Serbian Media & the International Criminal Tribunal for the Former Yugoslavia

by

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Abstract

The International Criminal Tribunal for the Former Yugoslavia has set for itself goals that go beyond bringing perpetrators of crimes to account. Some of these functions directly depend on the media for their fulfilment, because it is precisely the media who transmits these functions to the public. This ever-increasing reliance on the media brings a need for a minimal standard of balanced reporting, which seems to be lacking in Serbia. I will examine Serbian media reporting and conclude that it does not further the Tribunals purposes, thus negatively affecting the Serbian public. I will contrast Serbian to Rwandan news reporting in order to show that a higher standard can be expected of these news outlets. Nevertheless, regardless of what kind of reporting is prevalent, the effect on the ground may not be negative if it motivates people to access other sources and thus widen their outlooks on the issues.
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The reporting of the Adolf Eichmann trial in Nuremberg by Hanna Arendt was one of the most famous and widely discussed portrayals of an international criminal trial. It showed that there was a way to report on issues of profound importance without creating a misrepresentative account based on personal biases. Being of Jewish origin and thus significantly impacted by World War II, did not hamper Arendt's ability to present the public with a balanced report of the trial. The public was exposed not only to the punishment function of the trial, but the other core functions that make up the complex process. Arendt's portrayal corresponds to the work of scholars, who assign international criminal trials a much wider role in society than simply performing the punishment function. Media is that crucial link which is needed in order for these functions to be performed successfully. While Arendt's reporting can be said to satisfactorily fulfil this role, the question remains whether her reporting is standard or out of the ordinary. In order to answer this question, my paper will delve into Serbian news reporting after the initiation of the International Criminal Tribunal for the Former Yugoslavia (hereafter: ICTY). I will seek to establish how far the purposes of the ICTY are being furthered by Serbian media, and come to the conclusion that the media is creating a disconnect between the Serbian public and the actual achievements of the ICTY. Serbian media will be contrasted to Rwandan media to find that post-Nuremberg Tribunals can be portrayed in a relatively balanced light even by those most affected by the conflict in question. By no means is a standard of objectivity argued for, only that some minimal criteria of balanced reporting exist and, comparatively, some media has been more successful in this regard. Although a disconnect exists between the work of the ICTY and media reporting, there is a way to remedy the situation. I will explore what direct mechanisms have been put forward by the ICTY in order to bring information to the public first hand without having to rely on an intermediary. I hypothesize that a negative impact on the public inevitably results from skewed reporting. Nevertheless, the reporting may create curiosity, leading the public to increase reliance on direct coverage, which could potentially persuade them to consider other versions of the issues in question.

Hannah Arendt’s reporting in The New Yorker and subsequent book Eichmann in Jerusalem is perhaps the most famous portrayal of an international trial. As the trial was public, Arendt was able to obtain first-hand experience of the process and then impart this knowledge of the work of the Tribunal to the public.
Arendt was forced to flee Germany because of her Jewish origin. It is not difficult to see that impartiality is an ambitious goal to achieve when relaying information through media outlets, especially when one has been victimized and taken direct part in a major war. It would be easy for Arendt to paint a biased and unrealistic picture of the trial process due to her own experiences, but this did not occur. Arendt’s work was controversial precisely because of the way in which Eichmann was portrayed\(^1\). She was criticized for the use of the term ‘banality of evil’ in describing the Nazi leader\(^2\). While acknowledging his ‘monstrous deeds’, the person on trial was described as ‘quite ordinary, commonplace, and neither monstrous or demonic’. She also talked of Eichmann as someone who was not fanatically anti-Semitic and did not have an ‘insane hatred for Jews’ only that he, like many others, was unable to think and did not realize what he was doing. Speaking as a person who was in the group most victimized by the Nazi regime, her descriptions are surprisingly and refreshingly open-minded. She is able to separate herself from the tragedies that were suffered by her people and realistically look at the trial process and those involved. The author points out flaws of a trial that is based on ‘victor’s justice’, where one is considered guilty before he is even tried and where proper defence is unavailable throughout the process\(^3\). The victims in this process became the judges. Most controversial was her contention that Jewish leaders acted in cooperation with the Nazis. Blinded by the heinous crimes committed, critics were uncomfortable with Arendt's reporting and were not able to see past the crimes for which the accused stood trial.

One such vocal critic was former Nuremberg Justice Michael A. Musmanno who stated that ‘the disparity between what Miss Arendt states, and what the ascertained facts are, occurs with such disturbing frequency that it can hardly be accepted as an authoritative historical work’\(^4\). She was also criticized as sympathizing with the Nazi leader. A substantial proportion of critiques targeted Arendt's allegedly favourable treatment of Eichmann\(^5\).

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\(^3\)Ibid


\(^5\)Not only is there extensive critique of her work, there is also substantial praise. Bruno Bettelheim agrees with Arendt that Eichmann was no monster driven by hate but someone who was determined to create a Totalitarian Reich: Bettelheim B., “Eichmann; the System; the Victims” (1961) 148:24 The New Republic; Ezra M., *The Eichmann Polemics: Hannah Arendt and Her Critics*, online: Dissent Magazine <http://dissentmagazine.org/democratiya/article_pdfs/d9Ezra.pdf>
Regardless of the critiques, Arendt’s work remains one of the most influential of our time. Whether or not one agrees with the substance of her reporting, an important lesson is to be drawn from it. Simply because one is close to a conflict does not mean that total empathy must exist for his or her particular side. Appraising the whole situation and critically assessing events will allow for eventual reconciliation. Arendt outlined the flaws of ‘victor’s justice’, created a more complete account of the events, and did not by any means blame the victims or justify the defendant’s actions. Exploring the grey areas of a conflict is not considered to be acceptable to many. People often prefer to regard conflicts and culprits as either black or white. We should not go further than saying that Nazis are monsters. Arendt did not accept this line of reasoning and surpassed the comfort level of many. She was able to break boundaries and offer an informative account of not only a trial and its punishment function but dig deeper into the more complex nature of international criminal trials and their purposes.

Part II
Media & International Trials

As the case of Arendt reminds us, media is a link between the trial and the public. Indeed, it is often the only link. If we lacked these sources, people would be in the dark about every-day occurrences in their countries and the rest of the world. Media has a very far-reaching effect and the reporting is able to target people all over the world in a matter of seconds. Because it is the often the only link between world events and society, it seems to be even more crucial that the media does not abuse its powers of influence.

Media reporting is especially crucial where a trial, such as war crimes trials, has a function that goes beyond an ordinary criminal trial. The media’s goal should be to increase popular understanding and broader social awareness of current issues, especially issues which impact such a large volume of the population. Media reporting helps create a narrative of history for society as well as a way in which people can learn of past events in order to hopefully avoid future mistakes.

It is difficult for media to perform this ambitious task due to the divisions in post-conflict society. War-stricken populations are very sensitive to reporting on the issues that had such a great impact on their lives.
Even though the world has seen very different interpretations of the role of the media in the last century, it is now acknowledged that it has great power\(^6\). This does not only include political and economic power, but the ‘power to shape how we think about the world’\(^7\). Media no longer provides only information but a conceptual framework for further thought processes of the public. For this reason, the way that the information is transmitted and the veracity of the reporting is crucial. The way in which information is shared with the public can have a significant influence on public values and sentiment.

**Part III**

**The Importance of the ICTY**

I will be looking into Serbian news media and exploring how it portrays the work of the International Criminal Tribunal for the Former Yugoslavia. The focus of this particular article will be news media because, as opposed to social media, its primary purpose should be to transmit the news. As stated previously, the media is a vital component to some of the functions of the international criminal trial. A large volume of work has been put forward on the topic of what the purposes of international criminal trials are and some of the most well-known accounts come from Antonio Cassese, Mark Drumbl and Lawrence Douglas. My goal will be to look at how Serbian media reporting correlates with these particular accounts. The aim of this paper is only to discuss those scholarly accounts of trial functions directly requiring the media.

The ICTY will be the focus of my discussion because it was the first international tribunal to be set up after Nuremberg and Tokyo. The focus shifted from ‘victor’s justice’ to a wholly evolved system of international justice. The ICTY has delivered substantial indictments over the years of its operation. 161 people have been indicted and most recently the two most sought after suspects (Radovan Karadzic\(^8\) and Ratko Mladic\(^9\)) have been transferred to the court\(^10\). In comparison to other tribunals such as the Extraordinary Chambers in the Courts of Cambodia (ECCC) where only 5 people have

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\(^8\) Former President of Republika Srpska

\(^9\) Former Military General in the Bosnian War

\(^10\) International Criminal Tribunal for the Former Yugoslavia, Official Website, online: ICTY <http://www.icty.org/> [ICTY]
been indicted as a consequence of the Khmer Rouge regime, the ICTY can definitely be seen as a success in this respect\(^\text{11}\).

The ICTY has shown that leaders of parties will not be subject to impunity. When Slobodan Milosevic stood trial at the Tribunal it was clear that even heads of state could be subject to criminal prosecution if they were suspected of breaching international law. While on trial, Milosevic consistently aimed to discredit the Tribunal, and media outlets in Serbia were very receptive to this. Even before the trial started, Milosevic stated that he would represent himself because he was dealing with an “illegal organ” that was not created by the UN General Assembly\(^\text{12}\). Milosevic’s accusations that the ICTY was being used as a “political tool”\(^\text{13}\) echoed throughout the Serbian media. Instead of invoking an actual defence to the case against him, he persisted with his goal of appearing as a “scapegoat” in a politically staged sham trial\(^\text{14}\). Appearing alone against the Prosecution presented the former president in a very sympathetic light to the public, who perceived him as “alone against the world”\(^\text{15}\). Milosevic also sought to discredit the trial process by emphasizing that he was slowly being poisoned by the officials. His deteriorating health was a question of constant concern for the Serbian public. When his health deteriorated to the point of death, suspicions that the tribunal officials were somehow at fault were even more prevalent. Nevertheless, this view is subject to much skepticism from, among others, Serbian lawyer and president of the Legal Committee for Human Rights Biljana Kovacevic - Vuco, who claims that the death of President Milosevic only jeopardized the work of the tribunal\(^\text{16}\). After four years, probably the most notorious figure on trial in the Hague was close to receiving his judgment, but he died before justice could be achieved. People will not be exposed to what actually happened and what role the former President played in the War. This defeats the purposes for which the Tribunal was established. With Milosevic’s death, this vital chapter of history will forever remain unfinished and this surely does not benefit the ICTY.

