciliation commissions, and lustration proceedings.⁹ These methods, advocates argued, would help create the institutions and values necessary for democratic consolidation. The assumption by human rights activists was that such measures would have positive effects. Human Rights Watch, for example, reasoned that "reckoning with the crimes of the past does not impede the transition to democracy; it facilitates it."¹⁰

Over time, however, confidence in international courts eroded as arrests were not made, high-level cases were inconclusive, and legal instruments used in Iraq meted out what appeared to many as something other than justice.¹¹ The whole enterprise of international justice began to seem to some like a misuse of limited funds.

The first scholarly analyses of these ad hoc courts looked at their effects in the countries in which they operated, and drew pessimistic conclusions. Most found that they were counterproductive, failed to deliver their intended results, exacerbated the ethnic tensions they were designed to quell, and were disliked by the citizens in postconflict countries they were designed to serve.¹² Scholarly consensus

⁹ The literature is vast and growing. The foundational book for most studies is Ruti G. Teitel, *Transitional Justice* (New York: Oxford University Press, 2002). For a work on truth commissions, see Priscilla B. Hayner, *Unspeakable Truths: Confronting State Terror and Atrocity* (New York: Routledge, 2001). For an overview of the various mechanisms, see Martha Minow, *Between Vengeance and Forgiveness: Facing History After Genocide and Mass Violence* (Boston: Beacon Press, 1998). On war crimes in Southeastern Europe, see Paul R. Williams and Michael P. Scharf, *Peace with Justice?: War Crimes and Accountability in the former Yugoslavia* (Lanham, MD: Rowman and Littlefield, 2002); Norman Cigar and Paul Williams, *Indictment at The Hague: The Milošević Regime and Crimes of the Balkan Wars* (New York: NYU Press, 2002); and James Gow, *The Serbian Project and Its Adversaries: A Strategy of War Crimes* (London: Hurst and Company, 2003).

¹⁰ Kenneth Roth, "Milošević's Indictment Sets Much Needed Precedent," July 12, 2001, *Human Rights Watch*, <www.hrw.org/en/news/2001/07/12/milosevics-indictment-sets-much-needed-precedent> (accessed February 24, 2009).

¹¹ See, for example, Michael A. Newton and Michael P. Scharf, *Enemy of the State: The Trial and Execution of Saddam Hussein* (New York: St. Martin's Press, 2008).

¹² See Stover and Weinstein, *My Neighbor, My Enemy*; Jack L. Snyder and Leslie Vinjamuri, "Trials and Errors: Principle and Pragmatism in Strategies of International Justice," *International Security* 28, no. 3 (2003/04): 5–44; Helena Cobban, "Think Again: International Courts," *Foreign*

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began to form that these experiments in international justice had largely failed. This book presents evidence that differs sharply from that gloomy conventional wisdom, and illustrates how attitudes changed over time, civil society mobilized, and domestic institutional capacity to try war crimes developed because an international tribunal had helped to put those developments in motion.

To date there have been relatively few analyses of the domestic impact of international tribunals, even in Southeastern Europe. This is surprising given the vast resources available to the ICTY and the historical significance of the proceedings: the first judgment treating rape as a war crime, the first indictment of a sitting head of state, and the court's impact on the evolution of international law. The region's wars have been the subject of wide-ranging discussion and many books.¹³ Scholars have studied the founding of the ICTY and its internal politics, and journalists have described the crimes committed in the region, which included mass rape, deliberate destruction of cultural and religious institutions, and genocide.¹⁴ Still, although interest in the subject is growing, only one scholarly book and a handful of articles have thus far directly addressed local attitudes toward and the effects of the ICTY.¹⁵

Policy (March–April 2006); and Tonya Putnam, "Human Rights and Sustainable Peace," in Stephen J. Stedman, et al., eds., *Ending Civil Wars: The Implementation of Peace Agreements* (Boulder, CO: Lynne Rienner Publishers, 2002), 237–272. For a critique written by a UN insider, see Ralph Zacklin, "The Failings of Ad Hoc International Tribunals," *Journal of International Criminal Justice* 2, no. 2 (2004): 541–545.

