

Claremont-UC Undergraduate Research Conference on the European Union

Volume 2014 2014

Article 11

2014

Reconciliation and the Rule of Law: The Changing Role of International War Crimes Tribunals

Oriana LaVilla
Scripps College

Follow this and additional works at: <http://scholarship.claremont.edu/urceu>

 Part of the [International and Area Studies Commons](#), [International Law Commons](#), [International Relations Commons](#), [Military, War, and Peace Commons](#), and the [Rule of Law Commons](#)

Recommended Citation

LaVilla, Oriana (2015) "Reconciliation and the Rule of Law: The Changing Role of International War Crimes Tribunals," *Claremont-UC Undergraduate Research Conference on the European Union*: Vol. 2014, Article 11. DOI: 10.5642/urceu.201401.11
Available at: <http://scholarship.claremont.edu/urceu/vol2014/iss1/11>

This Chapter is brought to you for free and open access by the Journals at Claremont at Scholarship @ Claremont. It has been accepted for inclusion in Claremont-UC Undergraduate Research Conference on the European Union by an authorized administrator of Scholarship @ Claremont. For more information, please contact scholarship@cuc.claremont.edu.

9

Reconciliation and the Rule of Law: The Changing Role of International War Crimes Tribunals

Oriana LaVilla

Scripps College

ABSTRACT

This paper explores the relationship between international war crimes tribunals and reconciliation in post-conflict societies. The aim of the present study was to examine how the role of international war crimes tribunals has changed in the peacebuilding process since the early years after World War II. Due to the evolving nature of international law and the international criminal legal system, international tribunals have become increasingly recognized as an integral component of peacebuilding in post-conflict societies. The International Criminal Tribunal for the former Yugoslavia (ICTY) was the first international tribunal with a mandate to contribute to international peace and security. The ICTY established a new precedent for the role of international tribunals. Not only did it secure accountability for past abuses, it made a significant contribution to the development of the rule of law in the region of the former Yugoslavia. As the first international criminal court since the Nuremberg tribunal and the first UN tribunal of its kind, the ICTY provides an important model for future judicial intervention in the aftermath of conflict. It has shown the extent to which international war crimes tribunals facilitate societal reconciliation is, and will be, understood within the context of the legacies they leave behind. Institutions such as the ICTY will not be judged solely on the merits of the ideals on which they were established, but instead on their concrete successes in the domestic arena and their ability to fortify domestic judicial capacity.

KEYWORDS

Rule of Law, Peacebuilding, Reconciliation, Transitional Justice, and International Law

INTRODUCTION

The Nuremberg and Tokyo tribunals, established in the immediate aftermath of World War II, were the “genesis of international criminal law and enforcement” (Kerr & Mobekk, 2007, p. 18). These tribunals revolutionized the way people all around the world think about accountability for international war crimes and marked a significant step forward in the development and codification of international law (Kerr & Mobekk, 2007, p. 18). The Nuremberg legacy provided the foundation for the establishment of the International Criminal Tribunal for the former Yugoslavia (ICTY) in 1993, and the International Criminal Tribunal for Rwanda (ICTR) in 1994 (Kerr & Mobekk, 2007, p. 19). These International Criminal Tribunals (ICTs) have further expanded the role and function international tribunals play in post-conflict societies. The ICTY specifically, initiated a new way of thinking about international responsibility in situations of armed conflict. Beginning with its establishment, there was a new emphasis on using international judicial mechanisms to promote peace and reconciliation in post-conflict societies. One important element of change was its engagement in public outreach efforts and attempts to help strengthen the capacity of national justice institutions in the region for which it distributed justice. Aspects of rule of law, institution building, and reconciliation have evolved out of the ICTY’s work.

The aim of the present study is to examine the change in the role and function of international war crimes tribunals since World War II. As the first international criminal court since Nuremberg and the first United Nations (UN) tribunal of its kind, the ICTY has played a revolutionary role in defining the purpose and scope of international criminal justice in post-conflict societies. Although it has received a great deal of criticism, the ICTY has been an invaluable model for the development of other tribunals, as well as the establishment of the International Criminal Court (ICC), the first permanent court of its kind (Kerr & Mobekk, 2007, p. 31). This research arrives at a moment when the ICTY’s legacy and role in transitional justice processes is under considerable scrutiny (Nerma Jelacic, Szabo, & Kosca-Vrlazic, 2013). The Tribunal has shown that the extent to which international judicial institutions facilitate societal reconciliation is, and will be, understood within the context of the legacies they leave behind. Institutions such as the ICTY will not be judged solely on the merits of the ideals that they were established on, but instead on their concrete successes in the domestic arena and their ability to fortify domestic judicial capacity.

HISTORICAL CONTEXT: THE NUREMBERG TRIBUNAL

The International Military Tribunal (IMT) at Nuremberg (hereafter referred to as the Nuremberg tribunal or Nuremberg) was the first international tribunal to hold individual perpetrators accountable for their actions under international law (Kerr & Mobekk, 2007, p. 18). In December 1942, the Allied leaders of the United States, Great Britain, and the Soviet Union “issued the first joint declaration officially noting the mass murder of European Jewry and resolving to prosecute those responsible for violence against civilian populations” (“USHMM,” n.d.). In October 1943, these three leaders—U.S. President Franklin D. Roosevelt, British Prime Minister Winston Churchill, and Soviet leader Josef Stalin—met and discussed their plans for the trial and punishment of Nazi war criminals. The British government favored summary execution, arguing that Nazi leaders did not deserve a fair trial. However, the U.S. was adamant that the four Allied nations—the U.S., U.K., the Soviet Union, and France—needed to demonstrate the democratic notion of justice in the punishment of Nazi leaders (Sands, 2003, p. 5). In the end, the three Allied

powers declared that “at the time of granting armistice” those persons deemed responsible for war crimes would be sent back to the countries in which the crimes had occurred and be judged and punished according to the laws of those nations (“The Moscow Conference, October 1943,” n.d.). However, the “German criminals whose offenses [had] no particular geographical localization” would be “punished by joint decision of the governments of the Allies” (“The Moscow Conference, October 1943,” n.d.). On August 8, 1945 the Governments of the Allies signed the London Charter, which officially established the Nuremberg tribunal to prosecute these major war criminals (United Kingdom of Great Britain and Northern Ireland, United States of America, France, & Union of Soviet Socialist Republics, 1945).