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\(^\text{11}\) Extraordinary Chambers in the Courts of Cambodia, Official Website, online: ECCC
<http://www.unictr.org/>
\(^\text{12}\) Prosecutor v. Milosevic (Transcript of Initial Appearance) ICTY-02-54 (July 3 2001), online: ICTY
http://www.un.org/icty/ind-e.htm; Slobodan Milosevic – Initial Appearance, online: YouTube
<http://www.youtube.com/watch?v=ZpPATdZ0eZM>;
\(^\text{13}\) Prosecutor v. Milosevic (Transcript of Status Conference) ICTY-02-54 (August 30 2001), online: ICTY
<http://www.un.org/icty/ind-e.htm>
\(^\text{14}\) Scharf M.P., The Legacy of the Milosevic Trial (2004) online:
\(^\text{15}\) Champion M, Court of Opinion: With Hague Case, Defiant Milosevic Wins at Home; As Daily Coverage Keeps Serbs Riveted to TV, Many Feel As if They’re on Trial Too, WALL ST. J. at A-1 (Jan. 10 2003), available at 2003 WL-WSJ 3956244
\(^\text{16}\) Ninic V., (Losaj) Proslost I Dalje Zivi, Pravda u Tranziciji Broj 4, Iz Uglia NVO, online:
The trial itself was extensively publicized by Serbian media and more than half of Serbian households tracked the proceedings live on television. B92 was the most popular source showing five hours of the trial a day even as it was at its mid point. Although Milosevic’s defence tactics would not hold up in court, he was more than successful in pinning the Serbian public against the West, and particularly against the ICTY. People were growing more and more supportive of the former president and becoming increasingly disillusioned with the trial process. During that time, less than 25% of the population felt that Milosevic was being given a fair trial and a minority of the population actually believed in his guilt. International lawyers observed the duality of the trial process – the process actually taking place in court, and the one taking place in the public.

I will hypothesize that thus far the media has negatively affected the Serbian public due to the fact that it has failed to increase popular understanding and broader social awareness of the issues. The media is a powerful tool in agenda-setting and consistently skewed reporting fuel public discontent. The ICTY has made a variety of achievements but it is frequently portrayed in a negative light and the media has an ever-increasing role to play in this. Such misrepresentations prevent the Tribunal from fulfilling some of its key functions.

Part IV
Methodology

In Serbia, internet-based media is not fully developed and people still primarily rely on print and television. I will be looking into online newspapers in the Serbian language to discuss how the Serbian media has portrayed the ICTY and what the underlying implications are. In choosing my sources, I decided to rely most heavily on the most popular print/online media – B92, Kurir and Politika. The political leanings of these newspapers vary between left wing democratic and right wing radical. Assessing both inclinations allows in-depth analysis of the link between the ICTY’s work and the media’s portrayal thereof. The central sources of this paper are articles and publications about the

18 Purvis A., Star Power in Serbia; Slobodan Milosevic’s Performance at his War Crimes Trial has Won Him Increased Popularity at Home, Time, (September 30, 2002)
ICTY. My paper focuses on a period between 2002 and present day. The reason for this is that, recently, we have evidenced the apprehension of the most sought-after individuals from the ex-Yugoslavia conflict, so the volume of sources and importance of reporting on the ICTY’s work is put into the spotlight as never before.

In order to hone into the media treatment of the ICTY it is necessary to see what kind of standard we hold the media to. The threshold between good and bad reporting is very disputable and this standard is subject to varying viewpoints.

As it is difficult to determine whether the Tribunal is functioning at an acceptable level, it is also not an easy task to determine when reporting is distorted. Uncontroversial objectivity does not exist and news outlets will always be tainted by opinion to an extent. I have chosen to discuss news reporting partly because I believe that news media should be held to a minimal criteria of balanced reporting. We have many sources of opinion media that people can access and this can be anything from blogs, Facebook, Twitter, Journals and countless others. The news media should strive to attain some semblance of objectivity. People are interested in what is going on in the world and they can easily pick up an opinion piece if that is their preference. Newspapers abundant with biased observations fail to meet the minimal requirements of balanced reporting. News media should strive to report on facts as much as is feasible so that the public can gain the knowledge that they are seeking. Distorting facts with opinions and sensationalist rhetoric makes news media no different than social media. Providing the public with information that is at least somewhat balanced allows the readers to draw their own conclusions or research more before they do so. As stated before, it is highly unlikely that news can be completely devoid of opinion due to the political tainting that is always present, but some minimal standards must exist. Hannah Arendt’s reporting on the trial of Nazi Adolf Eichmann will, for the purposes of this paper, be considered what the media, and Serbian media in particular, should strive to attain. Although Arendt’s reporting has not been devoid of criticism, the present author considers that it attains the minimal standards of balanced reporting. Rwandan reporting, as will be shown below, is exemplary in this respect as well.
Part V
The Purposes of International Criminal Trials

It is now necessary to delve into the Serbian case. From extensive research of sources as well as physical presence in Belgrade during a ten year period, it has transpired that the ICTY trials are not having the effect that is expected on the Serbian population due to the interference of news media. This interference has taken place in the form of inappropriate translation and distortion of facts. The Serbian media has been employing tactics in order to discredit international criminal trials. There are certain purposes of the trial, whose achievements are dependent on the media. I will set out when the media is integral to the trial function by utilizing some of the most respected scholarly opinions on the matter.

A. Accountability and the Creation of a Historical Record

This report does not seek to examine the general functions of criminal trials, but aims to specifically identify those functions which largely depend on the media for their fulfillment. Lawrence Douglas is an influential scholar for our purposes precisely because he examines those functions of trials that are often targeted by the Serbian media. He asserts that international courts have created historical records, brought high level perpetrators of crimes to account and thus contributed to the expansion of international criminal law. Throughout my paper, I will be discussing the first two of the ICTY functions that Douglas identifies. The reason for this is that the expansion of international criminal law function does not necessitate the media to be fulfilled. Douglas calls the historical accounts function the ‘pedagogical’ value of the trial process. Although the historical accounts created are far from perfect, they do create a record of events which is widely accessible to the public. The Civil War in Serbia led to the breakup of Yugoslavia and this is a key turning point in Serbian history. Crucial facts have been established regarding the crimes committed and a historical record has been made. This record is accessible not only to the victims and families of those who suffered during the War, but are of value to current and future generations in general. Only when the whole story is told can the peace and reconciliation processes begin. This story-telling function of the trial is largely dependent on the methods used to bring the facts to the attention of the public and this is why the media is

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important. As previously stated, the media can target more people than ever before and the work of the ICTY can be accessible to a large part of the world in a matter of seconds.

Lawrence also identifies accountability as a key function of trials. Although international criminal courts lack the requisite force for apprehending suspects, and are limited to search warrants, they have the vital function of putting on trial those responsible for mass atrocities. Member State cooperation is a key ingredient to the ICTY’s process because it does not have its own police force. After suspects are arrested, the ICTY carries out the prosecution of those on trial. Failure of the international community to prosecute suspects would most likely lead to complete impunity. Ensuring accountability is valuable not only because of the need to punish those guilty of breaching international law but because of the need to acknowledge the lives lost and damage caused to society. Bringing the accused to account on the international arena is also of symbolic value because it denounces the grave crimes committed against the international community as a whole. An influential scholar, Mark Drumbl also emphasises the importance of bringing high level perpetrators to account for the breaches of international criminal law. He believes that accountability can only be achieved if the communities most affected have greater involvement in the processes. Nevertheless, Drumbl questions whether most victims of crimes are satisfied with bringing about individual responsibility through trials rather than, for example, community forums. Fulfilling the accountability function has always been crucial for the ICTY, although scholars differ on how accountability is best achieved.

B. Reconciliation

Stover and Weinstein assert that justice encompasses much more than the criminal trial itself. As Gordon Hewart stated in the famous 1924 case of Rex v Sussex Justices, ex parte McCarthy: ‘Justice must not only be done; it must also be seen to be done’. This means that not only must justice objectively be achieved, but the public must subjectively feel that justice has been done. In order to bring about reconciliation, a criminal trial is just one step on the way. Bringing suspects to court and going through with the prosecutions does not guarantee that reconciliation will ensue. Conducting fair


\[\text{25 Stover E. and Weinstein M., My Neighbour, My Enemy: Justice and Community in the Aftermath of Mass Atrocity (Cambridge: Cambridge University Press, 2004)}

\[\text{26 R v Sussex Justices, ex parte McCarthy [1924] 1 KB 256} \]
trials, bringing the guilty to account, educating the public on the processes, and creating a historical record, all bring about reconciliation. As will be seen below, the Serbian media have slowed down reconciliation among all those who the Civil War has touched due to their highly skewed reporting.

Although media reporting is an important impediment to truth telling and reconciliation, there are other avenues through which both of these important functions of the international criminal courts are threatened. For example, admissions of guilt have a very important role to play with regard to the establishment of the facts, but even this can be problematic. The information provided by those who admit guilt is crucial for the courts to corroborate their evidence. Establishing the historical facts will aid both the victims and society in the process of reconciliation. It is argued that instead of having a trial that focuses on the narrow issue of guilt or innocence as we do now, trials should “expose the larger picture”. Rather than looking at the core issue of liability, the broader context of the events could be brought to light in order to promote reconciliation. As argued by Justice Arbour, guilty are inadequate because they prevent the public from engaging in the process. International trials need to be different than domestic trials because of the unique qualities of the crimes committed and effect that they had. In order for the public to be aware of these facts courts must have mechanisms to reach out to the international community. This is where the media can have an important role play. Even when a guilty plea is accepted by the court, the media should make sure to transmit as much information as possible about the case to the public. Reconciliation can only be achieved through collaboration between international courts, media outlets, as well as other actors.

Drumbl believes that international criminal law should overall have a wider function than it does now. Reconciliation is only possible when we look at the “whole picture”. We should not only be “scratching the surface” and blaming a few individuals for egregious crimes. Only doing so will really lead to a just result.

C. Impartiality

Antonio Cassese is one of the most vocal supporters of international criminal tribunals among the international community. He argues that international tribunals are more apt than domestic courts in


28 Arbour L., War Crimes and the Culture of Peace (Toronto: University of Toronto Press, 2002)

29 Drumbl, supra 26
implementing international laws\textsuperscript{30}. International courts are an effective mechanism of bringing to justice those who have breached international law, because of the general unwillingness of states to do so\textsuperscript{31}. Political motivations are one reason why effective prosecutions have not taken place domestically, thus warranting an international mechanism. Justice will be free of vengeful passions if undertaken internationally\textsuperscript{32}. Furthermore, international trials avoid amnesties which would make a mockery out of all the suffering that has taken place. The rationale for amnesties is most often reconciliation, but it is not very clear how forgiving and forgetting the wrongs committed can bring any kind of peace to the populations most affected. Discontent would be more likely to escalate if impunity were the norm. Bringing culprits to justice instills a sense of responsibility in perpetrators of crime as well as producing a historical record of events. It is vital to target system criminality, in other words, the highest authority of a certain country, rather than only individual criminality. Domestic courts are very unlikely to target the most powerful people in a country to expose the regime as a whole. Targeting the high-level suspects has to this day been a problem for Serbia. The War Crimes Chamber, which will be discussed in more detail below, has been set up to deal with international criminal law breaches domestically. So far its track record of success has been disappointing. Not only have very few prosecutions taken place, but those most responsible for war crimes have not been targeted\textsuperscript{33}. Furthermore, those who have been convicted, have received very lenient sentences\textsuperscript{34}. For this reason, it is arguable that international justice is better equipped to handle such prosecutions. It is important to note that even though a supporter of international tribunals, Cassese does identify flaws of the processes\textsuperscript{35}.

