

Examining the ICTY to evaluate criticisms of anti-Serb bias

Evan Bruning, Jane Rudy, Mara Scallon, Jeremia Whall

Northeastern University

Abstract

The International Criminal Tribunal for the former Yugoslavia (ICTY) was established by the UN Security Council in Resolution 827 as a response to the Yugoslav Wars of the 1990s. Since its inception, the ICTY has come under heavy criticism with accusations of political bias against Serbs. The charges against the Tribunal are levied by nationalist Serbian politicians and Serbia's allies in the Russian government and state owned media. Our research question is, are these criticisms and accusations of bias valid and true? To answer this, our group visited The Hague. Based on a series of meetings and our scholarly research, our conclusion is that while an anti-Serb bias is not inherent within the Tribunal, it does exist within individual actors in the ICTY who have influence over the outcome of the system. Our research was focused on getting qualitative data from all parties relevant to the ICTY. This took the form of in-depth interviews where we asked our subjects about their party's stance on various controversial aspects of ICTY. In particular, we focused on individual actors within the Tribunal, the political climate, legal procedure, the logistical operating structure, and sentencing practices. Further research is derived from primary documents and scholarly international law books found in the Peace Palace Library. The paper then spells out the lessons learned from the ICTY, and the implications for the future of International Criminal and Humanitarian law, particularly when it comes to the ICC.

Keywords: International law, International tribunal, the Balkans, The Hague, bias, Transitional Justice, International Criminal Law, International Humanitarian Law, Geneva Conventions, International Criminal Tribunal for the former Yugoslavia

The International Criminal Tribunal for the former Yugoslavia (ICTY) was established by the UN Security Council in Resolution 827 as a response to the Yugoslav Wars of the 1990s. It serves to prosecute those responsible for committing war crimes, acts of genocide, and crimes against humanity during the conflict. Since its founding in 1993, 161 people have been indicted by the ICTY for violations of international humanitarian law. Of those indicted, proceedings have concluded for 147 of them, with 18 acquittals, 80 sentencing, 13 transfers to national courts, and 36 withdrawn indictments or deaths. Of the remaining 14 persons, 10 are standing before the Appeals Chamber and the other 4 are currently standing trial, including notable persons such as Radovan Karadžić and Ratko Mladić.¹

The ICTY has faced specific criticism from Moscow, which labeled it as “ineffective, costly and politically motivated,” especially in regards to the case of Vojislav Šešelj, a far right Serbian politician who allegedly recruited for paramilitary groups during the war. He has been charged with inciting violence against non-Serbs and directing a paramilitary group against Bosnians during the conflict. Recently acquitted, he had been on trial intermittently since 2003 when he surrendered to the court, and in 2013 submitted a complaint of bias against one of the judges in his panel, Judge Harhoff. A letter the judge had sent to a friend was indeed found to betray an apparent bias, and he was removed from the case.² In addition to Russian criticism, many Serb nationalists also decry the ICTY as politically biased, noting that “according to the court’s statistics, three-quarters of those indicted at the ICTY have been Serb or Montenegrin,

¹ “Statistics on the ICTY: 126 cases closed, 14 to go.” *Expatica*. Expatica Communications BV, 25 Jul 2011. <http://www.expatica.com/nl/news/country-news/Statistics-on-the-ICTY-126-cases-closed-14-to-go_276331.html>.

² Simons, Marlise. “International Judge is Removed From Case Over Political Bias.” *The New York Times* 30 Aug 2013: web. <<http://www.nytimes.com/2013/08/31/world/europe/international-judge-is-removed-from-case-over-apparent-bias.html>>.

while there have been far fewer indictments resulting from crimes committed against Serbs.”³

Those who support the court have argued that since Serbs were responsible for a majority of the war crimes committed in the war, this disproportion is only natural.

However, accusations of an unfair bias continue to breed resentment, as seen when the Russian ambassador to the UN, Vitaly Churkin, criticized the acquittals of Ante Gotovina and Ramush Haradinaj. Gotovina was a lieutenant general who served in Croatian army and Haradinaj was an ethnic Albanian politician and head of the Kosovo Liberation Army, both of whom were accused of committing war crimes against Serbs.⁴

After many interviews with involved parties and extensive research, our group decided the answer to the question of anti-Serb political bias within the ICTY is as follows: while an anti-Serb bias is not inherent in the Tribunal, it does exist within individual actors who heavily influence and may ultimately determine the outcome of the system. Thus, by neglecting to address the need for accountability in each step of the legal processes associated with the Tribunal and its creation, the architects of the ICTY and the international community alike failed to produce a universally impartial institution.

At its core, the ICTY faces numerous foundational flaws that have inhibited its legal processes from the very beginning. While none of these flaws are inherently malicious toward any party involved with the Tribunal, the issues rooted in the creation of the Tribunal compound over time to water down the actual benefits of the Tribunal and its legitimacy as an international legal institution.

³ Boyko, Oksana. “Case of accused Serbian war criminal puts Hague on trial.” *RT*. TV Novosti, Channel RT TV. 12 Jan. 2010. Web. 25 Nov. 2015. <<https://www.rt.com/politics/serbia-hague-court-yugoslavia/>>.

⁴“Čurkin: A Negative Example of The Hague Tribunal.” *Mondo.rs*. Mondo Portal, 10 Apr 2014. <<http://mondo.rs/a571509/Info/Svet/Curkin-Negativan-primer-Haskog-tribunala.html>>.

The urge to successfully address the “Balkan Problem”, even if just in appearance, after years of nonintervention in the conflict allowed for a lack of foresight and planning in the creation of the Tribunal. Basic questions such as the need for trainings and minimum qualifications for the judges and legal staff, the plan for assessing the court’s success or re-assessing its structure, and how the court would be guided within the international system were left unanswered, causing gaps in the potential for the Tribunal as a whole. Beyond these initial shortcomings, the creation of the Association of Defense Counsel (ADC) nine years into the mandate of the Tribunal (2002) signals the Tribunal’s lower level of dedication to providing fair/proper legal aid to those indicted. Albeit belatedly, it was established to “ensure a higher quality for Defence Counsel and make collective representations to the organs of the Tribunal on behalf of all Defence Counsel involved in cases.”⁵ While the objective of providing greater support to the Defence Counsel is an admirable one, with great potential to create more balance in the ICTY framework, we did not find that such a balance exists, even with the further development of the ADC in recent years.

One interview in particular offered the most initial insight into what the circumstances for development of the Tribunal were. In our discussion with the ADC, Dr. Michael Karnavas suggested that the justices and legal experts assigned to the Tribunal, while undeniably experts in their legal fields, oftentimes had inadequate experience in the courtroom and that this inexperience resulted in inconsistent Tribunal procedure. Additionally, he noted that the initiatives and programs associated with the Defense were originally offered fewer financial and legal resources, and were expected to achieve more extensive lists of qualifications before

⁵ “History of the ADC.” *Association of Defence Counsel Practicing Before the International Criminal Tribunal for the Former Yugoslavia*. Association of Defence Counsel Practicing Before the International Criminal Tribunal for the Former Yugoslavia, 2014. Web. 25 Nov. 2015. <<http://adc-icty.org/home/history.html>>.

making procedural progress in a given case. According to Dr. Karnavas, his daily interactions with the Office for Legal Aid and Defense (OLAD), which provides administrative assistance for Defence staff, showcased the combination of these issues. Dr. Karnavas explained several circumstances in which this office did not authorize hiring of certain experts, or did not have the trial experience necessary to prioritize the assistance they provided according to what was most logistically important in the trial setting.

