(In)Humanity on Trial: On the Ground Perceptions of International Criminal Tribunals

by

Izabela Steflja

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Graduate Department of Political Science
University of Toronto

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Abstract

The purpose of this dissertation is to understand how international criminal tribunals (ICTs) are received in different contexts. The dissertation is driven by the following puzzle: Why has there often been a negative response to international criminal tribunals (ICTs) in local communities that have been victim to the crimes that these institutions are prosecuting? I examine this puzzle through local responses to the International Criminal Tribunal for former Yugoslavia (ICTY) in Bosnia and Herzegovina (BiH) and Serbia, and the International Criminal Tribunal for Rwanda (ICTR) in Rwanda. The findings are based on three research trips to each country, including nine consecutive months of fieldwork in Rwanda and six consecutive months of fieldwork in BiH and Serbia, and over 136 successful semi-structured and open-ended interviews with a variety of local actors. My data suggest that the two ad hoc tribunals were not successful at establishing themselves as legitimate and credible mechanisms of transitional justice. The locals in each country believed that they were not the primary beneficiaries of ICTs, and that that the ICTs paid insufficient attention to the dynamics between tribunal demands and proceedings, and political events on the ground. My findings show that, first, in each case, local actors in power – those connected to past regimes who were responsible for the 1990s atrocities, and those who were part of new regimes – adapted well to the conditions set by ICTs, manipulating the tribunals for their own political goals and influencing the perception of these institutions among the local populations. Second, ICTs had a serious impact on domestic politics, feeding into power struggles between domestic and international actors and between factions on the ground. This outcome had significant implications for political transitions in the three countries, many of which were unintended and contrary to the aims and expectations of the tribunals.
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It takes a village (and in my case a few villages on three different continents) to write a dissertation.

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Chapter I: Introduction

We have an easy time thinking of animals as animals in part because they smell like animals. That’s the difference between us and them. But what are you supposed to think when you find a group of humans who smell no better than cows, even worse? *It reminds you that humans are animals, with the ability to stink like pigs, and kill like wolves.*¹


We don’t expect a foreign correspondent and a local child to share similar memories of war. Reading Peter Maass’ first chapter, The Wild Beast, in *Love Thy Neighbor*, made me believe otherwise. Maass recounts his experience of foul human smell, the smell of death, in a gymnasium overcrowded with refugees in Split, Croatia, in 1992. Smelly, traumatized strangers stacked like sardines in my elementary school gym is also one of my first memories of the Yugoslav wars. I, an eight-year-old Yugoslav child, and Maass, an accomplished, widely-traveled American journalist, shared the same thoughts at the same time about the same war. The difference was that we were located on the opposite ends of the country, and thus, at opposite ends of the war: Maass was in Croatia and I was in Serbia. Yet, I think that I can speak for Maass in saying that from the very beginning it was clear to both of us that this was a complicated, messy war and that the good guys – the innocent people whose home was now a gym floor – lost it.

For the next two decades I have been engaged in a process of trying to understand the Yugoslav conflict – what happened, why, and under whose watch. During the same two decades, an international institution, in part funded and supported by my new country, Canada, had the same goals in mind. The International Criminal Tribunal for the Former Yugoslavia (ICTY) was established in 1993, fought its way through indicting and obtaining accused war criminals, difficult cases, and funding crises – all with the aim of discovering the truth, attributing

¹ My italicization.
responsibility, and providing justice for past atrocities. Naturally, I was interested to see whether this aim was attainable; and while I wanted to remain hopeful, I was skeptical of what an international tribunal could achieve in the aftermath of such extreme violence. A quote by Oliver Wendell Homes resonated strongly with me, and I found it relevant in spite of the fact that it was written over a century ago: “What have we better than a blind guess to show that the criminal law in its present form does more good than harm?” (1897, 12).

Mahmood Mamdani, a scholar whose work has played a key role in my interest in the Rwandan conflict over the past decade, expressed similar doubts about the merits of international criminal law in post-conflict situations in Africa. In an article in the London Review of Books, Mamdani questions the logic of Nuremberg, arguing that “mass violence isn’t just a criminal matter, since the criminal acts it involves have political repercussions” (2013, 33). Mamdani claims that our response to mass atrocities has been over-determined by the model of Nuremberg, in which victors or external actors conduct trials while the losing parties are largely left out of the process. Mamdani weighs the judicial approach against a negotiation-based approach, which necessarily involves all parties in the conflict. He argues that in emphasizing trials we have treated political factors which shape violence as secondary to the question of criminal responsibility. At the same time, we have problematically reduced successful negotiation approaches to exceptional leaders, such as South Africa’s Nelson Mandela. This dissertation accords with Mamdani’s thinking in the sense that it questions the assumed merits of the judicial approach, evaluating international criminal trials through the eyes of local actors on the ground in Central-East Africa and the Balkans. I argue that views of local actors matter because they can gravely undermine the goals of international criminal tribunals. I do not claim that local actors have a monopoly on ‘the truth’ or that their criticisms of international criminal trials are on the mark; in fact, local actors are often misinformed and misguided in their views of the world. However, I argue that understanding local perceptions of tribunals is important because they can diminish what the tribunals are able to accomplish in the affected communities and beyond.

The puzzle

This dissertation is driven by two questions. First, what is the meaning of international criminal tribunals in different domestic contexts? When members of the international community
create international institutions they assume that the same institutional design will function uniformly in diverse settings. Politicians and legal professionals have been advocating and undertaking war crimes trials since the early twentieth century, including Constantinople in 1919, Leipzig in 1921, Nuremberg in 1945, Tokyo in 1946, The Hague in 1993, Arusha in 1994, Hague/Beirut in 2009 (Bass 2000, 5, 19). I am interested in how these international bodies are perceived at the domestic level, and in the similarities and variations in local narratives on The Hague and Arusha specifically.

The second question follows from the first: why is it that, despite the best intentions of their architects, international criminal tribunals have failed to produce justice and reconciliation in the eyes of the people in the countries in question? Specifically, why don’t local populations support the prosecution of war criminals by international tribunals? The stated primary functions of war crimes trials are securing justice for victims and re-establishing the rule of law, followed by reconciliation and commitment to a common future among contending groups. Official United Nations websites for The Hague and Arusha, formally entitled the International Criminal Tribunal for former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) respectively, clearly indicate these objectives. The ICTY website informs us that, first and foremost, this court “aims to deter future crimes and render justice to thousands of victims and their families.” Former ICTY President, Antonio Cassese, points to the secondary aims of reconciliation and peaceful relations: “Justice is an indispensable ingredient of the process of national reconciliation. It is essential to the restoration of peaceful relations between people who have lived under a reign of terror. … Thus peace and justice go hand in hand” (Cassese 2011). The ICTR website indicates that this second court has the same functions as the ICTY (although these are listed in different order). The ICTR website states that “[t]he purpose of this measure is to contribute to the process of national reconciliation in Rwanda and to the maintenance of peace in the region.” Following this statement on the aim of national reconciliation and peaceful relations is a statement on the aim of justice:

The International Criminal Tribunal for Rwanda was established for the prosecution of persons responsible for genocide and other serious violations of international humanitarian law committed in the territory of Rwanda between 1 January 1994 and 31 December 1994. It may also deal with the prosecution of Rwandan citizens responsible for genocide and other such violations of
international law committed in the territory of neighboring States during the same period (“About the ICTR” 2011).  

In addition to the tribunals’ official aims, various actors have further expectations of these institutions. Legal experts point to the ability of international tribunals to reestablish the rule of law, institutionalists advocate the tribunals’ contribution to institution-building and norm diffusion, human rights activists highlight the tribunals’ importance for victim rights, and even realists recognize incentives, such as donor aid, which are tied to cooperation with international tribunals. The list of expectations among scholars of transitional justice is long and ambitious, including “shaming, and diminishing perpetrators for their offenses,” “creating a ‘collective memory’ or common history for a new future not determined by the past,” “forging the basis for a democratic political order that respects and protects human rights,” and “promoting reconciliation across social divisions” (Van Der Merwe 2009, 3-5; Betts 2005, 737; Lu 2006, 201). All of the mentioned goals of international criminal tribunals seem noble and lead us to expect that international criminal tribunals would be reputable not only in the eyes of international actors but also among citizens of the countries in question. However, the evidence on the ground reveals a very different reality. The goal of this dissertation is therefore to first, uncover local narratives on international tribunals and second, explain the surprisingly negative responses these institutions produced in Bosnia and Herzegovina (BiH), Serbia, and Rwanda.

The argument
My first question then deals with the perception of international tribunals in different domestic contexts. Here I found that tribunals interact with domestic populations and domestic politics in counterintuitive ways to produce multiple and unexpected outcomes that are often harmful to the legitimacy and the impact of the tribunals themselves. An official in the prosecutor’s office at the ICTY describes the tribunal as “a sort of Frankenstein. … You create the monster and then you can’t control it” (Bass 2000, 34). If we apply the metaphor of Frankenstein to my project, I follow the monster and examine the multiple roles it adopts on its trek from Western Europe to the Balkans and East-Central Africa. In less-fanciful language, my data suggest that the very  

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2 The definition is important in its entirety because, as discussed in detail in chapters five and six, there is disagreement between the Rwandan government and international and domestic actors on whether the ICTR mandate includes prosecutions for war crimes and crimes against humanity in addition to the crime of genocide (in the language of the Rwandan government, “the genocide against the Tutsi,” specifically.)
people that international tribunals are meant to serve are the ones who end up being the most disillusioned with the institutions.

My second question examines the reasons behind the lack of local support for international tribunals. Here I found that my interviewees overwhelmingly perceived the tribunals as having overlooked the interests of the local populations and domestic politics in these countries. First, locals questioned the motivations behind the establishment of the tribunals and did not believe that they were the target audience or the primary beneficiaries of the tribunals. My interviewees offered a number of alternative hypotheses, such as that a) the international community created the tribunals as a substitute for more forceful action in BiH and Rwanda, b) Western European and North American governments used the tribunals for public relations among their Western European and North American voters, and to reassure their populations, human rights advocates, and civil society groups who were distressed by the atrocities the media was covering, and c) members of the international legal community wished to develop the international legal field and assure positions for themselves. This perception was partly a result of inadequate and ineffective outreach programs on the part of the tribunals in BiH, Serbia, and Rwanda which led to feelings of detachment – politically, geographically, linguistically, and procedurally – from these institutions on the part of the local populations. The data suggest that regardless of whether a trial meets objective due process standards, it is difficult to make a case in support of the tribunals if the justice the tribunals offer does not resonate among the people the tribunals are meant to serve.

Second, locals believed that the tribunals paid insufficient attention to domestic politics, specifically to the dynamics between tribunal demands and proceedings, and political events on the ground. On the one hand, my data point to the ability of certain local actors to co-opt the power of international law for their own aims. On the other hand, my data highlight harmful effects of tribunal processes on local political processes and democratic engagement on the ground.

I provide two explanations for the key findings above. First, I argue that the relationship between the indicted leaders on trial and the domestic populations is more complex than assumed by international tribunals. Some of the key links are: a) certain indicted leaders were supported by significant portions of the population, b) the crimes these leaders are accused of are essentially collective crimes and despite the tribunals’ legal focus on individual responsibility members of the public are aware of the implications for their responsibility, and c) identity
politics and group psychology play an important role in transitional justice because individual self-image is tightly bound to group worth and group affiliation and crucial psychological, social and emotional dynamics take place between individuals and groups and their real and perceived adversaries (Tajfel 1962, 27). These links are especially salient in a context where individuals fought a war against each other and where their leaders (despite their grave faults) are often seen as defenders of their people.

Second, I argue that international initiatives in transitional justice have specific limitations. My research suggests that local communities regard internationally-sponsored trials with different suspicions than domestic initiatives, and believe that certain goals, which the tribunals set out for themselves, need to be organically developed from within communities, rather than being imposed through international law. In addition, I found that the tribunals exposed global power imbalances; they were frequently perceived as imperialist institutions of selective justice where the strongest global actors impose their versions of history. This point often united the most unlikely political allies.

Alternative explanations

Alternative explanations for the lack of local support for international criminal tribunals can be grouped into two categories. The first category includes Jelena Subotić (2009) and (to a much lesser degree) Victor Peskin (2008) who argue that Bosnian, Serbian, and Rwandan governments effectively captured the tribunals for their own political interests. The second category is best summarized by Kingsley Moghalu (2006) who argues that the most powerful global actors, such as the United States and the European Union, use tribunals as instruments of political engineering at the international scale. My findings suggest that there is truth to both of these viewpoints but that they fail to capture the entire picture, such as the complex two-way dynamics between the international and domestic scenes. By looking closely at the situations on the ground we realize that we cannot merely attribute the lack of support for international tribunals to power games by hegemonic international actors or to power games by domestic leaders.³ Moreover,

³ For example, like Victor Peskin (2008), I question the likelihood of a government’s genuine cooperation with a tribunal but I also develop Peskin’s argument a step further by focusing not only on the government but also the internal dynamics within a state. Even if some political actors engage in genuine cooperation, rather than compliance for the purpose of state aid, international image, or membership in the European Union, it is not certain that these political actors will be able to influence societal-level change—they may in fact experience a domestic backlash.
both explanations are state-centric and both generate binary analyses which view state sovereignty and international law in opposition to each other. Both fail to take seriously the views of the local populations, including non-state actors, and the role of domestic politics. The problem in leaving out such elements is that our analyses lead to misunderstandings, inaccurate predictions, and variations that cannot be explained.

Research design

Justification of case selection

Because the Yugoslavia and the Rwanda Tribunals are exceptional institutions – the ICTY and the ICTR are the only cases of international justice where ad-hoc international criminal tribunals are implemented solely by the United Nations Security Council – I only had a few countries to choose from for my case studies. I chose Bosnia and Herzegovina, Serbia, and Rwanda because key war criminals who are being prosecuted by the two tribunals are from these countries. The ICTY and ICTR are different from hybrid tribunals, such as the Sierra Leone and Cambodia tribunals which are joint international and national efforts, and the International Criminal Court which is a permanent body that came into effect after the ICTY and the ICTR (in 2002, via Rome Statute). This is analytically important to my study because the two tribunals are the first truly international efforts in transitional justice.

The second and most important reason for my case selection is the variation my cases represent. The three countries have taken very different paths in post-conflict times despite the apparent similarity of the international judicial institutions. In post-Yugoslav times, Bosnia and Herzegovina is a highly decentralized, fragile state, with a three-member presidency composed of a member of each ethnic group and two autonomous political entities – the Federation of Muslims and Croats, and Republika Srpska. The country is effectively being held together by the international community which is trying to reconcile three rival communities into a multiethnic state with a new ‘Bosnian’ narrative. In post-Yugoslav times, Serbia, (like Croatia,4) has returned to a narrative of nationalist ideology and has been attempting to transition into a democracy. In

4 While Croatia was a key player in the Yugoslav wars and the ICTY has indicted a number of Croats, I exclude Croatia as a case study because Croatia has taken a similar route as Serbia in post-conflict times and because Croats have responded to the ICTY in a similar manner as Serbs. Studies show that both Serbs and Croats have a very negative perception of the tribunal and for the same reasons (see Klarin 2009; Saxon 2005; Vojin Dimitrijević, professor and director of the Belgrade Centre for Human Rights, Interview, August 20, 2010).
post-genocide Rwanda, we see a different trajectory: the Rwandan Patriotic Front (RPF) and President Paul Kagame have embarked on a process of attempting to eliminate Tutsi and Hutu ‘ethnicity’ and replace it with a ‘Rwandan’ national identity. Rwanda’s democratic credentials have been questioned extensively and President Paul Kagame has extensive powers and only limited oversight from the Parliament. Such variations in the political institutions that have arisen in post-conflict times provide the possibility of probing the consequences of these different approaches and how they interact with the workings of the relevant tribunal. The Rwandan government, for example, has been able to make sure that only members of the genocidal regime are brought to trial and no members from the current RPF-led regime who are implicated in war crimes are brought to trial. This is very different from the former Yugoslav cases where the ICTY has tried alleged war criminals from all three warring sides. Nonetheless, despite the very different paths that the three countries have taken, there is an important domestic convergence: a lack of support for criminal tribunals by local populations.

Third, these cases are valuable because, in addition to the international trials underway, domestic level trials, which include state and local trials, are also sitting, allowing me to contrast citizens’ responses to international and domestic proceedings. It is important to note that while domestic trials in the Balkans owe their existence to The Hague and international pressure, national and local (gacaca) trials in Rwanda were established at the initiative of President Kagame and are widespread and exclusively managed by his regime. Rwanda is thus a particularly important case because the international-level ICTR trials are clearly distinct from the domestic trials underway inside Rwanda. (This is in contrast to the Balkans and, for example, the tribunal in Sierra Leone, which combined domestic and international efforts). An examination of the ICTR thus makes it possible to disaggregate the impact of domestic and international efforts respectively.

Fourth, I selected Rwanda, Serbia, and BiH for closer study because I am interested in contexts where a single and particular ethnic group has generally been identified as being primarily responsible for the atrocities that took place. In the Yugoslav conflict Serbs have been labeled as the ‘guiltiest’ group by foreign media and governments, and the number of Serbs tried and the magnitude of their crimes are more significant than that of Croats and Bosnian Muslims.

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5 In Bosnia and Herzegovina, the War Crimes Chamber began operating in 2005 within the State Court of Bosnia-Herzegovina. Also, canton-level trials have taken place in Republika Srpska. In Serbia, the War Crimes Chamber was created in 2003 within the Belgrade District Court.
In the Rwandan conflict the Hutu have been labeled as the ‘guilty’ group and only Hutu have been tried at the ICTR. I am interested in the effects of transitional justice on the ‘guilty’ group’s consciousness, identities and narratives. The reason why the attitudes of the ‘most guilty’ groups are important is because the tribunals promise reconciliation in addition to justice in their mandates. The tribunals do not have mandates that focus merely on justice for victims, or justice for key victim groups – Bosnian Muslims in the case of Yugoslavia and Tutsis in the case of Rwanda. In order to foster reconciliation it is reasonable to expect that populations associated with the ‘guilty side’ need to be included in and supportive of the transitional justice process especially because Serbs and Hutus make up significant portions of the populations in the countries in question. Serbs make up 37.1 percent of the population in BiH and 83.3 percent of the population in Serbia, and Hutus make up 84 percent of the population in Rwanda (Central Intelligence Agency 2014). The break up of former Yugoslavia allows me to apply the comparative method in a particularly useful way since I can compare the response of my Serbian interviewees in BiH with that of my Serbian interviewees in Serbia.

**Research methodology**

Experts in transitional justice claim that “the greatest untapped potential” in the field of transitional justice “is in the area of evaluating consequences,” and that macro-level effects of transitional justice processes, such as regime stability and democratization, are overemphasized (Backer 2009, 51). This dissertation sets out to address precisely that gap. While this project compares macro-level phenomena, such as group narratives and reconciliation, this is done through micro means. I begin at the smallest scale possible – individual outlooks – and look for the mechanisms that connect these to their collective forms – these individuals’ attempts to make sense of their political and social context.

Given the limited pool of potential cases for this study and the novelty of international criminal tribunals, detailed documentation of each case was desirable. This is thus a small-N study which employs a qualitative and interpretive approach. Moreover, Catherine Marshall and Grechen B. Rossman’s argument that we “cannot understand human actions without understanding the meaning participants attribute to those actions – their thoughts, feelings,

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6 On the qualitative and interpretive approach see for example Geertz (1973) and Schatz (2009).
beliefs, values, and assumptive worlds” suggests that case studies are best suited for the constructivist approach of my project (1998, 57).

With these points in mind, I made three trips to each country during my research; this included six consecutive months of fieldwork in BiH and Serbia in 2010 and 2011 and nine consecutive months of research in Rwanda in 2011 and 2012. My approach was to build up networks, adopting an ethnographic sensibility (Schatz 2009, 1-23) by living with the locals and spending my personal time with them. I selected interviewees based on their willingness to share information with me, while also building on their referral chains of individuals they identified as like-minded people as well as opponents, with the goal of developing trusting relationships and investigating interesting empirical angles.

I am most familiar with the territories of the former Yugoslavia, where I grew up and lived for 14 years. I therefore needed less time to arrange the practical elements of conducting research on the ground, such as accommodation and transportation, in BiH and Serbia than in Rwanda. My research in Rwanda required numerous research permits from the Ministry of Education and visas from the Rwanda Directorate General of Immigration and Emigration, while my research in the Balkans did not require such documents. Also, conducting research in Rwanda proved to be more of a challenge, as people were reluctant to speak in the authoritarian context and I needed more time to gain the trust of interviewees in Rwanda than I did in the Balkans.

My research objective was to explore what it actually means for a society to go through a transitional justice process. Here I applied the method and logic of “structured, focused comparison,” outlined by Alexander L. George and Andrew Bennett in Case Studies and Theory Development in the Social Sciences (2004, 67-89). This research design was “focused” because I was interested in a particular subgroup and specific aspects of transitional justice – international criminal tribunals. It was “structured” because I posed a set of general questions to the same, targeted groups of local actors in each case study in order to guide and standardize the collection of data and allow for a systematic comparison of findings. I applied this “structured, focused comparison” across a range of methods, including conversational data collection techniques, such as interviews, focus groups, and email exchanges, and non-conversational data collection techniques, including analysis of traditional sources of information such as newspapers, government-issued documents, and non-traditional sources such as popular culture material (art, songs, jokes).
Interviews formed the core of my research strategy. The aim of the individual interviews was to conduct a careful analysis of domestic discourses on the tribunals and to develop a more specific sense of how the actors that I was interviewing construct narratives and compete to frame events at the tribunals. In order to capture this, I conducted over 136 successful semi-structured and open-ended interviews. I say over 136 because I repeated interviews with several people and I do not include these in the total number. The purpose of these interviews was to gather primary data, and the advantage of this method was that it allowed me to adopt my language, questions and line of enquiry in a way appropriate for the people interviewed – clarifications can be sought and made, and there is a degree of freedom to probe and be flexible (Berg 2007, 93, 96). In BiH and Serbia I conducted interviews in English and Serbo-Croatian, my mother tongue, depending on the preference of the interviewee. In Rwanda I conducted interviews in English and in French. I had planned to use an interpreter in Rwanda if my interviewees specified their preference to express themselves in Kinyarwanda. However, after an incident at the Kigali Prison I decided against this idea. (Despite the fact that I had proper documentation allowing me to conduct interviews in Rwandan prisons, my interpreter was turned away when we arrived for our first interview. The prison security threatened the interpreter and would not allow him entrance. I was given permission to enter the prison but was asked not to bring locals.) Because of the potential risk to the safety and security of my interpreter, and because all of my interviewees learned either French or English in high school and university and could therefore communicate with me in those languages, I decided to conduct all of the interviews without the help of the interpreter.

I let my interviewees choose the location of the interviews. I understood their need for privacy and therefore agreed to meet wherever each interviewee felt most comfortable. We met in offices, coffee shops, restaurants, bars, parks, my home and their homes. We met in private rooms or spaces where there was no one within earshot. At the beginning of each interview I introduced myself as a PhD student from Canada working on her dissertation. If the interviewees asked why I chose the topic of international criminal trials (which happened often, especially in Rwanda), I explained that I too experienced civil war and political violence and was trying to understand how affected populations wanted the violent past addressed and what measures they found most helpful and most crucial in post-conflict times. This explanation was most often adequate and my interviewees felt that (at least in broad terms) my experience resonated with theirs. I specified that I was independent of any third parties, and explained the entirety of my
project. In Rwanda I told my interviewees that all of my interviews are anonymous. In BiH and Serbia I gave my interviewees the choice of being anonymous, as well as choosing what information about their identity I would share in my citations. The decision to take a different approach in Rwanda and the Balkans was based on the Rwandan government’s infringements on rights and freedoms and my concern for the safety of my interviewees. After this lengthy explanation I asked for the verbal consent of each interviewee. I also asked them to specify whether I could record the interview or not and gave them the choice to stop the recorder at any point during the interview.

My goal was to interview many different kinds of people (in age, sex, occupation, political inclination) and people with a variety of experiences. I made a point to speak to both individuals who were in support of and in opposition to the leaders on trial at the ICTY and the ICTR. Interviewees’ ages ranged from early twenties to late seventies at the time of interviews. I wanted to speak to young people who were children during the conflicts and grew up in post-conflict regimes, as well as older people who were adults during the conflicts and in pre-conflict times. I tried to have a balance between the number of men and women I interviewed. This goal was not attainable in the Balkans or in Rwanda, but I came closer to the balance in Serbia, than in BiH and Rwanda. In Rwanda women did not volunteer to be interviewed and, more often than men, said that they were busy or had no opinion to share. Moreover, men often recommended other men (even if I requested to speak to a woman). My interviewees included a variety of elites. In Rwanda this meant people who had at least completed high school, and in the Balkans this meant people who had at least completed some university education. I chose educated participants because they were most informed on the subject matter of my inquiry, but also because they were often opinion makers in their local communities. Moreover, public opinion polls in former Yugoslavia suggested that elites were more likely to support cooperation with the Yugoslav Tribunal and good relations with Western countries (CESID study cited in Mihailović 2009, 131) and I wanted to speak to the segment of society that was most sympathetic to the aims of the international community.

I targeted four groups of participants in my interviews. First, I chose some participants because they were educated enough to be aware of the tribunals and have views on the proceedings, such as current students and individuals with high school and/or university education. Second, I chose teachers, and community and religious leaders because of their educational/advisory roles in society and their power to influence wider perceptions of the
tribunals. The third ‘type’ of participant were those in a position to influence or implement policy on the tribunals, such as a government or NGO employee. My fourth type of participant was based on Helen Hintjens’ hypothesis that, in order to discern different categories functioning in any social context, it can be effective to look at people located on the borders of different identities that cut across a particular society (2008, 90). Psychiatrists argue that anger, vengefulness, and lack of forgiveness bind the ‘offender’ and the ‘offended’ together and result in “restless energy consumptions” (Rhiannon Lloyd in Janz and Slead 2000, 194-201). Yet, if the ‘offender’ and the ‘offended’ are found in one person, when the ‘other’ is found within ourselves, we are not necessarily as keen to be ‘destructive’ and ‘hateful.’ I thus tried to include participants who themselves (or through their family members) play rival roles and contain opposing elements in their narratives and their backgrounds, because trying to understand how these ‘dual’ or ‘multi-layered’ people reconcile their different experiences might give us insights into building blocks for the collective narrative. Women are important ‘multi-layered’ participants. For example, in former Yugoslavia ethnicity was passed on through patriarchal lines which meant that many women found themselves in families where their children carried their husband’s ethnicity and thus these women often held interesting views on reconstructing narratives and crossing boundaries in post-conflict times.

Broadly speaking, my participants included university professors and students, community leaders, top echelon and lower rank staff in international organizations and institutions, civil society members (local and international), clergy, government officials (bureaucrats, ministers and senators), members of the opposition, and political prisoners. Many of these interviewees self-disclosed to me that they were involved in the conflicts as survivors, combatants, perpetrators of war crimes and genocide, witnesses at the tribunals, and members of the defense and prosecutions teams. Finally, I managed to secure access to some high-level interviewees, including a former head of state, a current vice-president, head of lower and upper house of parliament, leaders of opposition, and high-profile political prisoners. For security purposes, high-level interviewees were anonymous in the case of Rwanda, while high-level interviewees had the choice of being anonymous or choosing to reveal information about their identity in the cases of Bosnia and Herzegovina and Serbia.

As Lee Ann Fujii explains in her work on Rwanda (2009, 2010), meta-data, such as silences, ambiguities, laughter, and rumors, is an integral part of data collection and analysis in
contexts of political violence.\(^7\) I paid close attention to questions that my interviewees asked about my identity and my purpose in their community. I also noted moments of intended silence, nervous laughter, or instances when my interviewees used ambiguous statements and subtle clues in their answers, all of which were common in Rwanda. In general, when I encountered nervous laughs, silences, and resistance, I did not pressure interviewees to continue to discuss the subject matter that they felt uncomfortable with and instead raised questions about entirely different topics. For ethical reasons I believed that it was important to respect interviewees’ boundaries and allow them to choose what they want to share with me.

In Rwanda I often encountered ambiguous, circular answers and explanations painted in broad strokes. At first these types of answers appeared not to have any substance. However, I quickly realized that a number of these interviewees, many of whom were among the most educated, were sharing very useful material with me because they would often stop to ask: “Do you understand what I mean?” This suggested that my interviewees were not simply agreeing to the interview out of politeness (because of my high status as a foreigner) and without any desire to share information, but that they were censoring themselves because they worried about being overheard uttering statements that may be used against them. I put significant effort into listening carefully and considering the ‘Rwandan’ way of expressing oneself. In fact, during one encounter with a professor of media, whom I found to be most skilled in saying a lot while appearing to say nothing, I had a conversation about Rwandans becoming masters of ‘the art of speaking.’ In the chapters on my findings (three to six) I examine these instances of meta-data individually and reflect on what I perceived to be the meaning of each.