\textsuperscript{30} Cassese A., International Criminal Justice: Is it Really so Needed in the Present World Community?, London School of Economics Human Rights Articles and Transcripts, online: LSE <www2.lse.ac.uk/humanRights/articlesAndTranscripts/Casselse.doc>

\textsuperscript{31} Ibid


\textsuperscript{33} Human Rights in Serbia, Supra 35

\textsuperscript{34} Ibid

\textsuperscript{35} One such criticism is directed at the length of the processes.
Part VI
Serbian Media & the Portrayal of the ICTY

A. Failure of the Media in Providing the Full Context of Trials

Now it is vital to explore whether the media has helped trials perform the above-mentioned functions. In assessing this, the first media function that I will discuss is the provision of the full context of trials. I will come to the conclusion that this context is more often than not missing from reporting. One of the most famous Serbian news channels - B92 - has long been considered the bastion of democratic speech and pro-Western rhetoric 36. This was particularly the case during the rule of President Milosevic, when B92 was a bright example of independent and truthful reporting on the events of the Civil War. Nevertheless, such sentiments are fast declining 37. Instead of reporting on the crimes committed and sentences obtained by those convicted of mass atrocities, B92 seems to be focused more on criticizing the ICTY for alleged bias, thus directly influencing the performance of the key ICTY functions. Punishing the guilty, ensuring a fair trial, promoting truth-telling and reconciliation – all these functions are jeopardized when the tribunal faces allegations of bias. Given the sheer volume of people that can be reached by the media, its influence and the vulnerability of the population targeted, such portrayals of the ICTY are very damaging to its proper functioning and ultimate achievement of purposes. A particular allegation of bias is frequently directed at the fact that Croatian officials are targeted much less than Serbs. These allegations impact greatly on the public’s perception of the entire process. The ICTY’s achievements are severely hampered by such media treatment and this will surely have an effect on the ground. Although this report will not address the actual effects of the media reporting, it is at least arguable that some negative consequences will ensue. In a poll that was taken only days before Mladic’s arrest, 78% of participants said that they would not reveal information about the General’s location regardless of the monetary award 38. 40% considered him to be a war hero, while 51% emphatically opposed the idea of his arrest. Media can partly be to blame for inflaming national opinion to such an extent.

It is arguable that the fear of bias is not completely unfounded. It is a fact that Serbs have been targeted more than Croats, Albanians and Bosnians (94 Serbs; 29 Croats; 9 Albanians; 9 Bosnians). Nevertheless, it is a mistake to look at the numbers in isolation in order to determine whether a certain demographic is being unfairly targeted, and it is vital to explore the countless possible explanations of the phenomenon. By failing to consider these other options and present them to the public, the ICTY’s functions are being improperly represented. Giving context to an event or a claim would allow the reader to form their own value judgment. Again, it is by no means argued that a complete and unbiased report can be made, only that a minimal contextual framework should ideally be presented. Among others, the explanation could be that more crimes were actually committed by the Serbs. Also, can we really say that the people targeted were innocent? Even Luis Moreno Ocampo, the International Criminal Court (hereafter: ICC) Prosecutor, has stated that there is an element of selectivity with regard to Security Council referrals to the ICC, but that it is better to resolve some of the pending issues than none. Here it can also be stated that even if we do acknowledge some element of selectivity, the people presented to the tribunal are, in most cases, by no means innocent. In theory, it is always possible to add more indictments and issue more search warrants, but the ICTY was meant to be temporary and have an end date. It would be the task of domestic courts to prosecute the remainder of the suspects.

At one point the ICTY was criticized by B92 for excluding Franjo Tudjman, the ex-President of Croatia at the time of the Civil War, from the charge documents relating to Operation Oluja (trans: Operation Storm) when hundreds of Serbs were killed and a reported 200,000-250,000 were exiled. The explanation put forward was that Tudjman had died before this could be done. Representatives of the court maintained that the process could have been more efficient if all sides to the dispute had cooperated. Instead, nobody was taking responsibility and was pointing fingers at one another. Allegations of partial treatment towards a certain group severely damage the public’s perception of the ICTY, and providing context to the claims would put these criticisms in question.

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39 ICTY, supra 10

40 Prosecutor Luis Moreno Ocampo Speech delivered at the University of Toronto on December 19 November 2011 [unpublished]

Right-wing media frames the work of the ICTY in a light that undermines the need for the public to obtain a reliable account of the events and those responsible.\textsuperscript{42} It seems that pressure is exerted on the media mainly through right-wing organizations, tycoons and politicians.\textsuperscript{43} Evidence of threats and violence against the media is frequent so it is “not surprising that media in Serbia has become increasingly nationalist.”\textsuperscript{44} One bright example of misrepresentation and failure to provide context in right-wing media is the discussion in a Serbian newspaper Politika of the release of Veselin Sljivancanin, a former officer of the Yugoslav National Army.\textsuperscript{45} The title of this article is “I will not sue Serbia”, and Sljivancanin states that he will not sue Serbia for extraditing him to the Hague for crimes of which he has been exonerated. At face value this man seems innocent of the crimes for which he was charged. Nevertheless, closer examination makes it very clear that the information is misleading. Reading the interview more carefully allows the reader to learn that Sljivancanin was released, but that this was after he had served two thirds of his sentence. What transpires is that a sentence of seventeen years was reduced to seven years because some of the evidence against him was dropped. This man is not innocent as the article would lead readers to believe. This is not just a matter of a sensationalist title, but of an article which is written in a way as to induce the reader into believing that the ICTY put an innocent, or largely innocent, man in jail. Again, the focus is drawn away from the atrocities that were committed and the article aims to mislead the reader by framing the issue in a false light.

B. Ratio of Factual Information to Allegations Made with the Sole Purpose of Discrediting the Tribunal

The second function that media should have is transmitting factual information to the public. Serbian media has not been successful in reporting factual information related to the ICTY and its processes. Instead it tends to raise allegations with the aim of discrediting the Tribunal in the eyes of the public. Serbian media goes even further than saying that Serbian officials are unfairly targeted for prosecution and often stipulates that those already serving sentences in the Hague are mistreated. This


\textsuperscript{43} \textit{Human Rights in Serbia}, Civil Rights Defenders (September 1 2010), online: Civil Rights Defenders <http://www.civilrightsdefenders.org/country-reports/human-rights-in-serbia/> [Human Rights in Serbia]

\textsuperscript{44} Ibid

\textsuperscript{45} Sljivancanin: Necu da Tuzim Srbiju (trans: Sljivcanin: I will Not Sue Serbia), Politika Online (July 17 2011), online: Politika <http://www.politika.rs/rubrike/Hronika/Sljivcanin-Necu-da-tuzim-Srbiju.lt.html> [Sljivcanin]
kind of sensationalist reporting was evidenced in explaining the president of the Serbian Radical Party, Vojislav Seselj’s, poor health. Several articles, both nationalist and democratic focus on the defence’s allegations that Seselj is subject to “systematic maltreatment which not only detrimentally affects his health, but is manifested through curtailing his defence as well as his procedural and human rights”46. Seselj’s lawyer Nemanja Sarovic maintained that he as well as the other attorneys were denied communication with their client and that Seselj’s freedom of movement in prison was denied. He also held a gathering at the Belgrade Arena in support of the indictee. Problematically, Sarovic’s allegations seem to conflict with other indictee’s statements about the lawful and procedurally correct behaviour of prison officials. Former participant in the Vukovar massacre, Sljivancanin, stated that if rules are complied with by the prisoners, they will not receive as much as a menacing look, let alone anything else47. He further contends that the rules are ‘strict, but fair and equal for all, whether the prisoner is a president, general or regular soldier’. There seems to be no logical explanation as to why one Serbian prisoner would be treated differently than another, unless he himself does not comply with the proscribed rules and regulations. Exposure to these sources of information reinforces the perception of bias on the part of the ICTY, thus jeopardizing its crucial functions.

Extremist media goes even further in distorting the functions of the ICTY by focusing on allegations made by sympathizers of indictees, about the alleged plan of ICTY officials to kill them, as has already been mentioned above. This was a very popular topic while former President Milosevic was on trial and several theories exist nowadays about how he was poisoned before his trial came to an end, although no such facts were actually established. Autopsy results found no traces of poison and established that death was caused by a ‘myocardial infarction’48. Toxicology reports soon confirmed the initial finding49. Similar stories are heard with regard to Vojislav Seselj. The nationalist newspaper Danas reported the Vice-President of the Serbian Radical Party saying that, given the lack


47 Sljivancanin, supra 37

48 *Preliminary Autopsy Results of Slobodan Milosevic*, Press release of the ICTY (March 12 2006), online: ICTY <http://www.icty.org/sid/8792/en>

49 *Update from the President on the Death of Slobodan Milosevic*, Press release of the ICTY (March 17 2006), online: ICTY <http://www.icty.org/sid/8781/en>
of evidence against Seselj, the ICTY officials have decided to kill him\(^5^0\). The newspaper Politika, known for its nationalist reporting, published an article which enumerated the frequent health problems which arose with Serbs in the Hague. It stated that, even though the evidence was inconclusive, the Tribunal failed to provide proper medical treatment to the prisoners\(^5^1\). The fact that no non-Serbian indictees have died to this day is given as evidence to support this line of argument.

Even when Croatian army officials were indicted by the ICTY, the Serbian pro-Western media found a way to shift the focus from the importance of the indictment and what it meant for society towards a critique of the transferral of the trial to Croatia\(^5^2\). This masks the importance of the ICTY and its strict regulation of the process. The Tribunal has always maintained that, even when such transferrals are made, the highest international standard will be applied\(^5^3\). The mandate of international tribunals is to prosecute only the top offenders, while leaving less serious indictees to national courts. This is in part due to the limited funding available from States. Instead of a priori portraying such a transferral of jurisdiction as leniency towards the “opponent” state, it is necessary to see it an important step in transitional justice. The public is prevented from learning about the principles of due process that the ICTY consistently upholds and the insistence on targeting only those most responsible for atrocities committed during the War – what they see is that Croatian officials are given a “free pass” by being sent to their countries.