Following WWII, developments in international humanitarian and human rights law laid the foundation for the development of transitional justice, a set of “judicial and non-judicial mechanisms aimed at dealing with the legacy of large-scale abuses of human rights and/or violations of international humanitarian law” (Kerr & Mobekk, 2007, p. 3). These measures form an approach, in times of transition from state repression and/or conflict, to serve justice and foster reconciliation. In tandem with these developments, following the Cold War, the tendency for outside actors to intervene in situations, previously “deemed beyond the purview of an outside entity” significantly increased (Kerr & Mobekk, 2007, p. 1). Additionally, peace operations became more commonplace and their scope expanded, in some instances undertaking projects to build or re-build institutions in post-conflict or failing states (Kerr & Mobekk, 2007, p. 1). As international justice has been recognized as “part and parcel of a broader peacebuilding process,” courts such as the Yugoslav tribunal have “begun to embrace the idea that justice is not only a tool to fill justice gaps at the domestic level, but an instrument to strengthen domestic justice efforts” (Stahn, 2009, p. 9).

HISTORICAL CONTEXT: THE ICTY

Prior to the breakup of the former Yugoslavia, Bosnia–Herzegovina (BiH) was an ethnically mixed state. Its three constituent peoples (Bosniaks, Croats, and Serbs) lived together in peace. However, on March 3, 1992, BiH’s declaration of independence from the former Yugoslavia elicited a violent response from the Bosnian Serbs. National sentiments mobilized the Bosnian Serbs and Yugoslav National Army (JNA) to partition BiH along ethnic lines, with the ultimate goal of creating a “Greater Serbia” (Nettelfield, 2010, p. 1). By means of armed resistance, they waged war against the Bosnian Croats and Bosnia Muslims. The war in BiH continued for three years, with one of the greatest atrocities, the genocide at Srebrenica, occurring in 1995 (Nettelfield, 2010, p. 1). During this period, failed UN peacekeeping efforts exposed the “impotence and sterility of a system of world order... that was founded, in an attempt to bind the world legally to preventing future aggressions” (Rieff, 1995, p. 21). Although the U.S. and European Community formally recognized the state of BiH in the spring of 1992, the war prevailed resulting in extreme casualties (Rieff, 1995, p. 21).

The Dayton Peace Agreement (DPA) ended the war in late 1995 and separated the republic into two entities, the Bosnian Muslim and Bosnian Croat Federation of BiH, and the Bosnian Serb Republika Srpska (RS) (“The World Fact Book: Bosnia and Herzegovina,” n.d.). In addition to separating these two entities and establishing a political, legal, and military framework in the country, the DPA “institutionalized international expectations for transitional justice in Bosnia” (Subotic, 2009, p. 126). It required the two Bosnian entities to

fully cooperate with the ICTY regarding “the investigation and prosecution of war crimes and other violations of international humanitarian law” in the region (“Article IX of the General Framework Agreement for Peace in Bosnia-Herzegovina,” n.d.). However, even though the DPA required states to cooperate with the Tribunal, the ICTY struggled in securing state cooperation throughout the course of its mandate (Peskin, 2009). Despite these challenges, the ICTY “laid the foundation for what is now the accepted norm for conflict resolution and post-conflict development across the globe, specifically that leaders suspected of mass crimes will face justice” (“About the ICTY,” n.d.).

COMPARING THE NUREMBERG TRIBUNAL AND THE ICTY

In order to understand the evolution of the international criminal legal system since WWII, it is important to understand how these two international tribunals differ in their relationship with the local communities for which they distributed justice. The Nuremberg tribunal and the ICTY were both established to hold individual perpetrators accountable for their actions. However, while the establishment of the ICTY marked a return to Nuremberg’s international norms against impunity, its role and function differed greatly from that of the Nuremberg tribunal (Kerr & Mobekk, 2007, p. 31). For the first time, the Tribunal’s mandate and statute linked retributive justice with the maintenance of international peace and security (Kerr & Mobekk, 2007, p. 32).

Unlike the Nuremberg tribunal, which was officially established in the aftermath of war, the ICTY was established while conflict was still turbulent in the former Yugoslavia (Orentlicher, 2010, p. 11). On October 6, 1992 the UN expressed concern over the “widespread violations of international humanitarian law” in the territory of the former Yugoslavia, specifically BiH (UN Security Council, 1992). It called Secretary-General Boutros-Ghali to establish a commission that could provide conclusions on these accounts of abuses in the region. On February 22, 1993 the UN Security Council (UNSC) reaffirmed its “grave alarm” at reports of widespread abuses in the former Yugoslavia, including mass killings and the practice of “ethnic cleansing” (UN Security Council, 1993a). It determined that these violations of international humanitarian law constituted a “threat to international peace and security” and sought to “put an end to such crimes and take effective measures to bring to justice the persons who are responsible for them” (UN Security Council, 1993a, p. 808). On May 25, 1993, the UNSC officially established the ICTY for the “prosecution of persons responsible for committing serious violations of international humanitarian law in the territory of the former Yugoslavia” since 1991 (UN Security Council, 1993c).

While both these international tribunals were established to see that justice had been done, establish the truth about crimes committed, and hold individuals accountable for their actions, they did not share the same relationship with the regions for which they distributed justice. Concurrent to the Nuremberg trials, Allied efforts were being made to denazify and democratize Germany. However, these were not the direct actions of the Nuremberg tribunal (Taylor, 2011, p. 281). In legal terms, the Nuremberg tribunal “did not address the relationship with national courts. However it established the right of the competent authority of any signatory of the [Nuremberg] Constitution to bring individuals to trial for membership of criminal groups or organizations, before national, military or occupation courts” (Sands, 2003, p. 79). In the case of the ICTY, the Tribunal shared concurrent jurisdiction with national courts in relation to the crimes over which the Tribunal had jurisdiction (UN Security Council, 1993b). Article 9(2) established that the ICTY had primacy over

the national courts and at “any stage of the procedure, the International Tribunal [could] formally request national courts to defer to the competence of the International Tribunal in accordance with the present Statute and the [Tribunal’s] Rules of Procedure and Evidence” (UN Security Council, 1993b).