¹³ Quintin Hoare and Noel Malcolm, eds., *Books on Bosnia: A Critical Bibliography of Works Relating to Bosnia-Herzegovina since 1990 in West European Languages* (London: The Bosnian Institute, 1999). This bibliography, now quite outdated, contains 379 books in the languages of Western Europe. The Bosnian Institute's "Books on Bosnia" database contains 3741 books about Bosnia and the region. See <www.bosnia.org.uk/about/bi_books/bi_pub.cfm> (accessed September 20, 2009).

¹⁴ See Michael P. Scharf, *Balkan Justice: The Story Behind the First International War Crimes Trial Since Nuremberg* (Durham, NC: Carolina Academic Press, 1997); Gary Jonathan Bass, *Stay the Hand of Vengeance: The Politics of War Crimes Tribunals* (Princeton, NJ: Princeton University Press, 2000); John Hagan, *Justice in the Balkans: Prosecuting War Crimes in the Hague Tribunal* (Chicago, IL: University of Chicago Press, 2003); Laura Silber and Alan Little, *Yugoslavia: Death of a Nation* (New York: Penguin Books, 1997); David Rohde, *Endgame: The Betrayal and Fall of Srebrenica, Europe's Worst Massacre Since World War II* (New York: Farrar, Straus and Giroux, 1997); Alexandra Stiglmyer, ed., *Mass Rape: The War Against Women in Bosnia-Herzegovina* (Lincoln: University of Nebraska Press, 1994); Peter Maass, *Love Thy Neighbor: A Story of War* (London: Papermac, 1996); Ed Vulliamy, *Seasons in Hell: Slaughter and Betrayal in Bosnia* (New York: Simon and Schuster, 1994); and Roger Cohen, *Hearts Grown Brutal: Sagas of Sarajevo* (New York: Random House, 1998).

¹⁵ The topic has also been addressed in one journalistic account: Elizabeth Neuffer, *The Key to My Neighbor's House: Seeking Justice in Bosnia and Rwanda* (New York: Picador, 2001). See also Stover and Weinstein, *My Neighbor, My Enemy*; Hagan and Kutnjak, *Politics of Punishment*; Cibelli and Guberek, *Justice Unknown*. On the subject of state cooperation with the ad hoc tribunals, see Victor Peskin, *International Justice in Rwanda and the Balkans: Virtual Trials and the Struggle for State Cooperation* (Cambridge: Cambridge University Press, 2008). For the experience of witnesses at the court, see Eric Stover, *The Witnesses: War Crimes and the Promise of Justice in The Hague* (Philadelphia, PA: University of Pennsylvania Press, 2007).

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Analysis to Date

Analysis of impact requires deciding how to measure it, which standards to use, and how to decide whether the goals have been achieved. No agreed definition exists of what would constitute success in transitional justice efforts, or how to determine it. There are many people speaking, writing, and ruminating about international courts: victims, perpetrators, bystanders, scholars, international lawyers, diplomats, and citizens. Each of them, implicitly or explicitly, has in mind a counterfactual idea about what the region would have looked like and where the development of international justice would be today, had the court been able to meet some underspecified "ideal," or if it had never been created at all.¹⁶ These counterfactual notions form models against which comparisons are made. The reputation of international courts is influenced by both domestic and international public opinions. Popular opinion often reflects a lack of knowledge about criminal prosecutions and their limitations. Misperceptions about the role of law in a given polity, a topic which is a source of much dispute even among experts, muddies understanding. Opinions are influenced by press reports and international headlines that emphasize extraordinary events, such as the death of Slobodan Milošević in his cell in 2006, judges caught napping at the bench, and indictees escaping justice. Inside Bosnia, the profound sense of injustice felt by victims of the war has fueled popular perceptions that the court has failed there. A gulf exists between the often unrealistic expectations of international criminal justice and the output of the court on any given day. There is a normative component to this question as well, as one recent volume asks: "At what point, if any, is one to reasonably concede that the 'realities' of world politics require compromise from cherished principles or moral ends, and that what has been achieved is ethically justified?"¹⁷