C. Failure to Issue Detailed Reports

More often than not details of indictments and the progress of proceedings at the ICTY are not divulged to the public. The amount of detail often depends on who the subject of the media is at the time. At the time of Goran Hadzic’s arrest, the focus of the reporting was more on the actual crimes committed and background, rather than extraneous details unrelated to the crimes themselves. Hadzic was the former president of the Republic of Serbian Krajina. He was accused of crimes against

\(^{50}\) *Seselj: Cilj Politicko Unistenje Naprednjaka* (trans: Seselj: The Goal is the Destruction of the Political Progressives), Danas (Feb 19 2012), online: Danas
\(<http://www.danas.rs/danasrs/politika/seselj_cilj_politicko_unisenje_naprednjaka.56.html?news_id=233889>

\(^{51}\) Carnic D., *Haski Beli Mantil* (trans: The Hague’s White Coat), Politika (June 12 2011), online: Politika
\(<http://www.politika.rs/rubrike/Hronika/Haski-beli-mantili.lt.html>

\(^{52}\) *Serbian Media Even Criticised the Indictment Against Norac*, View from the Hague (June 2004), online: ICTY <http://www.icty.org/x/file/Outreach/view_from_hague/balkan_040609_en.pdf>

humanity and of violations of the laws and customs of war. He was indicted on fourteen counts including deportation, forced labour of detainees, extermination or murder of Croat and non-Serb civilians, and torture. The arrest was portrayed in a much more impartial light and was not publicized to the extent that Karadzic and Mladic’s arrests were. In B92 reporting on the matter, information was given about how Hadzic was caught, who he had contacted while in hiding, how he managed to keep hidden and where, his possessions at the time of arrest, as well as the procedure undertaken by police upon his arrest before the extradition to the Hague\(^4\). When the arrest of Ratko Mladic took place, the right-wing newspaper Politika released an article explaining the circumstances under which this took place\(^5\). These circumstances are explained in a substantial amount of detail – the author speaks of the new identity Mladic had created and emphasizes throughout the article that Mladic’s health was deteriorating. At two points in the article the author stated that Mladic had visibly aged. Although these details may be of interest to the public, the reporting makes no mention of the crimes that Mladic is accused of or anything about the Hague process that he plays a key role in. This reporting is precisely the kind that should be avoided. As will be discussed below, there is a tendency to focus on irrelevant details about personalities and lifestyles of those accused as opposed to their role in the ICTY’s process. Such reporting prevents the public from learning vital details about the indictments and this jeopardizes the tribunal’s fulfillment of its purposes.

When the arrest took place, the right-wing newspaper Kurir similarly released an article where the central theme was President Tadic’s announcement of the arrest to the public\(^6\). Again, the details of the indictment and process against the accused were missing. The article spoke of President Tadic’s relief that such a difficult mission had been accomplished and that Serbia was able to improve its credibility before the international arena. Although the public needs to be aware of the reaction of the President, there seem to be far more important issues that the media fails to inform them of. The public would have benefited from background information about the suspect and why he was sought by the international community in the first place. Avoiding these crucial issues puts the ICTY and the Serbian population at a significant disadvantage and delays reconciliation.

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\(^4\) Hadzic Krenuo po Novac od Jatuka (Hadzic Left to Collect Money from Contributors), B92 (July 20 2011) online: B92 < http://www.b92.net/info/vesti/index.php?yyyy=2011&mm=07&dd=20&nav_category=64&nav_id=526596>

\(^5\) Ratko Mladic Uhapsen (trans: Ratko Mladic Arrested), Politika (May 26 2011), online: < http://www.politika.rs/rubrike/tema-dana/Ratko-Mladic-uhapsen.it.html>

\(^6\) Uhapsen Ratko Mladic (trans: Ratko Mladic Arrested), Kurir (May 26 2011), online: < http://www.kurir-info.rs/uhapsen-ratko-mladic-clanak-90556>
D. Ratio of the Negative Versus the Positive

Whether the media chooses to discuss the ICTY in a positive or a negative light largely depends on the topic of discussion. Media reports are more often than not tainted with negative commentary about the Tribunal. There is a tendency for news reports to include views and opinions of politicians who reject the legitimacy of the tribunal. The discussions on Hadzic tend to lack this commentary. Reports on ICTY indictees are usually tainted with such commentary, but the more “marginal” indictees are ascribed lesser importance. Perhaps the explanation is that Mladic and Karadzic were seen as war heroes, symbols of national pride, and this is why the media portrayed everything related to them in a biased and misrepresentative way. The media treatment of the ICTY in relation to Hadzic can be seen in a more positive light. Some semblance of balanced reporting is evident and the Tribunal’s functions are able to reach the public. Nevertheless, this kind of reporting is more typical for those indictees who generate lesser public interest. The negative treatment of the ICTY is at its peak when figures such as Mladic and Karadzic are discussed. Mladic was deemed by the President of the Serbian Progressive Party to be a “tragic figure and good Serbian soldier” and this was reiterated in several newspapers. It is interesting to see that the reporting of negative opinions largely prevails over positive opinions of the tribunal. There seems to be a similar pattern evident in other ex-Yugoslavia countries such as Croatia. Some indictees are considered to be war heroes and great patriots of their respective countries and the process against them is subject to inflammatory critiques by the media, and subsequently by the public itself. The right-wing newspaper Kurir published an article quoting Seselj as saying that the process against him was inadequate due to the poor education of his opponents, sub-par lawyers and their lack of moral scruples. He adds that this

57 Court Says Hadzic Fit to be Extradited (July 20 2011) online: B92 <http://www.b92.net/eng/news/crimes-article.php?yyyy=2011&mm=07&dd=20&nav_id=75542>
62 Seselj: I Moj Grob ce se Boriti Protiv Haga (trans: Even When I am in my Grave, I Will Fight the Hague), Kurir (March 22 2012), online: Kurir <http://www.kurir-info.rs/seselj-i-moj-grob-ce-se-boriti-protiv-haga-clanak-154494>
lead to an unfair trial against him. Seselj is also quoted as saying that no one is a match for him due to his intellectual and moral superiority. He accused the Tribunal of leading a political and psychological war against him. The whole article relays Seselj’s negative views of the ICTY and its process. No mention is made of why he was in the Hague, or of anything else that is not a direct view or direct quote of Seselj. This kind of reporting has the potential for negatively influencing an already vulnerable public. Reading articles such as this inflames public opinion and, problematically, this is the kind of reporting that they are most often exposed to.

From the evidence it is clear that the parties to the Ex-Yugoslavia conflict only seem to accept their own versions of the truth. Due to the glorification of those on trial or those already convicted, it is very difficult to promote reconciliation through taking responsibility. Serge Brammertz, Prosecutor of the ICTY since 2007, acknowledged the problem of those convicted being taken back to their home countries by government airplanes and received like heroes\textsuperscript{63}.

E. What is Taking up the Most Space in Print?

i. Relaying Information about the Personal Lives of Those on Trial as Opposed to Their Link to the ICTY

When we look at the media treatment of the ICTY it is vital to ask ourselves what the most dominant themes in print are. Research has shown that relaying information about personal lives of those on trial prevails over details of their link to the ICTY. Kurir published an article called ‘WikiLeaks: Milosevic died craving wine and his wife’, where the last days of the former President were described in a very romantic and heart wrenching way\textsuperscript{64}. The article describes in detail Milosevic’s loving relationship with his wife, who supported him while he was in the Hague. This kind of journalism distracts readers from the purposes of the ICTY and, instead, romanticizes and invokes pity for the defendants. Another bright example of Kurir’s reporting was an article written about how officials of the Hague blackmailed prisoners by offering freedom or reduced sentences in exchange for money\textsuperscript{65}. Supposedly, those who provide $1 million to the ICTY officials are given preferential treatment. This

\textsuperscript{63} Interview with Serge Brammertz, Prosecutor of the International Tribunal for the former Yugoslavia, UN News Centre (June 9 2011), online: UN <http://www.un.org/apps/news/newsmakers.asp?NewsID=33>


\textsuperscript{65} Mafija u Hagu (trans: The Hague Mafia), Kurir (June 17 2008), online: Kurir < http://www.kurir-info.rs/mafija-u-hagu-clanak-23507>
sort of outrageous reporting is likely to produce anti-Hague sentiment among an already vulnerable population.

An overwhelming volume of information was published when Radovan Karadzic was arrested. Nevertheless, the central topics were not those relevant to the ICTY. Karadzic’s life in hiding generated substantial media attention and this was subsequently relayed to the public. Stories of his healing practices flooded the Serbian media66. One particular article speaks in great detail about Karadzic’s mentor who prepared him for his teaching career67. Under a new identity and disheveled appearance he taught healing practices all over Serbia. The article speaks of Karadzic’s active participation in public life. Furthermore, it mentions his romantic life with a woman he met while in hiding. Another article gives an in-depth account of Karadzic’s every-day routines68. People who he frequently spoke to were interviewed. They were reported as saying how he had nice things to say about everyone, that he knew how to console those with problems, and details were even given as to what kind of food he would buy regularly. This particular article had one small paragraph about the crimes for which Karadzic was charged. This paragraph was one of the last in the article itself. While the personal information that predominates can be seen as interesting, it is not of crucial significance to the Serbian public, so it is unclear why so much attention is dedicated to these stories. The Serbian public will not benefit from knowing these intricate details, yet they are often presented to them. The public would benefit more from finding out why the accused are detained and what kind of process they will be subjected to. It would be favourable if the majority of the information were relevant to the ICTY functions and only a small portion was dedicated to the personal information.

It is disconcerting when a media outlet publishes an article called “Mladic and Karadzic are Playing Chess in the Hague”69. This short account talks about how the two indictees were great friends during the war and how they enjoyed playing chess together. After having been denied communication, they were finally able to “rekindle an old bond”70. This article was written with such nostalgia and sympathy for the accused, and absolutely no mention of the horrific events for which they are on trial.

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66 Uveo sam Radovana u Svet Bioenergije (trans: I Introduced Radovan to the World of Bioenergy), Blic (July 25 2008), online: <http://www.blic.rs/Vesti/Tema-Dana/50542/Uveo-sam-Radovana-u-svet-bioenergije>
67 Ibid
70 Ibid
When reading such articles it is not enough to say that they do not meet the minimal criteria of balanced reporting. They are a complete and total disregard of the massive breaches of international law that took the lives of hundreds of thousands of people.

Sensationalist, off-topic reporting, which more often than not sympathises with those accused of war crimes provides a great disservice to the nations which have been struck by tragedy. Not only is the public prevented from knowing the truth, but ignorance and hatred are instilled even deeper among the populations. Truth telling provides the chance for reconciliation and the ability to look forward. From the present author’s experience living in Serbia, the society is unfortunately very far from such reconciliation and forward-looking attitude. The reason why so many Serbs are trapped in the past is because they are consistently being fed nationalist propaganda. At this rate it is questionable whether the country will be moving on any time soon.

ii. Framing the ICTY’s Work within the Context of International Politics, and More Precisely, EU Integration.