A LOOK AT THE ICTY’S NEW ROLE

According to the President of the ICTY, Judge Theodor Meron, the ICTY, in fulfilling its goal as an institution to bring individuals to justice, has “played a pioneering role in international law and paved the way for a number of other initiatives, both international and domestic, aimed at upholding the rule of law and bringing an end to impunity for the most heinous of crimes” (Outreach Program, Registry, ICTY, 2013, p. 3). In anticipation of closing its doors, the ICTY developed an unprecedented relationship with national judiciaries in the region of the former Yugoslavia. Unlike Nuremberg, it made a direct contribution to increasing the capacity of the region’s national courts through a number of avenues including adjudicating war crimes cases through the transfer of evidence, knowledge, and jurisprudence to national judiciaries (“Capacity Building,” n.d.).

The ICTY established a new precedent for the role of international war crimes tribunals. Not only did it reinforce international norms of accountability, it demonstrated the importance of promoting a culture of rule of law, in which “no one, including government, is above the law; where laws protect fundamental rights; and where justice is acceptable to all in the aftermath of conflict” (“What is the Rule of Law?,” 2012). In order to ensure that grievances are redressed and actions are brought against individuals for abuses, a criminal justice system must be “capable of investigating and adjudicating criminal offences effectively, impartially, and without proper influence, while ensuring that the rights of suspects and victims are protected” (“Criminal Justice,” 2012). In more specific terms, an effective criminal justice system is defined by its ability to conduct fair and impartial trials. Throughout its existence, the ICTY realized that in order to have its intended effect on the region of the former Yugoslavia it would need to ensure that the national courts, with which it shared jurisdiction, were capable of conducting fair and impartial trials. Because the rule of law “is often a casualty during times of war” the Tribunal implemented a number of key programs in order to “re-establish the rule of law in criminal matters” in the region of the former Yugoslavia (“Working with the Region,” n.d.).

In 1996, a procedure called “Rules of the Road” was established under the Rome Agreement to protect against arbitrary arrests on suspicion of war crimes. This program “regulated the arrest and indictment of alleged perpetrators of war crimes by national authorities” (“Working with the Region,” n.d.). Under this procedure, the ICTY Office of the Prosecutor (OTP) was required to review and determine a case to have “credible charges” before national authorities could arrest a suspect (“Working with the Region,” n.d.). If the OTP did not find a case to be credible, local prosecutors could not proceed with an arrest. Under this procedure, 1,419 files involving 4,985 subjects were reviewed. Out of these 1,419 local war crimes case files, the ICTY granted local prosecutors permission to prosecute 848 persons (Outreach Program, Registry, ICTY, 2013).

THE ICTY COMPLETION STRATEGY

Ten years after its establishment, the ICTY was operating at full capacity. The national judicial systems in the former Yugoslavia were beginning to “demonstrate varying degrees

of intent to improve their ability to handle war crimes” (“Completion Strategy,” n.d.). After a comprehensive evaluation of the work done over those ten years, the judges of the ICTY devised and adopted a strategic plan to close down the Tribunal. On August 28, 2003 this plan, known as the ‘Completion Strategy,’ was created under Resolution 1503 (2003) to ensure that the Tribunal concluded “its mission successfully, in a timely manner and in coordination with domestic legal systems in the former Yugoslavia” (“Completion Strategy,” n.d.). This strategy aimed to complete “all investigations by the end of 2004, all trial activities at first instance by the end of 2008, and all of the Tribunal’s work in 2010” (UN Security Council, 2003). As a core component of the plan to close down the tribunal, the ICTY began transferring cases to competent national judiciaries (UN Security Council, 2003). Consequently, it began assisting in strengthening the capacity of the national judiciaries in the region of the former Yugoslavia and making evidence collected by the ICTY available to national prosecutors (Nerma Jelacic et al., 2013, p. 152).

CAPACITY BUILDING EFFORTS

The ICTY demonstrated the contribution international war crimes tribunals could make to building local judicial capacity and strengthening the rule of law in post-conflict societies. According to Martin Petrov, Chief of the Immediate Office of the Registrar, ICTY, “the ICTY has always been meant to be a temporary institution—we have all known from the day when it was established that one day it would close its doors. And that is why it had a limited mandate...to prosecute only the highest ranking military and political leaders” (Nerma Jelacic et al., 2013, p. 152). There was an expectation that local legal professionals and institutions in the region would handle war crimes cases after the Tribunal closed its doors (Nerma Jelacic et al., 2013, p. 152). In attempting to fill the rule of law vacuum in the aftermath of conflict in the former Yugoslavia, the ICTY established an unprecedented relationship with local legal professionals and national judiciaries in BiH. Specifically, the Tribunal focused on transferring know-how, expertise, and materials to domestic courts in the region in order to facilitate the “implementation of international standards and best developed practices within the local judiciaries” (“Capacity Building,”).

Much of this transfer of expertise and materials took place under the War Crimes Justice Project, a collaborative project between the ICTY, the Organization for Security and Cooperation in Europe’s (OSCE) Office for Democratic Institutions and Human Rights (ODIHR) and the United Nations Interregional Crime and Justice Research Institute (UNICRI), with funding from the European Union. The aim of this project was to “meet the identified outstanding needs” of local judiciaries determined in a nine-month long needs assessment preceding the project, which asked local legal practitioners to define the challenges they were facing and the best ways to address these needs (OSCE Office for Democratic Institutions and Human Rights (ODIHR), 2009, p. 14). Based on these recommendations the project organized activities and developed the necessary tools to support the national jurisdictions in handling the investigation and prosecution of wars crimes. The main components of the project included: bolstering staffing capacity in key areas, developing curricula and materials, professional development of local legal professionals, and access to the ICTY’s material and expertise (“Factsheet on the War Crimes Justice Project,” 2006, p. 1).