I did not select people based on their ethnicity. Since the Rwandan government officially forbade ethnic identification it was not possible to ask individuals in Rwanda if they were Hutu, Tutsi, Twa, or of mixed background. Rwandans all speak Kinyarwanda, and religion, name, and appearance are not reliable indicators of one’s ethnic background. Distinguishing between ethnicities was challenging and often impossible, and while there are some common clues that tell the Hutu and the Tutsi apart, many times I was uncertain whether I was speaking to a Hutu, Tutsi or a mixed person. Some indicators that I used to try to tell the ethnicities apart were questions about personal history, such as where the person grew up (Rwanda, Uganda, Burundi, DRC, Tanzania, Kenya), questions about how the person experienced the civil war and genocide,

such as whether they or their family experienced violence or were refugees – at what point in time and where, as well as questions about whether their families were wealthy or poor at particular points in time (see Thomson 2009 and Zorbas 2009). I asked these questions because I wanted to make sure that I spoke to a variety of interviewees with different experiences. In particular I wanted to ensure that I spoke with a significant number of Hutu because they are the group that has been labeled “most guilty” and I was especially interested in their response to international trials. I also wanted to speak to participants who identified with both the Hutu and the Tutsi, or participants who experienced a shift in ethnic identity, because they fit into the fourth type of participant described above and I was interested in their insights as people who may be located on the borders of different identities. My interviewees were aware that being unable to tell their ethnic identity was a difficulty in my research and they patiently answered my questions on their personal and family histories. Some interviewees voluntarily shared their ethnic identity with me and thus disobeyed the instructions of their government. Some justified this decision by arguing that different social codes and rules applied to conversations with Westerners who expected an open discussion on ethnicity. Others made obvious hints, such as “I am/I am not of the same tribe” as the current regime.” Telling ethnicities apart in BiH and Serbia was not difficult because people openly expressed their ethnic identity (as the authorities did not forbid it). Most often my interviewees in the Balkans declared their ethnic and religious identity early on in the interview. They also often inquired about my identity because I speak Serbo-Croatian which to them indicated that I have ties to the region.

I also did not select my interviewees solely based on ethnicity because I did not want to overemphasize the importance of this factor in conflict and post-conflict times. Both the Yugoslav and Rwandan conflicts and post-conflict societies broadly have often been mistakenly understood purely in ethnic terms while cleavages have resulted from a variety of factors and social identifications that cross-cut ethnic ties. My intention is not to contribute to this literature so I do not group and analyze my interviewees’ responses on the basis of my interviewees’ ethnic identities. The disadvantages of emphasizing my interviewees’ ethnic identities at the detriment of other variables that play into my interviewee’s choices, such as different views

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8 Because of its loaded meaning, I only use the word ‘tribe’ in this dissertation when the interviewees themselves use it.
9 I discuss details regarding how my identity might have affected the way my interviewees perceived me in the Balkans in chapter three (see, for example, page 12 in Chapter III).
10 Also, there are authors, like Dan Saxon (2005), who summarize the Serb, Croat, and Muslim Bosnian views of the ICTY.
between returnees and those who lived in Rwanda their whole lives or people who are retired versus those who are of working age, are significant for this study. Roger Brubaker explains that violence “may have as much or more to do with thuggery, warlordship, opportunistic looting and black-market profiteering than with ethnicity” (2002, 166, 176, 186). As one Rwandan man told Susan Thomson during her PhD research, “whoever has the power are the ones that shape our national history” (cited in Thomson 2009, 76). By invoking ‘groups,’ participants “seek to evoke them, summon them, call them into being” and “live ‘off’ as well as ‘for’ ethnicity.” Powerful individuals use ethnic categories for “group-making” projects, and “ethnic violence is just violence until it is framed by someone as ethnic conflict” (Brubaker 2002, 166, 176, 186). For all these reasons, I let my interviewees draw on ethnicity when they wanted to rather than imposing my understanding of ethnic relations in their communities. My goal was to understand what kind of ‘groups’ they spoke of, what individuals (or groups) they believed needed to be punished, transformed, and reconciled, or, more appropriately, what kind of powerful networks they identified and wished to see dismantled. Finally, examples from my research confirm that abandoning the ethnicity-based approach was most suitable. For example, the interviewee who was most critical of the ICTY and expressed the most extreme Serbian nationalist views in BiH was actually an ethnic Croat. Also, some of the most critical views on the ICTR came from the Tutsi who spent their entire lives in Rwanda and are supposed to be the key beneficiaries of the tribunal, rather than the Hutu (as researchers who focus on ethnic identity of interviewees may expect).

I also did not organize my interviewees into neat categories based on political affiliations, such as nationalists, liberals, human rights activists, or post-colonialists. This decision was based on two reasons. First, the interviewees resisted being placed in a particular political category. When I asked my interviewees to place themselves on the political spectrum they resisted associating with a particular political faction and instead chose to share particular views that they hold on specific issues. Second, there was too much shift and overlap in my interviewees’ political inclinations. I often encountered people in Serbia and BiH who believed in the defensive nationalist narrative but also thought of themselves as the biggest human rights advocates, arguing that the international community’s selective approach to justice was an infringement on fair and equal treatment of human beings. For example, the vice president of the most liberal and pro-Western political party in Serbia held nationalist views and explained his commitment to his party as a pragmatic realist choice. He was thus a nationalist and a realist while at the same time
serving for a liberal party. The political situation in Rwanda made categorizing people based on their political affiliation extremely difficult because people did not feel comfortable expressing their political alliances openly. For example, my interviewees never openly stated that they oppose the ruling party and instead commented on specific views that they hold regarding a number of issues. For these and other reasons, the limitations to generalizability are greater in my research than in a study based on public opinion surveys, making estimating percentages of interviewees who are for or against the tribunals very difficult. That said, the unique insight that we gain from this dissertation is an opportunity to understand and explain prevalent narratives on the ground in great detail and depth.

I conducted three focus groups in Serbia but decided not to continue this method in BiH and Rwanda. The participants in Belgrade were drawn from preexisting groups – a student group at a university and a group of members at a political science institute – and were thus already familiar with each other and the social setting. Interaction and discussion during focus groups are supposed to stimulate participants to react to each other’s comments, resulting in a dynamism which Bruce L. Berg defines as “synergic group effect,” a form of collective brainstorming (2007, 145-6). While I found that this hypothesis was largely true during my focus groups in Belgrade, the assumption that focus groups result in higher comfort level for participants since the participants are of similar status and background and the informal group discussion encourages them to speak freely (Berg 2007, 145-6) was not as applicable in more sensitive contexts like Bosnia and especially not in Rwanda. As I familiarized myself with the Rwandan context I realized that focus groups could have had the opposite effect, instead limiting the comfort level of my participants. (Rwandans pride themselves on not revealing their emotions and are not at ease expressing their opinions publically, especially not in front of each other (rather than a foreigner) because of the limitations their government imposes on freedom of speech (Zorbas 2011)).

A final point regarding my research methodology is that short and long term effects of institutions on people and ideas are notoriously difficult to study; studying them while these institutions are still developing and while the societies in question are in the midst of transition is even more difficult. David Backer notes a number of research design and methodology problems in cross-national studies of transitional justice institutions: the case studies might be dissimilar, the extent of knowledge about the cases varies due to their complexity and information constraints (I would add constraints on access to information, such as security and transparency
issues), and it is extremely difficult to identify any independent effects of tribunals from everything else taking place in the same settings (2009, 56-7). On the first issue, Backer reminds us that just because no two institutions are identical does not mean that there are not significant similarities, or that all differences are consequential (Backer 2009, 57-8). Moreover (and following the logic of John Stuart Mill, and then Adam Przeworski and Henry Teune (1970),) just as a few similarities in divergent contexts can prove consequential and allow us to discover factors that are key in different settings, a few differences might prove key in explaining the variation in results. Therefore, while using modeling in transitional settings is difficult because of contingency of events, developing useful insights about transitional justice institutions that are generally consistent across countries is feasible. On the second issue, I tried to mitigate asymmetry in information and access by applying a variety of methods to get answers to the same questions in different contexts. Still, I found that some methods used in Serbia for example, such as focus groups, were not replicable in Rwanda because of government constraints on freedom of speech. On the last issue, disaggregation of effects, I recognize that tribunals are collinear with, contingent on, and modified by various factors. I attempt to disaggregate factors, yet I also find that it is just as useful to gain an understanding of the complex interactions and interwoven causal mechanisms.

Empirical evidence of domestic views on and responses to international tribunals benefits policy-makers since it informs decisions on whether and what kind of transitional justice mechanisms should be implemented. Hugo Van Der Merwe et al. note that the current scholarly debate is based on “popular conceptions (or misconceptions) of the benefits and drawbacks of different models and romanticized notions of their achievements” (2009, 3-5). My contribution provides instead a critical examination of the current assumptions steering transitional justice policy, and an understanding of what it actually means for a people to go through a transitional justice process. This objective is particularly important in the context where there is a significant geographical distance between those conducting the trials and those being placed on trial. Thus, at the heart of this project was an attempt to answer Neil Kritz’s question:

Are the attitudes and actions of participants in conflicts half a world away affected in any way by their perception of international justice as represented by the tribunals? For example, does their awareness of the tribunals influence them to commit to an international acceptance of human rights principles and an understanding of human rights conversations? (2009, 15-7)
King et al. also suggest that a project “make a specific contribution to an identifiable scholarly literature” (1994, 15). The main thematic benefit of this dissertation to the scholarly community is the re-examination of the value of international criminal tribunals specifically, and international trials as a form of transitional justice in general.

**Chapters that follow**

My next chapter presents the theoretical argument of this dissertation. I situate my argument in the available literature and systematically address key, presumed virtues of international criminal trials, illustrating why each is problematic in the case of the ICTY and the ICTR. I make the argument that domestic actors in BiH, Serbia, and Rwanda perceive international tribunals as institutions which overlooked the interests of their primary audience, had crucial, albeit possibly unintended, negative effects on domestic politics, and brought attention to the selectivity of global justice and the prevalence of state-interest in international relations. This chapter also provides a conceptual framework for understanding the political impact of international criminal tribunals at the local level.

In chapter three I use mainly secondary sources, as well as some research data, to set up the historical and political context that the ICTY encountered in BiH and Serbia. I address key contextual themes which factored into local understandings of the tribunal. In chapter four I examine the response of domestic actors in BiH and Serbia to the ICTY. The finding are based on 63 semi-structured interviews, 43 of those were in Serbia and 20 in BiH. I also conducted three email exchange interviews (two in Bosnia and one in Serbia), and three focus groups in Serbia. The objective of the chapter is to illustrate how domestic actors perceived the ICTY, interpreted its mandate, and defined its meaning. The chapter highlights contending narratives on the ICTY and the two pillars of its mandate – justice and reconciliation, revealing implications for domestic politics and the legacy of the tribunal.

In chapter five I use key secondary sources, as well as interview data from Rwanda, to describe the post-genocide context that the ICTR faced in that country. I examine crucial political dynamics on the ground which shaped the domestic perceptions of the tribunal. In chapter six I analyze the response of domestic actors in Rwanda to the ICTR. The analysis here is based on 70 semi-structured interviews with a range of participants. The goal of the chapter is to capture how domestic actors perceived the ICTR and its mandate, and defined its impact on
Rwandan politics and society. The chapter highlights domestic views on the tribunal’s undertakings in justice and reconciliation, as well as its relationship with the Rwandan government and actors on the ground, illuminating anticipated consequences for Rwanda’s future.

Chapter seven then provides concluding remarks regarding the perception and evaluation of international trials in different domestic contexts, and the relationship between international justice and domestic politics. The concluding chapter also highlights broader implications for international justice and the applicability of the lessons learned from international criminal tribunals to ongoing and future trials of individuals accused of the most horrendous crimes.
Chapter II: Dissertation Argument

“Hell, the law is like the pants you bought last year for a growing boy, but it is always this year and the seams are popped and the shankbone's to the breeze. The law is always too short and too tight for growing humankind.”

Willie Stark in Penn Warren’s All the King’s Men 1996, 136.

On April 20, 1993 Bill Clinton made the statement that inspired the title of this dissertation: “The US should always seek an opportunity to stand up against – at least speak out against – inhumanity.” The statement summed up America’s stance towards the war in Bosnia and Herzegovina (BiH). Clinton preferred “speaking” over sending his troops to “a shooting gallery” (Clinton 1993; also qtd. in Bass 2000, 214). In this dissertation I will investigate the political consequences of the international criminal tribunals that the United States and their Western European allies established in response to the mass atrocities that took place in the early 1990s.

In Stay the Hand of Vengeance: The Politics of War Crimes Tribunals Gary Bass details the political backdrop to the establishment of the tribunal for the former Yugoslavia. Bass tells us that Germany’s foreign minister made the proposal to establish a war crimes tribunal while the war was still raging in BiH, which America saw as the perfect justification for military inaction. Britain and France opposed the establishment of the tribunal (as well as military action) but did not wish to be seen blocking the legal process. The Western Europeans and Americans therefore grudgingly agreed to use the law to “speak out” against violence in BiH through a body whose wordy name foreshadowed what would become over two decades of legal speech. The International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 was established in February 1993 (Bass 2000, 215), though the war in BiH concluded in 1995. A couple of journalists reporting for key media outlets, such as Peter Maass who had been
The tribunal for former Yugoslavia is a mechanism of international transitional justice. I define transitional justice as a set of judicial and non-judicial measures implemented by various actors (state, non-state, local, and international) in order to address massive human rights abuses in societies attempting or undergoing transition from armed conflict and repression. This definition includes restorative justice in addition to retributive justice, and private in addition to public forms of restoration and retribution. The definition also includes the four broad types of transitional justice mechanisms, including reparations, institutional reform, truth commissions, and criminal trials (with the latter two being most popular) (see Teitel 2000 and 2003; Minow 1998; Bell 2009; Elster 2004; UN 2004; ICTJ 2014). However, specifically, this dissertation concerns judicial measures implemented by international actors (the UN Security Council particularly) to address massive human rights abuses in three countries undergoing transition from armed conflict. I purposely do not specify what the ‘transition’ is to because it is unclear whether and to what degree the countries in question are transitioning in a political sense and moving towards a democratic system of governance. It is also unclear whether and to what degree the three countries are transitioning to societies of social stability and trust. My findings on reconciliation in the three countries suggest that this aim is far from accomplished. In this sense, my definition of transitional justice is closer to Christine Bell’s cautious use of the concept of ‘transition’ in her definition of transitional justice as “the attempt to deal with past violence in societies undergoing or attempting some form of political transition” (2009) than Ruti G. Teitel’s broader definition of transitional justice as “the conception of justice in periods of political transition” (2000).

The use of transitional justice mechanisms to address wrongdoings of regimes is not a new practice. In his work Closing the Books: Transitional Justice in Historical Perspective, Jon

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11 The Rwandan regime is authoritarian, Serbia is relatively democratic, while BiH is a non-functioning democracy. See chapters three and five for more detailed analyses.
Elster characterizes the 404 and 411 BC restorations of democracy to Athens as cases of transitional justice. Elster shows that in 404 BC the Athenians chose the route of social reconciliation combined with restitution of property that the oligarchs had confiscated. However in 411 BC the Athenians decided on retributive justice against the deposed oligarchs (Elster 2004). Bass (2000) begins his historical account of transitional justice with the 1815 St. Helena trials for the Bonapartists. Trials addressing wrongdoings of past regimes continued to be carried out in the twentieth century. Two sets of trials took place in the aftermath of World War I – the Constantinople trials of 1919 and the Leipzig trials of 1921. The Constantinople trials were military courts of the Ottoman Empire which tried selected former officials for subversion of the constitution, wartime profiteering, and massacres of Armenians and Greeks. The Leipzig War Crimes Trials prosecuted alleged German war criminals before the German Reichsgericht as part of the penalties imposed on the German government under the Treaty of Versailles. Several sets of trials also took place in the aftermath of World War II. The most well known are the Nuremberg trials of 1945 and the Tokyo trials of 1946. Both were a joint effort by the Allies to prosecute Nazis and their allies for genocide and crimes against humanity, for crimes against peace, and for mistreatment of prisoners and opponent population. The Tokyo tribunal, which prosecuted Japanese leaders for their actions in World War II was more of an American creation than a joint effort by the Allies and was, arguably, less concerned with due process and the rights of the defendant (Bass 2000).

This dissertation examines particular approaches to transitional justice – legal and international responses to wrongdoings of predecessor regimes. While this dissertation thus concerns itself with international trials, the Nuremberg and Tokyo tribunals inspired numerous domestic trials. In the aftermath of World War II the Allies carried out a few hundred local trials and the German state carried out tens of thousands of local trials. In Eichmann in Jerusalem, Hannah Arendt brilliantly documents Israel’s prosecution of Adolf Eichmann in 1962. Other notable examples of domestic trials are Argentina’s 1985 prosecution of 500 members of the military junta involved in the murder of 10 000 to 30 000 people, Germany’s prosecution of border guards involved in shooting escapees from East Germany in the 1990s, and Poland’s 2008 trial of a general for imposition of martial law. Both international and domestic trials run the risk of being victor’s courts. One advantage of domestic trials is the fact that the local population may perceive domestic trials as more legitimate because they are located in the countries in question, domestic law is applied, and the proceedings are carried out in the local language. However,
local trials may run higher risk of corruption and lower quality of legal procedures and due process because of political influence and lack of resources.

The ICTY and the ICTR are institutional successors of the Nuremberg and Tokyo tribunals in the sense that they had the same purpose as the Nuremberg and Tokyo trials – punishing wrongdoers for war crimes and crimes against humanity and enforcing international laws of war. The ICTY and the ICTR also reflected the exponential development of international law that transpired in the fifty years between the Nuremberg trials and the ICTY, including new types of violations of international humanitarian law, the Geneva Conventions of 1949 and their Additional Protocols on prisoners of war and civilians, as well as international treaties on torture and hostages (Wald 2006, 1564). An important difference between the ICTY and the ICTR and the Nuremberg and Tokyo tribunals is that while the Nuremberg and Tokyo tribunals were established by the Allies, the ICTY and the ICTR were the first war crimes trials to be established by the United Nations Security Council. Therefore, while Germans and Japanese were put on trial by victors of World War II, Yugoslavs and Rwandans were put on trial by a body representing the international community. Another interesting distinction from the post-WWII trials is that the ICTY and the ICTR are international responses to civil and regional\(^\text{12}\) wars rather than international wars. The countries which established the ICTY and the ICTR were not directly involved in the fighting in Bosnia, Croatia and Rwanda.\(^\text{13}\) America, Britain, France, and Germany were thus not responding to aggression against their own populations. In this sense, the ICTY and the ICTR are landmark institutions whereby several Western powers and the UN Security Council granted themselves the position of arbitrators in other states’ civil conflicts.

After the establishment of the ICTY and the ICTR interest in the notion of transitional justice quickly grew. Today, numerous organizations, institutions, centers, and academic programs are devoted to the study and implementation of transitional justice mechanisms, mainly war crimes tribunals and truth commissions. In 2004 the UN Secretary General Kofi Annan publicly formalized the UN’s normative commitment to transitional justice and outlined a framework for strengthening UN support for the concept (Leebaw 2008, 96). Understanding

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\(^{12}\) The Rwandan war involved an invasion by the Rwandan Patriotic Front from Uganda.

\(^{13}\) By arguing that Western countries were not directly involved in the infighting in Bosnia, Croatia and Rwanda, I do not mean to argue that Western countries were not involved in the Yugoslav and Rwandan conflicts in significant ways. This chapter and the following chapters will in fact point out Western involvement in Yugoslavia and Rwanda and its consequences.
strengths and weaknesses of the ICTY and the ICTR is thus crucial as more criminal trials based on these models are being implemented and planned for the near future in various parts of the world.14

Situating my argument in the available literature

A review of the literature on international criminal trials reveals that expectations about what processes of international criminal justice can do have been raised too high; much less attention has been paid to what they cannot do. In From Nuremberg to The Hague Michael Schaff outlines six goals that the permanent members of the UN Security Council assigned to the ICTY in 1993: (1) justice for victims, (2) accountability for individual perpetrators, (3) respect for the rule of law in the popular consciousness, (4) restoration of peace, (5) historic record for a conflict in which distortion of the truth has been an essential ingredient in fueling violence and (6) deterrence of future atrocities in the Balkans and around the globe (Schaff 2002, 52-54; see also Bass 2002, 286-288). More then a decade later Kofi Annan still emphasized three grand goals for transitional justice mechanisms: “to ensure accountability, serve justice and achieve reconciliation” (UN 2004, 4). This dissertation therefore accords with Mirjan Damaska’s view that architects of international criminal courts mistakenly profess to achieve “gargantuan” goals (2008, 331; see also CCPDC 1997, 94-8). Peter Maguire concludes his book Law and War: International Law and American History with the argument that advancing international law will not make up for the lack of courage to understand and apply knowledge that we already have (2010, 212). I argue that this includes questioning the fundamental assumption that processes of international justice necessarily produce beneficial effects.

Why such an overabundance of goals for international criminal trials? This overabundance is partially the result of an activist mindset that emphasizes the normative virtues of international criminal tribunals and what human rights advocates15 and prominent tribunal practitioners16 perceive as the tribunals’ capacity to withstand political pressure (Peskin 2008,

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14 For example, the International Criminal Court has taken on cases from eight countries in Africa, including Democratic Republic of Congo, Central African Republic, Uganda, Sudan, Kenya, Libya, Cote d’Ivoire, and Mali. Also a Special Tribunal for Lebanon was established in 2009 with no set timeline for the judicial work to be completed. In addition, international discussions on prosecuting war crimes and crimes against humanity which are currently being committed in Syria have begun.
15 Such as Aryeh Neier and Kenneth Roth. See also Robertson 1999.
16 See Goldstone 2000.
This dissertation begins with the premise that, far from being apolitical, international criminal tribunals are political and understanding how is crucial.

It is therefore ironic that lawyers and human rights activists have dominated the field of international justice, while political scientists have been “remarkably oblivious to the potentially paradigm-challenging qualities of international criminal justice, were it to prove the durable phenomenon that lawyers occasionally announced it to be” (Megret 2002, 1262). However, even authors who claim to draw on political science and international relations have been mildly optimistic about the tribunals’ chances of success (Megret 2002, 1263). More critical work on the tribunals has emerged only recently. Understanding the effectiveness and the roles of the tribunals, this dissertation argues, requires a return to the political sphere.

A careful study of short-term and long-term effects of international criminal tribunals would be able to tell us what tribunals are actually able to accomplish, yet few such studies exist (Stahn 2009). Janine N. Clark suggests that scholars of transitional justice need to address this empirical gap in order to examine whether the theorized benefits of international criminal trials eventuate, and whether these institutions can develop mechanisms that are more inclusive of and responsive to the local context (2012, 55, 72). Similarly, Carsten Stahn criticizes the tribunals for creating a post for a “legacy officer” devoted to establishing the tribunals’ place in history before even conducting an inquiry into “the proper goals and effects of international trials” (2009, 4).

Building upon Clark’s and Stahn’s arguments I argue that the complex (and sometimes negative) consequences of international criminal trials need to be fully taken into account, and more attention paid to how local people mobilize in response to international criminal trials, and how the transitional justice process is being revised, reinterpreted and reiterated at the domestic level. This dissertation sets out to address that gap.

The answer to my research question then – Why is it that, despite the best intentions of their architects, international criminal tribunals have failed to produce justice and reconciliation in the eyes of the people in the countries in question? Specifically, why don’t local populations support the prosecution of war criminals by international tribunals? – is two fold. First, the absence of meaningful communication by the tribunals about their work allows local actors to

17 Frederic Megret argues that the reason why political scientists did not pay adequate attention to international criminal tribunals is because international criminal justice seemed ornamental at first, without much real influence on world events, and political scientists tend to devote their attention to a study of the world “as it is” (2002, 1262).
manipulate tribunal processes and the perception of tribunals to their own ends. Second, tribunal processes can damage local attempts to advance human rights and political transitions.

The first argument of this dissertation unfolds along the following lines: the tribunals do not have adequate and effective outreach programs in the communities in question. Consequently, locals do not feel that they are the target audience, which then creates opportunities for exploitation and ridicule of the tribunals by local elites, as well as accusations that the tribunals serve the interests of Western countries and the international legal community. I recognize that there is an important tension in this argument: I critique the tribunals for failing to reach out to local communities, but I also concede that local elites can significantly manipulate the debates around the perceptions of tribunals. It is difficult to see a way around this tension: if the tribunals admit their political role and openly seek to shape local politics, they may be either co-opted by local actors, and/or accused of imperialism. If they don’t do so, this may happen anyway. It is a difficult tension to resolve. Nonetheless, it is clear that the absence of meaningful outreach by the tribunals leaves room for political entrepreneurs to manipulate tribunal processes and the perception of tribunals for their own purpose.

The second argument proceeds as follows: not only do the tribunals provide a new venue for existing battles in domestic politics, but they may even shift local dynamics in more dangerous ways by introducing new threats to already strained political actors and presenting new conditionalities in already unstable contexts. This line of argument emphasizes that tribunal architects have often failed to take into account the extent to which these institutions shape domestic politics and can be self-defeating, contributing to the entrenchment of harmful politics and politicians, including right-wing nationalists and autocrats. There are a number of elements at work here.

First, the extent to which war tribunals can be negatively perceived in local contexts and can, paradoxically, help right-wing nationalists and autocrats gain political support suggests that we should be very cautious about assuming that war tribunals will serve as positive education and rehabilitation mediums for post-war societies. The argument that the courtroom can serve as a classroom has been propagated by those who privilege the importance of Nuremberg in the post-World War II transformation of Germany. Norbert Ehrenfreund for example argues that it was the record of the Nuremberg trial that eventually opened Germany’s eyes to what the Nazis did, and thereby became a major factor in the country’s rapid strides to democracy. By awakening the German people to the past, Nuremberg influenced their political conduct in the future (2007, 139-140).
Similarly, Susanna Karstedt writes about “the civilizing influence of the Nuremberg Trail” (qtd. in Wolfgram 2013, 4), and Gary Bass (2000), Lawrence Douglas (2001), Mark Osiel (1997) and Steven Ratner and Jason Abrams (2009) all to a lesser or greater degree suggest that the trials served a successful pedagogical purpose in German society. Yet, Ehrenfreund and others provide little empirical evidence for their claims.

In fact, Mark Wolfgram, who does look at the empirical evidence, finds that “it is difficult to detect any significant increase in the social discussion of the Nazi persecution of the Jews and the Holocaust until the very end of the 1970s, long after the conclusion of the Nuremberg trials” (2013, 5). Wolfgram argues that in order for trials to have a chance in shaping public attitudes towards facing the criminal past, the narratives of the courtroom need to be adopted by local actors and communicated through newspapers and radio, as well as popular culture, including theatre, television and film (2013, 3). That is, these narratives actually need to be convincingly conveyed to the relevant domestic audience. Donald Bloxham confirms Wolfgram’s argument, suggesting that generational change and the student movement of the 1960s are responsible for the more positive view of Nuremberg, not the courtroom process itself. “The legal event did not shape the cultural change; to argue otherwise is to confuse cause and effect,” he explains (2008, 267). While I agree with Wolfgram and Bloxham, I find also that war tribunals can serve a negative pedagogical role, providing a venue for right-wing nationalists and autocrats to shape public opinion. Trials can be used to teach useful lessons – but they can also be “hijacked” (Subotić 2009) as speaking platforms by the accused criminals or dictators who have their own ‘lesson’ that they wish to teach to the broader population.

This dissertation also does not endorse arguments which suggest that certain conditions – such as economic stability and/or time – are required before positive lessons from war tribunals will be accepted by local populations. Robert Hayden for example argues that German citizens needed to feel the economic benefits of the Marshall plan before they could confront the realities and learn the lessons from the Nuremberg trials (2011; see also Giesen 2004). Victor Peskin (2008) and Michael Scharf (2006) suggest that local perceptions of war tribunals become more

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20 In 1953 Germans were asked in a poll “Do you think that the German soldiers of the last war can be reproached for their conduct in the occupied countries?” to which only 6 percent responded positively and a clear 55 percent responded negatively (Noelle and Neumann 1967, 202). Also, in a poll conducted in 1955 a clear majority of Germans said that Hitler had been one of Germany’s greatest leaders (qtd. in Wolfgram 2013, 9).
positive over time. Peskin explains that even in advanced industrial societies with a robust tradition of the rule of law, it takes time for courts to alter attitudes held by the general public (2008, 244). However, Peskin misses a key difference in his analogy: in advanced industrial societies the general public, while disagreeing with the domestic court’s decision, may still perceive their country’s legal system as legitimate. My interviewees in Bosnia, Serbia, and Rwanda not only disagreed with the tribunals’ specific findings but often saw international criminal law itself as an illegitimate external imposition.\(^{21}\) We have no way of knowing whether time or the fact that Germans were able to find an alternative positive self-image to rely on – one rooted in the German economic miracle culture (\textit{Wirtschaftswunder}), and their success as innovative and industrious citizens (Giesen 2004, 125-6) – affected their ability to learn certain lessons from Nuremberg. This dissertation instead emphasizes the dynamics between international and domestic politics over temporal and economic factors.

The debate over the potential educational function of war crimes trials is philosophically grounded in the work of Judith Shklar on the one hand and Hannah Arendt on the other. In the 1960s Judith Shklar wrote in defense of trials and referred to Nuremberg as “a legalistic means of eliminating the Nazi leaders in such a way that their contemporaries, on whom the immediate future of Germany depended, might learn exactly what had occurred in recent history” (1964, 155-6). Contrarily, in the same decade Hannah Arendt accused the Prime Minister of Israel David Ben-Gurion of turning Adolf Eichmann’s trial in Jerusalem into political theatre. Arendt insisted that “[o]n trial are [Adolf Eichmann’s] deeds, not the suffering of Jews, not the German people or mankind, not even the anti-Semitism and racism” (1964, 3, 7). Arendt would be unhappy to learn that the same issues exist today at the ICTY and the ICTR and that my interviewees in BiH, Serbia, and Rwanda were unclear about who or what is on trial. Are the Hutu and the Serbs on trial? Is it the suffering of the Tutsi and Bosnian Muslims? Nationalism and racism? Following Arendt’s line of thought, this dissertation is critical of the use of trials as pedagogical tools, as well as a variety of other extralegal roles advocates assign to them.