What has been taking up most of the space in print lately, has been the relationship between cooperation with the ICTY and EU membership. Features of Serbian media reporting such as those described in A-E(i), account for a large percentage of reporting linking international trials to national politics. But what is more typical, and particularly popular with left-wing reporting, is framing the issues in the context of international politics. This completely ignores the underlying crimes involved and lessons which need to be learned, thus jeopardizing the functions of the ICTY.\(^{71}\) Journalist Larisa Rankovic conducted a study of Serbian press in 2002.\(^{72}\) The conclusion derived from studying 848 published articles within one month, was that substantive issues of the trials were omitted. The emphasis was placed not on the criminal acts of those accused and lessons of responsibility which needed to be learned, but on the benefits that were to be gained from compliance with the ICTY. The only time when the ICTY is mentioned is in the context of bringing Serbia closer to the EU. The more Serbia complies with the demands of the EU, one of which is cooperation with the Hague, the more expedient the process towards EU membership will be.


Countless articles have been published on the topic, especially by left-wing media like B92. The arrest and extradition of Ratko Mladic to the Hague were portrayed as the final chapter in Serbia’s compliance with the ICTY’s demands. Serbia was described as having done everything in its power to locate the suspect and played an important role in bringing him to justice. There is a large volume of material on the international community’s praise of Serbian efforts. Serbia is seen as “completely meeting the expectations with regard to the access to witnesses and documents linked to Mladic and Hadzic”\textsuperscript{73}. While the cooperation is a positive development, it must be noted that there is no discussion of the moral values of the arrests or of the fact that justice can finally be done\textsuperscript{74}. Serbia’s role in the arrests is framed as complying with the requests of the international community, and no mention is made of the wider meaning that the arrests have\textsuperscript{75}. EU integration is an important step for Serbia, but the arrests and prosecutions of the most notorious figures of the Civil War should close this grim chapter of history for the Balkans. The newspapers should be focusing more on bringing closure to the victims and all those affected by delving into the real meaning that these arrests have for Serbia. The arrests and prosecutions acknowledge the wrongs committed during the Civil War as well as the loss of almost 200,000 lives\textsuperscript{76}. The emphasis that should be made is that it is time to take responsibility for the wrongs committed. If this is eventually done, the ICTY will have successfully served its purposes. Masking the true meaning behind the arrests prevents Serbian society from moving on as well as delaying peace in the region. The first thing that comes to mind when the final arrests are made should not be that this will enable access to the EU, because moral culpability is completely lacking. Reiterating that the arrests entail a strategic change in Serbia’s relationship with the EU and the international community in general diminishes the primary rationale behind the arrests\textsuperscript{77}.

Using the ICTY as a vehicle towards EU integration completely displaces the importance of international criminal trials for grave violations of international law. When interviewed, young people

\textsuperscript{73} Godisnjica Hapsenja Ratka Mladica (One Year Anniversary of Ratko Mladic’s Arrest) B92 (May 26 2012), online: B92
\texttt{<http://www.b92.net/info/vesti/index.php?yyyy=2012&mm=05&dd=26&nav_category=64&nav_id=612884>}
\textsuperscript{74} Ibid
\textsuperscript{76} ICTY, supra 10
in Belgrade said that they preferred the Institute for War and Peace Reporting on Mladic’s arrest due to the focus of Serbian media on EU integration and the focus of right-wing media on portraying the war criminals as heroes\textsuperscript{78}. It is comforting to see that at least some parts of the population are seeking information through more reliable media outlets.

Part VII

Is There Truth to the Criticisms Put Forward by the Media?

The Perspectives of Prominent International Law Scholars and Lawyers

Although critical of the media treatment of the ICTY, this paper by no means argues that the process of the ICTY is without its faults. As will be shown below, some international law scholars view the international justice system as a positive development, thus highlighting its achievements. Other scholars are more apprehensive. While they do not consider the developments as something negative, they see substantial room for improvement. One of the main purposes of an international criminal trial is to have clear laws and accountability mechanisms to guarantee the fairness of procedures. Mirjan Damaska, Sterling Professor Emeritus of Law and Professorial Lecturer in Law, expounds that the objectives of the international criminal justice system are so broad that it is impossible to examine the progress that has taken place thus far\textsuperscript{79}. He concludes that if an overarching goal were to exist, it cannot be identified due to the lack of clarity in the system. While he is apprehensive about the current system, Damaska does not reject international criminal justice altogether and believes that some progress has been made\textsuperscript{80}. The media, on the other hand, sees a largely flawed system which should not exist. It is acknowledged that international courts rely greatly on the political will of states and do not have a thoroughly thought out and set up accountability mechanism. Nevertheless, rejecting the system as a whole, without acknowledging the achievements that have been made, seems problematic.

The international court system has borrowed laws from a large number of jurisdictions and the system is susceptible to critiques just like any other. It is easy to imagine that the media would have countless avenues through which to critique the work of the tribunal solely due to the relatively new and complex nature of its operation. Instead of focusing on the delicate nature of this new system and the


\textsuperscript{79} Damaska M. R., \textit{What is the Point of International Criminal Justice}, Faculty Scholarship Series Paper 1573 (2008), online: eYLS <http://digitalcommons.law.yale.edu/fss_papers/1573>

\textsuperscript{80} Damaska M. R., \textit{The International Criminal Court: Between Aspiration and Achievement}, Faculty Scholarship Series. Paper 1572 (2009), online: eYLS <http://digitalcommons.law.yale.edu/fss_papers/1572>
positive prospects for improvement, the media have been hasty in attacking the existing accountability mechanisms and fairness of procedures. The public is lacking the context within which the ICTY has been developed.

International tribunals are a relatively new development and their work is constantly being improved, so it should not come as a surprise that judges would need to use their discretionary powers to a much greater degree, as opposed to when the legal system has been functioning for centuries. Furthermore, the officials working in the ICTY were faced with an overwhelming volume of tasks and large scale projects that were foreign to them. The ICTY was built from its foundation less than two decades ago when there was no procedure, no staff and no precedent to be guided by. International and national laws and regulations were combined into a unique and complex system of laws, both common law and civil. A former Judge of the ICTY, Patricia Wald, emphasized that judges coming from civil law jurisdictions tended to adopt inquisitorial methods while common law judges were used to adversarial methods. Inquisitorial methods give judges much wider discretion to question and become involved in the trial itself rather than remaining an impartial adjudicator, as is more common in adjudicative systems. Another major problem outlined was the diversity of languages that were used to communicate. It made the complex tasks of the judiciary that much more problematic due to this lack of uniformity and persistent need to translate.

The judicial powers of interpreting legislation have raised concerns by those who believe that abuse is likely. Nevertheless, even national courts engage in powers of interpretation when several interpretations of legislation are possible, and this is routine procedure. In the first ever ICTY case - Prosecutor v Tadic - there was dispute as to whether civil law or common law procedures should apply with regard to hearsay evidence and if it should be included. The court developed its own sui generis approach which combined the two methods, thus ensuring fairness on both ends of the spectrum. This is an instance of judicial law-making, influenced by non-binding national laws, which seems perfectly in accordance with the task that was given to the ICTY. Critics argued that excessive

82 Prosecutor v Dusko Tadic (Appeal Judgment) ICTY-94-1 (15 July 1999), online: ICTY <http://www.icty.org/x/cases/tadic/acjug/en/tad-aj990715e.pdf> – The Accused was charged with 41 individual counts of persecution, murder, beatings and other offences committed in the Prijedor district of the Republic of Bosnia and Herzegovina. He was found to be guilty on 11 counts and not guilty on 20 counts – The Accused was charged with 41 individual counts of persecution, murder, beatings and other offences committed in the Prijedor district of the Republic of Bosnia and Herzegovina. He was found to be guilty on 11 counts and not guilty on 20 counts
law-making was common for the Court and it needed to be controlled. One such example was that of the ‘joint criminal enterprise’ doctrine that was used to convict Croatian Generals Ante Gotovina and Mladen Markac. It was argued that this doctrine created excessive liability and took the jurisdiction of the ICTY too far as there was no mention of it in the Statute. But again, ‘law making’ is within the purview of the judiciary due to the fact that the Tribunal was such a novel enterprise to begin with. What is meant by ‘international rules’ or ‘laws’ is very difficult to define even more than 20 years after the ICTY’s creation and this is where the judiciary’s powers of interpretation are vital.

In an interview, a former judge, president and vocal supporter of the ICTY, Antonio Cassese, shed light on just how difficult a task it was to set up the tribunal from the ground up with no precedents to be guided by. He explained that the Nuremberg Tribunal was a completely different enterprise, where budgetary and procedural problems did not exist, as the Tribunal was funded and set up by the victors of WWII (mainly America). The rules of procedure for the ICTY were put together by the judges themselves and this complex task took more than 3 months and involved 30 subsequent revisions. Those believing that the Tribunal would work were significantly outnumbered by those who believed that it would be a losing battle, thus lack of funding was always a large concern. Regardless of Cassese’s pro-international criminal tribunal stance, he was not unaware of the difficulties that faced them. These difficulties included a lack of state cooperation, financial difficulties as well as other impediments to the realization of the Tribunal’s full potential.

Not all scholars share the same optimism about international criminal tribunals, but they do not quite endorse the media’s perspective either. One of the most famous portrayals of an anti-international criminal court view is that expounded by scholar Jeremy Rabkin. Nevertheless, his concerns cannot be equated to those propounded in the Serbian media. Jeremy Rabkin considers global justice a “dream” that cannot be attained. Instead, he proposes the independent pursuance of justice by domestic regimes. Rabkin says that the international community cannot provide an effective response to war-torn societies because of a lack of enforcement mechanisms. He believes that the countries

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85Ibid

86Stuart H.V. & Simons M., The Prosecutor and the Judge: Benjamin Ferencz and Antonio Cassese – Interviews and Writings, (Amsterdam: Amsterdam University Press, 2009)


88Rabkin J., “Global Criminal Justice: An Idea Whose Time Has Passed” (2005), 38 Cornell Int’l L.J 753
themselves are best placed, considering their involvement in the conflict, to resolve the issues to the best of their abilities. Tribunals are too far removed from the conflict to be effective in its resolution. Justice should not always dominate over amnesty and pardon. Domestic trials would ensure stability and not justice at all costs. Domestic prosecutors are better placed to understand how to ameliorate the country’s situation as a whole, while international prosecutors do not have the necessary connection to the country. Rabkin asserts that “justice from bystanders is not an improvement over victor’s justice”, and the moral claim of these bystanders is not enough to give them such wide jurisdiction. He claims that victims need those who will speak in the name of the effected society, and not outsiders who have no links to the events that took place or any incentive to bring justice to the affected populations. As we can see, even sharp critiques from prominent scholars are not quite on the same page as the Serbian media. The media tends to emphasize bias and persists in attacking the credibility of the ICTY using often controversial reporting, while Rabkin critically analyses why domestic prosecutions would be preferred. After reading Rabkin’s work, one can agree with his stance or disagree, but at least there will be enough overall information about the Tribunal and its functions for one to draw one’s own conclusion. Serbian media tend to, on the whole, lack critical analysis and offer very little relevant and reliable information that can be assessed by the public. Nevertheless, it is clear that there are prominent scholars who do not see international tribunals as a positive development, so there may be some truth to the media’s criticism.