One of the main outstanding needs identified by institutions within the national jurisdictions was staffing capacity in key areas such as analysis and legal research. In order to

address this need, the project sponsored the hiring of 32 additional support staff at domestic justice institutions in BiH, Serbia, and Croatia. Throughout the course of the project, these additional support staff members were provided with training and support in order to promote retention (“Factsheet on the War Crimes Justice Project,” 2006, p. 2). A second project focus was the development of curricula on international humanitarian law, training materials and various other research and analysis tools, in collaboration with the International Criminal Law Series (ICLS) and several judicial and prosecutorial training institutions (“Factsheet on the War Crimes Justice Project,” 2006, p. 2). One major success of this partnership was the development of the “first-ever training curriculum on international law and practice for local justice actors in the region” (“Factsheet on the War Crimes Justice Project,” 2006, p. 2). This manual, which outlines the ICTY defense counsel’s best practices, was produced to support practitioner’s legal training in the region. As such, it “provides training institutions with a platform for the sustainable delivery of training programmes for war crimes justice actors” (“Factsheet on the War Crimes Justice Project,” 2006, p. 2). As a component of this project, the UNICRI developed an e-learning portal to increase legal practitioners and judicial and prosecutorial training institutions’ access to materials relating to war crimes (“Factsheet on the War Crimes Justice Project,” 2006, p. 2).

A third outstanding need identified by the national authorities was the professional development of the legal professionals working on war-crimes cases in the region. In order to address this need, the project organized “working visits” for staff members from the prosecuting authorities of the region and “peer-to-peer meetings” between judges, prosecutors, and other local professionals. These visits and meetings were designed to facilitate the exchange of information between local legal practitioners, as well as between local legal practitioners and legal practitioners at the ICTY. In addition, the project provided 800 justice professionals with training on topics such as “international criminal law, the use of analytical tools and working with vulnerable witnesses” (“Factsheet on the War Crimes Justice Project,” 2006, p. 2). Together, these meeting, discussions, and training events on legal issues aimed to strengthen co-operation between practitioners in the region (“Factsheet on the War Crimes Justice Project,” 2006, p. 2).

Lastly, the project focused on national judiciaries’ access to the ICTY’s materials and expertise. In order to improve the ability of local legal practitioners, emphasis was placed on the production of transcripts of key proceedings and the most important Appeals Chamber decisions into Serbian, Bosnian, and Croatian. 60,800 pages of proceeding transcripts, which national judicial institutions had identified as “most relevant,” were produced in local languages by the ICTY (“Factsheet on the War Crimes Justice Project,” 2006, p. 1). Over 18,500 of these 60,800 pages were produced in direct response to requests from national jurisdictions. This capacity-building function greatly increased the number of transcripts of proceedings and materials provided by the ICTY, which legal practitioners in the region can directly use in all phases of their criminal proceedings (Outreach Program, Registry, ICTY, 2013, p. 25). Additionally, the project organized trainings for lawyers in the region on accessing the Tribunal’s records (Outreach Program, Registry, ICTY, 2013, p. 25).

Together these four project focus areas aimed to assist national judiciaries in not only trying cases of low and mid-level perpetrators transferred by the ICTY, but also supporting national judiciaries in investigating and prosecuting alleged perpetrators not indicted by the ICTY. The project made a significant contribution to national prosecutions in the countries of the former Yugoslavia by enabling the efficient exchange of information and expertise

between the ICTY and the national judiciaries, with the hopes of ensuring the continuation of regional war crimes prosecutions long after the Tribunal completed its mandate (Outreach Program, Registry, ICTY, 2013, p. 26).

In addition to assuming a role in strengthening the capacity of national judiciaries through the transfer of knowledge and best practices, the ICTY, in 2005, in collaboration with the Office of the High Representatives (OHR), established a War Crimes Chamber (WCC) in the State Court of BiH. The WCC was established to strengthen the national judicial system in BiH by investigating and prosecuting war crimes committed in Bosnia in accordance with international law (Subotic, 2009, p. 142). In order to maintain the timeline of the tribunal's closure laid out in Resolution 1503 (2003) the ICTY began to refer lower and intermediate level cases to the Chamber (UN Security Council, 2003).

According to an ICTY Representative based in The Hague, which I interviewed for this research, the relationship between the ICTY and the State Court of BiH is the strongest in the region and cooperation between the ICTY and the Court of BiH is full speed ahead. An indicator of their successful cooperation is the number of requests and responses to requests between the two courts, which is the highest in the region. Additionally, in 2012, ICTY judges and prosecutors were still meeting with and providing training to judges and prosecutors in the Court. However, she noted that, although the relationship is the strongest in the region, the Tribunal couldn't direct the work of the Court of BiH. It couldn't exert pressure on national and regional judiciaries; it could only offer expertise, help, and lessons learned to local officials when they were designing their own strategies for investigating and prosecuting war crimes. She asserted that the ICTY was not there to impose its ideas on national judiciaries, but to provide assistance to local legal professionals in their legal system. This is important because the ICTY and national judiciaries' systems are different. You can't just "copy and paste" ("Interview by the author," 2012c). Therefore, the relationship functions on capacity-building and outreach efforts in order to support national judiciaries in conducting fair and impartial war crimes trials ("Interview by the author," 2012c).