Second, advocates of war crimes trials argue that an additional function of the international tribunals is removing harmful political actors from the fray and deterring others from carrying out harmful politics and perpetrating violence. In his first annual report to the UN,
the President of the ICTY stated that “the Tribunal is intended to act as a powerful deterrent to all parties against continued participation in inhuman acts” (qtd. in Stahn 2009, 6). In a similar vein, human rights advocates often make general claims about the supposed “alert effect” of international trials—suggesting that a public display of the investigation and prosecution of past crimes deters possible future criminals in the affected communities and beyond (Stahn 2009, 4). However my finding that the tribunals can help entrench the wrong kind of politics and strengthen the wrong kind of actors suggests otherwise. This dissertation is more in accord with those scholars and researchers who critique this line of reasoning. The Open Justice Initiative study of 2008 found that it cannot reach reliable conclusions about the ICTY’s deterrent impact because the Srebrenica massacre for example took place two years after the ICTY was established, and atrocities in Kosovo took place five and six years after the creation of the Tribunal (Orentlicher 2008).

Damaska argues that the claim about deterrence is based on the flawed assumption that criminals actually consider the threat of punishment in their planning, and that their perceptions of costs and benefits of committing proposed crimes are the same as those of advocates of tribunals (2008, 344). My findings support Damaska’s hypothesis that the rival sides to a conflict often present and perceive the conflict in question as a bigger political cause, transcending single individuals and their interests; the individuals involved often have self-transcending goals and perceive themselves as martyrs to a higher cause – not rational, self-serving individuals. For example, my interviewee Staša Zajović, founder of an NGO in Belgrade, explained that Vojislav Koštunica’s government celebrated the accused war criminals who voluntarily gave themselves up to the ICTY as martyrs (Activist and founder of Women in Black, Interview, July 28, 2011). Koštunica’s government and its nationalist supporters branded accused war criminals as double martyrs who first ‘sacrificed’ themselves for the survival of their nation during the war and then did so again for the economic and political future of their nation after the war. Vojislav Šešelj, an alleged war criminal described by one of my interviewees as “hyper-educated, hyper-intelligent, and hyper-crazy” voluntarily surrendered to the ICTY in his quest for fame (Nebojša Randjelković, a professor of history of law and vice-president of the left-wing Liberal Democratic Party, Interview, June 22, 2011).

In addition, ‘incapacitating’ perpetrators is a time sensitive issue because if the conflict is ongoing, a tension can arise between bringing the alleged criminals to trial and ending the violence (Damaska 2009, 331). If combatants fear prosecution after the conflict ends or after
they hand over power, they may be more ruthless in how they wage war or hold on to power. Raymond Aron argued as early as 1966 that the threat of war crimes trials makes conflict more brutal:

Would statesmen yield before having exhausted every means of resistance, if they knew that in the enemy’s eyes they are criminals and will be treated as such in case of defeat? It is perhaps immoral, but it is most often wise, to spare the leaders of the enemy state, for otherwise these men will sacrifice the lives and wealth of and possessions of their fellow citizens or their subjects in the vain hope of saving themselves. If war as such is criminal, it will be inexpiable (115).

My interviews in Rwanda did not reassure me that the work of the ICTR will discourage future crimes in Rwanda. In fact, two of my interviewees with very different profiles forecast more violence in Rwanda’s future. A man who teaches media law and served as a préfet and a governor post-1994 in a neighbourhood in Kigali where mass atrocities took place during the genocide predicted that “the government will lead the community to another war and another genocide and other crimes against humanity” (Interview, December 14, 2011). A woman who is an attorney at law and chairs an underground human rights organization which was banned under the Habyarimana regime and is still banned under the current RPF regime argued that Western countries will regret their current support for the RPF government because “something will happen in Rwanda again and the international community will feel guilty once again for not having interfered” (Interview, December 15, 2011).

Such findings suggest that thinking of the tribunals as a means to reconciliation is very problematic. Yet, both the ICTY and the ICTR websites assert that in addition to the aim of justice, the aim of reconciliation is included in the mandates of the tribunals. The ICTY website (2011) states that “Justice is an indispensable ingredient of the process of national reconciliation. It is essential to the restoration of peaceful relations between people who have lived under a reign of terror. … Thus peace and justice go hand in hand.” Similarly, the ICTR website (2011) argues that “[t]he purpose of this measure [ICTR] is to contribute to the process of national reconciliation in Rwanda and to the maintenance of peace in the region.”

22 The latter may be true for President Paul Kagame and his clique. Moreover, in Stay the Hand of Vengeance, Gary Bass gives us examples of the problems American diplomats encountered in Serbia and Bosnia when trying to negotiate a cease-fire with individuals the ICTY indicted as war criminals (2000, 274).

23 The ICTY continued to emphasize the goal of reconciliation in its proceedings, also linking it to the notion of ‘truth.’ “Discovering the truth is a cornerstone of the rule of law and a fundamental step on the way to reconciliation” (Erdemovic Sentencing Judgment, 1998: para. 21.).
The findings of this dissertation are in agreement with scholars who argue that trade-offs in post-war goals have been ignored and that criminal trials may be a detriment to the establishment of the less-ambitious goals of political compromise (over reconciliation). Damaska argues that the didactic role of the courts creates hard distinctions between the ‘innocent’ and the ‘guilty,’ which limits the discussion about conflicting positions and understandings of the past (2009, 346). Indeed, when we disaggregate ‘justice’ and ‘reconciliation’ we discover that the concept of ‘justice’ inherently concerns the past, since it addresses a specific moment in history, while the concept of ‘reconciliation’ emphasizes the future – the focus is on “rebuilding broken relationships” (Clark P. 2008, 193, 205; see also Clark, J. N. 2012, 58). Transitional justice institutions thus find themselves in a paradoxical position located between backward and forward-looking goals, “failing to articulate precisely how – punishment will contribute to reconstruction or reconciliation” (Clark P. 2008, 197; see also Teitel 1997, 2014).

I asked locals in Bosnia, Serbia, and Rwanda to express their opinion on the relationship between criminal trials and reconciliation. The link was not clear to them. Interviewees in Rwanda, Bosnia, and Serbia agreed that reconciliation is not a legal issue. Some even suggested that treating reconciliation as a legal issue can be counter-productive. A Catholic minister and vice-rector of a college in north Rwanda argued that “unity and reconciliation are moral not legal issues and should be handled by civil society not the state” (Interview, December 15, 2011). Similarly in Serbia the editor of the prominent left-wing/centrist journal Vreme claimed that “[r]econciliation was an impossible aim of the ICTY. Justice was achieved to some degree in a number of cases, but reconciliation was worsened because the ICTY triggered defensive nationalism” (Dragoljub Žarković, Interview, August 31, 2011).

My interviewees were also unclear about what “reconciliation” meant in their context. When I asked a college student and genocide survivor who lost his entire family in the genocide whether Rwandans are reconciling, he responded by discussing whether the Tutsi and the Hutu live together in present-day Rwanda. He explained that he sees people living together but does not know whether they live together because of government pressure to reconcile or because they choose to (Interview, November 15, 2011). According to a psychiatrist and head of a research

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24 Bronwyn Anne Leebaw (2008) similarly argues that “the strategies developed by transitional justice institutions to judge and transform the basis of a political community are often in tension with the strategies that transitional justice advocates have adopted to avoid volatile conflict and legitimate transitional compromises” (2008, 97, 106, 117).
institute in Kigali, Rwanda’s Reconciliation Barometer\(^{25}\) found that 80 percent of Rwandans think that reconciliation is going well. However, this interviewee argued that we have to look at more detailed elements of reconciliation because, for example, studies indicate that 50 percent of respondents prefer having a neighbour of the same ethnicity (Interview, January 11, 2012).\(^{26}\) Since reconciliation is an official policy of the RPF, it is likely that Rwandans feel pressured to respond positively when the word ‘reconciliation’ is used in surveys. However, when respondents are asked to consider specific indicators of reconciliation, the picture is different.

My interviewees in the Balkans were more openly negative when I asked them whether Serbs, Croats, and Bosnian Muslims are reconciling. Milovan Jovanović, a talk show host for a private media network, summarized the attitude in the Balkans: “Honest reconciliation is a far cry. Right now it is all cosmetic – a play of the eye. The tribunal does not have [anything] to do with this. People in politics, media, sport, and culture in the countries in question all need to be united for reconciliation to take place” (Interview, August 20, 2010). The responses in Serbia and Bosnia suggest that, by linking justice to reconciliation, the ICTY attempted to impose reconciliation on populations who have not yet demonstrated a desire to address issues of collective responsibility. The tribunals problematically presupposed a willingness on the part of former rivals to reconcile.

So, if there are reasons to doubt that the tribunals are playing the roles that advocates assigned to them, what is the actual meaning of international criminal tribunals as they are received in different domestic contexts? In Serbia, my interviewees perceived the ICTY either as an international institution that is hostile towards the relatively (or at least procedurally) democratic government, or as a transaction between the government on the one hand and international donors and the European Union on the other hand driven by purely material or economic interests. In BiH, where the Dayton structure of government encourages ethnocentric politics, my interviewees perceived the tribunal as not only hostile towards the democratic government but also towards the nation itself. In Rwanda, by contrast, my interviewees perceived the tribunal either as an international institution that sided with the authoritarian

\(^{25}\) Rwanda Reconciliation Barometer was a joint study between a government body – the National Unity and Reconciliation Commission – the UNDP, and two research institutes (Institute of Research and Dialogue for Peace and Institute for Justice and Reconciliation). The report was published in 2010.

\(^{26}\) The interviewee’s estimation seems correct in the sense that the Barometer shows that about 85.4% of people surveyed indicated that they have personally experienced reconciliation (Rwanda Reconciliation Barometer 2010, 62). I am not aware of the interviewee’s source for the second statistic about the preference for a neighbour of the same ethnicity.
regime, or as an institution that is largely irrelevant to the Rwandan population. In all three countries, my interviewees perceived the tribunals as mechanisms of a highly selective brand of international justice, serving the interests of Western countries and the international legal community. In Serbia, both the right-wing nationalists in power and the liberal opposition whose approach was rooted in postcolonialism were united in this view.

My data suggest then that the tribunals were not able to reinstate faith in the rule of law in the countries in question because of perceptions about how selective law, and especially international law, can be. This empirical point contradicts the claims by supporters of international criminal tribunals that the “international criminal procedure is valued for its intrinsic, not instrumental, functions” (Ohlin 2009, 82). My findings suggest that if we ask individuals situated in the affected societies (Bosnia, Serbia, and Rwanda), as opposed to international legal experts, to assess the value of international justice, we find that they often view tribunals as instrumental tools of Western strategy rather than symbols of the neutral and objective rule of law.

Furthermore, advocates of the courts like Jens D. Ohlin argue that international criminal justice processes vindicate the rule of law by “adjudicating allegations of criminal violations that occurred during periods of anarchy characterized by the absence of domestic procedural law” (2009, 77). It is unclear why Ohlin would believe that international justice mechanisms, the legitimacy of which is often debated by local populations, would have the necessary authority to reinstate the intrinsic value of the legal process at the domestic level. My findings are more in accord with Hagan and Kutnjak Ivkovic’s argument that “[f]undamentally, to be seen as legitimate, legal justice must ultimately also be seen as local justice” (2006, 146). The process thus involves a localized democratic norm (O’Neill and Hymel 1994) – for the reestablishment of the rule of law to be legitimate and genuinely internalized at the domestic level it needs to be seen as grounded in local power struggles and, at least in part, locally-owned.

That is not to say that the international element of the tribunals is not important. International recognition of institutions and versions of history as ‘true’ is required for each of the post-conflict countries to hold a certain status and gain benefits derived from being accepted in the international community. In *Eichmann in Jerusalem*, Hannah Arendt argued that finding

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27 Such as Jens D. Ohlin who is an attorney and professor of law.
the balance between local, national, and international elements is the biggest challenge of law (Arendt 1965).

Finally, in all three countries my interviewees agreed with advocates that the tribunals’ role as a research repository may be beneficial. However, my interviewees were very cautious to distinguish between the advantages of the tribunals acting as a research archive and the problems the tribunals experienced attempting to establish an ‘objective record,’ ‘the truth,’ or ‘historical context.’ My findings thus do not entirely support those who argue that international tribunals are valued for what they supposedly do to determine the truth about individual and collective guilt (Ohlin 2009, 95-7; Scharf 2002, 52-4). While conventional national and local criminal courts address specific cases of criminal conduct, international tribunals consider both specific cases as well as the surrounding context. The inspiration for such efforts is, in the words of George Santayana, the notion that without such an objective record “those who cannot remember the past are condemned to repeat it” (1905). Yet this urge to establish the entire truth of an entire conflict is not well-served by the capacity and training of legal professionals.28 Damaska argues that “seen through the prism of a historian, then, judicial portrayals of the background of international criminality inevitably appear fragmentary, foreshortened, and locked in arbitrary time frame” (2008, 336).

My interviewees in Bosnia, Serbia, and Rwanda are inclined to agree with historians about these shortcomings. Chapters four and six provide ample evidence suggesting that the historical records established by the ICTY and the ICTR are at best incomplete and at worst distorted. One of my first encounters in Rwanda was a man who has dedicated his life to the humanitarian sector, the church, and, more recently, an orphanage he runs in Kigali. He argued that “the ICTR did only 40 percent of its work.” By capturing war criminals from the Habyarimana group only, the ICTR neglected war crimes committed by members of the RPF and

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28 First, unlike historians, attorneys and judges in war crimes trials function under significant time constraints that jeopardize the quality and completeness of their record. Second, attorneys and judges limit their truth-finding to legally relevant issues which results in the exclusion of a great deal of material. For example, both the ICTY and the ICTR exclude from their historical accounts the roles played by foreign states and international organizations in the conflicts. Third, when addressing the surrounding context in which atrocities took place, attorneys and judges necessarily must decide how far back to trace the causal explanations of violence despite having little or no training in the histories of the countries in question. Fourth, the evidence presented at tribunals distorts the fuller picture offered by historians because the legal procedures for acquiring and presenting evidence are restrictive, precluding thorough historical inquiry, and there is disproportionate use of forensic evidence (Damaska 2008, 335-6).
Zone Turquoise (Interview, November 4, 2011).\(^{29}\) Another memorable interviewee who reflected on the subject was a professor of sociology and anthropology of genocide at a college in Kigali. He concluded that “we need to distinguish historical and judicial truth” (Interview, January 9, 2012).

Not only is using war crimes trials to establish the historical record problematic, but there are also better ways to determine and remember the historical truth. In his review article “The Balance between Forgetting and Remembering,” Gerry Simpson appropriately asks “Do we remember the Holocaust because of Nuremberg, or because of Levi or Arendt\(^{30}\)? Simpson brings attention to “cultural-remedies” which can be used to achieve justice and remembrance but are often overlooked by war crimes lawyers with trial fixations (2001, 507). The work of historians and certain types of historic and truth commissions are more likely to lead to comprehensive, inclusive historical records.

This dissertation does not set out to argue that trials should never be conducted in post-atrocity times, but to argue that the tribunals of the past two decades represent an overemphasis on criminal justice at the expense of other facets of political transition, reconciliation and development. I thus do not intend to dismiss transitional justice mechanisms (nor criminal trials necessarily) but to call instead for careful analysis of the oftentimes conflicting and unrealistic goals of criminal trials. Serious impediments to political transitions need to be taken into account when deciding whether and how transitional justice mechanisms should be implemented in particular contexts. My findings suggest that assuming that criminal trials provide a linear and effective route to the rule of law, respect for human rights, democracy, and reconciliation is unfounded and idealistic.

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\(^{29}\) Zone Turquoise was established as part of Operation Turquoise by French troops and was supposed to be a safe zone in western Rwanda. The stated purpose of Zone Turquoise was to stop massacres and protect the Rwandan population. However the zone proved to be safe only for the Interahamwe to carry on murdering the Tutsi and protected the extremist leaders from capture by the RPF (McGreal 2007).

\(^{30}\) Simpson’s comment can be interpreted in two ways. On the one hand, we may remember the Holocaust because of Hannah Arendt herself, as a survivor of the Holocaust, political theorist, professor, and writer of influential works. On the other hand, we may remember Hannah Arendt because she reported and wrote extensively on a key event in history – the trial of war criminal Adolf Eichmann conducted by the state of Israel. If the latter explanation is true, it emphasizes the importance of domestic trials over international trials – it suggests that Israel’s trial of Eichmann accomplished more than the Allies’ Nuremberg trials.
Major themes in my findings

The first major theme in my findings is that the tribunals have overlooked the interests of their primary audience – the local communities in Bosnia, Serbia, and Rwanda. The second major theme in my findings is that the tribunals have ignored domestic politics in the countries in question and the two-way effect between legal processes at the tribunals and political processes on the ground.

The tribunals have overlooked the interests of local populations

The clientele the tribunals were established to serve is not clear. Moreover, the evidence suggests that informing the local population, local engagement, and a sense of local ownership were not priorities of the tribunals. This dissertation maintains that the success of war crimes trials significantly depends on the reactions of ordinary people because ordinary people participate in peace-building and reconciliation efforts in their communities on a daily basis and are thus the ultimate decision-makers on the matter.

Damaska (2008) writes about the dilemma of target audience, an underlying tension in criminal tribunals which has not been adequately explored in the literature. He notes that the factors that tribunals need to pay close attention to differ depending on whether the tribunals are supposed to have global or local effects. If the target audience is global then the court can concentrate on the normative content of international criminal law and the expansion of the reach of the law (335). However, if the target audience is local then local historical experience, customs and sensibilities, and existing loyalties need to be taken into account because adverse local reactions can come from genuine human rights ideals in local communities or disparities between domestic and international law (2008, 348), rather than, for example, nationalist propaganda. Damaska calls for international judges to avoid dismissive and condescending attitudes toward local culture and laws and instead justify their decisions to local audiences (2008, 349).

Unfortunately, most often, this is not how the criminal tribunals proceeded with their work. “It often seems that the memory for which the trial in The Hague is staged is not the memory of Balkan populations but that of an ‘international community’ recounting its past as a progress narrative from ‘Nuremberg to The Hague,’” says Martti Koskenniemi (2002, 34).
Donald Bloxham also writes about the interests of the international community and reassurance for Western populations:

… we may have to face the fact that one reason we find (hugely expensive, showpiece) international trials valuable is that they create a reassuring if often misleading sense of the restoration of order, a comforting illusion that the “values of the international community” are being upheld, even as they palpably are not in so many cases, and even as the greatest powers within that community continue to act as laws unto themselves (2008, 279).

Frederic Megret explains that tribunals appease particular elements of Western societies, including strong civil society, expanding powers of media, and the emotions of the public, without committing precious political and military resources to the problem (2002, 1281; see also Wippman 2006, 130). Peter Maguire argues that the US only becomes interested in human rights issues, including war crimes trials, when these issues correspond with its larger policy aims or become public relations problems through “psychobabble, public opinion polls, and that great arbiter of justice, CNN” (2010, 212). Overall, the decision of Western countries to support the creation of international tribunals seems to be more of a solution to their own needs for reassurance and public relations problems than a desire to serve the affected communities.

My interviewees were skeptical of the intentions of the architects of war crimes trials. In chapters four and six I cite various interviewees who suggested that the tribunals are alternatives to Western inaction during the violence in Bosnia and Rwanda. “The ICTR does not benefit anyone in Rwanda, it benefits the UN for their [genocide] guilt,” said a teacher (Interview, November 15, 2012). My interviewees also argued that members of the international legal community simply wished to develop the international legal field to assure professional positions for themselves. This view that the tribunals were established to foster the renaissance of international criminal law, rather than serve the local population, was common among those who visited the tribunals as expert witnesses, defense attorneys, as well as individuals who have never been to the ICTY or the ICTR (Teacher, Interview, November 15, 2011; Psychiatrist and expert witness, Interview, January 11, 2012; Toma Višnjić, defense attorney, Interview, August 4, 2011).

What is striking here is that the tribunals have failed to pay adequate attention to what should be their main target audience – domestic populations. I make the case that the domestic populations in Bosnia, Serbia, and Rwanda should be the target audience of the tribunals for prudential and ethical reasons. For prudential reasons, if the goal is justice for victims, and
peaceful future relations among former rivals, then the legal process needs to involve and satisfy these local actors. For ethical reasons, the local populations are the biggest victims of the crimes that took place so they deserve that the tribunals see them as primary constituents to whom the tribunals have a responsibility and accountability. Jennifer Trahan rightfully questions the extent to which tribunal architects and experts see the people in former Yugoslavia and Rwanda as their “primary constituents, to whom they had a responsibility and accountability” (ICTJ 2009). She argues that

[i]f the victims in the country aren’t persuaded that justice is being done, if the perpetrators aren’t being duly scared that their turn is next, if the public isn’t aware of the accomplishments of the tribunal, then who are we doing justice for? It cannot be the international audience, or Western NGOs, or the UN. That is not enough (ICTJ 2009).  

My findings in chapters four and six overwhelmingly suggest that my Bosnian, Serbian, and Rwandan interviewees did not feel that they were the target audience of the tribunals.

This finding is not surprising considering that “winning hearts and minds” was not a priority of the ICTY and the ICTR (Des Forges and Longman 2004). David Tolbert, who served as the deputy chief prosecutor of the ICTY, admitted that outreach was always ancillary to the ICTY because the tribunal could not attain funding for this purpose (ICTJ 2009). Hassan Jallow, the chief prosecutor of the ICTR explained that the outreach program is funded on a voluntary basis through the UN Trust Fund and that the UN itself does not provide funding for such activities (ICTJ 2009). The ICTY did not have an outreach strategy for the first six years of its existence which meant that local actors had an opportunity to construct interpretations of the tribunal which fit into their already existing narratives (Clark J. N. 2009, 101). Since its establishment in 1999 the outreach program has been severely understaffed: even though the ICTY has a staff of about 1200, only two people work in the outreach office in The Hague, and outreach offices in Zagreb, Sarajevo, Priština, and Belgrade only have one or two employees each (Clark J. N. 2009, 105). The key ICTY outreach project has been the “Bridging the Gap” awareness series, which seek to engage the public by bringing the debates on the ICTY to their local context. However, the low turnout at “Bridging the Gap” events in Bosnia (where most of

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31 Marie Kamatali raises a similar point arguing that if a tribunal is going to have an impact on the domestic context it remains its full responsibility to persuade local communities of “the nature of its justice and its input on national reconciliation” (2003, 120).
the Yugoslav victims are and therefore a higher level of interest was expected) suggests that the public is disinterested and disillusioned with The Hague process (Clark J. N. 2009, 103).

A less active outreach campaign has resulted in feelings of political alienation from the process by the population. These feelings are only intensified by the fact that the populations of former Yugoslavia and Rwanda are already geographically, linguistically and procedurally detached from the tribunals. Geographical detachment is an important concern because both the ICTY and the ICTR are located outside of the countries where the accused populations live - Rwandans are being tried in Arusha, Tanzania, and Bosnians and Serbs are being tried in The Hague in the Netherlands (see also Clark J. N. “The Three Rs” 2008, 331). Rwandans, Bosnians, and Serbs are generally not wealthy and thus very few of them would be able to afford to travel to Arusha and The Hague to participate in tribunal processes. Bosnians and Serbs confront excessive visa requirements when traveling to Western Europe, while Rwandans have to deal with poor infrastructure between Rwanda and Tanzania which makes journeys to Arusha long and difficult. In addition, the trials at the ICTY and the ICTR are conducted in foreign rather than local languages, and foreign rather than local law is applied. Since the tribunals are thus in many ways inaccessible to the accused populations, public knowledge depends on framing acts by various entrepreneurs, and the tribunals compete with governments and the media, whose reporting is often uninformed and “slanted” since these sources have particular propaganda in mind and cater to specific audiences (Chapman 2009, 110-1; Mani 2008, 257; Rabkin 2007, 120).

In addition to the lack of funding, the problems in outreach are a result of an internal debate which has been taking place between those tribunal experts who believe that the judgments should speak for themselves and those who argue that judges need to offer explanations and speak to their audience about their judgments. Jallow emphasizes that “the best outreach is actually the judicial work a tribunal does; it needs to be efficient rather than focus more on outreach,” but fails to acknowledge that there is less use in a tribunal carrying out good work if the audience is unaware of these accomplishments. This problem is especially evident in the case of the Rwanda tribunal which Jallow himself oversees. On the other hand, Tolbert acknowledges that a significant shift in the thinking of legal experts is required. He explains that “judges are trained not to speak to the press. Usually they are thrown out of the court room for such behaviour” (ICTJ 2009). While this used to be the reigning attitude of legal experts, Tolbert argues that the ICTY has learned that it needs to correct misrepresentations and inaccurate
information about the tribunal by reaching out to its audience (ICTJ 2009). Thus, more so than Jallow, Tolbert recognizes the crucial role that local perception plays in the interpretation of international justice.

Finally, it is difficult to make a case in support of the tribunals if the justice the tribunals offer does not resonate among the people they are meant to serve. Janine N. Clark (2012) explains that “regardless of whether a trial meets objective due process standards, if people feel it is unfair, this may encourage them to persist in seeing their own ethnic group as victimized” (61). Ratner and Abrams miss this point when they focus on the audience in the United States, commenting that the Tadić trial did not draw enough American journalists to The Hague and enough television audience in the United States (1997, 187). Domestic perception in favour of the tribunals is crucial if the tribunals are to achieve anything more than quality justice in the eyes of Western advocates - anything beyond that, such as a catharsis, a lesson, or an acceptable historical record for the local populations – requires that local actors buy into the process. Here, local engagement is key, yet Tolbert admits that regrettably locals were only hired in interpretation and translation at the ICTY rather than legal fields (ICTJ 2009). Dianne Orentlicher argues that clerks and legal advisors from the region would have been extremely useful in bridging the distance (ICTJ 2009). In my research I tried to reach out to these actors, including clerks, attorneys, and legal experts from the region, and give them an opportunity to engage in the conversation that they have been excluded from. This dissertation favours a participatory approach, one that takes seriously opinions of domestic actors and sees their insights on solutions to past atrocities and injustices as crucial to the political transformations in their countries.

Even if the communities in question understand the legalities at the tribunals, they will look at internationally-sponsored courts with different suspicions than domestic courts. From a critical postcolonial perspective, the origin of the legal decisions is itself problematic. Moreover, on prudential grounds, rather than being imposed through international law, moral lessons need to be seen as locally-owned and organically developed from within societies because these societies will need to uphold the norms established through the transitional process in order to prevent future atrocities. My data, specifically my findings on Bosnian, Serbian, and Rwandan attitudes to reconciliation, confirm this hypothesis.\(^3^2\) The implication is that the tribunals cannot

\(^3^2\) See chapters four and six.
compete with grassroots reconciliation movements, and, in fact, any attempt to influence ground-level developments might have the reverse effect.

The tribunals have overlooked domestic politics in the countries in question

In addition to failing to serve the interests of the local populations, the tribunals have overlooked domestic politics in the countries in question. My findings suggest two major drawbacks regarding the impact of international criminal tribunals on domestic politics, both of which help us understand why domestic audiences reject these institutions. On the one hand, certain local actors have managed to use the power of international law for their own goals. On the other hand, the tribunal processes can themselves have harmful effects on local political processes and democratic participation on the ground. Both of these drawbacks are evident in Bosnia, Serbia and Rwanda.

Regarding the first point, in the case of Bosnia and Serbia, extreme nationalists use the tribunal as a propaganda podium to discredit and display the weaknesses of the tribunal itself. For example, Vojislav Šešelj, the leader of the Radical Party in Serbia, the third strongest party in the country, is on trial for inflammatory speech and numerous crimes committed by his paramilitary militia called Šešelj’s Men, including acts of looting, killing, rape and persecution of Croats and Muslims. He voluntarily surrendered to the ICTY in 2003 and has used the ICTY podium to expand his extremist views during each court hearing. In the case of Rwanda, President Paul Kagame and his RPF clique have manipulated the tribunal into putting Kagame’s opposition on trial while avoiding indictment and diverting attention from human rights abuses and war crimes carried out by members of the RPF regime. The RPF government has been able to influence what cases the prosecution takes on to the degree that the tribunal Prosecutor Carla Del Ponte was replaced because she insisted on prosecuting RPF members (Del Ponte 2004).

Regarding the second point – the fact that tribunal processes can themselves be harmful to political transitions on the ground – in the case of Serbia, compliance with the ICTY led to adverse effects in domestic politics. For example, Prime Minister Zoran Djindjić, the most popular and progressive leader in Serbia, was assassinated because of his decision to eliminate the lingering influence of Milošević’s regime, which involved cleaning up Serbia’s organized crime scene and cooperating with the ICTY. Djindjić’s commitment to political transition and pro-Western policy cost him his life and significantly harmed Serbia’s political scene. In the case
of Rwanda, by giving in to the RPF clique, which was composed mainly of returnees from Uganda who came to Rwanda after the genocide, the ICTR officials alienated the majority of the Rwandan population – not only the Hutu majority but also the Tutsi survivors who wanted everyone, including the RPF, tried for their crimes.33

Among the few scholars who have examined the domestic effects of international criminal trials are Anne-Marie Slaughter and William Burke-White (2006) and Carsten Stahn (2009). In an article entitled “The Future of International Law is Domestic,” Slaughter and Burke-White argue that the future of international law depends on its ability to “affect, influence, bolster, backstop, and even mandate specific actors in domestic politics” (2006, 350). Slaughter and Burke-White thus recognize the major impact international law can have on domestic politics by arguing that this impact is “a double-edged sword” (2006, 347). They explain that “by strengthening state capacity, international law may actually make states more effective at the very repression and abuse the interference challenge seeks to overcome” (2006, 347). Slaughter and Burke-White also argue that international law may have detrimental effects on local politics and democratic engagement but do not offer empirical evidence of this. This dissertation offers in depth empirical examples, systematically tracking patterns of such effects in Bosnia, Serbia, and Rwanda.

Stahn also examines the effect of tribunals on domestic politics and deviates from common practice by asking what the consequences and side-effects are of preventing the accused war criminals from participating in the transitional processes and putting them on trial. According to tribunal supporters, the incapacitation of particular leaders is supposed to be a major contribution of international law. For example, Radovan Karadžić was prevented from participating in the 1995 Dayton Peace talks because he was indicted by the ICTY. The purpose of such decisions is to delegitimize former political elites and reduce the space available to these actors and their followers to deny atrocities committed (see Orentlicher 2008). However, Stahn points out that former political elites, such as Radovan Karadžić, Slobodan Milošević and Vojislav Šešelj, became ‘mythologized,’ rather than delegitimized, by the ICTY (Stahn 2009, 7).