That is not to say that the attitudes of the victims and other stakeholders are unimportant, or that anyone should be satisfied by less-than-ideal outcomes. However, there should be a greater appreciation of the fact that popular sentiment would not likely have changed if more (or different) perpetrators had been tried and sentences had been longer. Victims, generally, will assess the court through comparisons to an impossible ideal, in which every perpetrator is brought before the court. This expectation imposes an impossible standard: that failure to provide such justice at the international level is disrespectful to those

¹⁶ For a similar argument with a different emphasis, see Kathryn Sikkink, "The Role of Consequences, Comparison and Counterfactuals in Constructivist Ethical Thought," in Richard Price, ed., *Moral Limit and Possibility in World Politics* (Cambridge: Cambridge University Press, 2008). Sikkink contends that those who compare to the ideal argue that having no trials would have been better than the ones that have occurred. On the use of counterfactual thinking, see Philip Tetlock and Aaron Belkin, eds., *Counterfactual Thought Experiments in World Politics* (Princeton, NJ: Princeton University Press, 1996).

¹⁷ Richard Price, "Moral Limit and Possibility in World Politics," in Price, *Moral Limit and Possibility in World Politics*, 1.

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who suffered and perished. Many victims' groups are concerned only with convictions and specific charges, but not with complicated issues of evidence and due process. The approaches and emphases of different professions influence understandings of effects, too, at both the international and regional levels. For instance, some diplomats think lawyers should and could take political factors into consideration; legal professionals disagree. Most prosecutors aspire to court decisions that will hold up at the appellate level and to scrutiny over time. Defense attorneys – an often maligned group in international justice circles – want to make sure criminal liability for their clients is established according to fair standards of due process. All of these factors make for an exceptionally difficult task, especially when the crimes in question resulted from widespread and often organized political violence, yet the form of liability is individual guilt, as it was at the ICTY.

These observations are not an excuse for the shortcomings of the ICTY – many will be discussed – but arise from a desire to be explicit about the limitations that hinder the evaluation of a pioneering institution such as this court. There are no road maps. All of the social actors invested in the outcomes of international tribunals evaluate the court against ideals of their own. Some of these ideals are closer to, some farther from, the legal and extra-legal functions that courts can, in reality, perform.

International law has always been a weak instrument for dealing with widespread political violence. One scholar lamented that in some circles there is “a misguided impulse to capture ineffable human suffering within the confines of the judicial process.”¹⁸ This never has been and never will be possible. The demands and goals of the international criminal justice system are different from those of the people who suffer from violent conflict. Courts will never be able to make up for the losses people have endured from war. One informant in this study rued a youth lost to the ravages of war. A political community and a way of life were also lost: “Yugo-nostalgia” was a common postwar theme for many people interviewed for this study, who recalled the prewar years and the positive aspects of the Socialist Federal Republic of Yugoslavia (SFRY), such as relative economic stability and freedom of movement. The war caused demographic changes everywhere. A “brain drain” to Europe and beyond, and a loss of social capital, housing stock, and educational facilities, will affect future generations.¹⁹ The judicial process could never hope to reflect more than a fraction of this collective loss in Bosnia.

The expectations gap, however, still persists. Local groups interpret international law in their own terms and translate it into their cultural contexts and, where international criminal law has proved inadequate, they have sought out

¹⁸ Payam Akhavan, “Justice in the Hague, Peace in the Former Yugoslavia? A Commentary on the United Nations War Crimes Tribunal,” *Human Rights Quarterly* 20, no. 4 (1998): 737–816.

¹⁹ For example, a growing number of studies are starting to look at future demographic losses due to conflict.