Perhaps Dr. Karnavas's strongest point, however, was regarding the justices of the Tribunal specifically: in the initial setup of the Tribunal, there was a lack of foresight in accommodating justices from various legal backgrounds. Specifically, justices who are experts in their respective field of either common or civil law come together under the mandate of the Tribunal, and have no training or standard procedure to reconcile the differences in their legal perspectives. This, according to Dr. Karnavas, produces inconsistent outcomes. He made similar assertions about the inconsistencies in individual courtrooms, suggesting that one courtroom may consistently hear cases with defendants of one particular nationality. Dr. Karnavas argues that having the same judges hear cases involving the same nationality can lead to the development of a bias against members of that nationality, resulting in disproportionate or inconsistent rates of convictions and lengths of sentencings. While certain levels of inconsistency are inevitable given the different participants in the legal process hail from around the world, the examples of uneven sentencing and processes of appeals are notable in the statistics of those sentenced by the court.

For example, the statistics of sentencing (as of April 2015) at a glance show sentences handed out to 63 Serbs (65.6% of total sentences), 21 Croats (21.9%), 7 Bosniaks (7.3%), 2

Montenegrins (2.1%), 2 Albanians (2.1%), and 1 Macedonian (1.0%). The number of sentences assigned per ethnicity shows a more stark contrast, with Serbs receiving 105 sentences (66%), 32 for Croats (20%), 13 for Bosniaks (8%), 4 for Montenegrins (3%), 3 for Albanians (2%), and 2 for Macedonians (1%). With regard to lengths of sentences, assuming a life sentence equates to 40 years, Serbs were handed an average sentence of 32.7 years (2,060 years total, a staggering 75% of total years sentenced to all nationalities by the Tribunal), as compared to 17 years for Croats (502.5 years total, 18% of all years sentenced), 6.5 years for Bosnians (72 years total, 3% of all years sentenced) , 10.7 years for Albanians (32 years total, 1% of all years sentenced), 10.6 years for Montenegrins (42.5 years total, 2% of all years sentenced), and 12 years for Macedonians (24 years total, 1% of all years sentenced). Given the lower count in both years and number of indictees sentenced for Bosniaks, Montenegrins, Albanians, and Macedonians, these statistics do not stand for analysis on their own, but when compared with the numbers relating to each other and the Serb and Croat ethnicities, the discrepancies are striking. These statistics do not point to an inherent bias, but do point to an opening in the data for further analysis of how these differences in sentences came to be.

The flaws already identified support the finding that the ICTY stands on a foundation that is not entirely sound: The Tribunal does not offer consistent verdicts across nationalities, as a direct result of unanticipated and subsequently unresolved differences in legal approaches from individuals of varying legal backgrounds and understandings of the mandates attached to their offices and the ICTY as a whole. While many of these issues seem, at first glance, unavoidable, it would appear that more frequent legal analyses and reports regarding the progress and efficacy of the courts would have allowed for an opportunity to confront inconsistencies before they

became intertwined with procedural norms of the Tribunal as a whole. As Dr. Karnavas pointed out, there are several minor flaws that could be easily adjusted, which are outlined in following sections of this paper.

The structure of the Tribunal contains several significant legal and procedural flaws which inhibit it from being an effective and just administrator of restorative justice. These include an over-reliance on secret indictments, the lack of trials and/or indictments for high level Croat and Bosnian Muslim leaders, and widespread sentencing inconsistencies.

Under Chief Prosecutor Carla Del Ponte, who was in office from 1996 until 2002, the ICTY's Office of the Prosecutor (OTP) relied on and systematically used secret, "sealed" indictments to issue arrest warrants. Typically when an indictment is issued by a pre-trial judge, the indictment is made public and a warrant for the arrest of the accused is issued publicly. A sealed indictment remains non-public until the arrest is executed, and the OTP used these sealed indictments when it was believed the accused posed a serious flight risk or would otherwise have absconded to evade arrest. By design, nobody was aware of the indictment until the accused was arrested and the indictment unsealed. This denies the accused the right to surrender themselves to the authorities. For example in 1998 Slavko Dokmanović, a Serb accused of participating in the Vukovar hospital massacre, was lured from his residence in Serbia to Eastern Slovenia where he was promptly arrested. This caused the Russian foreign minister to issue a harsh rebuke to the ICTY about the deceptive nature of the OTP using sealed indictments to apprehend accused criminals.⁶ In 2000, Prosecutor Del Ponte confirmed the widespread use of sealed indictments by

⁶ Schabas, William A. *The UN International Criminal Tribunals: the Former Yugoslavia, Rwanda, and Sierra Leone*. Cambridge, UK: Cambridge University Press, 2006. Print.

her office⁷ and though this practice was certainly warranted and useful in several cases, an over-reliance on such indictments led to a serious lack of transparency about the activities of the OTP.

Another significant legal flaw in the ICTY is the OTP's inexcusable unwillingness and inability to issue indictments for the arrests and trials of many senior Croatian and Bosnian Muslim leaders. Among those who certainly should have stood trial based on publicly available evidence include former Croatian President Franjo Tuđman, who approved and oversaw the controversial Croat offensive called Operation Storm, which forced 200,000 Serbs in Krajina Province to flee their homes ahead of Croatian troops or risk murder, torture, and forcible expulsion by these armed forces.⁸ Instead of trying those who targeted the Serb population, the OTP focused on prosecuting many high-level Serb generals and leaders, including Ratko Mladić, Radovan Karadžić, and Serbian President Slobodan Milosević. While these leaders are certainly culpable for crimes they ordered committed and the OTP had to prosecute them, the fact is that neither the Croat nor Bosnian Muslim leaders were held to the same standard. Among the most egregious of these cases is Tuđman, who, according to the ICTY itself in the judgement of the *Prosecutor v. Gotovina et al* case, played an active role in a Croat Joint Criminal Enterprise (JCE) which held command responsibility for war crimes and crimes against humanity committed by Croatian forces during the conflict, including Krajina Province. The lack of an ICTY indictment for Tuđman while he was alive certainly raises some interesting political questions that the ICTY has yet to fully answer: did Carla Del Ponte or the OTP have serious

⁷ Del Ponte, Carla. "Address to the Security Council by Carla Del Ponte, Prosecutor of the International Criminal Tribunals for the Former Yugoslavia and Rwanda, to the UN Security Council." United Nations Security Council. United Nations Headquarters, New York, NY. 24 Nov. 2000. Address. <<http://www.icty.org/sid/7803>>.

⁸ "Croatia: Praise for Operation Storm creates climate of impunity." *Amnesty International*. Amnesty International LLC, 5 Aug. 2011. Web. 25 Nov. 2015. <<https://www.amnesty.org/download/Documents/32000/eur640102011en.pdf>>.

political pressure put on them to not prosecute Tuđman? If the answer is yes, that demonstrates a serious breach of conduct by the OTP and is a severe misuse of the OTP's power of prosecutorial discretion. Since the OTP chooses which cases to bring to court based on the available evidence they have, if the OTP knew of crimes likely committed by Tuđman and chose not to prosecute him, that is a grave error which indicates at least some pro-Croat bias, or an overwhelming anti-Serb bias, within the Tribunal.