Having given views of prominent scholars and lawyers on the topic, it is clear that there are those who, at least partially, side with the media opinions. The account would not be complete if we did not discuss defence attorneys and their direct dealings with the ICTY’s criminal justice system. They represent those exact people who are at the epicentre of the debate, so their opinions about whether the objectives of international criminal courts are being achieved carry considerable weight. A comprehensive study was conducted by Professor Jenia Turner, who used a sample of international criminal lawyers from several international courts\(^89\). The sample for the ICTY consisted of 26 interviewees. In order to ensure the reliability of the results, the author cross-checked the opinions given in interviews with the practices and backgrounds of those particular lawyers as well as other academic literature they were quoted in. One of the main conclusions that was derived from the research was that political tactics did not factor into the decision to represent the particular clients, rather the inclinations stemmed from the willingness to undertake a challenging work assignment. One of the determining factors in examining whether defence lawyers thought of the process as

predominantly political or adjudicative, were their responses to whether they believed an acquittal was possible for their clients. The majority of interviewees saw this as a distinct possibility. Two of the ICTY lawyers believed that an acquittal was “practically impossible” because of political reasons and another one believed that it was unrealistic unless the rate of acquittals of non-Serbs warranted the acquittal of a Serb. It was concluded that such opinions were more common for high profile cases (i.e. Prosecutor v Slobodan Milosevic) where political inclinations played a greater role. Nevertheless, these negative comments reflected the minority opinion. Although no sample can be truly reliable and confounding variables will always exist, it is interesting to see that the people who defend those charged with war crimes are generally convinced that justice works.

International courts are much more likely to be impartial because the conflict is far away from home. It is arguable that impartiality cannot be guaranteed due to the fact that the ICTY was created pursuant to Chapter VII authority of the Security Council\(^\text{90}\). Critics assert that the prosecutors answer to the Council and are so too far removed from the populations which suffered so they cannot ensure that their interests are taken care of\(^\text{91}\). Nevertheless the Secretary-General affirmed the independent nature of the Tribunal in his report to the Security Council\(^\text{92}\). It was emphasized that the Tribunal’s judicial function would be free of any authority of the Security Council. The reason for creating the Tribunal in such a way was because of expediency – drawing up a Treaty could take years and it is questionable how many countries would sign off. It is especially unlikely that the parties to the conflict would ratify the treaty. As propounded by Cassese, system criminality is very difficult to target domestically because the highest government officials are dealt with. Dealing with individual criminality is not as ambitious a task and could be more appropriately targeted by domestic courts. Countries that have been directly involved in a conflict may have a tainted view of what justice is. This is why justice will be free of vengeful passions if undertaken internationally\(^\text{93}\).


\(^{91}\) Rabkin J., “Global Criminal Justice: An Idea Whose Time Has Passed” (2005), 38 Cornell Int’l L.J. 753


Part VIII
Can More Balanced Reporting be Expected?

It is important to ask ourselves whether it is unrealistic to expect some degree of balance to exist in reporting. Is the Serbian method of reporting standard or can we realistically expect media to do better? It is interesting to see that close scrutiny is given to the underlying crimes when Croatian officials are involved, and significantly less detail is given in the case of Serbian officials. This makes it clear that Serbian media does know how to present a fuller more detailed analysis. When sentences of 24 and 18 years were handed down to Croatian Generals Ante Gotovina and Mladen Markac respectfully, extensive media reports were made on the crimes committed\textsuperscript{94}. The reports stated that the accused had conspired to deport Serbs from the areas surrounding Knin. This was known as Operation Storm. Detailed information was provided as to the step-by-step criminal acts that were committed against the Serbian population, as well as what happened between the indictment and apprehension of the accused. Moreover, there are details regarding the charges of which they were eventually convicted including persecution, deportation, murder, inhumane acts against the Serbian population in that area etc. The account given corresponds to the actual decision\textsuperscript{95} brought down by the ICTY but, unfortunately, the people of Serbia are prevented from hearing the same in-depth account of convicted Serbian offenders. When a Serbian war criminal is brought to justice, very often, a short account, if any, is made of the background of the case. Instead, a very general overview of the conviction is released to the public\textsuperscript{96}. Very little detail is given as to the underlying issues that were involved\textsuperscript{97}. Some reports do not even go as far as mentioning what crimes the individual was convicted of. Instead, they focus from beginning to end, on the alleged bias of the Tribunal. Harsh sentences for Serbs, lack of sensitivity for the illnesses of some of the accused, and selective prosecutions are among the topics that the newspapers go back to\textsuperscript{98}. “It is not logical for such draconian sentences to be given to political and military functionaries of Serbia who did everything constitutionally permitted to protect the integrity and sovereignty of our country”, says Branko Ruzic, member of the Socialist Party of Serbia\textsuperscript{99}. In order to increase the anti-Hague attitude, the opinions

\textsuperscript{94} Gotovina 24 godine, Markac 18 (trans: Gotovina 24 years, Markac 18), B92 (April 15 2011), online: B92 <http://www.b92.net/info/vesti/index.php?yyyy=2011&mm=04&dd=15&nav_category=64&nav_id=506318>

\textsuperscript{95} Gotivina, supra 62

\textsuperscript{96} Danas Presuda za Lovas (trans: Today: Verdict for Lovas Murders), B92 (2012), online: B92 <http://www.b92.net/info/vesti/index.php?yyyy=2012&mm=06&dd=26&nav_category=64&nav_id=621483>

\textsuperscript{97} Perisic Osudjen na 27 Godina (trans: Perisic Sentenced to 27 Godina), B92 (2011), online: B92 <http://www.b92.net/info/vesti/index.php?yyyy=2011&mm=09&dd=06&nav_category=64&nav_id=539876>

\textsuperscript{98} Reakcije u Srbiji na Presude (trans: Reactions to the Judgment in Serbia), B92 (2009), online: <http://www.b92.net/info/vesti/index.php?yyyy=2009&mm=02&dd=26&nav_category=64&nav_id=347164>

\textsuperscript{99} Ibid
and reactions such as this are expounded in detail. The reporting of anti-Hague sentiment instead of the actual indictments does nothing to reinforce the need for taking responsibility and undoing as much as possible the wrongs of the past. It is clear that Serbian media does possess the ability to report in a manner that meets the minimal standards of balanced reporting but they often choose not to do so.

Serbian media has largely failed to bring the ICTY’s purposes to the attention of the public. Skewed reporting directly correlates to the public’s perception that some functions are not being performed properly. This raises the question whether media reports on other tribunals have been just as problematic. It is necessary to delve into this issue in order to see if there is a general trend of misrepresentation or if this is exceptional for some media. In order to do this an evaluation will be made of the successes of Rwandan media in reporting on the International Criminal Tribunal for Rwanda (hereafter: ICTR).

I offer Rwandan and other African media as a comparison to Serbian media on the topic of international criminal tribunals. Both Rwanda and Serbia suffered through a destructive Civil War and ad hoc Tribunals were set up to deal with those accused of committing large-scale atrocities. I have conducted research of newspaper articles from two randomly chosen Rwandan newspapers as well as one African newspaper. The first 20 English articles to mention the ICTR were read and the conclusions are reassuring. When mentioning those on trial or under investigation by the ICTR, sources have shown a detailed analysis of the crimes themselves. Not only are the crimes mentioned, but there is substantial explanation of the background and events. This is very important because the public becomes aware of the circumstances, while simply mentioning that the indictee is charged with “crimes against humanity” is insufficient. No explanations as to what the actual crimes are would make the work of the ICTR far removed from the actual public, which is most interested in seeing justice done. A detailed account is made of the work of the High Court of Rwanda, which is an important step in ensuring transitional justice, one of the key functions of the Tribunal. Not only is it emphasized that compliance with international standards is a top priority for the High Court but, also, the mechanisms of safeguarding due process are examined. Furthermore, detailed mention is


made of the first transfer to the High Court for trial of the suspect Jean Uwinkindi, the Pastor responsible for planning, instigating, ordering and committing acts of genocide. This account included the procedure undertaken as well as the details of the staff involved. The need for cooperation between the ICTR and High Court by sharing information is deemed vital. Such information is key to the process of ensuring justice and eventually reconciliation. Explaining the Tribunal’s closure strategy is another important step in ensuring that the public is aware of the Residual Mechanism that will be put in place when closure occurs.\textsuperscript{102}

Detailed reports are made on the ICTR leadership in order for the public to be well-informed of the process of electing judges as well as for them to have access to a profile of those who would have a vital role in bringing justice.\textsuperscript{103}

In-depth explanations of trial processes and changes that occur due to delays are frequently discussed and this is done in a very balanced manner. Such was the case with the ICTR Appeals Chamber delay in transferring Jean Uwinkindi to have his trial in Rwanda.\textsuperscript{104} The delay was explained to be due to the inadequacy of monitoring mechanisms. It is advantageous for the public to know of these events in order to understand the various procedural safeguards that exist for ICTR trials as well as trials in the home country. One particular article speaks of an appeal that will be launched by the Prosecution with regard to the punishment given to Generals Augustin Bizimungu and Augustin Ndindilyimana.\textsuperscript{105} The Generals were in charge of training soldiers and guerrillas who would subsequently carry out the Genocide. The Prosecution’s allegation of disproportionality in punishment given by the ICTR is discussed. Nevertheless, the article relatively impartial and is very limited to the facts. It is not only important for the public to have access to the facts and disputes within the ICTR, but the way the information is relayed must attain a minimal standard of objectivity, and this certainly passed the threshold.