I agree with Stahn and argue that we need careful examination of how the indictment of former leaders plays into defensive group attitudes and nationalist mechanisms among the communities in question. The specific links become evident in case study chapters four and six.

33 More detailed analyses of these and other examples of how the tribunals have overlooked the domestic politics in the countries in question and the consequences of this can be found in chapters three to six.
Explanations for the findings

I provide two sets of explanations for my findings. The first explanation is rooted in general drawbacks of international justice. I argue that the tribunals exemplify two central dilemmas in the field of international justice – the debate on the selectivity of global justice and consequent accusations of imperialism, and the debate on the continued prevalence of state sovereignty and state interest in international relations. The second explanation offers a more in-depth analysis of the specific shortcomings of the two tribunals, discussing them though a three-part conceptual framework. I find that the tribunals provide a space for (1) continuation of conflict, (2) contestation over ownership of history and (3) contestation over ownership of the collective-self. These shortcomings are a consequence of the fact that the tribunals have failed to take into account key elements which mitigate their work, including links between leaders and masses, group dynamics, social psychology and identity politics.

Dilemmas in international justice

Selective justice and accusations of imperialism

My findings suggest that the populations on the ground do not evaluate the ICTY and the ICTR merely by their specific legal proceedings but by the entire process of international justice, including the establishment of international courts and the selection of states and actors to be prosecuted. Critics of criminal tribunals point out that international institutions and other powerful actors in the international system are responsible for the wider setting in which atrocities took place and that prosecutions should consider how these international actors endorsed and aggravated the situation (Alvarez 1999; Mutua 1997; Schabas 2001). For example, Donald Bloxham maintains that “we have to acknowledge the gap between the universalistic rhetoric of legalism and the reality of ongoing impunity for certain states and mass murderers with the right connections to other powerful states and interests” (2008, 297). The decision of the ICTY not to hold NATO responsible for its military operations in 1999 despite many observers who argue that the evidence points to clear violations of international humanitarian law supports the views of skeptics who deem global justice selective (Kittichaisaree 2000; Steflja 2010). Similarly, France has played a significant role in the establishment and the proceedings of the
ICTR yet many critics argue that French authorities contributed to the 1994 atrocities in Rwanda (Prunier 1995). Makau Mutua summarizes the skeptical view of international criminal tribunals: “such tribunals would only make sense in the context of an overall solution, a comprehensive and bold statement addressing the foundational problems that unleashed the genocide in the first place” (1997, 168).

The accusations that “global justice” only exists as selective justice are further supported by the United States’ refusal to ratify the Rome Statute which established the International Criminal Court (ICC). The Clinton administration signed the treaty but advised the Senate not to ratify it in its current form. The Bush administration, particularly during its first term, launched criticism of the Court, describing it as an unaccountable institution, a danger to American sovereignty, and a precursor of world government. Tom DeLay, the former US Republican Congressional leader, referred to the ICC as a “kangaroo court ... a shady amalgam of every bad idea ever cooked up for world government” (qtd. in Peskin 2010, 208; see also Sriram 2010; Isaacs 2006). The Bush administration also had countries sign bilateral agreements guaranteeing they would not transfer US citizens to the ICC. Moreover, the 2002 American Service Members’ Protection Act prevents the United States government from lending any support to the Court and from lending military aid to governments ratifying the Rome Statute (Peskin 2010, 209-210). The US therefore sided with China, Algeria, Iraq, India, and Israel in refusing to create a permanent international court, a decision that baffled human rights activists and international law advocates. In 2002 chairman of the Senate Foreign Relations Committee even threatened the UN Security Council with US withdrawal over the issue: “A UN that seeks to impose its presumed authority on the American people, without their consent, begs for confrontation and – I want to be candid with you – eventual U.S. withdrawal” (qtd. in Peter Maguire 2010, 211).

The US approach to the ICC has somewhat softened with the case of Darfur, during which the US agreed to offer assistance to the ICC, and with the change to the Obama administration in the White House. Despite its obvious disdain for the ICC, the US supports the ad hoc tribunals, as well as hybrid, and regional criminal courts. To critics, the decisions of the American administrations suggest that the US supports one set of international laws for the rest of the world while another more lenient set for itself. For the same reason, critics accuse the US of imperialist meddling in politics of countries whose citizens are indicted through US support and assistance. My findings suggest that the selectivity in the enforcement of international
criminal law diminishes the moral authority of international tribunals and reduces the chance of local communities accepting their decisions and messages. Damaska notes that prosecutions tend to be instituted against high-ranking individuals from small or vanquished nations, where arguments of enemies of international courts may easily resonate that this harsh doctrine would not have been adopted were it not tailored for use on top chieftains of less than well-endowed nations (2008, 351).

Questions remain about whether US acceptance of ICC jurisdiction would improve the institutions’ legitimacy. Skeptics like Megret argue that even if the US joins the ICC this will not put an end to selectivity. For example, the problem of selectivity can take a different form where the US can be given favourable treatment in caseload selection so that cases against American citizens are not pursued (2002, 1283). Damaska concludes that “when international prosecutors bring to justice only, or mainly, criminals from weak nations, the result is that they discriminate among human rights abusers on the basis of their citizenship” (2008, 361). Along the same lines, Nora Beloff points out that since Nuremberg there were 34 civil wars, many of which resulted in more deaths than the Balkan wars, but “Washington has never felt it necessary to show why ‘justice’ was required only in the case of Yugoslavia” (1997, 91). Similarly, Andrew Rigby asks, “Why were Bosnia and Rwanda deemed sufficiently significant to justify international criminal tribunals and not Russia’s genocidal action in Chechnya or the horrors of Algeria’s civil war?” (2001, 179). Damaska suggests that advocates of international justice should be frank with their critics and emphasize that the task of international criminal trials is to make incremental headway towards true global justice and, in the meantime, it is better to bring some war criminals to justice than none (2008, 361-363).

The politics of shaming also plays a key role in selective justice and accusations of imperialism. Peskin argues that “the prosecutor’s visits to the Balkans are anticipated in the government and the media with dread, as if the prosecutor were a headmaster sure to deliver a scolding” (2008, 242). In addition to shaming, the tribunals function through continuous negotiation and deal-making with the governments in question, which is often interpreted as bargaining or even blackmailing. The evidence suggests that the politics of shaming and blackmailing only increases skepticism towards the tribunals by conveying the idea that the tribunals and the states are involved in political struggles which have little to do with the ideals of human rights and the rule of law. I argue that such messages only harm the legitimacy of the tribunals in the eyes of the local populations. The prevalent sentiment amongst those I
interviewed in Serbia and Bosnia was that alleged war criminals were arrested and transferred to the ICTY in an environment of blackmail (Čedomir Antić, historian, Interview, August 26, 2010; Predrag Marković, historian, Interview, July 26, 2011; see also Toma Višnjić, defense lawyer, Interview, August 4, 2011).

Some supporters of tribunals however argue that in face of defensiveness and skepticism a more comprehensive and on the ground approach to transitional justice is needed. Most notably, in her book Hijacked Justice: dealing with the past in the Balkans Jelena Subotić calls for a maximalist approach to transitional justice in the Balkans including “more substantive, sustained, and broad transitional justice projects” (2009, 192). In his review of the book, Tom Gallagher maintains that “Subotić’s call for robust and dedicated international backing for transitional justice is splendidly evangelical” (2011, 562-73). Gallagher criticizes Subotić’s approach which calls for international involvement and guidance in media, education, political leadership and political culture (2009, 192). In my research I did not come across evidence that suggests that international involvement in multiple domestic spheres would be beneficial to the aims of justice and reconciliation. First, Subotić assumes that the international community is willing to invest unlimited resources in the Balkans, even though years of international commitment in Bosnia have not yielded many positive results (see Ottaway 2003). Second, more problematically, Subotić assumes that increased international involvement will not lead to further defensiveness and feelings of imperialism, or deems such side-effects acceptable.

State sovereignty and state interest

My evidence suggests that local populations believe that international trials are being carried out in a context where state sovereignty and state interest, rather than liberal institutionalist norms about the rule of law and respect for human rights, are still the dominant forces shaping international institutions. This finding is to a certain extent in opposition to a number of arguments made in the prevalent literature. In a 2006 piece entitled “The Future of International Law is Domestic” Anne-Marie Slaughter and William Burke-White argue that the international system is changing. While “[f]ormally, Westphalian sovereignty is the right to be left alone, to exclude, to be free from any external meddling or interference,” in reality, the international system is in a state of transition (Slaughter and Burke-White 2006, 350). They further hypothesize that “the very concept of sovereignty will have to adapt to embrace, rather than
reject, the influence of international rules and institutions on domestic political processes” (2006, 350). I agree with Slaughter and Burke-White on the inherent connection between international law and domestic politics and the importance of examining this critical link—a link which is often overlooked. Yet, it is unclear to me whether their hypothesis above—that states will adapt the very concept of sovereignty to “embrace” the influence of international law—will prove itself valid. While this may be possible into the future, currently the prevalent sentiment of states is to push back against international criminal tribunals. This hypothesis also begs the question: which states are Slaughter and Burke-White referring to? Will powerful countries (including the United States) embrace the influence of international rules and institutions on domestic politics or will this adjustment, like transitional justice itself, be selective in terms of which states are targeted?

Slaughter and Burke-White base their hypothesis on the European system of law and the politics of the European Union. To a certain extent the EU has been successful at influencing the legal, structural, and political frameworks of countries that apply for EU membership through what appear to be bureaucratic and administrative changes (Mac Daid 2008; Begović 2011; Vucheva 2007; McMahon and Forsythe 2008). It is likely that the effectiveness of the EU in this objective also has to do with the fact that EU membership offers rewards that are highly sought after by applicant states, such as economic assistance and trade. This is not the case with international criminal tribunals, which do not offer any such benefits. Advocates of tribunals emphasize several merits, however these do not include direct economic advantages. Furthermore, as I illustrated in the earlier sections of this chapter, the merits claimed by advocates of international tribunals are largely unsubstantiated.

It is possible that international tribunals offer participating states the prospect of economic assistance and trade. In the case of Serbia, donor aid and EU membership talks were linked to cooperation with the ICTY, which is largely why the ICTY was successful in compelling Serbia to give up its alleged war criminals. Yet, tying the ICTY to the EU and donor aid has also made the tribunal more unpopular because the demands of the tribunal are seen by my interviewees as highly political and a form of blackmail. Furthermore, the requirement of cooperation with a criminal tribunal is very different from the usual bureaucratic and administrative conditions the EU sets for its future member states. All of this is to say that states have fewer incentives to cooperate with international criminal tribunals than with the EU, and the ICTY and the ICTR were not based on the “European way of law,” as envisioned by Slaughter and Burke-White.
Frederic Megret argues that human rights activists—who saw international criminal tribunals as “a blueprint for the overthrow of the traditional interstate world”—must be disappointed with how inauspicious the Westphalian system is for international criminal justice (2002, 1265). The tension is thus between human rights and global justice on the one hand and “the hypocrisy of sovereignty,” which Robertson characterizes as “the traditional enemy of the human rights movement,” on the other hand (Megret 2002, 1266; Robertson 1999, xiv). While acknowledging this tension between international criminal justice and state sovereignty, many prominent scholars are optimistic about the future of global justice and look to globalization and liberal states to solve the tension. Geoffrey Robertson claims that globalization will allow global justice to flourish (1999). Gary Bass, who sees legalism and the creation of international criminal tribunals as a natural extension of liberal states, puts his faith in liberal states and liberal internationalist theory (2000). Nonetheless, Bass admits that “Even liberal states are more likely to be outraged by war crimes against their own citizens than war crimes against foreigners” (Bass 2000, 28). This is a surprising concession. My data suggest that local actors believe that the interests of powerful states shape the behaviour and activities of international criminal tribunals—a point which liberal institutionalists and tribunal enthusiasts prefer not to acknowledge because of its associations with the realist school of international relations theory.

Realists argue that the main purpose of international tribunals is to serve the most powerful states in the international system, and thus produce “Potemkin justice,” justice with a “bogus façade” (Laughland 2007, 86-7).34 In keeping with my empirical evidence, I argue that this debate is more prominent amongst actors on the ground than in the scholarly and legal literature. The establishment of the tribunals is itself up for debate, as many of my interviewees and some scholars argue that the tribunals were created to appease public outcry in Western states and in lieu of military intervention (Hazan 2000, 13; Robertson 1999, 286; Beigbeder 1999, 171; Holbrooke qtd. in Ball 1999, 141). The empirical evidence in the chapters that follow illustrates that people in Bosnia, Serbia, and Rwanda are inclined to question the interests and incentives of Western states that support the ICTY and the ICTR and are more likely to apply realist arguments than liberal institutionalist approaches. International lawyers, human rights advocates, and a large section of the scholarly community may have convinced themselves of the virtues of international criminal law but they have yet to convince the populations on the ground.

34 On victor’s justice see also Glennon 2001; Simpson 2004; Peskin 2003 & 2010.
Thrasymachus’ statement in Plato’s *Republic* “[E]verywhere justice is the same thing, the advantage of the stronger” still resonates strongly with the populations on the ground (1968, 339a).

State-interest, another element of realist thought, also come to the forefront in discussions about the decisions of the UN Security Council regarding the ICTY and the ICTR. The choice of Prosecutor is an obvious example. Megret explains that “every now and then, the Security Council chooses a Prosecutor who does not have to be – even if that were conceivable – ‘told what to do’, simply because he happens more or less to share some of the Security Council’s strategic options (after all this is what handpicking is about)” (2002, 1275; See also Hazan 2000). Moreover, the tribunals cannot be completely independent of their sources of funding because their existence depends on voluntary contributions. Megret explains that the ICTY was extremely vulnerable to and dependent on funding from the US: “the United States, for one, initially offered 20 personnel for the Prosecutor, threatened to withdraw them during Dayton, and topped up the Tribunal’s budget with an extra US$ 1 million during the Kosovo crisis” (2002, 1276). For all these reasons, state sovereignty and state interest are the central inherent assumptions among the many who emphasize the problem of selective global justice and accuse Western countries of using international law for imperialist aims.

**Criminal tribunals provide a space for 1) continuation of conflict by other means, (2) contestation over ownership of history and (3) contestation over ownership of the collective-self**

**Continuation of conflict by other means**

In this section I use the term ‘conflict’ to refer to deep political disagreements and tensions between former rivals. My use of ‘conflict’ in this section is not meant to suggest that international tribunals have instigated the violent use of arms but that the tribunals have furthered polarization among groups that they aim to reconcile. My data suggest that the tribunals facilitated the construction of ‘enemies’ at two levels – the domestic and the international. At the domestic level, the tribunals provided an opportunity for further construction of the ‘self’ in opposition to the ‘wartime-other,’ only strengthening group attachments. My findings indicate that the legal process was divisive itself and, for example, encouraged Serbs to emphasize their differences with Bosnian Muslims. At the international level, the tribunals provoked the
construction of the ‘national-self’ in opposition to the ‘international-other’ – a consequence of the institution’s formation, proceedings and international character. My interviewees suggested that Bosnians, Serbs, and Rwandans view themselves as small powerless nations who are being placed on trial by international forces with significant resources. There is however an important difference between the Balkans and Rwanda. In Rwanda, my interviewees often grouped the RPF government and the international forces into one side against other factions. A number of my interviewees suggested that the United States and the ICTR were on the same side as the RPF government. Statements such as “The ICTR is trying to please the government in place” were common even among self-identified Tutsi, an important finding that contradicts assumptions that the Rwandan Tutsi would support the current government solely on ethnic grounds (Interview, November 4, 2011). Others were quite blunt about the alliance: “The US did not want the Rwandan government judged….The US and the Rwandan government have the same vision. Who is judged and who is not is largely the decision of the United States of America” (employee in international organization, Interview, November 2, 2011).

While courts appear to be the perfect medium for resolving conflicts between different parties (Shapiro 1981), I argue that this assumption does not hold true in the case of international tribunals. In his renowned work on domestic judicial systems, *Courts: A Comparative and Political Analysis*, Martin Shapiro identifies “conflict resolution” as the single-most important political function of courts and one for which there is an overwhelming consensus (1981). Applying Shapiro’s analysis to international criminal courts, David D. Caron finds that international courts are “highly structured spaces of contestation” (2007, 410). Caron argues that international courts are more dynamic than domestic courts in the sense that the political contest continues and “resolution” is much more difficult to achieve (Caron 2007, 410). Victor Peskin similarly maintains that international criminal tribunals actually perpetuate conflict, simply creating a new arena to pursue ongoing political conflicts, this time at the legal level. While “the armed conflicts may have produced winners and losers on the battlefield,” the rhetorical combat at the tribunals is fought over “which state or ethnic group will earn the mantle of victim and which side will be castigated as a perpetrator or aggressor” (Peskin 2008, 14).

In addition, local communities in question might perceive the tribunals as ‘unjust’ if they believe that the tribunals project guilt and blame onto broader populations without establishing clear connections to the crimes. Chief prosecutor Carla Del Ponte emphasized at Milošević’s trial that “[t]he accused in this case, as in all cases before the Tribunal, is charged as an individual.
The indictments do not accuse an entire people of being collectively guilty of the crimes, even the crime of genocide" (Del Ponte 2004). Yet, there are many inconsistencies in this logic of individual responsibility.

First, there are discrepancies between legal jargon and the claimed individuality of the judgments. Legal principles such as “no exemption based on a superior’s orders,” “command responsibility,” and “joint criminal enterprise” implicate subordinates along with their commanders/ethnic leaders—those who carry out the deeds and those who order them are both seen as culpable. Second, in emphasizing individual accountability, the tribunals do not take into account how much ordinary people identify politically and emotionally with their leaders. Third, in reality, these actually are collective crimes and collective harms that the tribunals are addressing. As Tracy Isaacs explains, “An individual agent cannot, except in extraordinary circumstances, perpetrate a genocide single-handedly” (2006, 167). What we have, then, are collective perpetrators and collective victims. This makes assigning responsibility extremely difficult, since the international community is placing individuals on trial knowing that their individual acts could not, at least not on their own, have resulted in such crimes.

The distinction between individual and collective responsibility is made more problematic by the fact that crimes against humanity often include a degree of intention. An individual’s intention is usually derived from a joint objective of the group, illustrating collective solidarity, which is an intrinsic element of social psychology of groups. Since crimes with a significant moral dimension were committed, the tribunals are looking to assign moral responsibility. The dilemma they face in this objective is best explained in the words of Larry May. He argues that while “crimes against humanity are crimes perpetrated by a state or a state-like entity against a population or other group of people,” these state and state-like entities “have neither pants to kick nor a soul to damn” (2005, 236).

The argument provided by supporters of tribunals in favour of individual responsibility is that if particular individuals are found guilty and punished for an atrocity, the rest of the members of their group can be distanced from moral responsibility (Lu 2006). Trials are supposed to free the group from collective guilt and allow for inter-group reconciliation, since

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35 See also Lu 2006, 201; Kamatali 2003, 126; and May 2005, 236. Janine N. Clark distinguishes collective guilt from collective responsibility. Clark applies Arendt’s argument for a “sharper dividing line between political (collective) responsibility, on one side, and moral and/or legal (personal) guilt, on the other.” This clarification might make room for degrees of accountability and thus variation in my results. See Clark 2008 “Collective Guilt,” 670, 683-5.
each side has had the ‘bad apples’ removed from it. While this logic seems viable in its legal sense, in reality, when it comes to matters of individual and collective accountability, lines are blurred and borders are messy. Catherine Lu, for instance, raises important empirical concerns in this connection. First, Lu explains that while trials establish moral accountability of individuals within certain groups, they cannot establish an accounting of the broader political, economic and social ideologies, institutions and structures that made these acts possible (2006, 201). This further strengthens the point mentioned previously that crimes against humanity are collective crimes and generate collective harms, and is a serious weakness in regard to the preventive efforts of the tribunals.

An additional hope raised by supporters of individual responsibility is that by setting some of the factual record straight, trials will provide more ‘truthful’ group histories since the atrocious events that took place are bound to communal narratives and identities in important and complex ways. However, as I discussed in the earlier sections of this chapter, in reality, the process is more complicated. Trials often exacerbate inter-communal tensions, especially if they are perceived to be one-sided and therefore a means of obtaining ‘victor’s justice.’ Such consequences are furthered by the dichotomized language of victim/perpetrator employed by trials (see Lu 2006, 199). The trials can thus have an adverse effect, criminalizing entire populations instead of paving the way for reconciliation. For example, Rony Brauman and his colleagues argue that the ICTR has led to “the global criminalization of the Hutu community” where “every Hutu is suspect since his community bears the onus of guilt for the genocide” (2000, 155).

Ordinary individuals belonging to the accused groups can find it difficult to distance themselves from the “global criminalization” of their community. Some individuals emphasize the need for a distinction between those who are criminals and ordinary citizens who merely belong to the same ethnic group as the guilty. One Bosnian Serb explained that “it is important for the Serbs to know who is a war criminal and who isn’t. ... Otherwise, this world will think it is all of us” (Qtd. in Neuffer 1996, 1-2). My findings illustrate that my interviewees, however, do not see a clear distinction between combatants and civilians in their group. Many individuals believe that they and their peers were acting for the collective interest of their group. Consistent with this account, socio-psychological analysis tells us that self-image is inherently bound up with group-interest.
In an example pertinent to former Yugoslavia, the International Committee of the Red Cross (ICRC) conducted a survey in Bosnia which found that most Bosnians perceived the conflict in ‘total war’ terms and believed that their own survival, the survival of their families and friends and the survival of their ethnic group, were all threatened. As a result, whole communities were mobilized, bringing “civilians and soldiers together in defense of their community” in a way that did not permit “a clear distinction” to be drawn between civilians and soldiers (2006, 18). The complexity of the situation points to the difficulty of distinguishing civilians from combatants and drawing lines between the guilty and the innocent in former Yugoslav communities. Moreover, it explains the outrage at the proceedings of the ICTY felt by those who believed that they were defending their lives and the survival of their ethnic group. It is not surprising then that, as my data suggest, the ICTY has been interpreted as a tool for demonizing large parts of populations, fulfilling the fears of the man quoted above who fears that the world will view his entire ethnic group as guilty of genocide.

Even if ordinary people do not necessarily associate themselves with the combatants and leaders prosecuted by the tribunals, they can question the tribunals’ stated intentions to prosecute individual guilt. If, as Bass argues, “[t]ribunal justice is inevitably symbolic: a few war criminals stand for a much larger group of guilty individuals,” then “what is billed as individual justice actually becomes a de facto way of exonerating many of the guilty” (2000, 300). Bass further argues that when only a small number of people are prosecuted, and many of the guilty go unpunished, the extent of guilt that remains in any given society is unknown. This process thus collectivizes rather than individualizes guilt because, on this basis, entire groups can be viewed as collectively guilty. Referring to the leaders placed on trial by the ICTY, Carrie Gustafson argues that “those who would occupy the dock are inevitably and widely seen as symbolic representatives of their group” (1998, 68). This outcome thus entirely contradicts the ICTY’s stated objective of prosecuting individuals. Moreover, if the implication is that entire societies, rather than just a few individuals, need to be ‘re-educated’ before inter-group reconciliation can be pursued, the consequences for forging peace in the region are much graver.

My findings suggest that what seems to matter most are not the legal details but the kind of politics that tribunals reflect and the kind of political objectives they facilitate. Jeremy Rabkin warns us against trying to be apolitical, leaving the fate of post-conflict societies to “legal abstractions” and the Kantian motto of “[l]et justice be done, though the world perish” (2007, 111, 121-2; see also Cobban 2007, 57). One ICTR judge recognizes this problem and argues that
“it would be wrong when deciding a case not to see how [it] would be perceived in the country” since it is unadvisable to render “a legal decision that is wrong in the reality of the world” (qtd. in Peskin 2008, 184). This particular judge is among the minority of tribunal staff who are aware of political realities in the countries in question. Legal detachment from political realities is often a consequence of the attempt to ensure neutrality. It is ironic then that precisely this ‘neutrality’ advances particular political narratives. Neither the judges of the tribunals nor the prosecutorial staff are selected for their expertise in the politics, histories, or languages of the affected countries. The point that the judge quoted above makes is that employees who act based on their expertise in the societies in question might be more effective than ‘objective’ employees who are supposedly impartial but actually are influenced by political understandings and interests shaped elsewhere. Therefore, the political context is crucial to understanding the perception of the tribunals, especially if the kind of politics that the tribunals reflect is the encouragement of the continuation of conflict by legal means.

Contestation over ownership of history

The second concept that is of core significance to this dissertation’s argument is that international criminal tribunals provide a new arena for contestation over the ownership of history. One of the key debates in narration and analysis of history and sociopolitical conditions is what Walker Connor refers to as “what is” versus “what people believe is” (1994, 93). This debate is central to the constructivist scholars’ debate over whether ethnicity should be studied from the participant or the observant perspective (Larin 2010, 443). The debate is related to the traditional methodological distinction between “explanation” and “understanding” (Hollis 1994). Clifford Geertz addresses this subject in his theory on culture, where he argues that “primordial loyalties is meant (by me, anyway) an attachment that stems from the subject’s, not the observer’s, sense of the ‘givens’ of social existence [. . .] from the actor’s perspective, of blood, speech, custom, faith, residence, history, physical appearance, and so on” (1994, 6; see also Geertz 1973, 89). Furthermore, in Ethnicity without Groups, Roger Brubaker argues that instead of studying what ethnicity is, we should study how, when, and why people interpret social

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36 Stephen Larin argues that whether ethnicity should be studied from the participant or the observer perspective is the main point of contention among most scholars of ethnicity, rather than the contention over whether ethnicity is ‘natural’ or ‘constructed’ which has received more attention in the field (2010, 443).
experience in ethnic terms. According to Brubaker, “ethnicity, race, and nationhood … are not things *in* the world, but perspectives *on* the world” (2004, 17). This dissertation takes the stance that both “explaining” and “understanding” ethnicity is necessary. While there is a great deal to be learned from studying the processes through which ethnic identities are constructed, it is equally important to understand the self-conceptions and self-histories that those processes create.

Which narratives of self-understanding and in that sense self-history prevail depends on a process of framing—the “selection and salience” of certain aspects of a perceived reality in such a way as to promote a particular definition, causal interpretation, moral evaluation, and response (Entman 1993, 52). Rene Lemarchand criticizes President Paul Kagame’s framing of past events in his official “memory of the offense” and refers to Kagame’s framing as “manipulated memory” (2008, 70, 72; see also Hintjens 1999, 78). Also, understanding how nationalist elites can cause identifications, commonalities, and categorizations to emerge and crystallize through processes of framing can help us understand why people buy into certain stories over others, and why entire populations can exhibit dangerous psychological propensities (Cooper and Brubaker 2000, 20, 30; see also Horowitz 1985). It is important to recognize, however, that while certain ways of selecting memory can reinforce dominance or repression by powerful political elites, “critical use of memory,” or “*travail de memoire*,” is a way of bringing awareness to destructive elements of memory, such as obsessive and repetitive cognitive cycles, and bringing alternative accounts of traumatizing moments into discussion (Hintjens 1999, 78; Hoffman 1999, 296; Ricoeur 1995, 78).

Martti Koskenniemi (2002) points to two rival histories that have been presented at the ICTY. On the one hand, Slobodan Milošević’s version blamed Western policy for the destruction of former Yugoslavia and atrocities committed during the NATO bombing. On the other hand, the mere fact that Milošević was on trial and not Western officials suggested that he was the one to blame. His trial also implied the correctness of the Western view of the past. Koskenniemi appropriately points out that the rival views “play upon equally complex assumptions and interpretations” (2002, 17). The dilemma the tribunal faces, according to Koskenniemi, is that “in order to attain ‘truth’, and avoid a show trial, the accused must be allowed to speak. But this creates the risk of the trial turning into a propaganda show” (2002, 25).

While I agree that the dilemma Koskenniemi presents is important, I argue that the local audience decides which version of history presented at the tribunals is propaganda. For many
spectators it is both – that of the prosecution and that of the defense. In this way, the tribunals become a space where different actors battle over ownership of history. This is certainly not a new phenomenon. During the trial of Klaus Barbie, the SS army captain known as “the Butcher of Lyon,” Barbie’s counsel Jacques Verges declared that “the real battle lay not in attaining the release of his client but in achieving control over the historical and didactic aspects of the trial” (Koskenniemi 2002, 30). Similarly the trial of “the Butcher of the Balkans”—the title Milošević was given by the Western press—was also about establishing the historical truth. Just as Barbie sought to call attention to French colonial warfare and policy in the Algerian War, Milošević sought to write a history of the Yugoslav wars which placed the blame on European and American domination of the Balkan peninsula and their ability to pit the Balkan people against one another. My evidence suggests that advocates of tribunals did not realize how deep the divisions in perceptions regarding the Yugoslav and the Rwandan wars are across and within these countries (as well as internationally) and how difficult it would be to control the ‘official truth’ and achieve ‘historical closure’ by means of the tribunals.

Divergent narrations of the past are debates over ‘truth’ and ‘history.’ The ethnic group ‘on trial,’ its elites as well as ordinary folk, have a significant degree of agency in how they interpret their story. A socio-psychological analysis suggests that if people feel humiliation, blame, shame and international bias, they are more likely to dismiss prosecutions against their leaders, ignore verdicts and support contradictory and conspiracy-based accounts. Leigh Payne argues that dialogue, debate, and disagreement on interpretations of the past and future are precisely what the societies in question need. Her model is one of “contentious coexistence” which “rejects infeasible official and healing truth in favor of multiple and contending truths that reflect different political views in society” (2008, 280, 281, 285). On the other hand, Audrey R. Chapman describes the responsibility of transitional justice institutions to offer a single “social truth” that is a “deeper truth,” which “goes beyond documentation, to determine responsibility and try to ensure nuancas mas (never again)” (2009, 96-7, 109; see also Yifat Susskind qtd. in Moghalu 2006, 125).