The perception of the ICTY as an anti-Serb entity was not enhanced through its handling of the trial of Croatian General Ante Gotovina. Gotovina was accused of holding command responsibility for crimes committed during Operation Storm against Serb populations. In 2005, Del Ponte accused the Croatian government of, at best, not searching for Gotovina and, at worst, actively helping to hide him. Eventually, Gotovina was found to be hiding in Spain's Canary Islands, was arrested, and put on trial for 7 years after which he was found guilty on 8 of 9 counts of various war crimes.⁹ On appeal, however, the ICTY Appeals Chamber overturned these 8 convictions and declared him not guilty on any count.¹⁰ This stunning reversal received harsh criticism from both the Serbian government and the Croatian government. The Serbian government saw this as just another example of the anti-Serb ICTY bias; Serbian President Tomislav Nikolic said, "It is now quite clear the tribunal has made a political decision and not a legal ruling."¹¹ The Croatian government lambasted the trial for its length of 7 years, saying it was exceedingly long and it was cruel punishment to keep him imprisoned for so long when he was innocent. The Croatian government also complained that the European Union used their

⁹ United Nations International Criminal Tribunal for the Former Yugoslavia. *Judgement Summary for Gotovina et al.* The Hague, Netherlands: 15 Apr 2011. Web. <http://www.icty.org/x/cases/gotovina/tjug/en/110415_summary.pdf>.

¹⁰ United Nations International Criminal Tribunal for the Former Yugoslavia. *Appeals Judgement Summary for Ante Gotovina and Mladen Markač.* The Hague: Netherlands: 16 Nov 2012. Web. <http://www.icty.org/x/cases/gotovina/acjug/en/121116_summary.pdf>.

¹¹ Waterfield, Bruno. "Croatian hero Ante Gotovina acquitted of war crimes." *The Telegraph* 16 Nov 2012: web. <<http://www.telegraph.co.uk/news/worldnews/europe/croatia/9682855/Croatian-hero-Ante-Gotovina-acquitted-of-war-crimes.html>>.

cooperation in the Gotovina case (and others) as a bargaining lever during Croatia's EU accession talks. The Croatian government had maintained that they did not know Gotovina's whereabouts and found it unfair that the EU would use this fugitive's case to determine their progress towards EU accession. Furthermore, the Croatian government was confused as to why the ICTY would first call Gotovina in as a witness to other trials, only to later issue an indictment for his arrest.¹² The processes of finding, trying, and overturning the conviction of Ante Gotovina highlights the ICTY's structural flaws within the OTP and appeals processes and greatly damages the Tribunal's credibility.

Sentencing processes within the ICTY are also very variable. Unlike typically rendered legal judgments, the ICTY does not relate the guilty charge to a corresponding sentence length. An analysis of statistical consistency in the ICTY judgments found that, "This practice makes it extremely difficult to identify any patterns as to the sentencing ranges applicable to individual offences or the contribution of individual sentencing factors to sentence length."¹³ While it is a monumental task to determine which crimes are worthy of a longer sentence, that is what is expected of a judge. Since judges are not required to detail which crime equals which sentence length, this makes it possible for individual actors who are potentially biased against one ethnic group over another to hand down longer sentences without having to explain their reasoning for the longer sentence. Overall, the combination of sealed indictments, lack of trials for high-ranking Croatian and Bosnian leaders, and the inconsistencies in sentencing are all major issues which show the ICTY's fundamental flaws.

¹² Ljubanović, Davor. Personal interview. 19 May 2015.

¹³ Holá, Barbora, Catrien Bijleveld, and Alette Smuelers. "Consistency of international sentencing: ICTY and ICTR case study." *European Journal of Criminology*, 9.5 (2012): 539-552. Web. doi: 10.1177/1477370812453112

These structural weaknesses are not the only issues inherent in the Tribunal. The individual players within this framework are susceptible to flaws as well, especially in the form of biases. Questions were raised about judges' potential biases following the release of a private email sent by Danish judge Frederik Harhoff¹⁴ in June 2013. In this email, Harhoff described changes in the Court's conviction process that made it less likely that military commanders would be convicted, and their appeals upheld, due to the Prosecution's "inability" to prove that these commanders understood and desired for their actions and commands to contribute to the overall goal of targeting a specific population. In the case of appeals of three Croatian commanders and a Serbian commander, their convictions were all struck down because their military and logistical support was "not intended" to support the targeting of specific ethnic groups. Judge Harhoff's letter argued that the court and the judges representing it were becoming susceptible to short-sighted political pressure, especially to conclude as quickly as possible since the Court has moved past its target 2010 conclusion date.

Critics and those on trial viewed Judge Harhoff's letter as an indication that the Judge was intent on securing convictions for certain ethnic groups, specifically Serbs and Croats. The trial of Vojislav Šešelj (a Serb) was just finishing, but Šešelj nonetheless filed a request to have Harhoff removed from his trial due to Harhoff's perceived bias. The Court ruled in Šešelj's favor¹⁵ and Harhoff was removed from the case, ending his time at the ICTY.

Before the release of Judge Harhoff's email, there was already criticism of the Court's recent high-profile acquittals. Specifically, these acquittals seemed to show the Court moving

¹⁴ "ICTY Judge Frederik Harhoff's Email to 56 Contacts, June 6, 2013." *BT*. Berlingske Media Group, 2013. Web. 25 Nov. 2015. <<http://www.bt.dk/sites/default/files-dk/node-files/511/6/6511917-letter-english.pdf>>.

¹⁵ United Nations International Criminal Tribunal for the Former Yugoslavia. *Judge Harhoff disqualified from Šešelj case*. The Hague, Netherlands: United Nations International Criminal Tribunal for the Former Yugoslavia. 29 Aug 2013. Web. <<http://www.icty.org/en/press/judge-harhoff-disqualified-%C5%A1e%C5%A1elj-case>>.

away from its goal of protecting civilians and instead becoming friendlier towards military officials. The conviction of Momčilo Perišić¹⁶ (a Serbian general) was overturned on appeal and reversed his 27-year sentencing for crimes including murder, attacks against civilians, and crimes against humanity. The Appeals Chamber ruled that "evidence establishing a direct link between the aid provided by an accused individual and the relevant crimes committed by principal perpetrators is necessary" and the Appeals judges were not able to find evidence of this "direct link." In simpler terms, the Court could not find evidence that Perišić aided and abetted a group (in this case, the Army of the Republika Srpska) with the specific goal of helping that group to commit certain atrocities. This same lack of evidence was cited in the reversals of convictions of Jovica Stanišić (head of the Serbian State Security Service) and Franko Simatović (head of the Serbian secret police and subordinate to Stanišić).¹⁷ In these cases, and in others, the Appeals Court again ruled that there was a prosecutorial failure to clearly establish the link between the accused's efforts and the occurrence of specific atrocities, rendering these convictions moot. Preceding both of these cases was the *Gotovina et. al* case, which saw the acquittals of three men previously convicted of crimes against humanity and violations of the laws of warfare.¹⁸ That so many high-profile convictions have been reversed because of the same principle raises questions about the direction the Court is heading. As dissenting Judge Liu from the Perišić case wrote, "To insist on a [specific direction] requirement now effectively raises the threshold for aiding and abetting liability. This shift risks undermining the very purpose of aiding and abetting liability by allowing those responsible for knowingly facilitating the most grievous crimes to

¹⁶ United Nations International Criminal Tribunal for the Former Yugoslavia. *Appeal Judgement for Momčilo Perišić*. The Hague, Netherlands: 28 Feb 2013. Web. <http://www.icty.org/x/cases/perisic/acjug/en/130228_summary.pdf>.