\textsuperscript{102} Rwanda: ICTR/ Residual Mechanism – Closure Strategy Brings New Challenges for ICTR, All Africa (February 23 2012), online: All Africa <http://allafrica.com/stories/201202240990.html>


Compared to the successful reporting on the High Court, there is minimal reporting on the War Crimes Chamber in Serbian media. As stated before, the War Crimes Chamber has been established in order to deal with those suspects who are out of the reach of the ICTY. There are a limited number of prosecutions that can be undertaken by the ad hoc tribunals. They have primacy over national courts, but there is concurrent jurisdiction with these national courts to undertake prosecutions of persons who have committed serious violations of international criminal law.\(^\text{106}\) The War Crimes Chamber is purportedly the result of a “sharing of values” between the international community and Serbia. The idea behind the War Crimes Chamber was to show the international community that prosecutions could be successfully undertaken in the country. The key here is that while prosecutions are undertaken with the help of extensive records given by the ICTY, it is questionable whether these prosecutions comply with international standards.\(^\text{107}\) Very little is known of the court by the general public.\(^\text{108}\) Overall, the media have not been very active in reporting the work of the War Crimes Chamber. Some notable arrests and prosecutions have not had extensive media coverage. This includes the 2010 arrest of nine men suspected of killings in the ethnic Albanian village of Cuska. The suspects were part of a paramilitary group, police reserve and territorial defence.\(^\text{109}\) It is an achievement in itself that Serbs are being arrested and prosecuted and there should be some discussion of this in the media. It is disconcerting that there a lack of support for the Chamber by the government and the media.\(^\text{110}\) Many cases are still in their pre-trial or investigative stage and there is a delay in bringing justice due to the lack of funding and support.\(^\text{111}\) The media’s failure to publicize the work of the Chamber and promote it in a positive light, negatively affects the ICTY and subsequently the public. Due to this state of affairs, victims and witnesses may feel discouraged to come forward. Serbian media could learn a helpful lesson from Rwandan reporting. The frequency and detail of the reporting on the High Court contributes greatly to accomplishing the purposes of the ICTR, while the same cannot be said of Serbia.


\(^{107}\) Human Rights in Serbia, Supra 35


\(^{109}\) Kosovo War Crimes, Supra 87


\(^{111}\) Ibid
Of particular importance is discussing witnesses when reporting on trials. This not only allows for the public to be more informed of the case against the alleged perpetrator but brings a sense of closure, thus making reconciliation more likely, for the victims of mass atrocities. Discussing witnesses and victims in this context brings the trial closer to the public and empowers people to come forward and testify. This is especially the case where reports mention video-testimonies and anonymous witnesses. Without media reporting, potential witnesses would be much more unlikely to come forward because they would not be aware of the possible safeguards. Victims comprise a large part of the public. The more the public becomes aware of the system and how it functions, the more likely it is that the achievements of international criminal prosecutions will come to light.

Nevertheless, the seeping in of bias is not foreign to Rwandan newspapers, and one such example is the work of The Rwanda Focus. The bias is different than that of Serbian media because it is oriented more towards demonizing the offenders and not the ICTR per se. The reporting on Leon Mugesera’s long-awaited deportation to Kigali does not hide the disdain for the process, which ensured twenty years of carefree living of the suspect in Canada. Musagera was deported from Canada and prosecuted due to his inflammatory anti-Tutsi rhetoric prior to the Civil War. Although the author emphatically disagrees with the delays in justice (and this in itself makes the reporting overly biased), there is extensive discussion of the suspect’s criminal acts as well as the positive developments of the Rwandan justice system. While it is problematic to call those who have not had a trial to this day ‘monsters’, because this reporting is far removed from a minimally balanced setting out the facts, it can be acknowledged that the author does speak of some issues that are important to the public. In contrast, Serbian media most often completely disregards the main issues at stake as has been discussed above.

Another similarly critical article was published in reply to the downgrading of sentences of three accused men at the ICTR. The problem that was seen by the author is the high standard of proof necessary at the tribunal. But this should not be an issue because such crimes are considered some of the most serious and are condemned by the whole world. The burden of proof should be high in order

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112 Rwanda: Former Planning Minister Closes his Defence, All Africa (February 22 2012), online: All Africa <http://allafrica.com/stories/201202231351.html>

113 Rwanda: Resumption for Ex-Minister’s Case Set for February 20, All Africa (February 17 2012), online: All Africa <http://allafrica.com/stories/201202231351.html>


115 A Scandalous Decision by the ICTR, The Rwanda Focus (December 19 2011); online: Rwanda Focus <http://focus.rw/wp/2011/12/a-scandalous-decision-by-the-ictr/>
to avoid injustice and convicting the innocent. Such reporting sends a wrong message to the public. Newspapers must attempt to present the information in the most impartial way possible without letting authors’ opinions significantly influence the reporting. On the other hand, the same newspaper, only days later, published more balanced reports on the long-awaited arrest of Mugesera, where the facts were outlined in detail without resorting to biased writing. A forte of The Rwanda Focus newspaper is that a lot of emphasis is put on the description of crimes that the suspects are on trial for, as has been noted above. Former Ministers Pauline Nyiramasuhuko and Arsene Shalom Ntahobali were imprisoned for life after the allegations of genocide and crimes against humanity had been proved in 2011, and a thorough report of the facts was published by the Rwandan newspaper. The sentencing of another former army chief general Augustin Bizimungu was also professionally reported on, with substantial background information, as well as a discussion of the Prosecutor’s potential appeal.

From the above, it is clear that Serbian media has, and can do better. In order for this to happen, the ICTY’s role is to use its resources to better connect to the affected populations. In the countries of Former Yugoslavia there have been several conferences and workshops aimed at educating lawyers, judges, public officials and the public at large on the processes of the ICTY. The Outreach Programme has its regional offices in Sarajevo, Zagreb, Belgrade and Pristina. The Outreach Programme performs the important task of responding to misrepresentations of the ICTY and has links to the media. One significant hindrance to the process of educating the public is the media, so it is important for the Programmes to have their representatives in the countries of Ex-Yugoslavia.

118 *Former Army Chief of Staff Sentenced to 30 Years by ICTR*, The Rwanda Focus (May 17 2011), online: Rwanda Focus <http://focus.rw/wp/2011/05/former-army-chief-of-staff-sentenced-to-30-years-by-ictr/>.
119 *Outreach Activities, ICTY*, supra 10.
Part IX
How Big is the Problem and How Can it be Countered?

Serbian media sheds negative light on the functions of the ICTY. But it is necessary to ask ourselves, what can we really expect from the media anyway? A distorted image may be better than no image at all. At least it allows people to make inquiries in their own time. They can track actual trials online and do research on any matter of interest. Websites such as YouTube have extensive streaming of trials, especially of the most high-profile cases. The ICTY itself has a channel where trials are recorded\(^\text{120}\). These videos are not tainted in any way and people can draw their own conclusions from what they hear and see\(^\text{121}\). The 2011 Annual Outreach Report showed that the channel had been viewed more than 590,000 times and half of the viewings came from people of Former Yugoslavia\(^\text{122}\). Viewers are also able to access Twitter to get up-to-date information about the prosecutions and other activities of the tribunal\(^\text{123}\). It is very important for young people in particular, who are the main users of such social media, to get real time first-hand information. Young generations are vital for fostering positive relationships between nations in the future, so exposing them to the correct information is essential.

The fact that ICTY trials can now easily be tracked online and through other sources is not without its issues. In a recent survey\(^\text{124}\) it was established that 12% of people watched the trials “a few times a week” and 17% “at least once a week”. The public becomes almost a live witness to the trial process, thus getting a more objective overview of the processes. Nevertheless, 20% of those interviewed never watched the trials. A concern is that people may not always understand the technical legal proceedings. Lawyers are often hired in order to explain what the Court is saying. The news media has the important role of simplifying and shortening information for their audience. People lead busy lives and do not have time to delve into primary sources. Recently, a survey showed that 90 percent of people in Serbia have never read an ICTY verdict\(^\text{125}\). The public does not have the time or the

\(^{120}\)ICTY’s Official YouTube Site, online: YouTube <http://www.youtube.com/user/ICTYtv>

\(^{121}\)Ibid


\(^{123}\)ICTY Official Twitter Page, online: Twitter <http://twitter.com/ICTYnews>


expertise to go through complicated and dry case law, as well as hours of interrogation. This is another reason why minimal standards of media objectivity are emphatically advocated for in this paper. The failure to engage with primary sources of information can, in part, be due to lack of time or motivation, or to the negative attitude that generally exists towards the ICTY. 72% of people interviewed had a “mostly negative” (28%) or “extremely negative” (44%) view of the ICTY. Again, as discussed above, the reasons that prevailed for such views were the ICTY’s alleged lack of objectivity and biased processes.

There have been numerous translations of the tribunal’s work to the Serbian, Bosnian and Croatian languages so as to bring the information to those people who are most in need of it. Such documents include a book called “Assessing the Legacy of the ICTY” which advances knowledge about the Tribunal’s achievements and further goals, thus promoting reconciliation. Furthermore, one of the official languages that the ICTY website can be viewed in is Serbian, so all the first hand information is accessible to the public.

Given the importance of Outreach programs, they can always be taken a step further in bringing the work of the ICTY to the public. Mark Drumbl outlines several avenues through which progress can be achieved in this regard126. As any system, improvements are needed. One of the points of concern is victim’s rights which must be further addressed. This is in line with Laurence Douglas’s stance that that ensuring neutrality has put victims at the sidelines and Outreach is a key component of contextualizing the processes. International trials are often seen by the populations most affected as far removed from their lives and experiences and thus lacking in legitimacy. People feel disconnected and powerless in a process that they should to an extent be part of. Drumbl asserts that justice can only be brought about if we include those who were most affected. A trial happening thousands of miles away seems to be far removed from those who it affects most and improving Outreach mechanisms is a vital goal to be achieved.

There are those who will disagree that the media has an impact on the public’s thought process. But most will agree that, as Bernard Cohen states, the press is “stunningly successful in telling its readers what to think about”127. Although the content of news media is often highly problematic, the most important world events are reported. Arguably, this is what matters and not the exact content of the reporting. The educated public will know not to take reporting at face value. They will be able to read

a biased news piece, conduct further research into the matter, and conclude for themselves which version of the news story is acceptable. As stated before, news media cannot be devoid of opinions altogether. For this reason the public must preserve an objective overview of all the different sources of media that target them. It is enough simply to read one news story from the perspective of 3 different newspapers, especially if they derive from different countries, to see that the “truth” is a fluid phenomenon. So it would seem as though a distorted image is preferable to no image at all. It at the least it allows people to critically consider what is being presented to them.