A single clear-cut and “deeper truth” is not necessary. There is great value in open dialogue and acceptance of different interpretations of the past in a given society. In what follows, I examine variation in narratives, while also acknowledging that some narratives are more likely to provide a basis for reconciliation and a democratic future than others. Contradictory narratives, in which the views of domestic actors and those of tribunals are entirely
at odds, inhibiting possibility of consensus, might make reconciliation difficult since there is no ‘basic story’ to believe in. Payne admits that her approaches, which encourage “unsettling accounts [of the past] and contentious coexistence [among former rivals],” “do not heal democracies” (2008, 288). I suggest that perhaps some degree of ‘healing’ is necessary for the societies in question to move on. However ‘healing’ does not take the form of divisive trials which create rigid divisions between different truths, labeling some correct and others incorrect. I argue that through this process of divisive trials, the international community has given itself the right to create hierarchies of victims and hierarchies of perpetrators which is in turn detrimental to its stated goal of reconciliation.

Contestation over ownership of the collective-self

The third concept that is of core significance to this dissertation’s argument is that international criminal tribunals provide space for contestation over the ownership of the collective-self. One of the foundational assumptions of my project is that of a dialectic mechanism of “narrating-self” and “narrated-self” (Hinchman and Hinchman 1997, xx, xvi), the performative function of which also applies to “collective-self” (Buckley-Zistel 2008, 128-9) since “narratives can serve the purpose of establishing a collective identity and bounded community of all who share the same interpretation of the past” (Antze and Lambek 1996, xviii). This includes both what is said (or the emphasis of certain events in the construction of “chosen” or “cultural” trauma) and what is not said (or “chosen amnesia,” the active suppression of certain aspects of memory) (Alexander 2004, 9–11; Volkan 1991, 26). The “we” feeling is obtained through the construction and recollection of the same past. My project is therefore aligned with the constructivist approach, which, in contrast to the primordialist approach, argues that “there is nothing necessary about

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37 The main academic supporter of primordialism is sociologist Pierre van den Berghe who argues that racial and ethnic groups are “ascriptive, defined by common descent, generally hereditary, and often endogamous” and that “a myth of ethnicity will only be believed if members of an ethnic group … have developed a substantial measure of biological truth” (1978, 401 – 11; 1995, 357 – 68). There is no evidence to suggest that people in Rwanda actually believed that Tutsi and Hutu were different in biology, and that Hutu killed because of this perception of racial/ethnic difference. Similarly, survey data from Yugoslavia illustrates that, in the late 1980s, the overwhelming majority supported a shift to liberal democracy, rather than ethno-nationalism (Johnson 1998, 136; Lemarchand 2005, 54; Gagnon 2004, 34-36, 39-44).
ethnicity, and that it should be understood as the contingent result of specific historical circumstances” (Larin 2010, 441).\(^{38}\)

However, I take issue with the narrower instrumentalist variety of constructivism.\(^{39}\) I recognize, for example, the decision of the Serbs to elect Milošević and the decision of the Hutu to follow the orders of a few extremists, even though neither of these decisions necessarily implies universal public support for the political projects of these elites (see also Mann 2005, 360; Woodward 1995, 15; Saideman and Zahar 2008, 7-8). Similarly, I argue that the communities in question have a degree of agency in how they choose to perceive the tribunals and what narratives they adopt in post-conflict times. For example, Bass argues that “[f]or public attitudes to shift, criminal leaders must be tried – their aura of mystery shattered by showing their weaknesses and stupidities” (2000, 288). I disagree with the suggestion that international criminal trials—and international intervention in general—show the “weaknesses and stupidities” of local leaders. If anything, international intervention may provoke a rise in the popularity of local leaders who are being targeted, as well as in the willingness of citizens to identify and sympathize with these leaders.

Tribunal architects assume that trial proceedings will encourage the general public to accept how criminal and inhumane the acts of their former leaders were, therefore convincing the public to distance itself from these actors. This assumption ignores an important fact. It has been noted that in Rwanda large sections of the population themselves participated in the genocide. While estimates vary vastly, ranging from three million perpetrators to tens of thousands,\(^{40}\) we cannot deny that a significant number of people found reasons to participate in the violence. All this is to say that the relationship between the indicted leaders and their populations is quite complex. It is naïve and perhaps arrogant for the architects of the tribunals to assume that they can redefine this relationship through criminal trials and shift public attitudes.

\(^{38}\) Benedict Anderson provides the best theoretical backing of this constructed and exclusionary sense of ‘we-ness’ when speaking of ethnic and national communities (1983, 6-7).

\(^{39}\) The most renowned instrumentalist account is Paul Brass’ elite manipulation argument, which claims that all motivation for identity change is elite interest (1991).

\(^{40}\) Rwandan government officials claim there were three million perpetrators. Other sources, including Des Forges (1999, 2), Mamdani (2001, 7), Scherrer (2002, 126), Waller (2002, 67), claim there were “hundreds of thousands.” Jones (2001, 41) estimates between tens of thousands to over a hundred thousand. Scott Strauss (2004) estimates between 175,000 and 210,000 active participants in the Rwandan genocide but argues that “a small number of armed perpetrators and especially zealous ones probably did the lion’s share of the killing” (93-5).
In fact, as mentioned above, the tribunal proceedings may actually strengthen the link between indicted leaders and their supporters. As mentioned in the previous sections, legal terms such as “joint criminal enterprise” and “command responsibility” can have dangerous effects if interpreted broadly. Damaska notes that “By including a large numbers of individuals with different contributions to crime and different modes of culpability into a single stigmatizing category, the doctrine disregards differences that in many societies are morally relevant” (2009, 353). In societies where pride and shame weave into the fabric of daily life, the stigma of conviction may result in further defensiveness, closer attachment to one’s ethnic group, and hostility towards the international community and the victims of atrocities.

A focus on social psychology and group narratives can enrich our understanding of certain factors, such as the relationship between groups, between individuals and groups and, more particularly, between elites and masses. An in-depth analysis of why and how the individual relates to the elite and the ethnic group he or she belongs to can illustrate the rational link between these parties, debunking overstated attitudes which treat elites as malicious individuals entirely indifferent to public opinion and lacking public support, and sees masses merely as mindless followers. A socio-psychological approach can highlight at a practical and psychological level the valid complexities of the every-day lives of people.

Individual self-image is tightly bound to group affiliation. Alan O. Ross argues that a “sense of identity is the feeling of being a worthy person because he fits into a coherent and valued order of things” (1962, 27). When group identity becomes salient (as was the case during the Yugoslav and Rwandan wars), the members of the group may even begin to “see themselves solely in terms of their membership in a group” (Peterson 2009, 9). This happens when members of groups go through a process of “depersonalization” which is “a shift toward the perception of self as an interchangeable exemplar of some social category and away from the perception of self as a unique person defined by individual differences from others” (Turner et al. 1987, 50-51).

The legitimacy and value of a group are vital for the individual ego. Benjamin Peterson’s model suggests that “group identities may be relied upon or sought out for confirmation of the personal self, assistance in goal pursuit, and even defense against threats to the self” (2009, iv). Horowitz endorses the view that self-esteem is largely determined by the esteem held by the group that one is a member of (Horowitz 1985, 183). Kristen R. Monroe, a scholar specializing in the political psychology of perpetrators, victims and bystanders in the Holocaust, also argues that the critical characteristic of self-identity is that it is relational. For Monroe, particular values
derived from a specific worldview, canonical expectations and cognitive categorization are
dependent on how these values correspond to and are integrated within the subject’s sense of self
(2008, 699). Therefore, questioning groups to which individuals belong, as well as leaders
representing such groups, — activities that the tribunals are guilty of in the opinion of some —
can be interpreted as hostility towards the individuals themselves. Simply put, collective
identities provide psychological benefits such as a sense of belonging and opportunities for
affiliation, a sense of who one is and what is expected of them (Hogg 2000; Kruglanski, Pierro,
Mannetti & De Grada 2006), and a sense of self-esteem and positive distinctiveness (Tajfel and
Turner 1986; Abrams and Hogg 1988). Positive social identity seems to be a human need and, as
the following chapters of this dissertation will argue, by pointing fingers at certain elites (and not
others), the tribunals threaten this human need.

Available research on collective affiliation suggests that loyalty and favoritism towards
one’s own group, and discrimination towards outsiders, are intrinsic elements of group
formation. The individual members’ objective is a positive ranking of their group in comparison
to other groups (Brewer 1999; Eidelson and Eidelson 2003). The findings of Henri Tajfel’s
research illustrate that the outcome most favoured amongst subjects is relatively higher
combined profit for members of a group in comparison to outsiders. This seems to be the
recurring goal in place of either maximal combined profit for groups or maximal individual
profit for members. The available evidence suggests that this is the case even when there is no
necessary conflict between groups (1973, 27-52; see also Tajfel 1974). In general, a degree of
competition, injected by the groups themselves, seems to be an implicit consequence of the mere
introduction of the notion of ‘group’ and group distinction. Similarly Weaver maintains that:

The individual national narcissist finds proof of his own nation’s superiority in his
country’s successes, and proof of the injustice of his own failures in the
knowledge of his own nation’s superiority … Collective superiority is ‘true,’ as is
the ‘fact’ of other nations’ comparative collective inferiority (2006, 64).

Weaver’s quote gives us some insight into how certain types of individuals—narcissists, a
category in which we can place a number of the indicted leaders, including Slobodan Milošević,
Ratko Mladić, and Vojislav Šešelj — function in groups. Peterson (2009) argues that narcissists
attempt to transfer their own beliefs and goals to group identities and may use group identity to
“assist in defensive self-regulation of important aspects of the personal self, especially when
threatened” (Peterson 2009, 7; see also Morf & Rhodewalt 2001). Manipulation by such narcissistic leaders can play an important role in collective identities and behaviour.

Yet, if we take a closer look at what Weaver and Peterson describe as narcissist behaviour, we discover that a less extreme version of the same behaviour is part of the human condition and exists at the popular level. While extreme chauvinism may come from leaders, these leaders key into sentiments that in certain circumstances trigger a response among the broader population, inducing national chauvinism. All this is to acknowledge the complex psychological, social and political dynamics that take place between leaders and masses and their real and perceived adversaries.

I will summarize three key links between leaders and masses some of which have already been discussed in previous parts of this chapter. First, some of the leaders in question were democratically elected, often by landslide victories, and were supported by significant portions of the population. This is the case for a number of war criminals indicted at the ICTY, including Slobodan Milošević, Radovan Karadžić, and Biljana Plavšić.41 The elections in the former Yugoslavia were considered free because citizens were not prevented from voting, although their fairness was debatable because the state controlled the media. Second, the crimes these leaders are accused of are essentially collective crimes; one cannot commit a genocide singlehandedly. Thus, despite the fact that prosecutors emphasize individual responsibility at the tribunals, my interviewees often argued that the tribunals imply group responsibility. Third, individual self-image is tightly bound to group worth and group affiliation. Since there is no supreme authority or mechanism to deliver ultimate rankings of group status, group esteem is relative, a measure of comparison between states as well as groups within states.

Consequently, groups are subjected to persistent evaluation and entangled in a continuous struggle for group merit. Not surprisingly, then, an international tribunal prosecuting members of three different groups provides a perfect arena for ongoing group competition (between the groups on trial as well as with other members of the international community). Group psychology and identity politics become especially salient in a context of rivalry, whether in an armed or legal conflict. An international tribunal which pits rival groups against each other –

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41 Milosevic served two terms as the President of Serbia (1991-1997) and served as the President of the Federal Republic of Yugoslavia from 1997 to 2000. Karadžić served as President of Republika Srpska after the breakup of the Socialist Federal Republic of Yugoslavia from 1992 to 1996. Plavšić succeeded Karadžić (who was banned from office by the 1995 Dayton Agreement) and served as the President of Republika Srpska from 1996 to 1998.
groups which fought a war against each other and perceive their leaders (despite their faults) as defenders of the people – is an incubator for national chauvinism and popular narcissism.

Drawing on the insights of social psychology above and my data, I argue that defensive nationalism is a response to humiliation and blame at the group level in times of political insecurity and (armed or legal) conflict. By defensive nationalism I mean the strand of nationalism which develops in response to (a real or perceived) threat from and subjugation to ‘foreign’ forces. This strand of nationalism emphasizes the ‘victimhood’ of the group in question and calls for a degree of unity (whether in ethnic, religious, linguistic, or cultural sense) for the purpose of social cohesion, political-territorial unity, and the survival of the state and the nation.

Glen Bowman explains the activation of collective identity at the time of the break-up of Yugoslavia through discursive constructions of “enemies of the nation,” which “function to evoke – through their negativity – a national positivity which people can fantasize would suddenly and paradiasically emerge if the enemy were to be destroyed” (1994, 160, 167; see also Somer 2005). The phenomenon of defensive nationalism involves what Jeffrey C. Alexander refers to as the process of “constructing cultural trauma.” “Cultural trauma” emerges through the identification of a group’s social crisis as a cultural crisis, in the form of collective consciousness regarding the group’s suffering and stability in terms of meaning, rather than action (2004, 9-11).

Defensive, victimhood nationalism is characterized by “the denial syndrome” (defined below) and the glorification of war criminals. A common socio-psychological response to atrocities, which feeds into collective group solidarity, is a form of collective denial. Stanley Cohen has noted that whole societies can slip into collective modes of denial and this need not be a consequence of an elite-driven “thought control” project (Cohen 2001, 10). Sabrina Ramet refers to this phenomenon as “the denial syndrome,” comprised of selective recollection, perception and interpretation of past events “in order to block the recognition which the person in question cannot bear” (2007, 42). After all, denial is widely recognized as “a very common, perhaps universal, defense mechanism in combat” and conflict in general (Shale el at. 2003, 729). The denial syndrome is therefore a way of dealing with guilt and shame at the unconscious level; in terms of social psychology, it is a method of coping with the bruised collective ego through a simultaneous attempt to reassert an ethnicity’s ‘worth’ and/or superiority.

Psychological evidence suggests that shame is not only connected to denial but also to anger, since a person might display angry and violent tendencies to deal with shame. The relationship between shame and anger is a vicious cycle because one can be ashamed for feeling ashamed and
be ashamed for being angry – this individual-level analysis can be extended to the collective level (Hinchman 1971, Lewis 1971). In the context of this extreme type of nationalism, the denial syndrome can lead to the portrayal of the nation as simultaneously ‘victimized’ and ‘heroic’ and the identification of war criminals (who are perceived as ‘victimized heroes’) as its representatives. 42

The emergence of a nationalist backlash in the period of international humiliation of an ethnic group or a nation should not be a surprise for analysts and scholars. Extreme, discursive articulations of nationalist claims are a common way of dealing with past atrocities among ethnic groups around the world and throughout history. The denial syndrome and defensive nationalism were present in Germany, Austria, and France after World War II, the United States of America after the atrocities against the Amerindian societies and Turkey after the Armenian massacres (Ramet 2007, 43, 54; see also Bowman 1994, 169). Moghalu speaks of the “martyrdom effect” of international justice, drawing parallels between post-Versailles Germans and Serbs (Moghalu 2004, 20-21). The humiliation and guilt inflicted by the Treaty of Versailles triggered an excessive amount of resentment and bitterness among the German population, arguably clearing the path for political radicalization. Adolf Hitler met Hermann Wilhelm Göring, who would later become his top lieutenant, at a protest against French calls for the prosecution of German leaders accused of war crimes.

In light of all of this, I argue that the ICTY and the ICTR inadvertently provided the opportunity for the groups in question to construct new narratives of victimization and strengthen old ones. The tribunal architects did not use caution with regard to the local response to the tribunals’ intended lessons. These policy-makers did not recognize the power of group agency in the emergence and locking-in of group self-images and the possible consequences of its defensive nature.

The threefold purpose of this chapter has been to explore the stated and the actual merits of international criminal trials, and to provide a conceptual framework for understanding the political impact of these tribunals at the local level. The chapter began with a mapping of the field of transitional justice and key definitions, followed by a discussion which situated this dissertation’s argument in the available literature. The second section pointed to the actual political impact of the tribunals: that the tribunals have overlooked the interests of domestic

42 Sections of this chapter were published in my article in Global Justice, Peace and Security (Steflja 2010).
populations and domestic politics in the countries in question. The third section of this chapter considered two of the dissertation’s key arguments. The first argument highlighted general drawbacks of international justice, including the selectivity of global justice and consequent accusations of imperialism, and the continued prevalence of state-sovereignty and state-interest in international relations. The second argument illustrated that tribunals have failed to take into account key elements, including links between leaders and masses, group dynamics, social psychology and identity politics, and, as a result, provide a space for continuation of conflict at the legal level, contestation over ownership of history, and contestation over ownership of the collective-self. The following chapters will ground this argument in empirical evidence from Bosnia, Serbia, and Rwanda.
The poets of the coffeehouses in every corner of our alley tell only of heroic eras, avoiding public mention of anything that would embarrass the powerful. They sing the praises of the estate overseer and the gangs, of justice that we do not enjoy, of mercy we do not experience, of dignity we do not see, of piety that seems not to exist and honesty we have never heard of. I often wonder why our ancestors stayed – why we stay – in this accursed alley, but the answer is easy. In the other alleys we would only find a life worse than what we endure here – assuming their gangsters did not kill us to pay back what our gangsters have done to them! Our neighbors in other alleys say, “What a blessed alley! They have a matchless inheritance, and gangs whose very names curdle your blood!” Of course, we get nothing from our estate but trouble, and nothing from our protectors but insults and torment. In spite of all that we are still here, patient in our cares. We look toward a future that will come we know not when, and point out our gangsters and say, “There is our venerable father,” and we point out our gangsters and say, “These are our men; and God is master of all.”

Naguib Mahfouz in *Children of the Alley* 2001, 95.

The logic that Naguib Mahfouz applies to the relationship between the children of the different alleys in his fictional work is surprisingly useful for understanding the polarizations between nationalist factions across the territory of the former Yugoslavia. Such polarizations between ethnic groups in Bosnia and Herzegovina (BiH) and between conservative and liberal party camps in Serbia are a reflection of the extent to which the violent past and the nationalist propaganda from the 1980s and 1990s still preoccupy political debates and people’s psyches. Such polarizations also significantly mold domestic narratives about the International Criminal Tribunal for the Former Yugoslavia (ICTY). Dialogue on the tribunal is also restricted by the political framework of a ‘democracy without democrats,’ where procedural democracy exists without adequate interest and participation on the part of citizens, and with weak and economically and politically dependent media and civil society. Many of my interviewees expressed the opinion that economic betterment is not the key to addressing the violent past and argued that this matter is political at heart. They blamed the leaders in post-Yugoslav societies
for failing to guide their populations through the political transformation and the transitional justice process. Finally, I find that the external ‘carrot and stick’ strategy employed by the international community to ensure Serbia’s and BiH’s cooperation with the ICTY has unexpected and diverging results in the two countries, proving more effective in Serbia than in BiH.

The weak state
The Yugoslav wars were fought on Croatian soil from 1991 to 1995 and on Bosnian territory from 1992 to 1995 in the context of the break-up of the Socialist Federal Republic of Yugoslavia (SFRJ). The disintegration of Yugoslavia begun with the independence of Slovenia, Yugoslavia’s most western, ethnically homogeneous, and culturally distinct constituent republic, in 1991. Slovenia’s succession was a relatively swift and peaceful process (Glenny 2012, 637; Obradović-Wochnik 2013, 47).43 Croatia’s declaration of independence in 1991 had a very different effect – it triggered a four-year war between the new Croatian army, the remains of the Yugoslav People’s Army (JNA), as well as various paramilitaries and local self-defense units, resulting in the deployment of a United Nations peacekeeping force (United Nations Protection Forces, UNPROFOR) to Croatia. After fruitless negotiations with Croatian President Franjo Tudjman, Croatian Serbs proclaimed the creation of their own independent republic, Republika Srpska Krajina, in 1991 (which was never internationally recognized) (Glenny 2012, 650). The war on Croatian soil ended in August 1995 with Operation Storm, a Croatian-army offensive supported by the United States government which resulted in the recapturing of Serb-held territory (Silber and Little 1996, 349). Operation Storm resulted in a massive exodus of 150,000 Serbs from Croatia, the largest single movement of refugees in Europe since 1945 (Glenny 2012, 650), and, later, war crimes charges against Croatian generals involved in the military offensive.

Tensions in BiH rose after the first multi-party elections, which took place in November 1991 and resulted in the nationalist parties winning the majority of the seats (Silber and Little 1996). Bosnian Serb leaders established Republika Srpska (RS) in January 1992 and the Bosnian Muslim and Bosnian Croat leaders declared the Bosnian federation in March 1992. Violence begun in February 1992, and involved Bosnian Muslims, Bosnian Croats (supported by Croatia),

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43 The succession was relatively peaceful because it involved a short ten-day war, and relatively swift as the new Republic of Slovenia received international recognition by the end of 1991.
the newly-formed army of Republika Srpska (supported by Serbia), as well as various paramilitaries, criminal organizations, and self-defense units from all sides. The UN imposed sanctions on Serbia in 1992 on suspicion that it was assisting the army of RS, which had grave effects in terms of economic difficulties and shortages (Gordy 1999). War crimes and crimes against humanity were committed by all three sides by army forces and paramilitaries and included massacres, executions, rape, concentration camps, forced population displacement, and pillaging of towns (Silber and Little 1996). Two well-reported cases include the brutal attacks on civilians during the Bosnian Serb army’s siege of Sarajevo (1992-5), and the 1995 Srebrenica genocide in which more than 8,000 Muslim men and boys were killed by Bosnian Serb forces (Obradović-Wochnik 2013, 49, 51).44 The wars never seemed to have had popular support among the public in BiH, Serbia, or Croatia (Miličević 2006; Magaš and Žanić 2001). The end of the wars was marked with the signing of the Dayton Agreement by representatives from three warring sides – Serbs, Croats, and Bosnians – in December of 1995. The Agreement set the borders of the new states, in addition to establishing two political entities within BiH – the Croat-Bosnian Federation and the Serbian Republic (Republika Srpska).

The Bosnian war was followed by escalation in tensions between Milošević’s regime and Albanians in Kosovo and the eruption of violence between the Kosovo Liberation Army (KLA) and the Serbian police and military in 1997. The violence quickly spread to civilian populations and NATO responded with air strikes against Milošević’s regime lasting from 24 March to 10 June 1999 when Milošević signed a peace agreement to withdraw his forces from Kosovo (Obradović-Wochnik 2013, 56). The lead-up to the bombing involved significant divisions and disagreements over the right course of action among the Western powers involved (Dannreuther 2001). In addition to targeting Serbian military and strategic positions in southern Serbia and Kosovo, the air strikes targeted economic, political, and media infrastructures in the heart of major residential centres, which, unsurprisingly, had a negative psychological effect on Serbian civilians (Glenny 2012, 666-7). Milošević was finally ousted from power in October 2000 following the September 2000 elections (Obradović-Wochnik 2013, 57) and both BiH and Serbia have been trying to stabilize for the last decade and a half and confronting significant difficulties in the process.

44 For a full list of crimes see the ICTY website (www.icty.org).
Ethnic and political polarization

Vedran Dihic and Dieter Segert characterize Serbia as “a fractious country” and BiH as “a highly crisis-driven country dominated by ethno-nationalist rhetoric and politics and with very unstable governing institutions” (Dzihic and Segert 2012, 240). Thus, unlike the Rwandan state, whose strength has rarely been questioned in the aftermath of the civil war and genocide – both Serbia and BiH are institutionally weak states with fragile economies and unstable political communities. The weakness of these states has affected their relationship with the tribunal in a number of important ways.

Serbia has a bipolar character: politics is polarized between supporters of the conservative, nationalist block commonly referred to as the ‘first Serbia’ and the liberal block commonly referred to as the ‘second Serbia.’ Vesna Pešić, the founder of the Yugoslav Helsinki Committee and a former diplomat and MP in Serbia explains that what we have seen in the post-Milošević era is, on the one hand, efforts to make Serbia a modern society based on the rational-legal model, and, on the other hand, efforts to reduce this modern framework to a merely formal and descriptive commitment to pluralism without any normative means of conflict management and crisis resolution (Pešić 2009, 72). Serbs are also sharply divided about the value of membership in the European Union (EU), with a poll taken in December 2012 suggesting that the support for joining the EU is lowest on record with 41 percent of Serbs claiming that they would vote to join the EU (Vasović 2013). The decline in support is a result of EU pressure on Serbia’s relations with Kosovo as well as the economic crisis in Europe. While Serbia and Kosovo signed a historic agreement in April of 2013 and Serbia’s talks with the EU are moving in a positive direction, the division among Serbs on their desire to be part of ‘the West’ is a fact. The issue of accountability for war crimes is a key element in the polarization, with one side calling for full cooperation with the tribunal, and the other being inspired by the slogan ‘Stop The Hague.’ As the tribunal is at the center of party polarization in Serbia, understanding domestic political dynamics is crucial for understanding the role assigned to the tribunal.

In BiH political divisions lie mainly between, rather than within, ethnic groups. Because the atmosphere of conflict continues in BiH, ethno-nationalists have more power than they do in Serbia. Sumantra Bose’s work reminds us that Bosnia is “a state of international design that exists by international design” (Bose 2005, 323). Mark Gough argues that not only is the state weak in BiH but so are the economy and the individual (2002, 189-90). Gough calls for a strong
state characterized through an efficient, business-friendly bureaucracy, an environment that encourages private enterprise, as well as welfare programmes that reintegrate soldiers and retrain workers (2002, 174).

A number of scholars argue that post-Dayton BiH is a ‘frozen conflict,’ that is, a situation where war carries on by other means and where the international community’s role as mediator has not made a significant difference to the fragile political environment. For example, Gerard Toal and Carl T. Dahlman describe foreign agencies and actors in post-conflict BiH as “disinterested, ignorant or benevolent (or some combination of the three)” (Toal and Dahlman 2011; see also Gilbert 2013). These authors also emphasize that the seeds of political stagnation and inefficiency were sown into the Dayton Peace Agreement itself (Belloni 2009; Ružić 2012; McMahon and Western 2009). Gough, for example, argues that the Dayton Peace Agreement entrenched ethnic homogenization in BiH communities through the establishment of two political entities – the Federation of Bosnian Muslims and Croats, and Republika Srpska, and three judicial, educational and administrative authorities (2002, 185). The International Crisis Group report *Is Dayton Failing?* also finds that Dayton promotes ethnic polarization because the structure of the Dayton system encourages people to support representatives of their own ethnic identity (Hooper and Schwartz 1999). The presidency consists of one Serb, one Croat, and one Bosnian Muslim, the House of Peoples consists of five Serbs, five Croats, and five Bosnian Muslims, which leaves out anyone who does not identify with one of these three categories, such as 8 percent of the prewar population which identified itself as Yugoslav. Serbs cannot be elected in the Federation as the structure assumes that all Serbs live in Republika Srpska and non-Serbs cannot be elected in Republika Srpska as the structure assumes that all Croats and Bosnian Muslims live in the Federation, which institutionalizes Republika Srpska as the land of the Serbs and the Federation as the land of the Croats and Bosnian Muslims (Gough 2002, 187). This structure not only institutionalizes polarization and fixes group boundaries that were previously more fluid but also prevents any significant reforms because such reforms would be unpopular with a particular faction or ethnic group and representatives fear the response from their constituents. Moreover, while the Dayton Agreement specifically emphasizes “ethnic reintegration,” Gough lists numerous problems which have prevented this aim, including discrimination by police, judiciary, and public administration systems, lack of security against

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45 For a summary of attitudes towards a federal or unitary structure as well as secession movements since Bosnia’s independence see Thorsten 2010, 362.
hate crimes, impediment by authorities of property law, unequal access to employment, and ethnically-based education curriculums (2002, 185). Therefore, the system established by Dayton encourages political stagnation and ethnic homogenization. However choices by local actors and institutions also contribute to this sense of inefficiency and deadlock. Local actors and institutions in BiH and Serbia can be categorized into two key factions described below: the ‘conservative’ matrix and the ‘liberal’ matrix.

The ‘conservative’ matrix: nationalism, authoritarianism, and patriarchalism (referred to as the ‘first Serbia’ in Serbia)

The governments’ ‘business as usual’ and, at times, openly defiant discourse towards the ICTY is not only a result of concerns about reelection but also a consequence of the fact that many governing elites are themselves embedded in deep-rooted ethnic and nationalist narratives. Ideas of defensive nationalism were part of the socio-psychological framework of Serbian communities before the tribunal was established. Nationalism emerged earlier than the wars of the 1990s. Dzihic and Segert argue that nationalism had its roots in the economic and political crisis of the 1980s. They emphasize that in addition to recognizing the agency of elites we need to recognize the agency of the population in driving nationalism (2012, 240). Pešić, academic, former diplomat and MP in Serbia, writes that the extreme nationalist party, the Radical Party, remains the strongest political party in Serbia, and even parties which consider themselves centrist are simply moderate versions of the same ideological matrix (2009, 79).

Renown historian, Latinka Perović, explained to me in our interview that once it became certain that Yugoslavia would not remain one political unit, Serbian nationalists who hoped to unite all Serbs on ethnic grounds started a political revolution in the 1980s and continued it in the 1990s. The nationalist revolution which reached its height during Milošević’s reign, had a profound psychological effect on culture, media, and society and, according to Perović, “Serbia returned to the nineteenth century politics of revenge.” This included a discourse which rejected all international organizations and thus, from its very beginning, the tribunal was viewed with distrust not only by ultra-nationalists but also by the majority of the population (Interview, August 8, 2011).