¹⁷ United Nations International Criminal Tribunal for the Former Yugoslavia. *Judgement Summary for Jovica Stanišić and Franko Simatović*. The Hague, Netherlands: 30 May 2013. Web. <http://www.icty.org/x/cases/stanistic_simatovic/tjug/en/130530_summary.pdf>.

¹⁸ United Nations International Criminal Tribunal for the Former Yugoslavia. *Appeals Judgement Summary for Ante Gotovina and Mladen Markač*. The Hague: Netherlands: 16 Nov 2012. Web. <http://www.icty.org/x/cases/gotovina/acjug/en/121116_summary.pdf>.

evade responsibility for their acts.”¹⁹ This establishes an alarming precedent that allows for the possibility that leaders in other conflicts will not be deterred from providing “murderous assistance” so long as they do not directly order the crimes that they assist.²⁰ This devalues the international criminal justice model and threatens the future development of this field.

As the longest-serving Chief Prosecutor for the ICTY, Carla Del Ponte’s time there saw many trials, convictions, appeals, and sentencing and her tenure was not without scrutiny or claims of bias. Many of the same critics claiming an anti-Serb bias within the ICTY also claim the Office of the Prosecutor under Del Ponte held these same biases. Del Ponte understood that it was necessary to bring the former Serb leader Slobodan Milošević to trial, and credits the international community with the fact that he was unable to flee once he was ousted from political office.²¹ Fully understanding that failing to try and convict Milošević would have been a travesty of international justice, Del Ponte considers Milošević’s death while in detention to be among her greatest personal disappointments of her time as Prosecutor.²²

Despite Del Ponte’s success in bringing Milošević and many others before the Court, there have been claims that she misused and/or abused her powers as Prosecutor. The leadership of Kosovo has put forth a request that an impartial international investigation be launched into Del Ponte’s tenure to investigate whether or not her office did abuse its power and damage the

¹⁹ United Nations International Criminal Tribunal for the Former Yugoslavia. *Prosecutor vs. Momčilo Perišić Judgement*. The Hague, Netherlands: 28 Feb 2013. Web. <http://www.icty.org/x/cases/perisic/acjug/en/130228_judgement.pdf>.

²⁰ Roth, Kenneth. “A Tribunal’s Legal Stumble.” *The New York Times* 9 July 2013: web. <http://www.nytimes.com/2013/07/10/opinion/global/a-tribunals-legal-stumble.html?_r=3&>.

²¹ Del Ponte, Carla. “Address to the Security Council by Carla Del Ponte, Prosecutor of the International Criminal Tribunals for the Former Yugoslavia and Rwanda, to the UN Security Council.” United Nations Security Council. United Nations Headquarters, New York, NY. 24 Nov. 2000. Address. <<http://www.icty.org/sid/7803>>.

²² “Profile: Carla Del Ponte.” *BBC News*. British Broadcasting Corporation, 11 Dec. 2007. Web. 25 Nov. 2015. <<http://news.bbc.co.uk/2/hi/europe/1809185.stm>>.

image of the country of Kosovo.²³ Specifically, Kosovo argues that many charges brought against its citizens were unfounded charges, and the ultimate acquittals of nearly all Kosovars have reinforced this claim. For some particular cases, Del Ponte was advised by numerous legal advisers not to move forward with a case or indictment for lack of evidence but instead the Office went ahead with these actions; many of these cases went on to result in the acquittals of the defendants.

Victims and survivors oftentimes demand justice and truth in a way that cannot legally happen: they may wish to see harsher sentences imposed, significant reparations ordered, or other individuals brought to trial. These outcomes may not materialize because of a lack of evidence or a lack of cooperation from necessary parties. The lack of cooperation that Del Ponte's office faced from the governments of Croatia and Serbia enabled known war criminals to live openly in those countries without fear of arrest and stalled the Prosecution's progress towards achieving legal justice in the region.²⁴ Inadequate cooperation from these entities also prevented the Office from collecting adequate evidence before it was damaged or destroyed or before witnesses were unable to present their evidence. The Office's inability to successfully prosecute because of these obstructions was only overcome by outside intervention. When both Croatia and Serbia began EU accession discussions, their cooperation with the ICTY was made mandatory. Though there had been personal appeals from Del Ponte and others before these

²³ Hoxhaj, Enver. "Interview: Kosovar Foreign Minister Enver Hoxhaj." *Interview with Radio Free Europe/Radio Liberty*. Radio Free Europe/Radio Liberty, 3 Dec 2012. Web. 25 Nov 2015.
<<http://www.rferl.org/content/interview-kosovo-foreign-minister-enver-hoxhaj/24788155.html>>.

²⁴ United Nations Security Council. "6228th Meeting." United Nations Headquarters, New York, NY. 3 Dec 2009. Web.
<<http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/ICTR%20SPV%206228.pdf>>.
Brammertz, Serge. "Completion Strategy: Prosecutor Brammertz's address before the Security Council." United Nations Security Council. United Nations Headquarters, New York, NY. 7 Dec 2011. Address.
<<http://www.icty.org/en/press/completion-strategy-prosecutor-brammertz%E2%80%99s-address-security-council>>.

mandates were made, it was only the threat of exclusion from the EU that made these countries cooperate. The lack of indictments for Croats can be partly explained by this lack of cooperation.

Beyond Del Ponte's perceived bias, critics have claimed that even the investigative process held by the Office was biased. Specifically, these critics argue that forensic pathologists were not as impartial as they should have been. One report, released in 2006, surveyed 65 pathologists who worked for the ICTY, identifying the cause of death for victims found in mass graves. The results from the survey showed that the majority of pathologists were European and from NATO states, and several respondents felt that too little time had been spent investigating alleged mass graves of Serbs. Though the administrators of the survey did not explore these allegations further, it is possible that such an investigative bias did exist, but not at the level of the pathologists; after all, one cannot know who is buried in a mass grave until that grave is excavated. Rather, the bias may exist at the level of the investigators since much of the investigative work was conducted in teams charged with researching crimes committed against one specific ethnicity (e.g. one team was tasked with investigating crimes against Muslims and another against ethnic Serbs).²⁵ These investigative teams, though all working for the Office of the Prosecutor, are headed by one senior attorney who has the autonomy to direct the investigation and case overall.²⁶ Having such a structure as this allows for the possibility of inconsistent investigations into crimes committed against ethnic groups. Though these teams are all accountable to the Chief Prosecutor, if the Chief Prosecutor does not closely monitor the work of these teams, then a bias could develop as crimes against one group are investigated more

²⁵ Congram, Derek. "Cognitive Dissonance and the Military-Archaeology Complex." *Ethics and the Archaeology of Violence*. Ed. Ruibal A. González and Gabriel Moshenska. New York, NY: Springer-Verlag New York, 2015. 199-213. Web. doi: 10.1007/978-1-4939-1643-6

²⁶ War Crimes Research Office. *Investigative Management, Strategies, and Techniques of the International Criminal Court's Office of the Prosecutor*. Washington, DC, American University Washington College of Law: Oct 2012. Web. <<https://www.wcl.american.edu/warcrimes/icc/documents/ICCRreport16.pdf>>.

thoroughly than another. The structure of the Office of the Prosecutor highlights the potential inconsistencies in the ICTY's quest for evidence and indictments against all involved in the conflict.