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other avenues for redress of their past and present suffering, such as other courts, cultural representations, and memorials.²⁰

At the ICTY, the pursuit of individual criminal guilt has always been confounded by the perception that the wars in the region were particularly complicated. Findings of individual guilt offer an imperfect instrument for addressing criminality that involved varying levels of state involvement among different actors. It was especially difficult to tackle the sometimes dominant (but incorrect) narrative that these were wars of equal parties. Things are further complicated by the fact that any state project of violence that reorders populations based on ethno-religious criteria means that all citizens will be affected. Members of ethno-religious categories who may have suffered relatively less in strict terms of human loss can experience other forms of loss in equal proportion. Many argue that the court does not respond to their experience, or narrative, of the war when those in the dock are primarily members of their ethnic group. The same is true for members of ethnic minorities who stay on what becomes the “other side” in times of war. Furthermore, some citizens do not see the conflict in terms of ethnic groups at all; they only see politicians using violence to achieve political goals.²¹ Therefore, it is understandable that, as tools of social repair, courts are problematic. They produce narratives that do not correspond accurately to lived experience. Yet, as this study illustrates, courts helped to mobilize those affected by collective suffering to strive for better conditions; this study also shows how citizens came to change their attitudes over time.

Many academic observers of this international criminal court have underestimated the difficulty of day-to-day work in these institutions. Scholars who analyze international institutions often have the same high and unrealistic expectations as the public. They do not enter the courtroom every morning to witness the people who work there accomplishing a multitude of daunting daily tasks: creating the operating rules of the court, interpreting them, negotiating both civil and common law legal systems, and dealing with non-compliance in the region, all while fending off, or in some cases welcoming, the influence of geopolitics. This work is done by people from all over the globe who do not even share a common mother tongue. One ICTY prosecutor asked: “Would you go in for a surgery in which you had a Brazilian doctor, a Ugandan nurse, a Canadian anesthesiologist and the operation took place in a Japanese hospital?”²² It is an apt metaphor for what happens in The Hague every day.

²⁰ On the tensions between the international law and local interpretations, see Sally Engle Merry, *Human Rights and Gender Violence: Translating International Law into Local Justice* (Chicago, IL: University of Chicago Press, 2006).

²¹ On how average Bosnian citizens forged a daily existence not marked by nationalism and rooted in prewar counterdiscourse, see Torsten Kolind, *Post-War Identification: Everyday Muslim Counterdiscourse in Bosnia Herzegovina* (Aarhus, Denmark: Aarhus University Press, 2008).

²² Geoffrey Nice, Former Principal Trial Attorney in the Office of the Prosecutor of the ICTY, presentation, Columbia University, New York, April 17, 2006.

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There is another, perhaps even more limiting aspect to ivory-tower analysis which must be acknowledged. Scholars have professional incentives to overturn conventional thinking. In the social sciences, we are often taught to look for *man bites dog* and not *dog bites man*. Some research questions in the social sciences routinely produce somewhat polemical discussions across both sides of a debate because of this incentive structure. As a result, our analyses are often not as nuanced as they should be. Scholars will protest that this is a dishonest intellectual position, and one perhaps in violation of our own professional ethics. Still the inducement is there: to be overly critical is more rewarding than not. A related dilemma can be seen in Bosnia. One news agency bureau chief lamented the constant criticism of developments in postwar Bosnia, which she argued was a reaction to the inability to voice dissent in the socialist era. She felt it clouded the ability of many citizens to see positive developments.²³

This book, too, has a counterfactual underpinning its analysis. It implicitly compares reality to a state that will never be known: a world in which the international community, having intervened in Bosnia to end the war and hoping to influence postwar Bosnian society, did not engage in international criminal prosecutions – in other words, a postwar Bosnia without the ICTY. Contrary to much contemporary analysis, I argue, such a Bosnia (and by extension, the region), would have been much worse off.

This study argues that the most effective way to address the above issue, in the absence of specific criteria agreed upon by a consensus of experts, is to be explicit about the tools and methods utilized, and about the basis for findings in the course of the evaluation. This analysis does not presume that the current popularity of international trials in some circles means that they are the only way for countries that have suffered violent conflicts to address the past.²⁴ It argues that, where there have been trials, we should understand fully how they have reverberated throughout society. For such analysis, Bosnia is a crucial case. This study also does not take for granted that international solutions are better than local ones; the debate, in fact, has evolved to the point where there is an understanding that local solutions are likely to be more effective. International courts should only be engaged when local ones are not an option.