THE ICTY OUTREACH PROGRAM

Over the course of its mandate, the ICTY has developed an extraordinary legacy. During the immediate post-war period, the goal of the Tribunal to prevent impunity and face the past in the Balkans was gravely inhibited by the lack of the public's knowledge of the court in the region. In an effort to confront the gap in awareness and strengthen the relationship between the Tribunal and the local communities in the former Yugoslavia, the ICTY created an Outreach Program in 1999, and opened field offices in Zagreb, Sarajevo, Belgrade, and Pristina (Nettelfield, 2010, p. 152). In order to bridge the gap between the ICTY and the local communities of former Yugoslavia the ICTY Outreach Program focused on engaging with a number of different constituents including youth, the media, local communities, and as discussed earlier national judiciaries ("Interview by the author," 2012b).

The ICTY Representative based in The Hague, explained that it is important that people in the former Yugoslavia not only understand the achievements of ICTY, which are numerous, but also understand the wider impact of the Tribunal on the ground. She asserted that local populations "need to understand judgments. This is necessary in order for them to recognize the viability of international war crimes tribunals" ("Interview by the author," 2012c). In particular, she explained that the establishment of facts is crucial to reconciliation

in BiH because the communities are so politically and ethnically polarized (“Interview by the author,” 2012c). At the 2012 Legacy of the ICTY in the former Yugoslavia conference held in Sarajevo, the Vice President (VP) of the ICTY concurred with this argument that, “the future of the country and its citizens cannot be built without an honest confrontation of the past” (Nerma Jelacic et al., 2013, p. 13). Similarly, an Editor at the Balkan Insight Reporting Network (BIRN) BiH maintained that if “findings of war crimes are not adequately communicated to the people, explained to the people, then you are not going to have reconciliation” (“Interview by the author,” 2012a).

Today, the link drawn by these individuals between the success of reconciliation in the region and the communication of facts established in war crimes trials to the people for which the Tribunal distributes justice is clear; however, the importance of outreaching the Tribunals’ findings was not realized for the first six years of its mandate (“Outreach Programme,” n.d.). In establishing an Outreach Program, the ICTY “recognized that it had a role to play in the process of dealing with the past in the former Yugoslavia, one of the key challenges for societies emerging from conflict” (“Outreach Programme,” n.d.). It came with a recognition that the work of the Tribunal “would resonate far beyond the judicial mandate of deciding guilt or innocence of individual accused” (“Outreach Programme,” n.d.). In this regard, one ICTY Outreach Representative asserted that the “experience of Germany is precious to us, but it is different than the Bosnia experience and [it is] the same with Palestine and Israel and all around the globe. It is very important to be present and promote the role of the ICTY and prosecution of war crimes as the basis of reconciliation and dealing with the past” in the Balkans (“Interview by the author,” 2012b).

A main focus of the Outreach Program is reaching out and informing younger generations in the region of the former Yugoslavia about the Tribunal’s purpose and work. It aims to increase students’ awareness about international criminal law and explain how the ICTY has helped prosecute those alleged perpetrators most responsible for atrocities committed in the region since 1991. Specifically, Outreach representatives fulfill this aim through a number of avenues including organizing study visits to the ICTY in which students can learn first-hand about the Tribunal’s work, facilitating internships for young professions to learn about the Tribunal’s rules and procedures, and coordinating presentations, lectures, witness testimonies, and films and debates with high school and university students in order to encourage discussion of the ICTY’s achievements and legacy. In 2012, a total of 80 presentations and lectures undertaken by the Outreach Program reached 1,800 high school and 1,600 university students (Outreach Program, Registry, ICTY, 2013, p. 8).

During these study visits to high schools, the Outreach Program officers approach schools and ask for two hours for their presentation. Primarily, these presentations are given to students between the ages of 17–19 years old. Typically, one or two classes, totaling 30 students attend each presentation. The presentations have two parts. The first part is a general presentation about the purpose and work of the ICTY. The second part is a presentation of the ICTY’s cases related to that specific community. Finally, students are encouraged to ask questions and engage in debate about what they just learned at the end of the presentation. According to one ICTY Representative that I interviewed, students are encouraged “to be actively involved the presentation, to define the basic terms and principles of humanitarian law before we develop the concept of international justice, and the Tribunal, and why it is important” (“Interview by the author,” 2012b). He explained that students are asked to “become a part of the presentation itself by their comments, their views, and their addi-

tions” (“Interview by the author,” 2012b). According to the ICTY Representative, these presentations play an important role in helping the younger generation understand certain aspects and concepts, such as common law and plea bargaining, which are not familiar in the region. Each presentation is followed by a questionnaire, which gauges the participants’ satisfaction with the presentation itself (“Interview by the author,” 2012b).

The media also plays an important role in establishing and maintaining the ICTY’s legacy. As such, the Outreach Program also focuses on media outreach efforts. In order to maintain an open relationship with journalists, the Outreach Program utilizes social media to disseminate “quick and concise information” about the Tribunal, its judgments, events, and Outreach projects (Outreach Program, Registry, ICTY, 2013, p. 14). Additionally, the Tribunal’s website houses close to 18,000 documents, which range from the Tribunal’s Statute to courtroom filings and features an Interactive Map web feature, which details the crimes investigated and adjudicated at the ICTY (Outreach Program, Registry, ICTY, 2013, p. 15). In 2012, the ICTY Outreach program sent out 116 press releases and advisories, and held 39 press briefings (Outreach Program, Registry, ICTY, 2013, p. 31). Furthermore, 4, 203, 899 pages were viewed on the ICTY’s website and 1, 092 people liked the ICTY Facebook page (Outreach Program, Registry, ICTY, 2013, p. 32).

The Outreach Program also engages in community outreach efforts. In 2012, it created, promoted, and distributed its first feature-length documentary entitled ‘Sexual Violence and the Triumph of Justice,’ which outlines the ICTY’s role in the prosecution and adjudication of wartime sexual violence (Outreach Program, Registry, ICTY, 2013, p. 19). Thousands of copies of the film were produced and distributed throughout the region of the former Yugoslavia. As of November 2012, a few hundred alone had been distributed in BiH. According to the ICTY Representative, some universities in BiH have been using the documentary as an educational tool, screening part of the film as part of their regular classes (“Interview by the author,” 2012b).