The ICTY was designed to investigate crimes and hold the perpetrators accountable. Unfortunately for the ICTY, holding itself accountable has been a major problem. But this culpability is not entirely the Tribunal's fault. The international community that created and legitimized it shares responsibility to ensure it is functioning effectively and impartially. These governments, which include the United States, Russia, and the European Union, have a responsibility to uphold their commitments to the Tribunal's resources and repudiability, and they have failed to do so adequately.

When the United Nations Security Council created the Tribunal, there was an expectation by some that the United Nations would handle the necessary operating costs.²⁷ Despite this seemingly obvious commitment, the Tribunal was still underfunded for the vast undertaking it was assigned.²⁸ As already discussed, the Tribunal lacked a defense association in its early days and provided no judge training, which, given the array of judicial backgrounds at play, was a major issue. These problems could have been fixed had the Security Council done more to shore up an institution of its own creation. But this inaction continued because the Security Council and UN were not held accountable for this inaction; many in the international community, at the behest of some of the Tribunal's architects, have adopted the simple line of, "we have to believe the Tribunal is impartial."²⁹

²⁷ United Nations Security Council. "Resolution 827 (1993) Adopted by the Security Council at its 3217th meeting, on 25 May 1993." United Nations Headquarters, New York, NY. 25 May 1993. Web. <<http://www.refworld.org/docid/3b00f21b1c.html>>.

²⁸ *Looking for Justice: the War Crimes Tribunal of Bosnia and Herzegovina*. New York: Human Rights Watch, 12.1(D). Web. <<https://www.globalpolicy.org/images/pdfs/02wccbosnia.pdf>>.

²⁹ Devčić, Davor. Personal interview. 18 May 2015.

Blindly assuming that the ICTY is effective at fulfilling its mandate is unfair to those who stand trial and threatens the judicial integrity of the Tribunal. An interview at the Slovenian Embassy in The Hague showed that the official thought it unnecessary to seriously question the Tribunal's impartiality and in fact said that it was not his, or anyone else's, place to question the Tribunal.³⁰ Failing to question the Tribunal and the means by which it is, and is not, held accountable allows the problems to compound and implies that accountability is not even something to be concerned about.

At the local level, many of the conflict's successor governments have been uncooperative, and sometimes directly obstructionist. The case of Gotovina and Croatia illustrates this nicely, as do many other cases with the governments of Serbia, Bosnia and Herzegovina, and Croatia.³¹

At the Tribunal level, there also seems to be a lack of accountability. As was discussed, there were a number of legal issues with the Tribunal itself, and these were not given proper attention and oversight. The indictment process, kept secret from the public in a stunning affront to transparency, left many unindicted who were widely believed to have participated in war crimes.³² While these people are, of course, assumed innocent until proven guilty, there was ample evidence to at least bring some of these mentioned leaders to trial, and the fact that no one within the court questioned the Prosecutor about this is concerning, and allowed individual biases to affect the judicial process.³³

³⁰ Devčić, Davor. Personal interview. 18 May 2015.

³¹ "Croatia: Praise for Operation Storm creates climate of impunity." *Amnesty International*. Amnesty International LLC, 5 Aug. 2011. Web. 25 Nov. 2015. <<https://www.amnesty.org/download/Documents/32000/eur640102011en.pdf>>.

³² Karnavas, Michael. Personal interview. 15 May 2015.

³³ Karnavas, Michael. Personal interview. 15 May 2015.

Russia, one of Serbia's main allies, has used the complaints from Serbia as another rhetorical weapon against the United States, Europe, and global institutions.³⁴ Instead of actually bringing these concerns forward in a meaningful way, in other words, Russian officials, like everyone else, seem to have accepted the Tribunal as is, without attempting reform.

The United States and Europe have created the global narrative of the Balkan conflict, which has found legitimization in part due to the ICTY.³⁵ This narrative, it could be argued, has significantly affected the way the world remembers this conflict, and the details of the narrative itself are controversial.³⁶ The combined diplomatic weight of the EU and the US makes it hard for any other countries to see a benefit in advocating for meaningful reform within this Tribunal, and the creation of new Tribunals for other horrific events. Continually dismissing the concerns of Serbia has jeopardized the very idea of international criminal justice, and made the United States and the UN appear to have questionable motives.

Ignoring these concerns about the structure and outcomes of the Tribunal has led to the widespread understanding that the flaws of the ICTY are foundational and effectively permanent. These many flaws have been closely examined by all manner of legal experts, scholars, and governments. The ICTY was not deliberately designed to unfairly hear cases, but the lack of procedures to follow up or change the Tribunal meant that small issues in the foundation of the Tribunal led to much larger problems in the execution of its function. The Tribunal exacted uneven sentencing and appeals processes that undermined its own credibility through the reversal

³⁴ "Čurkin: A Negative Example of The Hague Tribunal." *Mondo.rs*. Mondo Portal, 10 Apr 2014. <<http://mondo.rs/a571509/Info/Svet/Curkin-Negativan-primer-Haskog-tribunala.html>>.

³⁵ Boyd, Charles G. "Making Peace with the Guilty: The Truth About Bosnia." *Foreign Affairs*. The Council on Foreign Relations, Inc., Sept/Oct 1995. Web. 25 Nov. 2015. <<https://www.foreignaffairs.com/articles/europe/1995-09-01/making-peace-guilty-truth-about-bosnia>>.

³⁶ Žohar, Benjamin. "Misrepresentation of the Bosnian War by Western media." *Journal of Comparative Research in Anthropology and Sociology*, 3.2 (2012): 97-110. Web. <<http://compaso.eu/wp-content/uploads/2013/01/Compaso2012-32-Zohar.pdf>>.

of sensational cases of high-ranking officials. The differences in legal backgrounds of the different judges and other actors of the Tribunal created problems that were exposed repeatedly by those outside the ICTY; these issues were ignored or downplayed by proponents of the Tribunal. The lack of transparency within the Office of the Prosecutor made other legal processes skeptical, especially as sentences were inconsistent and verdicts randomly reversed. The possibility of manipulation during different processes was made clear with the revelation of potential judicial biases and EU accession discussions being tied to cooperation with the ICTY. Leading international heavyweights such as the EU and UN did not demand the effectiveness and structure of the ICTY be evaluated, and as these calls for change were not coming from within the ICTY itself, none of these needed changes have occurred.

As the world moves ahead into another era of international law, justice, and war tribunals, the ICTY serves as a model for what to do and what not to do. The legal processes of such future courts must make it clear what crimes earn what sentence length, how transparent the processes of the prosecution and appeals processes must be, and how incorporating different legal models into one court must be controlled through careful training and regulation of different legal actors. Despite its many flaws, the ICTY hasn't been a complete failure. Many victims feel adequate justice has been served through the Tribunal, and both legal scholars and the international community alike recognize the initial, tentative successes in establishing a fair tribunal for war crimes. While the time for change within the structure of the ICTY may have passed, the lessons learned will continue to be relevant in the future.

With this analysis in mind, the opposing arguments of those who defend the ICTY can now be examined. Those who defend the ICTY often argue that the Tribunal has been a success

despite its limitations and has done an effective job of successfully prosecuting those responsible for committing the worst crimes of the war; all while setting an important precedent for the future of human rights and successfully changing international norms on a global scale.