46 On nationalist and anti-Western attitudes in Serbia see also Milić (2003).
The main agents of post-Milošević nationalism in Serbia are the conservative, nationalist camps of Vojislav Koštunica (Democratic Party of Serbia or DSS), Tomislav Nikolić (Serbian Progressive Party or SNS), Ivica Dačić (Socialist Party of Serbia or SPS), as well as the extreme nationalists led by Vojislav Šešelj (Serbian Radical Party or SRS), whose trial has been ongoing at The Hague for the past nine years. While the four parties have had numerous internal disagreements, scholars have categorized them all under the ‘conservative matrix’ umbrella of nationalists who claim to defend Serbian patriarchal society from threats from Europe and “Western depravity” (Dzihic and Segert 2012, 247; see also Pešić 2009, 73). 47

In BiH, the polarization plays out differently as the ethno-nationalist leader on the Bosnian Serb side, Milorad Dodik, competes with the Bosnian Muslim member of the Bosnian Muslim presidency, Haris Silajdžić. By framing every issue in ethno-nationalist terms and seeking reelection through fear tactics both of these leaders have become prisoners of their own ethnic traps and agents of political stalemate (Dzihic and Segert 2012, 246). Scholars Vesna Bojicic and Mary Kaldor comment on international perceptions of ethno-nationalist rivalries in former Yugoslavia and argue that Europeans perceived the Yugoslav wars to be a result of “bad nationalisms;” Americans perceived Serbian nationalism to be “bad” and Croatian and Bosnian Muslim nationalisms as “good.” Bojicic and Kaldor argue that such interpretations of the war miss the point because the war was against the civilian population and civil society of Yugoslavia, especially supporters of the international humanitarian outlook (1997, 137-77).

My interviewees argued that the form that nationalism takes in the Balkans is ethnic and tribal and does not include civic loyalties in which ideas of universal human rights are emphasized. They explained that what is problematic about this form of nationalism is the fact that groups compete over who is a bigger victim rather than seeking a human understanding of all victims (Srbobran Branković, CEO of TNS Medium Gallup in Serbia, Interview, August 11, 2011). A historian I interviewed blamed this “hysteria” of each group to prove its victimhood on the overestimates of casualties in Bosnia. He told me that he was not surprised when the ICTY rejected a lot of evidence, because the tribunal realized that “we lied a lot!” (Vladimir Petrović, Interview, August 3, 2011).

47 Some scholars place the DSS in the “liberal” camp (Mihailović 2009, 109), however, I classify it in the ‘conservative’ camp because of its policy towards the ICTY: the DSS officially recognized the Tribunal as an international obligation but made no genuine attempt to participate in the establishment of accountability for war crimes, and promised amnesty to members of the previous regime (Goati 2009, 287).
A professor whom I interviewed in Eastern Sarajevo, the part of Sarajevo that lies in Republika Srpska, expressed the view that there is no point in international institutions seeking common goals, such as justice and reconciliation, because “the mentality of the people is to always interpret ethnically or nationally, it is a classic subjective national approach” (Biljana Milošević, Interview, July 14, 2011). In my interview with Pešić, former diplomat and Serbian MP mentioned earlier, she painted a gloomy picture of Serbian nationalism: “the more of your tribal enemy you kill the better, there is no moral conscience against another tribe, there is no self-reflection and self-judgment” (Interview, August 10, 2011). The extreme form of nationalism is more pronounced in Republika Srpska where a professor of sociology predicted that in 20 to 50 years a war would start again. He described his view to me by comparing people in the Balkans to those in Rwanda, Sudan, Nigeria, and Somalia:

We are like them – tribal people. There is no way of breaking the cycle of revenge. The Hague cannot break this chain. The Hague can try to threaten those who want to take power next year because they may find themselves in court, but the court does not break this chain. The sense of injustice stays, people eventually regain their strength, and the tribes end up swapping power (Ivan Šijaković, Interview, July 12, 2011).

Unfortunately, scholars confirm the possibility of the return of violence in BiH. Gough argues that the human security situation is key to preventing future violence in BiH. He claims that “if the human security situation does not improve significantly in the future, then there is no guarantee that a new generation of dispossessed youth will not dig up old grievances handed down to them by bitter families” (Gough 2002, 190).

While in Serbia my interviewees often frowned upon this idea of the ethnic trap as an unfortunate reality, in BiH they most often accepted it as the way things are (Ratko Dmitrović, senior editor of Vesti, Interview, July 27, 2011; Djordje Vuković, CESID, Interview, July 28, 2011; Gajo Sekulić, professor of political science in Sarajevo, Interview, August 11, 2010). When I suggested that other factors play a more important role than ethnicity Professor Živanović, one of the most liberal individuals I met in Republika Srpska, contested my statement with his view that “heroes of one group are the criminals of another” (Miodrag Živanović, professor of philosophy and founder of the Social-Liberal Party in RS, Email correspondence, August 22, 2010).

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48 I use the word ‘tribe’ when my interviewees used the word themselves in English or when they used the word ‘pleme’ in Serbo-Croatian.
Sabrina Ramet argues that thought, speech, and behaviour in Serbia is marked with “neurotic and/or psychotic characteristics” (Ramet 2007, 42-3). Yet, the emergence of a nationalist backlash in a period of what is perceived as “unavoidable humiliation” of an ethnic group or nation (Čedomir Antić, historian, Interview, August 26, 2010) was not a surprise for analysts, scholars, and my interviewees; this is by now an established trend. As explained in the previous chapter, discursive articulations of nationalist claims are not limited to Serbs, this form of defensive nationalism manifests itself across the region and more broadly around the world.

Some of my interviewees took defensive nationalism to a more radical level, exposing a number of conspiracy theories against the Western world. A commonly held view is that ‘the West,’ mainly the US, was behind the break up of the former Yugoslavia, and that the tribunal’s purpose is to cover up this strategy. Some of my interviewees expressed the idea in a subtle way by, for example, posing the following questions: “Why is the West insisting that we reconcile when they allowed for the break up of former Yugoslavia to take place? Weren’t we reconciled and multicultural then?” (Milovan Jovanović, talk show host, Interview, August 20, 2010). Others developed more complex conspiracy theories which suggested that ‘the West’ took the side of separatist republics because it had an interest in the disintegration of the country (Slobodan Samardžić, professor of international relations and vice president of the Democratic Party of Serbia, Interview, September 1, 2011; Radovan Jović, editor of Srpska Republika News Agency (SRNA), Interview, July 12, 2011). When I asked the interviewees to explain how ‘the West’ benefited from the break up of former Yugoslavia, they expressed the view that the US and Germany simply disliked the success of the former Yugoslavia, especially its socialist regime, and wished to pick up the economic gains from the break up (Ivan Šijaković, professor of sociology, Interview, July 12, 2011; Zoran Krasić, attorney and vice president of the Radical Party, Interview, August 2, 2011).

A few of my interviewees in Serbia, and most of my interviewees in Republika Srpska, took this version even further, arguing that powerful propaganda was constructed by Western media giants who decided to cover up Western intentions by placing the blame for the break up of Yugoslavia on the Serbian population. These interviewees believed that Serbian leaders did not understand the power of Western propaganda agencies at the time and ‘mistakenly’ did not invest and get involved in this media war (Ratko Dmitrović, editor of Vesti, Interview, July 27, 2011). All of the mentioned views are more or less extreme versions of an ideological medium which combines ideas of Serbian nationalism and critiques of Western imperialism in, what
Pešić describes as, “a narrative of eternal injustice perpetrated against Serbia and Serbs by the great powers (or ‘international community’), allegedly, due to inexplicable hatred expressed over the centuries by ‘external factors’” (Pešić 2009, 81).

What I did not expect is that distrust of Westerners would be extended to me as a researcher in Republika Srpska. Since I speak the local language but my last name is not Serbian some of the interviewees asked me to explain my background and specify my Serbian roots as well as my religious orientation. A few interviewees suggested that I may be connected to Western media and could have undisclosed intentions. Others implied that I could be an undercover agent of Muslim background from the Arab world (because my features are darker than is common in the region). While they expected me to interpret such comments as humorous, I could not help but notice that the individuals who made these comments did not agree to formal interviews. They answered my questions informally but seemed worried that a formal interview would enable me to associate their names with erroneous or unrepresentative accounts. My interviewees in Republika Srpska unanimously argued that Western European and especially American media had misrepresented and exploited their experience, portraying Bosnian Serbs as the biggest perpetrators in the war and failing to acknowledge their victimization. I asked these interviewees what their attitude was towards actual Westerners (rather than individuals who have legitimate connections to the local contexts) and was told: “We simply lie to them.” These interviewees shared the view that as a group Serbs in Republika Srpska are misrepresented and misunderstood by ‘the West’ to such degree that they gave up on trying to change these biased perceptions and merely focus on protecting themselves from further media exploitation. I was thus taken back by the degree of mistrust which I encountered in the capital of Republika Srpska, Banja Luka; skepticism and complex conspiracy theories were much more pronounced there than in Serbia.

There are a number of reasons for the difference in the type and degree of defensive nationalism in Serbia and Republika Srpska. One reason may be associated with the trauma of refugees: whereas Serbs in Serbia watched, funded, and participated in the war from Serbia, they did not experience the same degree of violence, were not removed from their homes, and did not see their life-long neighbours become murderers overnight as did most Serbs who sought refuge in Republika Srpska during the war and after the Dayton Agreement. This (most often untreated) trauma may be so deep that individuals can only explain past events by blaming ‘bigger powers’ beyond their control, such as ‘almighty America’ or ‘Islamic terrorists,’ for the outcome. The
second reason is that people are more prone to relying on ethno-nationalist leaders and internalizing ethno-nationalist propaganda, which often scapegoats other national and religious groups or ‘the West’ for events that local leaders are themselves responsible for, when they feel that the safety and well-being of their family and friends are threatened. As Toal and Dahlman explain, even fifteen years after the establishment of Republika Srpska, the message passed on by the leadership in RS is an Islamophobic discourse which emphasizes demographic and civilizational threats from Islam (2011, 293). The third reason is the structure of government established by Dayton which itself encourages such ethnocentric politics.

The ICTY thus faced an extremely challenging local context in Serbia and BiH, and especially in Republika Srpska. Looking back, the tribunal architects most likely did not understand the gravity of the ‘conservative’ matrix and the degree to which it was entrenched in Serbian and BiH communities because their policies had little success in addressing this difficult setting and the damaging local perceptions. Chapter four will discuss the extent to which a unified ICTY outreach strategy did not exist; instead, the dynamics on the ground between domestic elites, their supporters at home and in neighbouring states, as well as a case of rotating foreign actors all affected how the ICTY was perceived. While at certain times foreign actors had little strategy and interest in affecting how the ICTY was perceived on the ground, at other times their approach seemed forceful. For example, on the one hand, the ICTY outreach program was established late and understaffed and, on the other hand, after Serb Radio Television (SRT)–Pale broadcast a reedited press conference distorting the ICTY prosecutor’s message into an anti-Serb message, the High-Representative Carlos Westendorp ordered the seizing of the SRT transmitters, and shut down and occupied SRT–Pale. In addition, the Office of the High Representative removed 60 individuals from political office in the attempt to alter the political landscape in BiH and remove “obstructionists” who were preventing ICTY from functioning (Toal and Dahlman 2011, 278). The extreme nationalist population in Serbia and especially Republika Srpska perceived these as aggressive moves which in their eyes confirmed the anti-Serb attitude among foreign actors and agencies (Toal and Dahlman 2011, 210).

From the very beginning then the ICTY’s success depended on its ability to overcome the divisiveness between ethnic groups and political factions, such as the ‘conservative’ matrix, and establish a degree of distance between various communities and recent events in order to ensure, at least, a partially objective viewpoint from respective sides. This hypothesis is based on the assumption that the purpose of the ad hoc tribunals was to bring justice which first and foremost
resonates with those who experienced the conflict.\textsuperscript{49} The evidence suggests that the ICTY failed in this purpose.

The ‘liberal’ matrix: liberalism, Europeanization and democratization (referred to as the ‘second Serbia’ in Serbia)\textsuperscript{50}

While the nationalist camp has been prevalent in Serbia and especially in Republika Srpska, Janine N. Clark brings our attention to a ‘second Serbia,’ which opposed Milošević at significant risk to its members. Clark argues that Serbs have become a “criminal nation” in the eyes of the international community despite the efforts of ‘second Serbia’ (Clark 2008, 668-92). This faction has existed and has been active since before the establishment of the tribunal; however it is composed of a small group of non-governmental organizations, legal experts with little access to the general public, and two political parties, which receive minor support. I found that there was a tendency on the ground among the majority of my interviewees to try to distance themselves from these ‘transition elites,’ which are pro-democracy, pro-Europe, anti-nationalist intellectuals and public figures, as well as urbanites employed by foreign-funded NGOs. This group has been accused of betraying ‘the people’ in favour of self-interest and resources from Western donors. The programs that these ‘transition elites’ advocate are perceived as too progressive on the political spectrum, because of their emphasis on cooperation with the ICTY, as well as gay and lesbian rights and gender sensitivity. Many citizens pit the concerns of ‘transition elites’ against the interests of ordinary and impoverished people in Serbia (Greenberg 2006 “Goodbye Serbian Kennedy,” 333-4). Therefore, even though these scholars, civic activists, and politicians are proponents of multiculturalism, human rights, and tolerance, they are not seen as lobbyists for inclusive goals but exclusionary ones. Moreover, in order to achieve their reforms Western donors ally with certain political parties and civic actors on the ground – ‘transition elites’ who support liberal democratic values. Yet, this strategy has attracted accusations of favouritism and NGOs being involved in ‘dirty’ politics, and has consequently lowered the level of popular participation in politics and civil society in Serbia (Greenberg 2010, 54, 58). In this sense, EU’s democratization discourse is not perceived as neutral, and liberal democracy itself is seen as benefiting only certain kinds of people.

\textsuperscript{49} See Chapter II for a more elaborate discussion of the subject.  
\textsuperscript{50} Parts of this chapter will be published in my article in \textit{Europe-Asia Studies} (Forthcoming, Steflja 2015).
Actors whom my interviewees most often perceived as part of the ‘second Serbia’ or ‘transition elites’ included employees and members of the Centre for Cultural Decontamination, the Helsinki Committee for Human Rights, the Belgrade Center for Human Rights, the Humanitarian Law Center, the Democratic Party (DS), and the Liberal Democratic Party (LDP). My interviewees viewed this political faction as being committed to rapidly leading Serbia towards Europe and the adoption of European liberal values and institutions. This finding is confirmed by other scholars in the field (Pešić 2009, 73; Goati 2009, 287).

‘Second Serbia’ was at its peak during the rule of Zoran Djindjić who delivered Milošević to The Hague as soon as he became Prime Minister of Serbia in 2001, therefore fulfilling the key commitment for the path to a ‘European Serbia’ and to Western aid necessary for the economic recovery of the country. Djindjić genuinely accepted the challenges from The Hague and the international community despite the political instability and lack of support from nationalists, especially the President of the Federal Republic of Yugoslavia, Vojislav Koštunica. While Koštunica accepted that The Hague is an inescapable obligation, he vowed to ensure amnesty and jobs for members of the old regime, and thus referred to Djindjić’s transfer of Milošević as a “coup” (Saxon 2005, 566-7; Pešić 2009, 76). Djindjić paid for his commitment to political reform and transition with his life on 12 March 2003 (Pešić 2012, 120).

Djindjić’s assassination was carried out by the Unit for Special Operations or the Red Berets, whose Commander was Milorad Ulemek Luković, known universally in former Yugoslavia as Legija, and whose official task upon creation was to act as Milošević’s Pretorian guard. The Red Berets acted as the “godfathers in Serbian State Security,” as well as the security forces for heroin dealers, extortionists and kidnappers from the Zemun gang, a major gang in Belgrade that Luković ran along with his friend and gang leader Dušan Spasojević (Glenny 2012, 677). The Red Berets symbolized how the world of the state and that of organized crime deeply intertwined in Milošević’s regime. Two year before the assassination, reformist Djindjić entered into an uneasy agreement with Legija and the security forces because he believed that Legija was opting for peaceful transfer of power in Serbia. Legija reportedly played a key role in the delivery of Milošević to The Hague on Djindjić’s instructions in 2001. Some scholars argue that

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51 Koštunica became the new Serbian Prime Minister in March of 2004, and during the same month the Serbian National Assembly passed a law which gave the Serbian government the right to reimburse Serbian inductees at The Hague and their families costs and monthly allowances. The day after the law was passed the US responded by suspending an economic aid package to Serbia (Saxon 2005, 566-7).

52 The nickname means Legionnaire and is in reference to the time Luković spent in the French Foreign Legion.
Djindjić did not need Legija’s support for successful transition and that, essentially, this pact led to Djindjić’s death (Rangelov 2013, 175). However, I am inclined to side with those who argue that because President Koštunica controlled the army and was very opposed to Djindjić’s reforms, Djindjić had to rely on the secret police (Orentlisher 2008, 30-1), especially in order to deliver inductees to The Hague. By 2003 however Djindjić moved towards removing the influence of organized criminals from the new government, including Legija and the organized crime gang with which Legija was associated, the Zemun gang. Djindjić supported criminal investigations against Legija and his clique in Belgrade as well as those in The Hague. Realizing that the enquiries came ever close to home, Legija allied with Koštunica in a campaign named “Stop The Hague” which aimed to undermine Djindjić’s government and show “who was really in charge in Serbia” (Pešić 2009, 76). Serbian conservative and nationalist factions, including not only security forces and political parties, but also intellectual circles, media and church, united against Djindjić. Shortly before the assassination a Belgrade newspaper reported that the ICTY was going to indict Legija, and Djindjić’s cabinet was planning to sign arrest warrants for Legija and the Zemun gang (Orentlicher 2008, 31).

The death of the Prime Minister sparked a slew of arrests, renewed cooperation with the ICTY, and a crackdown on organized crime in the immediate months after the assassination. However, long term modernization plans and political reforms came to a halt, and years of stagnation followed (Glenny 2012, 683). The event intimidated all domestic actors who hoped for a rapid transition from the previous regime. Pešić argues that Djindjić represented “Serbia’s hope, Serbia’s strongest card, he was that Europe towards which Serbs have striven for more than two centuries” (2012, 114). The overwhelming majority of my interviewees confirmed this, arguing that Djindjić was well-liked and trusted among the general public in Serbia. Pešić explains that the consequence of the assassination was that the vision of a modern “European Serbia” “remained alive in the minds of some people and marginal groups, but in political reality the battle was lost” (2009, 77).

It seems that the international community was not aware of the degree of pressure the ICTY indictments placed on already strained domestic politics. The Tribunal cannot be blamed for the assassination of Prime Minister Djindjić – Serbia’s organized criminals who were also members of the previous regime are ultimately responsible (Pešić 2012, 115; Glenny 2012, 682).

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53 Most importantly, the government struck a deal with Ljubiša Buha Ćume, the leader of the rival Belgrade gang Surčin clan, to testify against Spasojević and Luković in open court (2012, 682).
However, the tribunal’s demands contributed to the highly unstable political context leading to this event. Glenny (2012) argues that Djindjić’s assassination was a dramatic result of the contest between corrupt networks and the new government’s push for institutional reform under the pressure of international actors, the ICTY, the EU, and donor countries. It is unfortunate that in order for the tribunal to gain its most wanted war criminal – Milošević, Serbia had to lose its most valuable visionary. Even Djindjić’s assassination did not lead to the realization that the political scene in Serbia made cooperation with The Hague nearly impossible. The ICTY prosecution team did not seem to realize that allowing some space and time for the possibility of a new leadership to develop in Serbia was necessary. Instead, the ICTY’s push for a fast deliverance of alleged war criminals and a fast political transition contributed to the elimination and marginalization of the most liberal actors.

Nationalist factions perceived members of the so-called ‘second Serbia’ or ‘transition elites’ to be pro-ICTY and pro-US and charged them with rejecting and having an aversion to anything considered ‘Serbian.’ Even moderate nationalists had harsh criticisms for the liberal factions accusing the liberals of betrayal, building their credentials on “weekend schools,” being bought off by the West, and being “fashionably European” (Milan Dimić, co-editor of Svedok, Interview, August 31, 2011). Because organizations that exemplified the views of ‘second Serbia’ often received funding from the international community, the nationalists perceived and presented these organizations as serving the interests of ‘the West’ rather than working for the benefit of the local communities. Conservative factions repeatedly and publically argued that salaries of employees in civil society groups are paid by foreign sources with foreign political interests. Consequently, as one of my interviewees explained, the general public often ascribed the negative label of “professional humanitarians” to the groups in question (Predrag Marković, historian, Interview, July 26, 2011). Because of such monumental events and strong reactions, the ‘second Serbia’ took a step back from the political sphere to such degree that it also politically marginalized itself and its supporters.

The ‘liberal’ matrix faced bigger challenges in BiH. In BiH my interviewees were more inclined to be extremely skeptical arguing that “there is no civil society, nongovernmental organizations are all governmental organizations, they only differ based on which political side

54 Despite this I acknowledge that the chief prosecutor had a working relationship with Prime Minister Djindjić and tried to give him some political maneuvering room. Also, it may very well be true that tribunal officials believed that they were aware of the domestic political implications of seeking international accountability. However, my data reveal that my interviewees on the ground disagreed. I thank Victor Peskin for raising both of these points.
they root for” (Slobodan Popović, engineer and member of Social Democratic Party of BiH, Interview, July 11, 2011). A professor of sociology expressed the view that what appears to be civil society are “branches of George Soros Fund” which do not represent the interests of local communities (Ivan Šijaković, professor of sociology, Interview, July 12, 2011). Scholars Heleen Touquet and Peter Vermeersch find that international NGOs in BiH are not trusted by ordinary Bosnians and are perceived as being part of “the UN economy.” Touquet and Vermeersch argue that international support should be given to grassroots local initiatives that bridge social capital and the gap between ethnic groups (2008, 283).

This distrust of civil society contributed to the marginalization of groups from the ‘liberal’ matrix. Staša Zajović, long-time activist and founder of Women in Black, a feminist antimilitarist peace NGO in Belgrade, told me that she finds herself “a permanent minority against the nationalist majority” which controls public opinion with its powerful ideology (Interview, July 28, 2011). It is understandable that, after such negative dynamics between liberal and conservative camps in Serbia and rival ethno-nationalists in BiH, political elites in both countries became more radicalized and polarized over time. A degree of radicalization and polarization would likely have happened without an international tribunal because of other factors, such as the perception among many Serbs that Western media represented the war as Serb-led, as well as the 1999 NATO bombing of Serbia. However, over its twenty-year span the ICTY certainly contributed to the intensity of the phenomenon and helped to solidify such views.

Zoran Ćirjaković, a critic and controversial journalist I interviewed in Belgrade, agreed with my perception of Serbia as bipolar: “If you try to be grey here, they will smear you. You have to be either one or the other. The discourse is so polarized that both sides attack you.” He argued that, while he experienced criticism from both conservatives and liberals, he found it more difficult to accept the accusations made by the liberals, the so-called ‘second Serbia.’ He described his view that “nationalism has an inherent idea of the enemy so it is domesticated, but when the liberals smear you, you are the enemy of freedom, which is far worse” (Interview, June 24, 2011). Ćirjaković thus implied that he prefers being considered an enemy of one nation – his own nation – instead of being considered an individual who does not uphold the universal liberal value of individual freedom.

The reason why the tension between the two political factions is so strong has to do with the fact that the current times are seen by actors on the ground as ‘the battle for history.’ When I interviewed Borka Pavičević, one of the leading actors of the ‘second Serbia’ movement, she
expressed the view that nationalists are looking for heroes who are not associated with Yugoslav communists and partizans of Josip Broz Tito’s times at the same time as the ICTY and the ‘second Serbia’ are trying to establish their own respective versions of the past (director of the Centre for Cultural Decontamination, Interview, July 8, 2011).

The need for a ‘third way’

In one of my interviews in Belgrade, a young co-editor of a journal, who is representative of the educated and politically active youth in Serbia, expressed his view that

The third way is necessary. The urban Serbia is trying to develop but its opportunities are so limited because of limited political and economic choices. The middle class is not forming. Professors and intellectuals are paid 250 Euros per month. People don’t have the means to exploit their creativity (Milan Dimić, co-editor of *Svedok [Witness]*, Interview, August 31, 2011).

In addition to what seems to be a crisis of the middle class, a persistent theme that came up in my interviews and was common across the political spectrum is a crisis of leadership. Whether my interviewees supported ICTY activities or not, they agreed that the political system in both Serbia and BiH is closed in the sense that “the same people are perpetrating the same ideas” and “there are no new innovative leaders breaking into the system” (Djordje Vuković, Centre for Free Elections and Democracy, Interview, July 28, 2011). This context, which was not supportive of political transformation, significantly limited the tribunal’s ability to impact local communities.

The main issue is that there are no inspirational and trusted political actors to offer an alternative to the government’s and the nationalists’ interpretations of the tribunal. Latinka Perović, a renowned historian and political figure in Serbia, stressed that “The public has to be forced to think. … People will drag this attitude [of victimhood and defensiveness] on indefinitely, until the political will forces them to face what happened, and that hasn’t happened” (Interview, August 8, 2011). Professor and clinical psychologist Žarko Korač agreed with Perović and argued that “brutal confrontation with reality is needed. People pretend they don’t know [about the crimes that took place], but they should know” (Interview, July 8, 2011). This unwillingness of the population to face the past seems related to the general dormant role of the citizens in the two countries.
The limits of democratization

My findings suggest that while procedural democracy has been established in the two countries, the populations are disillusioned with the system and do not feel encouraged and enabled to participate in the debates on the ICTY, as well as more generally. Scholars have argued extensively that early elections can lend a veneer of legitimacy to groups or individuals who are not necessarily committed to democratization but simply have most access to resources required to win elections (see Singer 2000; McMahon 2004/5; Hooper and Schwartz 1999; Dzihic and Segert 2012). Such premature elections can lead to the ‘capturing’ of the state by old actors, who may even be interested in reversing the democratic process to authoritarian rule, and therefore taking advantage of the new ‘democratic’ system. This situation set the premise in Serbia and BiH for over a decade, exemplified through general disappointment and lack of expectations among the general public, especially after the assassination of Prime Minister Djindjić in Serbia.

The fact that a few key political actors captured the economy further limited the autonomy of civil society and media organizations. Civil society and media became economically dependent on national and international donors, which in turn de legitimized them in the eyes of the public. The result was a minimization of avenues for voices on the ground to be heard and opportunities for a variety of narratives on the tribunal to be constructed. The following section illustrates how the limits of democratization in BiH and Serbia shaped the opportunities (or lack thereof) for the local population to engage in the transitional justice processes, a factor which tribunal officials naively overlooked.

Democracy without democrats

Freedom House categorizes Serbia as a semi-consolidated democracy and Bosnia as a transitional government or a hybrid regime (Freedom House 2010), however Dzihic and Segert argue that such ratings overestimate the stability of democracy in the two countries (2012, 241-2). They note that what must be taken into account are superficial political stability, that is the succession of government through regular elections and the lack of deeper democratic participation, as well as contradictions and instabilities in these weak states which fail to address the social needs of their citizens (242). The situation is such that “the sea of democracy is more or less interspersed with authoritarian islands” (243).
Democratization scholars point out the significance of the sequence and the timing of democratization steps (Singer 2000; McMahon 2004/5; Hooper and Schwartz 1999). It is likely that early elections contributed to the described state of affairs in Serbia and BiH. As mentioned earlier, premature elections can become an impediment to the development of a functioning democracy.\(^\text{55}\) Peter W. Singer argues that Western policymakers pushed for elections to be held in BiH soon after the signing of peace agreements and questions the intentions of these policymakers by suggesting that they may have been more concerned with elections in their home countries rather than the well-being of the Bosnian people (2000, 32). Singer argues that because the opposition did not get the chance to organize, the premature elections only legitimized the elite which had manipulated ethnic relations during the war. There is general agreement among scholars on this interpretation of elections in post-Yugoslav times (see also McMahon 2004/5, 580-1; Hooper and Schwartz 1999, 40). The very same elites therefore profited from the elections politically, and used their new positions to maintain ethnic divisions and exploit the reconstruction efforts in their favour (Singer 2000, 32; McMahon 2004/5, 580-1; Hooper and Schwartz 1999, 40). In Serbia, the SPS party used ethno-nationalist propaganda and a biased electoral system to legitimize its power through elections and gain overwhelming victories. Similarly in BiH, the most nationalist party from each of the three ethnic communities was victorious (Dzihic and Segert 2012, 244).

While elections were therefore free, in the aftermath of intense and violent conflicts, early formal ‘democratic’ institutions resulted in the official legitimization of extreme ethnic parties. Early elections left no time and avenues for voters to digest and reflect upon the violent past, as well as to become an informed and aware demos. The consequent outcomes promoting extreme ethnic politics limited elites’ ability to compromise on the political future. This situation set the tone for the low standard of ‘democratization’ in the post-Yugoslav states and future political elites continued to use the formal system to strengthen their governing positions, a phenomenon which Dzihic and Segert speak of as “elite-controlled” or “elite-usurped stateness” (2012, 244). Even in the most recent elections actors from both ‘liberal’ and ‘conservative’ camps used elections mainly to consolidate their rule and hence to ‘capture the state,’ rather than to build democracy. Thus, Singer’s suggestion in 2000 that “the reality of political life in Bosnia is that

\(^{55}\) On post-conflict elections see also Ottaway 2002 and Lyons 2004.
while much has changed since the days of Yugoslavia, much remains the same” still holds true (32).