Other community outreach efforts include meetings between the OTP and victims and members of the public, establishing information centers to preserve copies of public Tribunal records and establish future generations’ permanent access to these documents, and organizing Legacy conferences in the regions of the former Yugoslavia to initiate dialogue between local stakeholders about the Tribunal’s role and legacy in the region (Outreach Program, Registry, ICTY, 2013, p. 22). In 2012, 157 people from the region of the former Yugoslavia and 9,063 people from the rest of the world visited the Tribunal (Outreach Program, Registry, ICTY, 2013, p. 30).

A primary example of community outreach efforts is the Outreach Program’s Bridging the Gap with local communities (BTG) project. This series of one-day events, which took place in 2004 and 2005, were one of the ICTY’s more “substantive engagements with the local communities of the former Yugoslavia” (“Bridging the Gap with local communities,” n.d.). This project was designed to approach those communities largely affected by war crimes (“Interview by the author,” 2012b). Panels of Tribunal staff, who had been directly involved in investigating, prosecuting, and adjudicating war crimes cases at the ICTY, gave “candid and comprehensive presentations” in the towns most affected by “the crimes at the heart of the Tribunal’s work” (“Bridging the Gap with local communities,” n.d.). The conferences provided an opportunity for domestic stakeholders to learn “first-hand” about the ICTY’s work; learn about the context in which the Tribunal works, and discuss the community’s expectations of the Tribunal (“Bridging the Gap with local communities,” n.d.).

DEALING WITH THE PAST BEYOND THE TRIBUNAL

On December 2012, the UNSC established a Residual Mechanism, to be the legal successor of the ICTY and the ICTR (Nerma Jelacic et al., 2013, p. 152). The structure of the Mechanism for International Criminal Tribunals (MICT) closely mirrors that of the ICTY. It has two branches, for the ICTY and ICTR respectively, which share one prosecutor, one president, and one registrar. Although this Mechanism will carry on the essential functions of the Tribunal, it does not share the ICTY's full mandate (Nerma Jelacic et al., 2013, p. 152). Like the ICTY, the MICT is a temporary institution. It will continue to operate until the UNSC decides that it has fulfilled its mandate (Nerma Jelacic et al., 2013, p. 152). Since July 1, 2013, for ICTY cases, the MICT has had "jurisdiction to designate enforcement States, including for persons thereafter convicted" by the Tribunal. It has also assumed the role of the ICTY President, "to supervise the enforcement of sentences and to decide on requests for pardon or communication of sentences, including convicted persons already serving their sentence" ("The Mechanism for International Criminal Tribunals," n.d.).

At present, the ICTY is responsible for completing all ongoing proceedings. However, any new proceedings or notices of appeal filed are to be carried out by the MICT. Moreover, the MICT has jurisdiction over a number of other functions including enforcing sentences handed down by the Tribunal, requests for early release, and protection of witnesses (Nerma Jelacic et al., 2013, p. 153). The Mechanism is also responsible, at present, for assisting national judiciaries. It responds to requests for assistance on transfer of evidence (Nerma Jelacic et al., 2013, p. 165). Although the Outreach Program will remain separate from the ICTY and the MICT, as trials at the ICTY wind down, outreach will increase. According to one ICTY Representative, the Outreach Program field offices will only remain in those countries that still have cases on trial ("Interview by the author," 2012c).

This paper has illustrated the relationship between the ICTY, national judiciaries, and the local communities for which the Tribunal distributed justice. In its decision to close the Tribunal, the UNSC reinforced the ICTY's responsibility in achieving reconciliation and establishing the rule of law (UN Security Council, 2003). It encouraged increased outreach efforts and established a number of programs for strengthening national judicial capacity to prosecute war crimes. While the Nuremberg tribunal established a number of important international legal norms and led to the prosecution of Nazis in other national courts, it did not assume the same role as the ICTY in supporting and empowering national jurisdictions.

IMPLICATIONS AND CONCLUSION

Since July 1, 2013, jurisdiction over ICTY cases has been transferred to the MICT. This transition calls attention to what the Tribunal's role has been in transitional justice processes in the former Yugoslavia. Evaluation of the Tribunal's work identifies one of its key contributions to reconciliation and peacebuilding efforts in BiH as the development of the WCC in the State Court of BiH, as well as the strengthening of national judiciaries in the region. As an international tribunal, the ICTY was established to prosecute those individuals responsible for violations of international humanitarian law. As its work evolved it also assumed the responsibility of building the capacity of national judiciaries in the former Yugoslavia and outreaching the findings of the Tribunal to both the international community and local communities in the region of the former Yugoslavia.

At the ICTY Global Legacy Conference held in Sarajevo, BiH in November 2012

representatives from the ICTY and the broader international community, and officials from national judiciaries, transitional justice experts, lawyers, victims, journalists, representatives from leading NGOS, and other local stakeholders gathered to discuss the ICTY's role and accomplishments in BiH and the greater Balkan region. During the conference, participants engaged in constructive dialogue about the scope of the Tribunal's legacy, its role in transitional justice processes, and local priorities for the future. The legacy of the ICTY, or "that which the Tribunal will hand down to its successors and others" includes: the factual findings, judgments and decisions of the court; the Tribunal's rules of procedure and evidence and best practices; the records of the Tribunal; its institutional legacy in developing local judiciaries and establishing a precedent for the creation of other international and hybrid criminal courts; its regional legacy in promoting the rule of law and supporting domestic judicial capacity in the region; and the Mechanism through which the Tribunal's work will be continued and preserved (Steinberg, 2011).

The ICTY's contribution to the rule of law and peace and reconciliation in the region is indisputably immense. It spans from the war crimes trials to the establishment of new courts in the region. According to Judge Hilmo Vucinic, Court of BiH, the importance of the legacy of the ICTY is "huge for the jurisdiction of Bosnia and Herzegovina." (Nerma Jelacic et al., 2013, p. 25) He asserted that:

The increase in efficiency is immense if we take into account that from 2005, when the War Crimes Department was established, until September 2012, ninety cases of war crimes were finalized involving 122 accused, while, before the ICTY 126 persons were accused, and the ICTY needed the period from 1993 until 2012 to complete the trails in these cases (Nerma Jelacic et al., 2013, p. 25).