While it is true the ICTY did rely on sealed indictments in order to arrest the fugitives, the fact is many of these alleged war criminals would have never seen the inside of a courtroom if knowledge of their arrest warrants had been made public. Even for major war criminals whose indictments were public, the Tribunal would have had much difficulty getting authorities to cooperate with carrying out the arrest. Therefore it is safe to say that in order to effectively prosecute the accused, the utilization of sealed indictments was necessary. The sealed indictments worked, for all 161 individuals indicted were successfully located, arrested, and tried. For being the first true international court, this is a monumental achievement.

The next part of the defender's argument holds that the Tribunal neither possesses nor contains elements of an anti-Serb bias despite that over three-quarters of those the court has indicted are Serb. This is because the evidence and facts show that the Serbs statistically committed the highest proportion of war crimes. Serb military and paramilitary forces are responsible for carrying out the two largest massacres of innocents during the war at Srebrenica and Vukovar. The Vukovar and Srebrenica massacres, volume-wise, are the largest-scale war crimes committed on the European continent since World War Two. This is not to say that Serbs did not suffer during the war, they absolutely did and it is irresponsible and insensible to compare any acts of tragedy. What needs to be remembered is that to the extent the ICTY could prosecute those responsible for committing crimes against Serbs, it did. Under Prosecutor Del Ponte, the OTP worked for more than a decade to prosecute Croatian General Ante Gotovina,

even going so far to as to take the unprecedented step of actively interfering in and blocking Croatia's EU accession talks until he was finally caught. Gotovina was initially found guilty of holding command responsibility for war crimes and crimes against humanity committed against Serbs during Operation Storm; he was found guilty alongside senior Croatian General Mladen Markač and former Croatian President Franjo Tuđman. Though Tuđman died before the Gotovina case was underway, the Tribunal did ultimately recognize the criminal role Tuđman played in Operation Storm. Upon reexamination of this case, the Appeals Court found Gotovina not guilty of these crimes and overturned his convictions. Understandably, Serbian politicians and citizens were angry about this reversal but despite the Tribunal's ultimate decision, the OTP did put significant, extensive effort into bringing justice to Serb victims of Operation Storm.

Despite some case-by-case failings, the ICTY set an important precedent for the future of international humanitarian law and achieved a remarkable amount of success for an ad hoc organization that had very little precedent to rely on. The Tribunal does draw inspiration from the Nuremburg and Tokyo trials, but it largely had to create its entire legal framework and procedural manual on its own since the UN Security Council Resolution 827 did not provide much in the way of guidance. In this aspect they succeeded, albeit with a few hiccups along with the way. But this is to be expected when one is creating an entirely new mechanism of international relations and law. It has largely worked and in the two short decades since the founding of the ICTY, it is now serving as a model for the International Criminal Tribunal for Rwanda, the International Criminal Court, the International Court of Justice, the Special Tribunal for Lebanon, the Special Court for Sierra Leone, and the European Court of Justice.

Furthermore, the ICTY set the precedent of holding heads of state accountable to international law: the importance of bringing Slobodan Milošević to trial cannot be understated. For the first time, a former head of state was held responsible for war crimes, something which was unthinkable only a few short decades ago. It was a watershed moment in the development of international humanitarian law, and it is thanks to the ICTY that international norms have undergone a remarkable transformation towards prioritizing human rights issues. When examined from this perspective, those who defend the ICTY against accusations of bias and incompetence find themselves to be very well equipped to stand up for the Tribunal.

While the rebuttal to our argument does raise several important questions, it falls short of disproving our thesis. Any discussion of the ICTY, its tactics, and its successes or weaknesses can quickly devolve into an emotional conflict of hearsay without the proper checks on the objectivity of analysis along the way. For example, at a glance it is logical to say that based on the assumption of Serbia's status as the "aggressor state" in the Balkan conflict, it seems wholly justified that most of those indicted in the ICTY are of ethnic Serbian identity. This statement, which is often the initial reaction to our research question, reflects exactly the complexities encountered when assessing the ICTY as a whole. In order to present an objective analysis of the ICTY, there are several considerations one should take into account. Mainly, when we assign Serbia the role of "aggressor state," are we then also solely assigning the other peoples affected by the conflict the roles of undeniable victims? When we applaud the ICTY for holding heads of state accountable, do we really believe that the ICTY sent a message that heads of state cannot operate outside the law, or was the message more that heads of "aggressor" states cannot operate

outside the law? When we assess whether a court has filled its mandate, how do we consider justice served?

None of these questions have clear or easy answers, which helps to drive the emotional discussion of the court in an effort to support answers to those questions with a more appealing basis in narrative. The important distinction to draw in our argument is that we are not saying that the ICTY has not achieved remarkable accomplishments or that it has failed, but instead that in order to truly fulfill its mandate, there is more work to be done and there are needed changes in procedure that will facilitate a more objective and fair process. Put differently, if the Tribunal were to cease bringing new cases to court once the current trials are decided (which it seems prepared to do), it would not have fulfilled its mandate completely. In order to fully achieve its objectives, the Tribunal must consider the implications of abandoning investigations of Croats and Bosnians who may have also committed war crimes.

Our argument centers not on placing the blame on any one party, institution, or tradition, but instead on calling for consistent accountability for the Tribunal and parties involved in its inner workings. We are encouraged by the monumental steps the ICTY has taken in forcing legitimate international discussion of human rights law, and in bringing war criminals to justice, but we see that, along its current trajectory, the Tribunal will have missed a huge opportunity to hold all factions within its jurisdiction to the same standard of justice.

From this analysis it is safe to conclude that the international criminal justice regime faces series of wide ranging challenges. The issues that have been discussed at length here are not so serious, however, that the international community should give up on ridding the world of impunity. There are improvements to be made, and that is how the future of international

humanitarian law should be seen. A cry that the International Criminal Court (ICC) is ineffective should galvanize states to put more time and money into the Court. As has been mentioned, the primary issue with the international criminal justice regime is a lack of attention and resources. However, there is still the fundamental problem of universality. The ICC needs the membership of the United States and like-minded nations to become a truly effective court. The improbability of this, however, should not discourage change. International pressure and a stronger institution could eventually change minds, and this is for what the world should strive.

Given the problems discussed above, the future of international criminal justice seems to be in doubt. For more than a decade the highly touted International Criminal Court has been operational, but it does not necessarily have a judicial record to support the praise it receives from world leaders and international organizations alike. After 13 years and over \$1 billion, the court has managed to come away with only two convictions, both Congolese warlords.³⁷ What's worse is that the convicted had been acquitted of the most serious charges. The trouble with the ICC, and international criminal justice as a whole, is that the alleged war criminals who need to be brought to trial often have many powerful friends who help them avoid justice.

President Bashir of Sudan, who has been indicted by the ICC for war crimes, recently went to South Africa and escaped the country without being arrested. In cases like this, it is hard to see how international criminal justice is supposed to work. South Africa was once one of the Court's champions, but is now one of the many African countries challenging its existence.³⁸

President Bashir's most recent escape from justice has made many feel that there is no realistic

³⁷ Davenport, David. "International Criminal Court: 12 Years, \$1 billion, and 2 Convictions." *Forbes*. Forbes.com LLC., 12 Mar. 2014. Web. 25 Nov. 2015.

<<http://www.forbes.com/sites/daviddavenport/2014/03/12/international-criminal-court-12-years-1-billion-2-convictions-2/>>.