The excessive institutionalization of powersharing between different ethnic groups in the Dayton Agreement only enabled elites in Serbia, Croatia, and BiH to continue governing their ethnic enclaves in a manner they were used to. McMahon argues that there is little evidence that consociational democracies are successful in transitional societies, yet the international community was bent on introducing the consociational structure in BiH (2004/5, 585).56 Toal and Dahlman’s work exposes the degree to which foreign agencies and actors were implicated in the anti-democratic and ethno-centered politics in BiH (2011). The ethno-nationalist elites understood that as long as they appear to speak the language of the international community and manage to gain few key checkmarks from international donors they can continue to carry on a ‘politics as usual’ attitude. Singer explains that while the language of governance is different today, the Communist-era nomenklatura system remains and shapes political and economic power, as well the allocation of basic goods and services (2000, 32).

As for the general population, the evidence indicates that indeed a demos has not developed in Serbia and BiH, at least not in the sense of an engaged democratic population. Apathy has been on the rise in Serbia since the overthrow of Milošević. In BiH citizens have been disillusioned with international reconstruction efforts. The general feeling among the young and educated, but also among the wider population, is that formal political parties and student organizations represent the self-interest of the members of these organizations and neither is able to provide a sense of collective belonging (Greenberg 2006 “Noć reklamoždera,” 194).57 Citizens are disillusioned with democracy and argue that politics is “the domain of the rich, criminal and corrupt” (Greenberg 2010, 56; Ghodsee 2011, 171-2). Greenberg finds that Western donors and NGO programs have the tendency to describe democracy in terms of ‘success’ or ‘failure,’ and in the case of Serbia most often as exemplary failure. This has limited political discourse, democratic action, and critical perspectives at the domestic level on how post-Yugoslavs experience the transition to liberal democracy. Serbs especially feel judged and are inclined to point out the power relations embedded in the democratic discourse of foreign actors.

56 On democracy in plural societies and consociationalism see Lijphart 1980 and Diamond 1999. See also Wilkinson 2000 for a critique of Lijphart.

My research confirms the presence of a key dilemma that Greenberg identifies in her work: “how to be a Serbian citizen, a democratic participant, and a moral subject” (Greenberg 2010, 63).

Srećko Mihailović raises a number of telling questions on the subject matter, such as “Is democracy only a means and a procedure, or is it, at least partially, a distinctive social and political goal?” and “Is a political party democratic when its supporters are undemocratically inclined?” (2009, 125). He argues that the attitude towards democracy in Serbia is not improving but is quite stable with the number of individuals who are undemocratic, individuals who are democratic, and individuals who do not understand democracy being equal, with each faction taking up a third of the population (126). It is troubling to know that only one third of the Serbian population identifies itself as democratic, which is indicative of the success (or lack thereof) of democratization in that country. Because those who were supposed to be representatives of democracy often acted in very undemocratic ways, it is not surprising that democracy was seen as an opposition project and the word democracy as “a corpus of profanities” (Mihailović 2009, 124).

Unfortunately what is true for the general public can be applied to the intellectual elite in Serbia and BiH as well, (although this is not true inversely in many cases). Many intellectuals in former Yugoslavia unexpectedly became the instigators of war in the 1980s and 1990s, acted as mentors of militant politicians and self-proclaimed advocates of the nation, and blurred the distinction between scholars and politicians (Božović 2009, 162). A number of these individuals are still holding firm to their ethno-nationalist worldviews, while others are in the process of transition. One noted example is the Serbian Academy of Sciences and Arts (SANU) whose contribution to the fueling of ethno-nationalism in the former Yugoslavia is well documented, and who, as Božidar Jakšić suggests, needs to go through a process of “restoring the Academy’s respectability” (2009, 239).

The process of transition is one from Yugoslav socialism, through the nationalism of the 1990s, on to liberalization and democratization led by the international community since the end of the Yugoslav wars and the overthrow of wartime regimes. ‘What’ Serbia and BiH are transitioning to is uncertain since the trajectories of the two countries can not be described as necessarily linear or smooth or even as progressions to any defined and fixed point (Burch and Smith 2007, 934). The extent to which the ICTY officials were aware of this setting is unclear. In

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58 Italics in the original.
particular it seems the ICTY architects did not realize to what degree Serbia and BiH were democracies without democrats. And while the views on the ICTY are not directly related to views on democratization, it is important to note that, while the ICTY meant to encourage self-reflection and dialogue among the rivals in the conflict, a culture of debate and *demos* did not exist in these countries.

Perhaps what is most troubling about this political context and most directly connected to attitudes towards the Yugoslav tribunal is the fact that these societies have no history or tradition of a strong and independent judiciary. The view during four decades of communist rule was that the law was an instrument of the state and the ruling elites (Saxon 2005, 562-3). Therefore, even though bringing the rule of law into unstable settings is according to supporters of international tribunals one of the biggest merits of international law, the rule of law is largely a foreign concept in post-Yugoslav societies. As a former prosecutor of the ICTY argued, “[e]ven where the concept was understood, residents of the former Yugoslavia would be just as likely to view the establishment of the rule of law as an idealistic Western dream rather than a Balkan reality” (qtd. in Saxon 2005, 562-3).

The distrust in legal institutions continues today. For example, data provided by the Romanian Academic Society (SAR) based on a survey conducted by BSS Gallup International and SAR in 2003 illustrate that the percentage of Serb respondents in Serbia who believe that the courts serve public interest is 10.3, and the percentage of Serb respondents in Serbia who believe that the prosecutor serves public interest is 8.7 (qtd in Sotiropoulos 2005, 248). Skepticism about the independence of the ICTY judiciary is prevalent and problematic as scholars argue that confidence in judicial independence is key for the rule of law and democratization (Hagan and Kutnjak Ivkovic 2006, 133). Perception of judicial independence on the ground is equally if not more important. Hagan and Kutnjak Ivkovic argue that in addition to meeting procedural and due process standards it is important that members of the public who identify as victims and those accused of having participated in the crimes broadly perceive the tribunal as meeting these standards (2006, 133; see also Lind and Tyler 1988).

Since most post-Yugoslavs believe that legal institutions do not serve public interest but the ruling elite, it is not surprising that they perceived the ICTY as a court which was established to serve the Western powers who put the institution in place (Saxon 2005, 562-3). What is most surprising and also extremely problematic is the fact that there is a consensus among Serbs in Belgrade and Bosnian Muslims and Croats in Sarajevo that judges at the ICTY are not
independent and lack political neutrality. Selectivity of justice is one of the reasons behind the ground accusations that the ICTY is a political tool. Chief Prosecutor Richard Goldstone acknowledged the discomfort that came with the selection of former Yugoslavia as the first case for international law since Nuremberg and the selection of Slobodan Milošević as a head of state (who was presumably democratically elected) to be ousted by the tribunal. Goldstone said:

> A decent and rational person is offended that criminal laws should apply only to some people and not others in similar situations. I felt distinctly uncomfortable when, in October 1994, in Belgrade, I was asked by the Serb minister of justice why the United Nations had established a War Crimes Tribunal for the former Yugoslavia when it had not done so for Cambodia or Iraq (2000, 122-3).

For these and other reasons, Hagan and Kutnjak Ivkovic find that the consensus in Sarajevo and Belgrade is such that, despite their notorious distrust in domestic courts (see Sotiropoulos 2005, 248), residents in both cities prefer local and national courts to the ICTY (2006, 149).

It is not surprising then that the rival ethnic groups in the Yugoslav conflict saw the tribunal as an opportunity to influence the Western powers’ perception of the conflict rather than re-establish the rule of law in their country. Assigning responsibility for the atrocities committed has been extremely difficult because Serbs, Croats, and Bosnian Muslims view themselves as victims rather than aggressors in the conflict. In general scholars who pay attention to the domestic reception of the tribunal argue that Serbs and Croats equally despise it (Saxon 2005, 562). For both of these groups ‘perpetrator status’ throws into question their ‘heroic’ national story constructed by ethno-nationalist elites during wartime (Saxon 2005, 566). For Bosnian Muslims, who endured 65 percent of war casualties (Zwierzchowski and Tabeau 2010), the ICTY was a source of hope initially, but they soon became disappointed and disillusioned with “legal judgments and decisions that appear to have little relevance to the actual experiences, perceptions, and feelings of the Muslim community” (Saxon 2005, 564). Saxon found that among all three groups, “[t]he ICTY is often perceived as having the ability to formally designate a particular national group with ‘victim’ or ‘perpetrator’ status” (Saxon 2005, 563). In line with Saxon, this dissertation argues that for societies in question such ‘decisions’ about and simplifications of history are equally important and more important than the formal legal proceedings taking place at the tribunal. Saxon hypothesizes that for the goal of ensuring the rule of law it may be more productive to examine how the ICTY can communicate with the

[^59]: My findings on the perceptions of the Tribunal in BiH and Serbia are discussed in detail in the chapter that follows.
nationalist communities, including for example acknowledging that each community has a right to its own version of the past (2005, 568).

**Restrictions on freedoms**

Freedom of association: weak civil society

When I asked my interviewees about civil society in their country and the civil society’s response to the tribunal, they spoke of the few groups associated with ‘second Serbia,’ such as the Centre for Cultural Decontamination, the Helsinki Committee for Human Rights, and the Belgrade Center for Human Rights. The problem is that they did not see these groups as politically independent but as subsumed under the ‘pro-Western’ and Western-funded political factions. The situation was similar in BiH where civil society faces profound ethno-national divisions (Dihic and Segert 2012, 241). My interviewees in Serbia and especially in Republika Srpska, at best, shunned and, at worst, shamed and targeted any group which they did not see as adequately ethno-nationalist.

The fact that a general sense of passivity and unwillingness to engage or show interest in politics prevails in the region is further damaging to the state of the civil society. In his work Mihailović argues that there is a “pronounced ‘mentality’ of subjugation” which dominates in Serbia and I would extend his hypothesis to BiH as well. He cites a CESID survey of self-assessment of attitudes towards politics, which found that one third of the respondents were not interested in politics at all, three fifths expressed very little interest in politics or in taking part of any political activity, while only five percent claimed to be occasionally active and for short periods of time, and three percent identified as politically active. Mihailović explains that passivity is compounded by an extremely low level of civic political culture and “authentic autonomous (independent) activism.” He then summaries what he means by mentality of subjugation:

Simply put, the Serbian population is primarily an object in the hands of politics and politicians, the state, state institutions, and political parties, and when it does show signs of activity (and this varies from isolated cases to organized protests), it acts like a cheering squad, reducing its activism more or less, to mere cheering (2009, 135-6).
In the case of BiH, Anze Voh Bostic finds that people’s understanding of civil society is affected by their understanding of Bosnian history as one where conflict is addressed through violent means and outside forces to the extent that Bosnians are suspicious of their own governments and do not believe in the power of civil society (2010, 215). Being aware of the weak state of civil society in Serbia and BiH helps us understand that the lack of response to the ICTY on the part of non-governmental groups is reflective of a general state of apathy in these countries.

Patrice McMahon finds that in its attempt to accelerate reconstruction and democratization in BiH the international community has made quick decisions on civil society initiatives, throwing support behind projects without paying adequate attention to domestic support for such projects or the projects’ ability to deliver stated aims. McMahon (2004/5) argues that the international community descended on Bosnia in 1996 with large funds but without a cohesive strategy (580). McMahon emphasizes that effective civil society development depends on improvisation as well as domestically appropriate strategies (2004/5, 580).

Dimitri A. Sotiropoulos studies the development of civil society in Southeastern Europe and hypothesizes that positive social capital – defined as trust in other people and institutions – is a requirement for the development of civil society and democratization in the region. According to Sotiropoulos, increased social capital is reflected in the tendency to join voluntary organizations and trust political and administrative institutions, while negative social capital is reflected in the tendency to trust only small sets of individuals with whom one shares local ties thus “constituting narrow enclaves of social interaction” (2005, 253). Sotiropoulos finds that in Southeastern Europe there is low trust in people (or interpersonal trust) and even lower trust in institutions (or social trust) (2005, 254). The results illustrate that in the case of the Serbs trust levels are particularly low, with Serbs and Macedonians claiming that they have been “cheated by others” more than other nations in the region, Serbs and Montenegrins having very low trust of most other peoples despite background, and Serbs having the lowest trust in institutions lagging behind Romanians, Bulgarians, Montenegrins and Macedonians (2005, 247-8).

Sotiropoulos’ data, provided by the Romanian Academic Society (SAR) based on a survey conducted by BSS Gallup International and SAR, show that the percentage of Serb respondents who believe that the following institutions serve the public interest are 8.8 for parliament, 14.3 for local government, 33 percent for schools, 22.2 for public television, and 22.6 percent for police (qtd in Sotiropoulos 2005, 248). If Sotiropoulos’ hypothesis that positive social trust is
needed for the development of civil society is correct, his study provides proof of weak civil society in Serbia and important insights for why this is the case.

The lack of international awareness on the state of post-Yugoslav civil society seems also to be a result of naïve assumptions about how people in the region organize. Scholars Stefanie Kappler and Oliver Richmond argue that liberal peacebuilding culture relies on civil societies which are free of ethno-nationalism and oriented towards the same norms and values which shape these liberal peacebuilding and state-building projects. This involves a naïve expectation in the case of BiH, which, I argue, the international community assigns to Serbia as well: that civil society in BiH will be inspired by the same tonic as EU member-states and organize itself in similar ways and forms (Kappler and Richmond 2012, 265). The problem thus lies in the fact that BiH and Serbian civil societies are perceived as compatible and similar to civil societies within the EU, which, while diverse, have developed out of the particular EU history and are perceived largely as a “homogeneous liberal network” (Bono 2006, 154). It is incorrect to make such assumptions about BiH and Serbia where an anti-Western attitude to civil society and a prevalent view that “we don’t do choirs and football clubs” exists (qtd. in Kappler and Richmond 2012, 265).

Jocelyn Linnekin argues that international actors often romanticize local cultures by assigning authenticity to one particular local faction, “hence instrumentalizing a specific discourse that fits into their goals of governing and shaping society in a given direction” (1991, 447). This is the approach of international actors in BiH and Serbia. Kappler and Richmond’s findings confirm that the EU has exclusionary tendencies when it comes to allocating funding to civil society groups and initiatives which do not fit into EU’s liberal-rights and market-economy framework or do not use conventional ‘Western’ civil society channels. The assumption is that post-Yugoslav societies will become ‘European’ in their norms and values through ‘natural’ linear progress which will lead to EU integration (2012, 265). What follows then is that local agency is supposed to ‘naturally’ comply with the Europeanization process, and thus civil society groups and initiatives which are further on this ‘linear’ process should be awarded with more funding. What international actors do not realize is that their selective funding and preference for certain groups delegitimize these organizations in the eyes of the locals who often perceive such groups as non-independent and non-genuine, sources of Western imperialism. In fact, it is often through resistance to the ‘imposed’ or ‘liberal’ or ‘market’ forces that local civil societies flourish. The international community’s detrimental effect or, at most, lack of effect, on civil
society in the region has likely harmed the construction of diverse local non-governmental narratives on the ICTY. Locals perceive the tribunal as part of the framework of liberal peacebuilding and, for all of the above reasons, locals are quite wary of citizen groups promoting the institution.

Freedom of press: weak media

Journalists Without Borders places Serbia 63rd and BiH 68th on the 2013 World Press Freedom Index which includes 179 countries in total. The rankings are not particularly alarming, especially if one compares them to Rwanda which takes the 161st spot. Nevertheless, my interviewees seemed particularly negative about the state of the media in Serbia and BiH. In general they argued that there are no, or very few, independent media sources. The editor of *Dnevne Novine* and the editor of *Svedok* explained that freedom of media is an economic issue in Serbia (Žarko Kesić, Interview, August 30, 2011; Milan Dimić, Interview, August 31, 2011). What these editors emphasized is that journals which claim to be self-funded are in reality dependent on funding from their supporters who belong to particular political factions and expect their political inclinations to be reflected in the media that they support. Pešić, former diplomat and Serbian MP, summarized this reality: “There is no freedom of media. Economically dependent is not independent” (Interview, August 10, 2011).

Branković, CEO of TNS Medium Gallup in Serbia, a company focusing on public opinion, media and market research which conducts regular surveys and reports of public opinion in the Balkans, confirmed that “media buying is controlled by the state, so you can write critically but the state will be aware of it and have a chance to respond” (Interview, August 11, 2011). The editor of *Svedok*, Dimić, expressed his view that while during Slobodan Milošević’s regime one could be killed for uttering the wrong words, today oppression of the media is equally harsh but takes on a more sophisticated form. “The big guys that used to wear leather jackets and gold chains are now in suits. They cut off the advertisements and the funds if you say the wrong thing,” said Dimić (Interview, August 31, 2011). Ćirjaković, an experienced journalist who was assaulted by and received threats from a variety of political factions, agreed with Dimić that the oppression of media is more disguised today than it was in the past, which makes it more difficult to handle (Interview, June 24, 2011).
Ratko Božović argues that journalistic professionalism suffered the most during and as a result of the 1990s conflicts. This had serious consequences for the media to the degree that the media abandoned its role as “the vent for the critical potential of society.” Božović argues that, while the media is supposed to support multiple forms of civic initiatives and alternative views because “journalists should have an ear for manifestations of civic aspirations,” the media in Serbia has been “pragmatic-political” and “a propagandistic intermediation” (2009, 163). Here Božović refers to political interests and monopolies which are preventing media autonomy and professionalism to the extent that standards of ethics and methodology are not being established in investigative journalism (2009, 164). An interviewee echoed Božović’s opinion and argued that “There is no such thing as professional media here. We need a media that questions, a media that cares about truth and politics” (Borka Pavičević, director of the Centre for Cultural Decontamination, Interview, July 8, 2011).

Instead, the media in Serbia and BiH subscribe to status quo opinions, because, as Božović writes, “[m]edia which is not independent of authoritarian culture have been distanced from the ideals of tolerance, non-violence, common life, and civil rights” (2009, 165). Instead of providing a variety of stimulating, challenging, and critical approaches, the media is limited to the nationalist narrative and the ‘Europeanization’ narrative. In Serbia this means that the narrative is either one which focuses on counting casualty numbers, equalizing guilt on all sides, and constructing conspiracy theories, or one whose primary goal is to be explicitly ‘pro-European.’ Karmen Erjavec and Zala Volcic examine two daily newspapers in Serbia – Blic and Večernje novosti – and identify the characteristics of “nationalistic journalism” as conforming to authority, conventions, the dominant common sense, and mainstream nationalistic principle (2007, 81). Moreover, nationalistic journalism emphasizes “historic symbolic glories and territories” and reinforces “us vs. them” reporting, which is “extremely one-sided and lacking information on complex issues such as Islam, terrorism, Europe, crime, and independence” (Erjavec and Volcic 2007, 81). Therefore, like intellectuals in the region, the media rarely push discussions in new directions. In the words of one of my interviewees, “they themselves are stuck in old stories” (Sonja Biserko, president of the Helsinki Committee for Human Rights in Serbia, Interview, June 24, 2012).

It may be the case that the divisive yet conformist state of the media in Serbia and BiH has been quite detrimental to the development of multiple and alternative views on the ICTY. On the other hand, it is possible that a more diverse and independent media environment would not
lead to different views on the ICTY. This depends on the degree to which political and ethno-nationalist polarization are embedded into the every day framework and perceptions of the populations. Still, there is certainly value in having a media venue where local actors can express opinions without a potential risk to their professional and personal security.

From the atrocious events in the former Yugoslavia and Rwanda the international community came to believe that media which is controlled by the state or ethno-nationalist factions can fuel conflict and violence (Thompson 2007). This is why donor countries responded by devoting significant funds to media assistance as part of their democratization policy in the years that followed. These donor countries also learned that when there is a lack of independent media there is also a lack of space for internal dissent and debate and in such situations citizens’ frustrations and blame are often directed towards the outside, in particular towards ‘the West’ (Kumar 2006, 653-4). This is another reason why the international community provides support and assistance to the development of independent media in the former Yugoslavia.

However, a problem arises when media development assistance is combined with public diplomacy policies because, while media assistance merely develops and strengthens indigenous capacity for a free flow of information, public diplomacy promotes the donor’s foreign policy interests by attempting to influence the audience. Merging the two leads to skepticism and accusations of imperialism against donor countries and, in the context of Serbia and BiH where international actors face an extremely distrustful audience, the consequences are grave. Western-funded media in these countries faces similar issues as Western-funded civil society, mainly, the common accusation that these organizations are representatives of Western interests. Because of this stigma, none of my media interviewees admitted that they themselves receive international support, yet a great number of them accused each other of accepting international funding. This is also one of the reasons why, for example, USAID’s initial decision to fund the broadcasting of Milošević’s trial, as will be discussed in greater detail in the next chapter, was self-defeating as it led to the doubling of Milošević’s approval ratings and contributed to an upsurge in defensive nationalism (Lelyveld 2002, 82).

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60 I am not suggesting that media alone leads people to kill one another. In fact, scholars have disconfirmed such hypotheses (Straus 2007; Gagnon 2004). I am merely drawing attention to the fact that international actors realized the importance of media during conflict as a result of the wars in former Yugoslavia and Rwanda.
It is unlikely that the ICTY officials were aware of how much these structural factors could shape local narratives on the subject of the tribunal and how actors on the ground respond to the tribunal. Tribunal officials also did not realize that foreign-funded awareness campaigns could have the opposite effect from what these officials intended and limit the freedom and expression of local voices on the subject matter. Even if some locals had a positive perception of the court, they were reluctant to voice it in order to prevent being scorned and labeled as supporters of Western imperialism. While the ICTY was charged with bringing justice and reconciliation by holding war criminals accountable for their acts, I argue that being perceived as carrying out these goals by local actors on the ground is equally as important as the legal process itself. My findings suggest that the tribunal officials did not pay adequate attention to the two-way relationship between the tribunal and dynamics on the ground, including politics, civil society, and media.

The effects of a stagnant economy and regional interests
The absence of a middle class in Serbia and BiH raises the question of whether the Yugoslav populations would have been more receptive to the ICTY, to self-reflection and accountability for the events of the 1990s, if they felt more stable in their socio-economic condition. A number of my interviewees expressed the argument that the middle class disappeared in the region and that people do not have the means to use their intellectual, social and political creativity. The Rwandan regime and its supporters often make a similar argument, claiming that sequencing of goals in post-conflict societies is necessary. They claim that economic development and reconstruction are primary, while the ability of individuals to engage politically, socially, and culturally and utilize individual freedoms effectively follow in the latter stages.

The Yugoslav economy has been experiencing tribulations since the 1980s. The 1990s wars had disastrous consequences for BiH with only seven percent of industrial facilities operating after the war, more than 80 percent of the population dependent on humanitarian aid, and the same percentage of the population unemployed (Bideleux and Jeffries 2007; OHR 1996). In his work Anze Voh Bostic argues that quick liberalization of economic sectors took place before BiH was ready for such drastic reforms. Consequently, banks owned by foreign companies focused on short-term profit and preferred not to give expansive long-term loans for projects aiming to restructure the economy. Such policies furthered anti-foreigner sentiment. Voh
Bostic argues that such economic policies had indirect but quite negative impacts on peace-building (2010, 225; see also Nahtigal 2006).

Serbia’s involvement in the Bosnian wars, followed by the war in Kosovo, and economic sanctions imposed on Milošević’s regime all had grave effects on Serbia’s economy. By 1997 Serbia’s GDP decreased by 60 percent from its pre-war performance and by 1999 unemployment rose to 50 percent (Bideleux and Jeffries 2007). While macroeconomic performance improved in postwar times, the picture continued to be negative and has been deteriorating since the 2008 international crisis. For example, Serbia rates second behind Cameroon in job security with 47 percent of the population fearing a loss of employment, and in BiH unemployment climbed to 40 percent by 2010 and is increasing (Gallup 2010; Radio Free Europe 2009).

One of the major problems is that postwar recoveries were greatly hindered by the ‘capture of the economies’ by new political and economic elites. This phenomenon occurred across the former Yugoslav republics, and is common in countries which, in their transition from authoritarianism and communism, introduced fast neoliberal deregulation. It entails the ‘capture’ of new deregulated industries by former key state actors in ethno-nationalist and war-economic structures who become neoliberal managers and use the opportunity of privatization to acquire large parts of the national wealth. As Dihic and Segert explain in their work, this phenomenon makes the state incapable of producing adequate common goods and social welfare and distributing them reasonably fairly (2012, 249). The tribunal has thus been functioning in an environment of dire economic conditions and negative prognosis. I asked my interviewees whether former-Yugoslavs would have been more receptive to the ICTY, to addressing the past, self-reflection and accountability in particular, if they had felt more stable in their socio-economic condition. My interviewees expressed the view that the economic situation in Serbia and BiH is troubling and that the middle class was crippled by violence and economic problems, which has significantly diminished its ability to participate in politics. Surprisingly however, the majority of my interviewees did not believe that an approach which prioritized the economy at the expense of delaying transitional justice would have been more successful.

One of my interviewees expressed the view that scholars studying the case of Germany need to recognize that “what mattered in Germany is not the Marshall Plan but the fact that [Germans] were occupied and thus forced to accept the guilt.” She disagreed with scholars who call for prioritizing economic goals over justice in post-conflict settings because, according to her, raising a people’s consciousness does not simply follow from better economic conditions.
“You cannot hide the past and trauma behind a good economy,” she said (Sonja Biserko, director of Helsinki Center for Human Rights in Serbia, Interview, June 24, 2011). Another interviewee, Djordje Popović, agreed with Biserko, arguing that improving the economic situation would not facilitate the acceptance of guilt for past events because the issue of guilt is a separate subject that politicians need to address (research fellow at the Belgrade Center for Security Policy, Interview, June 23, 2011). Nebojša Randjelković was the third interviewee to say that economic betterment and consciousness raising do not necessarily go hand in hand. Randjelković supported his argument by noting that the economic situation was better right after the fall of communism, yet the nationalists managed to promote divisionism and ethnocentric discourses. He argued that if ICTY funds are diverted to economic development they would probably not be invested in the economy but would end up in the hands of corrupt politicians because of the high levels of corruption in Serbia (professor of history of law and vice-president of Liberal Democratic Party, Interview, June 22, 2011). The point that economic betterment does not necessarily encourage post-conflict communities to face the past and embrace social change has serious implications for the international community’s willingness to overlook certain governments’ restrictions on individual freedoms and poor human rights records because of their economic accomplishments.

Many of my interviewees expressed the opinion that instead of focusing on improving socio-economic conditions the post-Yugoslav populations needed exceptional leaders to guide them through this difficult psychological and emotional situation:

Courage is needed and the truth is very difficult. Most people don’t want to get to the truth, it uncovers dirt and ugliness that exists within our elite. But the truth, even though it hurts and even though it will have serious consequences for those in power, is the only way. People need to hear the truth (Nebojša Randjelković, professor of history of law and vice-president of the Liberal Democratic Party, Interview, June 23, 2011).

While my interviewees focused on the need for exceptional leaders who inspire populations and are willing to accept consequences of political transformation, this view is likely a result of a long-standing tradition of top-down rule in the region. The example of long-term leadership is Josip Broz Tito, who ruled former Yugoslavia from 1953 to 1980. While Tito was an authoritarian president, he was popular among most Yugoslavs who considered him a benevolent dictator (Shapiro and Shapiro 2004). The literature challenges my interviewees’ views, and points out that when and how remarkable leaders emerge is largely influenced by context as well
as randomness. Thus, contextual factors, such as the development and strengthening of institutions, are central to the emergence of effective leaders and vice versa.

The ‘carrot and stick’ strategy of the tribunal, in which foreign aid and EU membership were tied to the countries’ cooperation with The Hague and transfers of accused war criminals, was reasonably effective in Serbia and resonated strongly in people’s awareness because of popular aspirations to join the ‘Europe club.’ In one of my interviews, Radmila Nakarada, a professor at Belgrade’s Faculty of Political Science and the director of the Centre for Peace Studies, expressed the shock the Serbian population felt at their ‘exclusion’ from Europe in the 1990s and “the belittling of the fact that Serbs were allies with some of these major European countries and America in the Second World War.” During the 1990s war and its aftermath “[Serbian] identity was reinterpreted, and they were thrown into something that is anti-Western, anti-European,” she continued. Nakarada expressed her opinion that, on a psychological level, Serbs are “craving … the internal feeling that we are part of this European continent.” She argued that this became apparent after the removal of visas for Serbian citizens travelling to the EU because, even if most people did not have the funds to travel to the EU, the psychological effect of visa-free travel was enormous (Interview, August 19, 2010).

Professor Nakarada was referring to the fact that Serbs were allies with Britain and the US during World War I and World War II, and Yugoslavia had a Non-Aligned status which resulted in great mobility for its citizens and a sense of worldliness (Jansen 2009). The Yugoslav passport was a prized possession especially in Central and Eastern Europe where the Soviets had a tight grip on their citizens. This changed abruptly and drastically during the Yugoslav wars and the decade after – in the 1990s and the 2000s – when citizens of post-Yugoslav states, and especially Serbs whom the West blamed most for the violence, faced international sanctions, heavy visa restrictions and interrogation when traveling abroad (Greenberg 2011, 88). In this period traveling became associated with war-related and commercial criminal activity as illegal means were usually required to arrange travel (Greenberg 2011, 92). The abrupt change in the mobility and geo-political status of post-Yugoslav citizens has been regarded as traumatizing by international scholars, and actors on the ground (Greenberg 2011, 92, 96).

A strong desire for economic progress, evident among the youth which is disillusioned with the political state of the region, and a desire to be identified with Europe in cultural, ideological, and economic terms is why ICTY’s unofficial ‘carrots’ – the promised rewards of donor aid and EU membership – produced results in Serbia. However, using CESID data,
Mihailović finds that this attitude towards Europe in Serbia is mainly pragmatic. He explains that while the majority of Serbs identify themselves with Europe and two thirds supported Serbia’s membership in the EU in 2006, this is accompanied by a low level of trust in the EU and negative views of the EU. Therefore, a degree of Euro-centrism exists simultaneously with Euro-skepticism and Euro-pessimism. Over half of respondents in a 2006 CESID survey agreed that “The world and Europe won’t let us be masters of our own destiny” (Mihailović 2009, 131).