In conjunction with the research and interviews conducted for this project, the conference proceedings clearly illustrate how the Tribunal's engagement in extensive trainings and administration of substantial assistance to national courts has redefined its role in the region. In this way, it has raised the question of the role and responsibility of international tribunals in the peacebuilding process in post-conflict societies.

As the first international war crimes tribunal since the Nuremberg and Tokyo tribunals, as well as the first war crimes court established by the UN, the scope of the Tribunal's work will perpetually be evaluated in relation to the conditions of its foundation. For this reason, it provides a model by which we can evaluate the role of hybrid courts and tribunals in post-conflict societies. Since the establishment of the ICTY, and its sister international criminal tribunal the ICTR, in 1993 and 1994 respectively, a number of other international courts and hybrid tribunals have been established, including the ICC and the Special Court for Sierra Leon in 2002, the Extraordinary Chambers in the Courts of Cambodia in 2003, and the Special Tribunal for Lebanon in 2009.

Despite the criticism of the ICTY, the absence of such an organization would have caused BiH, as well as other regions of the former Yugoslavia, to significantly lag behind in their quest for democracy and reconciliation. This research demonstrates that it is no longer enough for *ad hoc* tribunals such as the ICTY to merely exist and fulfill their basic mandates. The real success of international justice relies on these institutions' ability to transfer responsibility from the international community to the local community and establish domestic judiciaries that can carry on their missions and make them domestic initiatives. Just as the

ICTY was predicated on Nuremberg's legacy, the establishment of future international judicial mechanisms will likely be based on the ICTY's legacy. Therefore, understanding how it is different from the Nuremberg tribunal provides important insight into how the role of international tribunals will continue to evolve and be judged in the future. Ultimately, the results of this research show that the extent to which international war crimes tribunals facilitate societal reconciliation is, and will be, understood in the context of the legacies they leave behind.

As the 20th anniversary of the ICTY's establishment approached, Judge Agius urged participants of the *ICTY Global Legacy Conference* to remember the legacy of the Nuremberg trials. Recalling the ICTY's rocky start, and doubts surrounding the Tribunal's capability to "conduct a proper investigation, let alone hold a trial," Judge Agius called attention to the legacy the ICTY has built over the course of its mandate. He asserted that, having indicted and accounted for 161 individuals accused of war crimes in the former Yugoslavia, the ICTY "is a leader in the global fight for justice" (Nerma Jelacic et al., 2013, p. 13).

So—the question remains, what is the ICTY leaving behind? When will the Tribunal's legacy be fulfilled? According to Judge Agius:

The legacy of the ICTY, the facts it established, its archives, and its contribution to the rule of law in the region will certainly prove to be a decisive facilitator in the process of facing the past and securing reconciliation in not only Bosnia and Herzegovina but also the entire region. The Tribunal's legacy will be fulfilled when it inspires this and future generations to transform Bosnia and Herzegovina through the rule of law, accountability, and equal justice (Nerma Jelacic et al., 2013, p. 14).

The ICTY has demonstrated the role the international community can play in preventing a return to conflict in the future. The new role assumed by the ICTY illustrates the importance of embracing integrated and complimentary approaches to distributing justice in the wake of conflict. The role of international tribunals should extend well beyond the courtroom. The unprecedented role assumed by the ICTY, to help rebuild the rule of law in the region of the former Yugoslavia was crucial to fulfilling its mandate. In comparison to the Nuremberg tribunal, as well as in its own right, there are a number of lessons to be learned from the ICTY. International tribunals face a host of constraints. In transitional contexts, limits are placed on the reach of criminal justice. Moreover, funding, resources, caseload, and time constraints make balancing and achieving primary objectives complex. For this reason, it is pivotal that international war crimes tribunals consider their exit strategy and legacy at the time of establishment.

The conclusion of the ICTY legacy conference in Sarajevo, BiH offers a good summary of the important themes that arose in the conference, as well as this paper. After the final panel, the difficulty in drawing conclusions from open debate was noted. The Director of Communication at the International Center for Transitional Justice (ICTJ) noted that the people of BiH are "still fighting against each other with [their] versions of truth" (Nerma Jelacic et al., 2013, p. 82). Now, the legacy of the ICTY is offering the community of BiH a "unique opportunity" to make use of their findings to advance the work of domestic courts and encourage the organic growth of reconciliation in the region (Nerma Jelacic et al., 2013, p. 107). One of the closing speakers at the conference noted that human rights

violations do not happen in the abstract—justice must be made to address people in their daily lives. Therefore, when we look to the future, it is important to look towards the new generation and recognize the importance of bolstering national judicial capacity and conducting outreach in the public sphere.

Ultimately, the extent to which international institutions facilitate societal reconciliation is, and will be, understood within the context of the legacies they leave behind. What we can learn from the incorporation of assessing issues of impact in the completion strategies of *ad hoc* tribunals is that prior to their establishment, there is a need to examine and clearly define their desired goals and objectives for post-conflict societies. This study shows that in the future, institutions such as the ICTY will not be judged solely on the merit of the ideals that they were established on, but instead on their concrete successes in the domestic arena and their ability to fortify domestic judicial capacity. It is only with meaningful support of domestic reform constituencies, specifically, capacity building within the justice sector, that international judicial intervention will have the greatest hope for maintaining and restoring peace in post-conflict societies.