³⁸ "The battle against impunity goes on." *The Economist* 31 Oct 2015: web.
<<http://www.economist.com/news/middle-east-and-africa/21677253-despite-african-leaders-brickbats-court-still-fighting-justice>>.

future for international criminal justice, especially when it comes to crimes committed by a head of state. But there are also reasons to look at this episode more hopefully. Before he had left the country, a South African court issued an arrest warrant for the besieged Sudanese leader, forcing him to flee on circumstances that he surely did not intend.³⁹

In Kosovo, the Kosovar Parliament just recently approved a war crimes tribunal to try suspected war criminals from the Kosovar war of independence.⁴⁰ But the idea has met stiff resistance in Kosovo as well as Albania, where politicians are voicing concerns of delegitimizing their fight for independence; this resistance is cause for concern.⁴¹ The place that the alleged war criminal is from or residing is important since the cooperation of local authorities is necessary for ensuring the proper and successful implementation of international criminal justice. That the international criminal justice regime was unable to enforce the recent attempt to arrest President Bashir in South Africa, or penalize the South African government for its inaction, shows just how difficult it is to develop the needed political will to further international justice.

The ICC's lack of political power comes substantially from a glaring hole in its membership. The United States, Russia, and China are all major powers (and permanent members of the UN Security Council) that should be part of any effort that claims to be "universal". The ideal of international criminal justice demands that these three countries eventually join the court and the regime as a whole. However, this is even more unlikely now than it has been in recent years. The US, usually skeptical of international institutions, is in no position to finally give in and join the court. President Putin is more concerned with restoring

³⁹ Onishi, Norimitsu. "Omar al-Bashir, Leaving South Africa, Eludes Arrest Again." *The New York Times* 15 Jun 2015: web. <http://www.nytimes.com/2015/06/16/world/africa/omar-hassan-al-bashir-sudan-south-africa.html?_r=0>.

⁴⁰ "Kosovo parliament approves special war crimes court." *BBC News*. The British Broadcasting Corporation, 4 Aug. 2015. Web. 25 Nov. 2015. <<http://www.bbc.com/news/world-europe-33770897>>.

⁴¹ "Where the past isn't even past." *The Economist* 20 Jun 2015: web. <<http://www.economist.com/news/europe/21654654-special-court-try-kosovars-war-crimes-moves-closer-where-past-isnt-even-past>>.

Russian influence, and China maintains its tradition of upholding sovereignty above all else. Without any of these major powers, it is hard to see how the ICC will ever fulfill its mandate as a fully universal, global criminal court. Even countries party to the Rome Statute do not have the political will to enforce its mandate. South Africa had been one of the court's earliest, and heaviest supporters. Even still, South African authorities allowed President Bashir to come and go with impunity.

Some have argued that the emergence of international criminal justice could even have harmful effects for peacemaking efforts, eliminating the possibility of transitional justice as part of potential peace deals between insurgents and state. For example, many fighters from the Revolutionary Armed Forces of Colombia (FARC) have yet to accept the idea that they should be punished for war crimes they have committed. This impasse threatens the incredibly delicate peace negotiations still taking place, and poses the risk that the FARC, too afraid and unsure of what will follow peace, will refuse to make peace on such grounds. However, if the Colombian authorities were to give in to FARC's demands for transitional justice, it would undermine the principles of international criminal justice.⁴²

Transitional justice is a controversial idea, but it can be an effective bargaining chip in peace negotiations. However, impunity for war crimes can be seen as equally dangerous to the international community as conflict, given that it could lead to more conflict in the future. To this, critics of international law will argue that the advancements made in the Hague have done nothing to prevent violence or even war crimes. The ongoing violence in Syria is another testament to how ineffective the International Community can be and the rules of war seem to be

⁴² "Bullet proof." *The Economist* 30 May 2015: web.
<<http://www.economist.com/news/americas/21652332-despite-escalation-violence-talks-continue-bullet-proof>>.

non-existent in these war-torn lands. It is in these situations that the deterrence posed by future justice from the international community should keep the involved parties following some semblance of international law but this is not the case.

There is room for hope, however. Despite being around for almost 15 years, the ICC is still a very young institution, and its membership could still grow. With the construction of a new building underway, the ICC could be reborn on the international stage. A change of heart by the states not yet party to the Rome Statute is also possible, though not likely in the near future. Most importantly, a functional and fair international criminal law regime is beneficial for the world as a whole, and for that reason, it is worth continued investment in and development of its institutions.

Works Cited

- Batt, Judy, Voijn Dimitrijevic, Florence Hartmann, Dejan Jovic, Tija Memisevic, Jelena Obradovic-Wochnik. "War crimes, conditionality, and EU integration in the Western Balkans." *Institute for Security Studies*. European Union Institute for Security Studies, Jun. 2009. Web. 25 Nov. 2015. <<http://www.iss.europa.eu/uploads/media/cp116.pdf>>.
- Bloodworth, James. "Are We About to Repeat NATO's Greatest Failure?" *The Daily Beast*. The Daily Beast Company LLC., 9 Jul. 2015. Web. 25 Nov. 2015. <<http://www.thedailybeast.com/articles/2015/07/09/are-we-about-to-repeat-nato-s-greatest-failure.html>>.
- Boyd, Charles G. "Making Peace with the Guilty: The Truth About Bosnia." *Foreign Affairs*. The Council on Foreign Relations, Inc., Sept/Oct 1995. Web. 25 Nov. 2015. <<https://www.foreignaffairs.com/articles/europe/1995-09-01/making-peace-guilty-truth-about-bosnia>>.
- Boyko, Oksana. "Case of accused Serbian war criminal puts Hague on trial." *RT*. TV Novosti, Channel RT TV. 12 Jan. 2010. Web. 25 Nov. 2015. <<https://www.rt.com/politics/serbia-hague-court-yugoslavia/>>.
- Brammertz, Serge. "Completion Strategy: Prosecutor Brammertz's address before the Security Council." United Nations Security Council. United Nations Headquarters, New York, NY. 7 Dec 2011. Address. <<http://www.icty.org/en/press/completion-strategy-prosecutor-brammertz%E2%80%99s-address-security-council>>.
- "Bullet proof." *The Economist* 30 May 2015: web. <<http://www.economist.com/news/americas/21652332-despite-escalation-violence-talks-continue-bullet-proof>>.
- "Croatia: Praise for Operation Storm creates climate of impunity." *Amnesty International*. Amnesty International LLC, 5 Aug. 2011. Web. 25 Nov. 2015. <<https://www.amnesty.org/download/Documents/32000/eur640102011en.pdf>>.
- Congram, Derek. "Cognitive Dissonance and the Military-Archaeology Complex." *Ethics and the Archaeology of Violence*. Ed. Ruibal A. González and Gabriel Moshenska. New York, NY: Springer-Verlag New York, 2015. 199-213. Web. doi: 10.1007/978-1-4939-1643-6
- "Čurkin: A Negative Example of The Hague Tribunal." *Mondo.rs*. Mondo Portal, 10 Apr 2014. <<http://mondo.rs/a571509/Info/Svet/Curkin-Negativan-primer-Haskog-tribunala.html>>.
- Davenport, David. "International Criminal Court: 12 Years, \$1 billion, and 2 Convictions." *Forbes*. Forbes.com LLC., 12 Mar. 2014. Web. 25 Nov. 2015. <<http://www.forbes.com/sites/daviddavenport/2014/03/12/international-criminal-court-12-years-1-billion-2-convictions-2/>>.