So, if even scholarly evaluation can be problematically biased, the social sciences can best enlighten this issue by means of a broad inquiry. Above all, the social scientist is concerned, generally speaking, with the contributions of institutions: the role of norms; the interplay between domestic and international factors; and the ability of institutions to create openings for social movements, solve so-called collective action problems, and identify which factors contribute to greater

²³ Aida Cerkez-Robinson, Associated Press Bureau Chief in Bosnia and Herzegovina, discussion with author, July 25, 2008.

²⁴ Mark A. Drumbl, *Atrocity, Punishment, and International Law* (Cambridge: Cambridge University Press, 2007), 9, discusses the enthusiasm in some circles for international trials.

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peace and security in the world. One far-reaching study, for example, argues that international intervention has contributed to an overall post-Cold War decline in worldwide violence.²⁵ The ICTY is an example of one such intervention. This book represents an effort to understand and evaluate its impact using the best tools available in the social sciences, and a move toward wielding those tools for the public good.²⁶

Consequently, this book departs from, but builds on, the work that has come before it. Many analyses of the court to date have used the ICTY's own stated desired effects in the region as the criteria by which to measure its success. This seems like a logical approach to assessment: did the court do in the region what it said it would? However, it is important to recognize the origins of these stated legal and extra-legal goals. First, they are primarily the policy pronouncements of architects of the court, used in times of crisis to justify its creation at a point when not all of those supporting it had honorable intentions. Gary Bass describes the founding of the court as "an act of tokenism by the world community, which was largely unwilling to intervene in the ex-Yugoslavia but did not mind creating an institution that would give the *appearance* of moral concern."²⁷

Furthermore, justifications for international courts are derived from knowledge of criminal law in the domestic sphere, a practice which, legal scholars have argued, leads to an under-appreciation of the differences between international and domestic jurisprudence. Scholars have identified the following six intended outcomes of international prosecutions: 1) to uncover the truth about past atrocities; 2) to punish perpetrators; 3) to provide a way to respond to the needs of victims; 4) to promote the rule of law in new democracies; 5) to promote reconciliation; and 6) to serve as a deterrent for future crimes.²⁸ Most of these points are consistent with the stated goals and achievements of the ICTY. Mark Drumbl, similarly, outlines the rationale for international criminal courts as: retributive, deterrent, and what legal scholars call expressivist goals. Drumbl argues that deterrence as a rationale overlooks the lack of recidivism in many perpetrators of mass atrocities. Other works on deterrence are only beginning to measure whether or not it

²⁵ Human Security Report Project, *Human Security Report 2005* (Oxford: Oxford University Press, 2005), <www.humansecurityreport.info>.

²⁶ See, for example, Craig Calhoun, "Toward a More Public Social Science," Social Science Research Council, <www.ssrc.org/president_office/toward_a_more/> (accessed April 28, 2008). A compilation of works that seek to inform a broader audience about war crimes can be found in Roy Gutman, David Rieff, Anthony Dworkin, and Sheryl A. Mendez, eds., *Crimes of War 2.0: What the Public Should Know* (New York: W.W. Norton, 2007). This book has been translated into 11 languages.

²⁷ Bass, *Stay the Hand*, 207.

²⁸ Laurel E. Fletcher and Harvey M. Weinstein, "Violence and Social Repair: Rethinking the Contribution of Justice to Reconciliation," *Human Rights Quarterly* 24, no. 3 (2002): 573–639. See also Richard J. Goldstone, "Advancing the Cause of Human Rights: The Need for Justice and Accountability," in Samantha Power and Graham Allison, eds., *Realizing Human Rights: Moving from Inspiration to Impact* (New York: St. Martin's Press, 2000), 195–223.