REFERENCES

- About the ICTY. (n.d.). Retrieved March 23, 2014, from <http://www.icty.org/sections/AbouttheICTY>
- Article IX of the General Framework Agreement for Peace in Bosnia-Herzegovina. (n.d.). *Office of the High Representative*. Retrieved December 3, 2013, from http://www.ohr.int/dpa/default.asp?content_id=379
- Bridging the Gap with local communities. (n.d.). *ICTY*. Retrieved March 21, 2014, from <http://www.icty.org/sections/Outreach/BridgingtheGapwithlocalcommunities>
- Capacity Building. (n.d.). *ICTY*. Retrieved February 19, 2014, from <http://www.icty.org/sid/240>
- Completion Strategy. (n.d.). *ICTY*. Retrieved March 23, 2014, from <http://www.icty.org/sid/10016>
- Criminal Justice. (2012, June 9). *The World Justice Project*. Retrieved March 21, 2014, from <http://worldjusticeproject.org/factors/effective-criminal-justice>
- Factsheet on the War Crimes Justice Project. (n.d.). OSCE Office for Democratic Institutions and Human Rights. Retrieved from <http://www.osce.org/odihr/84406>
- Interview by the author. (2012a, November 12).
- Interview by the author. (2012b, November 20).
- Interview by the author. (2012c, November 26).
- Kerr, R., & Mobekk, E. (2007). *Peace and Justice: Seeking Accountability After War*. Cambridge: Polity Press.
- Nerma Jelacic, Szabo, S., & Kosca-Vrlazic, S. (Eds.). (2013). Legacy of the ICTY in the former Yugoslavia Conference proceedings Sarajevo, 6 November 2012; Zagreb 8 November 2012. (Balkan Investigative Reporting Network (BIRN) BiH, Trans.). ICTY Outreach Programme. Retrieved from http://www.icty.org/x/file/Outreach/conferences_pub/naslijedje_mksj_sa-zg_en.pdf
- Nettelfield, L. J. (2010). *Courting Democracy in Bosnia and Herzegovina*. Cambridge University Press.
- Orentlicher, D. (2010). *That Someone Guilty be Punished: The Impact of the ICTY in Bosnia*. New York, NY: Open Society Institute. Retrieved from <http://ictj.org/publication/>

- someone-guilty-be-punished-impact-icty-bosnia.
- OSCE Office for Democratic Institutions and Human Rights (ODIHR). (2009). *Supporting the Transition Process: Lessons Learned and Best Practices in Knowledge Transfer Final Report*. Warsaw, Poland. Retrieved from <http://www.osce.org/odhr/68108>
- Outreach Program, Registry, ICTY. (2013). *ICTY Annual Outreach Report 2012*. The Netherlands.
- Outreach Programme. (n.d.). *ICTY*. Retrieved March 21, 2014, from <http://www.icty.org/sections/Outreach/OutreachProgramme>
- Peskin, V. (2009). *International Justice in Rwanda and the Balkans*. Cambridge, New York: Cambridge University Press.
- Photo Archive. (n.d.-a). *United States Holocaust Memorial Museum*. Retrieved from <http://digitalassets.ushmm.org/photoarchives/detail.aspx?id=1040711>
- Rieff, D. (1995). *Slaughterhouse: Bosnia and the Failure of the West*. New York: Simon & Schuster.
- Sands, P. (Ed.). (2003). *From Nuremberg to The Hague: the Future of International Criminal Justice*. Cambridge, New York: Cambridge University Press.
- Stahn, C. (2009). *The Future of International Criminal Justice*. Presented at the Opening of the Academic Year, Den Haag, Leiden University. Retrieved from <http://media.leidenuniv.nl/legacy/opening-future-of-international-criminal-justice-pdf.pdf>
- Steinberg, R. H. (2011). *Assessing the Legacy of the ICTY*. Martinus Nijhoff Publishers.
- Subotic, J. (2009). *Hijacked Justice: Dealing with the Past in the Balkans*. Ithaca: Cornell University.
- Taylor, F. (2011). *Exorcising Hitler: The Occupation and Denazification of Germany*. Bloomsbury Publishing USA.
- The Mechanism for International Criminal Tribunals. (n.d.). *ICTY*. Retrieved March 20, 2014, from <http://www.icty.org/sid/10874>
- The Moscow Conference, October 1943. (n.d.). Text. Retrieved March 23, 2014, from <http://avalon.law.yale.edu/wwii/moscow.asp>
- The Nuremberg Trials. (n.d.-b). *United States Holocaust Memorial Museum*. Retrieved from <http://www.ushmm.org/research/research-in-collections/search-the-collections/bibliography/nuremberg-trials>
- The World Fact Book: Bosnia and Herzegovina. (n.d.). *Central Intelligence Agency (CIA)*. Retrieved December 12, 2013, from <https://www.cia.gov/library/publications/the-world-factbook/geos/bk.html>.
- UN Security Council. (1992, October 6). Resolution 780 (1992) Adopted by the Security Council at its 3119th meeting, on 6 October 1992,. Retrieved from http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/780%281992%29
- UN Security Council. (1993a, February 22). Resolution 808 (1993), Adopted by the Security Council at its 3175th meeting, on 22 February 1993. Retrieved from http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/808%281993%29
- UN Security Council. (1993b, May 3). Report of the Secretary-General Pursuant to Paragraph 2 of Security Council Resolution 808 (1993). Retrieved from http://www.icty.org/x/file/Legal%20Library/Statute/statute_re808_1993_en.pdf
- UN Security Council. (1993c, May 25). Resolution 827 (1993), Adopted by the Security Council at its 3217th meeting, on 25 May 1993. Retrieved from http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/827%281993%29

- UN Security Council. (2003, August 28). Resolution 1503 (2003), Adopted by the Security Council at its 4817th meeting, on 28 August 2003. Retrieved from [http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1503 %282003 %29](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1503%282003%29)
- United Kingdom of Great Britain and Northern Ireland, United States of America, France, & Union of Soviet Socialist Republics. Charter of the International Military Tribunal - Annex to the Agreement for the prosecution and punishment of the Major War Criminals of the European Axis ("London Agreement") (1945). Retrieved from <http://www.refworld.org/docid/3ae6b39614.html>
- What is the Rule of Law? (2012, May 9). *The World Justice Project*. Retrieved March 21, 2014, from <http://worldjusticeproject.org/what-rule-law>
- Working with the Region. (n.d.). *ICTY*. Retrieved March 21, 2014, from <http://www.icty.org/sid/96>