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CONCLUSION

Going back to Hannah Arend’s work, it can now be acknowledged that her critics are precisely the profiles of people who are monopolizing Serbian media. Closing one’s eyes to the possibility of multiple culprits because of, for example, pride and the insistence on being portrayed as a victim, does not make for good journalism but is nevertheless prevalent. It is dangerous to deflect culpability in such a way because people need to learn from past mistakes in order to avoid history repeating. The public could only benefit through the taking of responsibility for crimes committed. Serbia had an immense role in the Yugoslav War, albeit was not the sole culprit, and by creating misrepresentative images of the ICTY, not only is justice undermined but reconciliation is unlikely. Asserting that Serbs are the victims and everyone else is to blame for the tragedy is not only false but perpetuates hate and a false sense of pride. These sentiments lead to violence, lack of progress and general discontent among the population. Arendt’s and Rwandan journalism shed light on the necessity of looking at issues more broadly, and this is lacking in Serbian media portrayals of the ICTY. Hopefully, the media will remedy its flaws, and, if not, that Outreach efforts will prevail. Although there are criticisms to be made of the Tribunal, it has achieved substantial progress in the area of international criminal law. The Serbian media can and should do better in bringing its work to the public.
ELECTRONIC MATERIALS

*A Scandalous Decision by the ICTR*, The Rwanda Focus (December 19, 2011); online: Rwanda Focus

*B92? Don’t Call It Independent Media Anymore Please!*, Slobodna Vojvodina (September 28, 2009), online: Slobodna Vojvodina

Bass G. B., *Milosevic in the Hague*, Foreign Aff. (2003), online:


*Bring Mugesera Back for Justice*, The Rwanda Focus (January 23, 2012), online: Rwanda Focus
<http://focus.rw/wp/2012/01/bring-mugesera-back-for-justice/>

Carnic D., *Haski Beli Mantil* (trans: The Hague’s White Coat), Politika (June 12, 2011), online: Politika
<http://www.politika.rs/rubrike/Hronika/Haski-beli-mantili.lt.html>

Cassese A., *International Criminal Justice: Is it Really so Needed in the Present World Community?*, London School of Economics Human Rights Articles and Transcripts, online: LSE
<www2.lse.ac.uk/humanRights/articlesAndTranscripts/Casseselse.doc>


Court Says Hadzic Fit to be Extradited (July 20 2011) online: B92 <http://www.b92.net/eng/news/crimes-article.php?yyyy=2011&mm=07&dd=20&nav_id=75542>

Damaska M. R., What is the Point of International Criminal Justice, Faculty Scholarship Series Paper 1573 (2008), online: eYLS <http://digitalcommons.law.yale.edu/fss_papers/1573>

Damaska M. R., The International Criminal Court: Between Aspiration and Achievement, Faculty Scholarship Series. Paper 1572 (2009), online: eYLS <http://digitalcommons.law.yale.edu/fss_papers/1572>


Extraordinary Chambers in the Courts of Cambodia, Official Website, online: ECCC <http://www.unictr.org/>

File: Srbija Sada Bliza EU (trans: File: Srbija is Now Closer to the EU) B92 (May 26 2011), online: B92

Former Army Chief of Staff Sentenced to 30 Years by ICTR, The Rwanda Focus (May 17 2011), online: Rwanda Focus <http://focus rw/wp/2011/05/former-army-chief-of-staff-sentenced-to-30-years-by-ictr/>

Former Female Minister and Son Sentenced to Life Imprisonment for Genocide, The Rwanda Focus (June 24 2011), online: Rwanda Focus <http://focus rw/wp/2011/06/former-female-minister-and-son-sentenced-to-life-imprisonment-for-genocide/>

Godisnjica Hapsenja Ratka Mladica (One Year Anniversary of Ratko Mladic’s Arrest) B92 (May 26 2012), online: B92
<http://www.b92.net/info/vesti/index.php?yyyy=2012&mm=05&dd=26&nav_category=64&nav_id=612884>

Gotovina 24 godine, Markac 18 (trans: Gotovina 24 years, Markac 18), B92 (April 15 2011), online: B92
<http://www.b92.net/info/vesti/index.php?yyyy=2011&mm=04&dd=15&nav_category=64&nav_id=506318>

Hadzic Krenuo po Novac od Jataka (Hadzic Left to Collect Money from Contributors), B92 (July 20 2011) online: B92
<http://www.b92.net/info/vesti/index.php?yyyy=2011&mm=07&dd=20&nav_category=64&nav_id=526596>


Human Rights in Serbia, Civil Rights Defenders (September 1 2010), online: Civil Rights Defenders
<http://www.civilrightsdefenders.org/country-reports/human-rights-in-serbia/>


ICTY Official Twitter Page, online: Twitter < http://twitter.com/ICTYnews>

International Criminal Tribunal for the Former Yugoslavia, Official Website, online: ICTY <http://www.icty.org/> [ICTY]


*Mugesera Deportation Delay is Insult, Says Prosecutor-General*, The Rwanda Focus (January 16 2012), online: Rwanda Focus <http://focus.rw/wp/2012/01/mugesera-deportation-delay-is-insult-says-prosecutor-general/>; Leon

Mugesera Handed Over to Rwandan Police, (January 25 2012), online: Rwanda Focus <http://focus.rw/wp/2012/01/leon-mugesera-hande-d-over-to-rwan-dan-police/>


Outreach Activities, ICTY, online: ICTY <http://www.icly.org/sid/8938>


Preliminary Autopsy Results of Slobodan Milosevic, Press release of the ICTY (March 12 2006), online: ICTY <http://www.icly.org/sid/8792/en>


Purvis A., Star Power in Serbia; Slobodan Milosevic’s Performance at his War Crimes Trial has Won Him Increased Popularity at Home, Time, (September 30 2002)

Q&A with Zain Verjee, CNN International (February 12 2002), online: CNN <http://transcripts.cnn.com/TRANSCRIPTS/0202/12/i_qaa.01.html>


*Rwanda: Canadian Lawyer Assigned New Lead Counsel for Ngirabatware*, All Africa (February 20 2012), online: All Africa <http://allafrica.com/stories/201202210685.html>


*Rwanda: Resumption for Ex-Minister’s Case Set for February 20*, All Africa (February 17 2012), online: All Africa <http://allafrica.com/stories/201202231351.html>


*Serbian Media Even Criticised the Indictment Against Norac*, View from the Hague (June 2004), online: ICTY <http://www.icty.org/x/file/Outreach/view_from_hague/balkan_040609_en.pdf>
**Serbia’s Cooperation With the ICTY Won’t Change**, Balkan Insight (March 23 2012), online: Balkan Insight

**Seselj: I Moj Grob ce se Boriti Protiv Haga** (trans: Even When I am in my Grave, I Will Fight the Hague), Kurir (March 22 2012), online: Kurir <http://www.kurir-info.rs/seselj-i-moj-grob-ce-se-boriti-protiv-haga-clanak-154949>

**Seselj: Cilj Politicko Unistenje Naprednjaka** (trans: Seselj: The Goal is the Destruction of the Political Progressives), Danas (Feb 19 2012), online: Danas
<http://www.danas.rs/danasrs/politika/seselj_cilj_politicko_unistenje_naprednjaka.56.html?news_id=233889>

**Seseljevo Zdravlje i Dalje Lose** (trans: Seselj’s Health is Still Poor), B92 (February 19 2012), online: B92
<http://www.b92.net/info/vesti/index.php?yyyy=2012&mm=02&dd=19&nav_category=64&nav_id=583867>

**Seselju ni Posle Operacije Nije Bolje** (trans: Seselj’s Health Has Not Improved After the Operation) Vesti (February 19 2012), online: Vesti <https://www.vesti-online.com/Vesti/Srbija/203905/Seselju-ni-posle-operacije-nije-bolje>

**Sljivancanin: Necu da Tuzim Srbiju** (trans: Sljivancanin: I will Not Sue Serbia), Politika Online (July 17 2011), online: Politika <http://www.politika.rs/rubrike/Hronika/Sljivancanin-Necu-da-tuzim-Srbiju.lt.html>
[Sljivancanin]

<http://www.carnegiecouncil.org/publications/ethics_online/0058.html>

**SRS: Seseljevo Zdravlje Lose, Moguca Nova Operacija** (trans: Serbian Radical Party: Seselj’s Health is Bad, a New Operation is Possible), Radio Televizija Vojvodina (February 2 2012), online: RTV
http://www.rferl.org/content/poll_says_most_serbs_support_general_accused_of_war_crimes/24176617.html


Tabakovic: Ratko Mladic je Heroj (Jorgovanka Tabakovic: Ratko Mladic is a Heroe), Kurir (April 16 2012) online: Kurir < http://www.kurir-info.rs/jorgovanka-tabakovic-ratko-mladic-je-heroj-clanak-179302>

Uhapsen Ratko Mladic (trans: Ratko Mladic Arrested), Kurir (May 26 2011), online: < http://www.kurir-info.rs/uhapsen-ratko-mladic-clanak-90556>

Update from the President on the Death of Slobodan Milosevic, Press release of the ICTY (March 17 2006), online: ICTY <http://www.icty.org/sid/8781/en>

Uveo sam Radovana u Svet Bioenergije (trans: I Introduced Radovan to the World of Bioenergy), Blic (July 25 2008), online: <http://www.blic.rs/Vesti/Tema-Dana/50542/Uveo-sam-Radovana-u-svet-bioenergije>


SECONDARY MATERIALS: BOOKS

Arbour L., War Crimes and the Culture of Peace (Toronto: University of Toronto Press 2002)


SECONDARY MATERIALS: JOURNALS

Bettelheim B., “Eichmann; the System; the Victims” (1961) 148:24 The New Republic


Rabkin J., “Global Criminal Justice: An Idea Whose Time Has Passed” (2005), 38 Cornell Int’l L.J. 753

CASE LAW

R v Sussex Justices, ex parte McCarthy [1924] 1 KB 256

Prosecutor v. Gotovina et al. (Judgment) ICTY-06-90 (15 April 2011), online: ICTY

Prosecutor v Kvocka et al. (Judgment) ICTY-98-30/1 (November 2 2001), online: ICTY
<http://www.icty.org/case/kvocka/4>; Sikirica et al. (Judgment) ICTY-95-8 (November 13 2011), online: ICTY

Prosecutor v. Milosevic (Transcript of Initial Appearance) ICTY-02-54 (July 3 2001), online: ICTY
<http://www.un.org/icty/ind-e.htm>

Prosecutor v. Milosevic (Transcript of Status Conference) ICTY-02-54 (August 30 2001), online: ICTY
<http://www.un.org/icty/ind-e.html>

Prosecutor v Tadic (Appeal Judgment) ICTY-94-1 (15 July 1999), online: ICTY <
http://www.icty.org/x/cases/tadic/acjug/en/tad-aj990715e.pdf> – The Accused was charged with 41 individual counts of persecution, murder, beatings and other offences committed in the Prijedor district of the Republic of Bosnia and Herzegovina. He was found to be guilty on 11 counts and not guilty on 20 counts
DOCUMENTS


OTHER MATERIALS

Prosecutor Luis Moreno Ocampo Speech delivered at the University of Toronto on December 19 November 2011 [unpublished]