Del Ponte, Carla. "Address to the Security Council by Carla Del Ponte, Prosecutor of the International Criminal Tribunals for the Former Yugoslavia and Rwanda, to the UN Security Council." United Nations Security Council. United Nations Headquarters, New York, NY. 24 Nov. 2000. Address. <<http://www.icty.org/sid/7803>>.

Devčić, Davor. Personal interview. 18 May 2015.

"History of the ADC." *Association of Defence Counsel Practicing Before the International Criminal Tribunal for the Former Yugoslavia*. Association of Defence Counsel Practicing Before the International Criminal Tribunal for the Former Yugoslavia, 2014. Web. 25 Nov. 2015. <<http://adc-icty.org/home/history.html>>.

Holá, Barbora, Catrien Bijleveld, and Alette Smuelers. "Consistency of international sentencing: ICTY and ICTR case study." *European Journal of Criminology*, 9.5 (2012): 539-552. Web. doi: 10.1177/1477370812453112

Hoxhaj, Enver. "Interview: Kosovar Foreign Minister Enver Hoxhaj." *Interview with Radio Free Europe/Radio Liberty*. Radio Free Europe/Radio Liberty, 3 Dec 2012. Web. 25 Nov 2015. <<http://www.rferl.org/content/interview-kosovo-foreign-minister-enver-hoxhaj/24788155.html>>.

"ICTY Judge Frederik Harhoff's Email to 56 Contacts, June 6, 2013." *BT*. Berlingske Media Group, 2013. Web. 25 Nov. 2015. <<http://www.bt.dk/sites/default/files-dk/node-files/511/6/6511917-letter-english.pdf>>.

Karnavas, Michael. Personal interview. 15 May 2015.

"Kosovo parliament approves special war crimes court." *BBC News*. The British Broadcasting Corporation, 4 Aug. 2015. Web. 25 Nov. 2015. <<http://www.bbc.com/news/world-europe-33770897>>.

Ljubanović, Davor. Personal interview. 19 May 2015.

Looking for Justice: the War Crimes Tribunal of Bosnia and Herzegovina. New York: Human Rights Watch, 12.1(D). Web. <<https://www.globalpolicy.org/images/pdfs/02wccbosnia.pdf>>.

Onishi, Norimitsu. "Omar al-Bashir, Leaving South Africa, Eludes Arrest Again." *The New York Times* 15 Jun 2015: web. <http://www.nytimes.com/2015/06/16/world/africa/omar-hassan-al-bashir-sudan-south-africa.html?_r=0>.

"Profile: Carla Del Ponte." *BBC News*. British Broadcasting Corporation, 11 Dec. 2007. Web. 25 Nov. 2015. <<http://news.bbc.co.uk/2/hi/europe/1809185.stm>>.

- Roth, Kenneth. "A Tribunal's Legal Stumble." *The New York Times* 9 July 2013: web.
<http://www.nytimes.com/2013/07/10/opinion/global/a-tribunals-legal-stumble.html?_r=3&>.
- Schabas, William A. *The UN International Criminal Tribunals: the Former Yugoslavia, Rwanda, and Sierra Leone*. Cambridge, UK: Cambridge University Press, 2006. Print.
- Simons, Marlise. "International Judge is Removed From Case Over Political Bias." *The New York Times* 30 Aug 2013: web.
<<http://www.nytimes.com/2013/08/31/world/europe/international-judge-is-removed-from-case-over-apparent-bias.html>>.
- "Statistics on the ICTY: 126 cases closed, 14 to go." *Expatica*. Expatica Communications BV, 25 Jul 2011.
<http://www.expatica.com/nl/news/country-news/Statistics-on-the-ICTY-126-cases-closed-14-to-go_276331.html>.
- "The battle against impunity goes on." *The Economist* 31 Oct 2015: web.
<<http://www.economist.com/news/middle-east-and-africa/21677253-despite-african-leaders-brickbats-court-still-fighting-justice>>.
- United Nations International Criminal Tribunal for the Former Yugoslavia. *Appeal Judgement for Momčilo Perišić*. The Hague, Netherlands: 28 Feb 2013. Web.
<http://www.icty.org/x/cases/perisic/acjug/en/130228_summary.pdf>.
- United Nations International Criminal Tribunal for the Former Yugoslavia. *Appeals Judgement Summary for Ante Gotovina and Mladen Markač*. The Hague: Netherlands: 16 Nov 2012. Web. <http://www.icty.org/x/cases/gotovina/acjug/en/121116_summary.pdf>.
- United Nations International Criminal Tribunal for the Former Yugoslavia. *Judgement Summary for Gotovina et al.* The Hague, Netherlands: 15 Apr 2011. Web.
<http://www.icty.org/x/cases/gotovina/tjug/en/110415_summary.pdf>.
- United Nations International Criminal Tribunal for the Former Yugoslavia. *Judgement Summary for Jovica Stanišić and Franko Simatović*. The Hague, Netherlands: 30 May 2013. Web.
<http://www.icty.org/x/cases/stanistic_simatovic/tjug/en/130530_summary.pdf>.
- United Nations International Criminal Tribunal for the Former Yugoslavia. *Judge Harhoff disqualified from Šešelj case*. The Hague, Netherlands: United Nations International Criminal Tribunal for the Former Yugoslavia. 29 Aug 2013. Web.
<<http://www.icty.org/en/press/judge-harhoff-disqualified-%C5%A1e%C5%A1elj-case>>.
- United Nations International Criminal Tribunal for the Former Yugoslavia. *Prosecutor vs. Momčilo Perišić Judgement*. The Hague, Netherlands: 28 Feb 2013. Web.
<http://www.icty.org/x/cases/perisic/acjug/en/130228_judgement.pdf>.

- United Nations Security Council. "6228th Meeting." United Nations Headquarters, New York, NY. 3 Dec 2009. Web.
<<http://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/ICTR%20SPV%206228.pdf>>.
- United Nations Security Council. "Resolution 827 (1993) Adopted by the Security Council at its 3217th meeting, on 25 May 1993." United Nations Headquarters, New York, NY. 25 May 1993. Web. <<http://www.refworld.org/docid/3b00f21b1c.html>>.
- War Crimes Research Office. *Investigative Management, Strategies, and Techniques of the International Criminal Court's Office of the Prosecutor*. Washington, DC, American University Washington College of Law: Oct 2012. Web.
<<https://www.wcl.american.edu/warcrimes/icc/documents/ICCReport16.pdf>>.
- Waterfield, Bruno. "Croatian hero Ante Gotovina acquitted of war crimes." *The Telegraph* 16 Nov 2012: web.
<<http://www.telegraph.co.uk/news/worldnews/europe/croatia/9682855/Croatian-hero-Ante-Gotovina-acquitted-of-war-crimes.html>>.
- "Where the past isn't even past." *The Economist* 20 Jun 2015: web.
<<http://www.economist.com/news/europe/21654654-special-court-try-kosovars-war-crimes-moves-closer-where-past-isnt-even-past>>.
- Žohar, Benjamin. "Misrepresentation of the Bosnian War by Western media." *Journal of Comparative Research in Anthropology and Sociology*, 3.2 (2012): 97-110. Web.
<<http://compaso.eu/wp-content/uploads/2013/01/Compaso2012-32-Zohar.pdf>>.