Moreover, it is important to note that pro-European orientation and support for EU membership have been falling since 2003 (Mihailović 2009, 131). While the new nationalist government of Tomislav Nikolić signed a historical agreement with Kosovo in 2013 as a result of EU pressure, this government has also emphasized turning Serbia’s attention towards Russia and away from Europe. Therefore, ICTY’s ‘carrot’ strategy has been losing appeal in Serbia and the population has become increasingly disheartened with what seems to be a long and fruitless process to EU accession.

The situation has been different in BiH where the population is more deeply scarred by the wars (Zwierzchowski and Tabeau 2010) and has been disillusioned with the EU and the potential benefits of international assistance. BiH has attracted enormous international assistance but yielded very questionable and, at most, minor results (Ottaway 2002 & 2003). Biljana Milošević, a professor of sociology in Eastern Sarajevo, told me that Serbs in BiH feel most rejected by their Western ‘big brother’ (Interview, July 14, 2011). If this is true, it explains why my Serbian interviewees in Republika Srpska questioned the benefits of EU membership and foreign aid, and were most defensive and unwilling to support giving up accused war criminals whom they perceived as defenders of their nation. In my interview with Mladen Ivanić, who was the Prime Minister of Republika Srpska from 2001 to 2003, he argued that, in general, EU membership is much less appealing in BiH than in Serbia and Croatia because the people in BiH are disillusioned with Europe and do not believe that they will be a part of the Union in the near future (Interview, July 15, 2011). For all of the above reasons, the ‘carrot and stick’ strategy of the tribunal was not as effective in BiH as it was in Serbia.

The offers of EU membership and donor aid not only required that citizens of BiH and Serbia accept international ‘justice,’ these communities were also told by their European ‘big brother’ to become peaceful and reconcile. The main problem with this aim of the ICTY mandate was the evidence on the ground. Roland Kostic (2008) finds that in BiH, where the three rival groups live in the same state and reconciliation is thus most necessary, 61.2 percent of Muslims,
36.6 percent of Croats, and 50.1 percent of Serbs believe that ‘one should never forgive,’ while only 35.9 percent of Bosniaks, 58.4 percent of Croats, and 42.9 percent of Serbs believe that one should ‘forgive but not forget.’ Robert Hayden, also draws attention to the fact that no one seems to be able to ‘forgive and forget’ in BiH and the evidence illustrates strong ethno-nationalist polarizations in the one post-Yugoslav state which needs intergroup reconciliation for its most basic functions (2011, 314). The mostly homogeneous Serbia and Croatia have even less reason to reconcile with their former rivals as Serbs and Croats in these countries are not required to share a state with their former rivals. The goal of reconciliation therefore seems entirely imposed as an international interest, and represents mainly a Western European desire for more security and less criminal activity in the region. Presently, this goal does not reflect the wishes of those who were involved in the conflict.

The tribunal architects not only assumed that the people of former Yugoslavia wish to reconcile but also that international trials can facilitate that process. Hayden argues that there is no reliable evidence to suggest that international criminal trials have ever fostered reconciliation:

Despite the overwhelming rhetoric in ‘transitional justice’ circles about the necessity of accountability for reconciliation, I am aware of no cases in which externally-imposed criminal trials had this effect, at least if those trials were not quickly over and the countries whose leaders had been tried then helped to develop. It is certainly not true in the former Yugoslavia (2011, 316).

Finally, if we use peace and democracy as indicators of successful reconciliation, we encounter another problem: as Jack Snyder and Leslie Vinjamuri find, “[t]rials do little to deter further violence and are not highly correlated with the consolidation of peaceful democracy” (2003/04, 43).

In this chapter I have argued that the international community, and architects and operators of the ICTY specifically, made a number of problematic assumptions about key elements of the Bosnian and Serbian political contexts. International actors naively assumed that democracy was the natural and desired route for the countries’ transition from armed conflict and that procedural democracy would lead to actual democracy. International actors also discounted the wishes of the communities in question and underestimated the extent of political and ethno-nationalist polarization, as well as the degree to which this polarization is embedded into the every day framework and perceptions of the populations. In the process of enticing Bosnian and Serbian populations with the prize of foreign aid and EU membership, these actors lost track of the fact that genuine desire for and concrete evidence of the possibility for political transformation are
required at the local level. ICTY officials and its supporters were negligent in recognizing these key factors, which significantly influenced the local narratives constructed on the tribunal, all of which will be discussed in great detail in the next chapter.
Chapter IV: Domestic Responses – International Criminal Tribunal for Former Yugoslavia (ICTY)

At a focus group at the University of Belgrade in July of 2011 I asked several political science and international relations students to describe the first thing that came to their minds when someone uttered the words “The Hague.” The answers ranged widely (Focus group, July 27, 2011). The answer that came closest to the ICTY’s self-defined objectives of justice and reconciliation was “someone who sets up the legal truth.” Yet, the idea that the legal truth was being “set up” implied a significant degree of skepticism. “Injustice” suggested that the image of the Tribunal was the exact opposite of what was stated in its mandate, while “continuous conditions” and “a government building with a beach” implied domination by those in possession of power and wealth.

Unlike the ICTR which was established at the request of the Rwandan government for the international community to prosecute violators of international humanitarian law, the ICTY was established at the initiative of the United Nations in 1993 in response to the mass atrocities taking place in Croatia and Bosnia and Herzegovina at the time. The ICTY was the first war crimes court created by the UN and the first international war crimes tribunal since the Nuremberg and Tokyo tribunals. The cooperation of governments was not voluntary but mandated by the 1995 Dayton Peace Agreement, which was brokered by United States, Britain, France, Germany, and Russia, and put an end to the Yugoslav conflict. Bosnian Muslims, as the biggest victims of the conflict, were the only group possibly in favour of the creation of the tribunal. There was no formal and popular support for the establishment of the ICTY in BiH, with support being virtually non-existent in Republika Srpska and Serbia (Kutnjak Ivkovic and Hagan 2011, 156). My interviewees saw the Dayton Peace Agreement largely as an international initiative; its terms did not sit well with them. The Agreement oversaw the break-up of the former Yugoslavia into separate states – BiH and Yugoslavia (later to be Serbia and
Montenegro). The agreement therefore officially granted the groups with the greatest military capabilities their own largely homogeneous states - Croatia and Serbia. What this meant was that, unlike in Rwanda, where partition was not implemented and the Tutsi and the Hutu knew that they would need to go through processes of intergroup justice and reconciliation, in former Yugoslavia, the warring groups were not required to envision such processes. They had been granted separate states or, in the case of BiH, separate political entities backed by neighbouring states. Therefore, from the very beginning the majority of the population of the former Yugoslavia questioned the legitimacy of the ICTY as an internationally imposed initiative.

There was a degree of genuine desire on the part of some ICTY architects and staff to fulfill the stated ICTY mandate by providing just outcomes to Yugoslav communities and assisting reconciliation in post-conflict times (Arbour 2014). At the same time, my findings suggest that the prevalent concern of actors on the ground was that the ICTY was an example of selective justice in international affairs. This problem was at the root of criticism targeting the ICTY, and all institutions of international law more generally. My data reveal that the perception that the Western legal community had an incentive to establish the ICTY as a means to develop its international criminal law apparatus, which was in a dormant state since the Nuremberg and Tokyo trials, played a key role in shaping the attitudes towards the tribunal.

The findings in this chapter illustrate that the narrative which describes the ICTY as an imperialist institution of selective justice dangerously united the most unlikely political allies in Serbia against the tribunal. Right-wing factions, which based their views on victimhood nationalism, and left-wing factions, which employed a postcolonial critique, agreed on this interpretation of the ICTY. The ICTY’s formation and proceedings spurred and fueled certain interpretations over others. My data suggest that the ICTY underestimated the power of preexisting patriarchal and ethno-nationalist interpretations of history. Worse, the ICTY did not recognize that it was capable of amplifying and activating destructive forms of nationalism, including the glorification of war criminals.

The ICTY was not responsible for the birth of such attitudes. Victimhood narratives and ethno-nationalist influence in Yugoslav politics were already evident in the 1980s after the death of the Yugoslav leader Josip Broz Tito. A defensive form of nationalism, which was oriented against the West as well other political and national groups in former Yugoslavia, was

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61 Croatia had already declared independence in June of 1991.
discernible during the Yugoslav wars. It was especially obvious in the Serbian opposition to the international media and the media’s coverage of the conflict, as well as in opposition to countries that first recognized the independence demands of Croatia, namely Germany, supported by Italy and Denmark. Defensive nationalism came to the forefront with the Security Council’s decision to impose an arms embargo on Serbia and Montenegro in September 1991, and economic sanctions in May 1992, which led to spiraling inflation rates and other serious harms to Serbia’s economy. The establishment of the ICTY through the 1993 Security Council resolution was interpreted as the next international imposition. The ICTY was followed by the Dayton Peace Agreement, which was mainly brokered by the US and did not have popular support in Serbia. Finally, The NATO bombing of Serbia in 1999 only confirmed the suspicions of the Serbian populations about Western countries’ intentions as they perceived both NATO and the ICTY as American-led international organizations. It is not surprising then that Serbian communities in Serbia and BiH struggled to understand how the same actors could both ‘bomb us’ and ‘judge us’ fairly?; ‘the enemy’ and ‘the judge’ became one and the same.

A more corrosive type of defensive nationalism thus emerged in the 1990s. The establishment of the ICTY and the proceedings that followed were critical in this process. The tribunal was the most official and internationally widespread means of projecting guilt, blame and shame on the Serbs before and after the NATO bombing. The ICTY did not simply reflect the opinion of one media source or a single country; its actions and accusations carried international weight. The ICTY trials gave force to attitudes of defensive nationalism by providing an opportunity and a perceived necessity to further construct ‘oneself’ in opposition to a variety of ‘others.’ The Tribunal helped activate the reinterpretation of past events, including the civil war, through this more extreme form of nationalism, and furthered conspiracy theories against ‘the West,’ which are addressed in this chapter. Finally, the tribunal failed to actively participate in the creation of its own narrative, allowing space for exploitation, ridicule, and exoticization of the tribunal by agents of ethno-nationalism.

In a context where even moderate supporters of the tribunal faced serious political costs, such as marginalization and conspiracy accusations, Serbian and BiH governments relied on a ‘business as usual’ and overly procedural approach to the tribunal, instead of expressing any genuine will for change. The benefits of the tribunal to the local communities in Serbia and BiH did not extend past assurance of donor aid, the acceleration of the process of membership into the European Union, and a twenty-year-old research archive that documented the Yugoslav wars. I
argue that, rather than being seen by local actors as an institution committed to just outcomes in a post-conflict setting, the ICTY became a battle ground for the interpretation of history where ultimately the strongest actors would impose their worldview. The fact that the ICTY enabled the three-way battle between Serbs, Croats, and Bosnian Muslims to continue at the legal and administrative and political level indicated effects on intergroup reconciliation contrary to what the ICTY architects intended. My evidence suggests that local actors in BiH and Serbia felt that ideas of reconciliation were entirely imposed from outside on peoples who did not show any desire to reconcile.

This chapter examines the prevalent narratives on the tribunal. The majority of my interviewees expressed their views in the form of defensive ethno-nationalism and aversion to Western interference in the region. A small marginalized minority disagreed, arguing that ethno-nationalist ideology should be purged from former-Yugoslav communities and that better cooperation with the tribunal should be pursued. However, even this minority argued that the ICTY was proof that world powers apply justice selectively.

I inquired about possible solutions to difficult political questions and found that my interviewees identified strong leadership as a requirement for political transition, which I argue illustrates the influence of the authoritarian tradition in post-Yugoslav societies. This view was prevalent despite the fact that it had been mainly strong leaders who created the problematic circumstances these societies found themselves in the first place. The overemphasis on leadership denies the agency of ordinary people and conceals expectations for citizen participation in the post-conflict transition. It also provides justification for keeping the elite arrangement set by Dayton in place and allowing ethnocentric elites to continue to govern, manipulate and polarize their ethnic enclaves. The overemphasis on leadership conveniently serves status quo interests in post-Dayton times and is thus limiting democratization possibilities.

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62 This point stands whether we are speaking of Josip Broz Tito’s decades of rule or the actions of the key players responsible for the 1990s civil wars, such as Slobodan Milošević, Alija Izetbegović, and Franjo Tudjman.
Outreach policy and public awareness

**Impact of the ICTY**

From its first proceedings the ICTY faced a cynical audience and a difficult context of defensive attitudes and preconceived ideas about the intention and function of the institution. My findings suggest that the outreach and awareness-raising programs of the ICTY were ineffective and inadequate in mitigating the devastating effects of years of nationalist propaganda on the social psyche. The views of the graduate students presented at the beginning of this chapter were representative of the overwhelmingly negative response that the ICTY received from the Serbian population since its very establishment. In my interview with the CEO of Public Opinion Media and Market Research Company Media Gallup, Srbobran Branković (whose company regularly conducts polls on the ICTY), he described the general public opinion of the tribunal as “very negative” and “constantly negative,” with 70-80 percent of those surveyed being against the tribunal. The public response to the ICTY was especially negative if compared to the public response to other international institutions and organizations, including the European Union (Interview, August 11, 2011). The director of the Belgrade Center for Human Rights Vojin Dimitrijević summarized his Center’s findings on public opinion, which largely confirmed those of Media Gallup: About 15 percent of participants “hated” the ICTY and about 70 percent disliked it and preferred not to deal with it but considered cooperation if economic advantages were obvious. Dimitrijević explained that only 15 percent favored cooperation with the ICTY and believed that there is a possibility of securing justice at the ICTY (Interview, August 20, 2010). Branković concluded that while certain events temporarily influence the reaction to the tribunal, “the key views on the ICTY were cemented.” He believed that these views were cemented before the year 2000 and that people were not well-informed on the ICTY but simply used selective information from the ICTY to confirm beliefs that they already held.

My interviewees were individuals who had the opportunity to be well informed on the tribunal and to influence the dominant ICTY narrative more so than the general public. There was evidence that the educated elite was more inclined to favour cooperation with The Hague. One of my interviewees estimated that about 50 percent of the educated in Serbia accepted the transfers of accused war criminals to The Hague while no more than 30 percent of the general public did. The difference was most likely a result of the fact that the educated population understood the political and economic consequences of cooperation better than the lay
population (Djordje Vukadinović, political analyst and editor of *Glavne Srpske Političke Misli*, Interview, August 9, 2011).

The overwhelmingly negative attitude towards the tribunal was partly a response to ICTY’s decision to devote significant time in the early years of the tribunal to contextual analysis of historical and wartime events. The backlash was part of a general negative attitude towards Western interference in the region. My findings suggest that the idea that the international community would try local leaders was not well received from the very beginning. The main reason given for this resistance is the same that many African nations voiced against international criminal law, namely that the United States, the most powerful state in the world, had not ratified the Rome Convention on the International Criminal Court (ICC). This fact was particularly important to my Serbian interviewees because the US was deeply involved in the Yugoslav conflict, through, for example, the Dayton Peace Accords as well as NATO’s bombing of Serbia. This view was shared among elites on different ends of the political spectrum. In fact, on this particular issue, most of my interviewees agreed with Zoran Krasić, the vice-president of the Serbian Radical Party, who was on the extreme-nationalist end of the political spectrum. Krasić expressed his view in an ironic tone to me: “So the American soldier is the only soldier in the world who by definition assures peace and is thus incapable of committing a crime?” (Interview, August 2, 2011)

Interviewees thus questioned the legitimacy of the ICTY from the very beginning. A Bosnian politician argued that ICTY’s attempt to reveal the truth and provide justice for the events of the 1990s was useful, but people needed to see the ICTY as a legitimate institution and accept its rulings in order for this goal to have a chance (Slobodan Popović, engineer and member of Social Democratic Party in BiH, Interview, July 11, 2011). The former President of Republika Srpska Dragan Čavić, whose cooperation with the ICTY resulted in his own ouster from power, argued that “[s]tereotypes about the responsibility for the war ruled the judgments rather than proper legal procedures, which harmed the tribunal significantly” (Interview, July 13, 2011). Čavić referred to the common belief in Serbia and Republika Srpska that the international media was misleading and biased in its coverage of the 1990s conflicts, which had resulted in a distorted interpretation of the wars. My interviewees argued that for this reason the ICTY officials were not able to focus solely on legal matters and look at the evidence objectively. Interviewees also did not support the ad hoc structure of the court. A journalist in Belgrade stated that from the very beginning legal specialists in Serbia ridiculed the tribunal because of its ad
hoc form, which significantly harmed its credibility (Branka Jovanović, Interview, August 3, 2011).

Reflecting on the efforts of the ICTY to amend the unfavourable context, the Director of the Belgrade Center for Human Rights argued that “the presence of the ICTY is miserable.” He expressed the view that the ICTY’s outreach program was an untried policy, which proved ineffective in addressing the problem of a largely uninformed population. He criticized the ICTY for not having done enough in terms of public awareness and he identified problems in public relations and the translation of hearings (Vojin Dimitrijević, Interview, August 20, 2010). The majority of my interviewees agreed with him. The fact that most people did not understand “the Anglo-Saxon law” and how it functioned affected their understanding of the procedures, for example, how evidence, as well as witnesses and defendants were treated. The President of the Helsinki Committee for Human Rights in Belgrade explained how this lack of understanding of the law led to confusion when people watched the trials of Milošević, Šešelj, Karadžić and Mladić since the defenders seemed to be ‘winning’ by simply questioning the court, which was definitely not the case (Sonja Biserko, Interview, June 24, 2011). Moreover, the lack of understanding of international law in Serbia and BiH likely contributed to the perception among my interviewees that the ICTY trials were too long (Dubravka Stojanović, historian and professor of philosophy, Interview, September 8, 2011).

“People who do not understand the trials can react in aggressive and emotional ways” said Nebojša Randjelković, professor of history of law and the vice president of the Liberal Democratic Party (Interview, June 22, 2011). People tended to simplify the reasoning behind judgments by assuming that judgments depended on whether the judge was a national of a country that was an ally or an enemy of their country. They did not realize that “in some cases the judges that came from countries we consider allies have suggested draconian sentences” (Djordje Vuković, The Centre for Free Elections and Democracy, Interview, July 28, 2011). A public opinion and polling specialist expressed his view that when people did not have a thorough understanding of a subject matter they did not know how to process new information and resorted to interpreting it through their old lenses and fitting it into the narrative that they already knew (Srbobran Branković, Interview, August 11, 2011; see also Žarko Korač, professor and clinical psychologist, leader of Social Democratic Union, Interview, July 8, 2011).

Some interviewees suggested that the ICTY should have organized programs to educate those members of society who transmitted information on the tribunal to local communities,
starting with journalists. The lack of a clear link between the tribunal and local communities is problematic because, if we think of the ICTY as an institution which is supposed to contribute to peacebuilding (ICTY 2011), we realize that a degree of local ownership, or at least local empowerment, is required. Along with numerous scholars in the field, Hugh Miall et al. claim that “the goal of peacebuilding is the empowerment of local communities, so that the benefits of positive peace – the chance for development in ways they think best – are open to as many individuals and groups within the affected countries as possible” (Miall et al. 1999, 215; see also Donais 2005, 20). Timothy Donais’ suggestion in 2005 that “for most of the past 8 years the international community has treated Bosnians more as objects to be returned to their rightful places than as potentially powerful constituencies for peace whose support needs to be nurtured and cultivated” still stands today (2005, 32). As one of my interviewees explained, one problem was that there were no domestic actors dealing with the link between what happened at the ICTY and how the population at home was interpreting these events (Dubravka Stojanović, historian and professor of philosophy, Interview, September 8, 2011). In fact, the government and most elites in politics and media realized that the pro-Hague forces in Serbia and BiH were weak and they could therefore exploit the nationalist anti-Hague campaign and continue to use this strategy in the local constituencies when opportunities arose. Given this setting it was not surprising that local communities cast doubt on the legitimacy of the tribunal and were far from reflecting on the ICTY proceedings and considering their own roles in the crimes.

The problem was not only that outreach programs on the ICTY were gravely lacking but that one public awareness policy on the ICTY was highly unsuccessful and indeed resulted in effects opposite to those intended. The decision of the United States Agency for International Development (USAID) to finance the broadcasting of Slobodan Milošević’s trial throughout the region, without offering its own interpretation of this event, was particularly problematic. The use of a translator whose accent was that of the ‘enemy’ (a Croatian accent) only gave conspiracy theorists more reasons to view the trial as biased (Vojin Dimitrijević, Interview, August 20, 2010). Dragoljub Žarković argued that, rather than being discredited by these broadcasts, Milošević, the first head of state to face trial before an international criminal tribunal, exploited the platform, using it to challenge the legitimacy and impartiality of the ICTY (editor of Vreme, Interview, August 31, 2011). Academics confirmed my interviewees’ interpretation arguing that Milošević constructed a defense which was “brilliantly cunning, designed to play on Serbia’s psychological vulnerabilities” (Doder 2002, 25).
Scholars who followed Milošević’s trial found that, paradoxically then, USAID broadcasts of the trial proceedings led to the doubling of Milošević’s approval ratings and inadvertently contributed to the upsurge of defensive nationalism, harming chances of reconciliation (Lelyveld 2002, 82). Television coverage of trials was supposed to encourage reflection about the events of the 1990s, yet it became “a place to cheer for your own,” argued my interviewee Slobodan Samardžić, professor of international relations and the vice-president of the Democratic Party of Serbia (Interview, September 1, 2011). The audience perceived the leaders on trial as victims of a plot where a single Serb was being pitted against the world and, even if they did not support that particular leader’s domestic and wartime agenda, they preferred to be in solidarity with a member of their nation over supporting the international community. This highlights the way that trials can function as performances, and leaders like Milošević are well aware that their audience is watching (Payne 2008).

Realizing how well the ICTY trials could be manipulated for propaganda purposes, extreme nationalist factions in Serbia, and the supporters of the Radical Party of Serbia in particular, insisted that the trial of Vojislav Šešelj, the leader of the Radical Party of Serbia who was charged with murder and persecution of Croats and Bosnian Muslims, also be broadcast. They threatened that if the government did not agree to broadcast Šešelj’s trial they would urge their supporters to organize protest rallies and to refuse to pay the monthly license fee for the national television network (Predrag Marković, historian, July 26, 2011). My interviewees were united on the view that Šešelj is a political mastermind with impeccable manipulation skills. As his trial is still in progress, the ongoing live broadcasts have been a significant contribution to the enduring anti-Hague narrative.

What the ICTY failed to realize is that the perception of its actions mattered as much if not more than the actions themselves. Vojin Dimitrijević, professor and Director of the Belgrade Centre for Human Rights, argued that “the ICTY was not convincing neither here, nor in Croatia, because winning cases is different than winning cases in the eyes of people” (Interview, August 20, 2010). The direct transmission of proceedings without comments and interpretation was confusing for the audience (Predrag Marković, historian, Interview, July 26, 2011; Žarko Korač, professor and clinical psychologist, leader of Social Democratic Union, Interview, July 8, 2011). Some interviewees pointed out that interpretation by intermediaries from Serbia and BiH, such as specialists and NGO representatives, as well as international experts in law, should have been broadcast along with the direct coverage of the trials (Žarko Korač, professor and clinical
psychologist, leader of Social Democratic Union, Interview, July 8, 2011; Dubravka Stojanović, historian and professor of philosophy, Interview, September 8, 2011). The president of the Helsinki Committee for Human Rights in Belgrade told me that the problem of the ICTY outreach policy was that it was “too neutral and too objective.” She stated that “the outreach office should have been publishing and publicizing the facts they discover in order for them to be internalized by the publics of the region” (Sonja Biserko, Interview, June 24, 2012). Instead, the ICTY wrongly assumed that its audience was prepared to go through a process of transitional justice and completely underestimated the degree to which the context was constrained by deeply rooted nationalist narratives from the 1990s.  

Impact of political actors

Responses of the target governments

While the majority of my interviewees argued that the ICTY’s outreach and public awareness policy was ineffective, just as many argued that it was the responsibility of those in power to inform their population of key political developments. It was the task of various governments who claimed, at least officially, that they were willing to cooperate with The Hague to explain why this cooperation was necessary, argued Djordje Popović, a research fellow at the Belgrade Centre for Security Policy (Interview, June 23, 2011). During the first years of the ICTY the governments in power largely ignored and rejected the court. In 2000 the Serbian government of Zoran Djindjić recognized that cooperation with the ICTY was necessary for a number of reasons, including Serbia’s credibility as a UN member state, and more importantly its candidature for the European Union. Djindjić announced that he would not defend any war criminal. He secretly transferred Milošević in 2001, despite numerous objections from, not only the radical nationalists, but most politicians, including the Yugoslav President Vojislav Koštunica. Djindjić’s bold policy concerning the tribunal was one of the causes behind his assassination in March of 2003. With the Prime Minister’s death policy toward the ICTY changed. Latinka Perović, the former Chief Secretary of the Communist Party (1968-72) who was estranged from the Party because of her liberal views, confirmed this view. Perović argued

63 At various points the outreach program engaged specific audiences, such as journalists. However, my interviewees, many of whom were journalists and professionals, were not aware of this strategic outreach policy, which implies that the policy was ineffective or failed to reach key target audiences.
that after Djindjić’s death Serbian politicians pursued a solely procedural – a bureaucratic – approach towards The Hague (Interview, August 8, 2011).

In this bureaucratic approach, justice and reconciliation, which the ICTY architects cite as the central aims of the tribunal, were not discussed by the governments in power. These governments did not explain to their constituents cooperation with The Hague in terms of addressing the crimes that took place in the 1990s. Instead, as my interviewees explained, the governments evoked the sense that cooperation was an obligation undertaken in order for Serbia to be considered for EU membership and to secure donor aid (Djordje Popović, research fellow at Belgrade Center for Security Policy, Interview, June 23, 2011; Dragoljub Žarković, editor of Vreme, Interview, August 31, 2011). Transfers of accused war criminals in return for EU membership and donor aid had been understood as ‘blackmail’ of Balkan states by Western European and North American governments. Milošević was transferred one day before an international donor conference where Serbia hoped to secure one billion dollars in aid crucial to its economic recovery (BBC News, 2001). A historian at the Serbian Academy of Sciences and Arts (SANU) told me that the rest of the alleged war criminals were transferred in similar circumstances, and that political pressure was the reason behind the decision of the national assembly to adopt the resolution condemning the crimes in Srebrenica on 31 March 2010 (Čedomir Antić, Interview, August 26, 2010). This sense of extortion had over the years produced a degree of resentment among many of my interviewees who argued that, while the EU was built through technical requirements for integration, political requirements had been imposed on the Balkan states that wished to join the Union. “The ICTY requirement was a non-European requirement … this is not how Europe was built,” emphasized Slobodan Samardžić, professor of international relations and vice president of the Democratic Party of Serbia (Interview, September 1, 2011).

Dragan Čavić, former President of Republika Srpska, expressed the view that the ICTY was a political tool used to force parties to the former conflict to transfer accused war criminals and find solutions for the region. He stated that he felt the force of this political tool himself during his term as President of Republika Srpska (Interview, July 13, 2011). The leader of the Party of Democratic Progress in BiH agreed with Čavić and openly argued that every political party in BiH, including his own, cooperated with the ICTY “only because of political pressure” (Mladen Ivanić, Interview, July 15, 2011). While Toma Višnjić, a defense lawyer at ICTY, agreed that the political pressure of the ICTY was a form of “blackmail” and “not a nice
method,” his opinion differed in the sense that he found this method “a necessary and an efficient one” (Toma Višnjić, Interview, August 4, 2012). Višnjić therefore recognized that it would have been extremely difficult for the ICTY to gain custody of the accused war criminals without some degree of political pressure.

The strategy of using political pressure and binding foreign aid and EU membership to cooperation with The Hague had two results. On the one hand, the strategy produced feelings of animosity among many of my interviewees. On the other hand, the ICTY succeeded in pressuring governments from all sides of the conflict to transfer the accused war criminals, an accomplishment that was not matched by the ICTR. This controversial strategy was largely responsible for the strength and authority that populations of former Yugoslavia assigned to the tribunal. While the EU strategy of setting conditionalities has therefore produced results, these results have not led to internal shifts in opinion. Scholar Jasna Dragovic-Soso (2012) argues that the Serbian Parliament’s Srebrenica Declaration, which involved an apology and the condemnation of the Srebrenica crimes, was a foreign policy tool meant mainly for EU audiences in order to bolster Serbia’s reputation in Western Europe. In that sense the Declaration did not symbolize a shift in attitudes and norms on the ground and among Serbia’s ruling elite. Dragovic-Soso claims that

the primacy of the external factor has nevertheless contributed to diverting attention from what is a long-term domestic process of value transformation and the building of a civic public culture to a narrow focus on short-term measures aimed foremost at satisfying European demands and expectations (2012, 164-5).

I argue that the same analysis explains Serbia’s compliance with the ICTY. Therefore, EU conditionalities failed to generate genuine debate about responsibilities for past events, with some analysts arguing that the effects have been counterproductive. For example, a commentator in the Serbian magazine Republika hypothesized that

pressures by the Euro-American political intelligentsia and corporate media have shown themselves to be counterproductive because they decrease the chances that the participants in the war in the former Yugoslavia engage with each other in any objective analysis of recent history. Such pressures produce politically calculated declarations and apologies by Balkan politicians and the recalcitrance of ordinary citizens (Bogdanović 2010, 486-489; also qtd. in Dragovic-Soso 2012, 173-4).

Some of my interviewees argued that it was wrong to think of cooperation with the ICTY as ‘blackmail’ because this was not an actual condition set by the EU (since the EU did not voice it as a specific requirement for EU membership). Instead they argued that governing elites
manipulated their populations to believe this in order to influence voters prior to elections and to free themselves of any responsibility (Staša Zajović, activist and founder of Women in Black, Interview, July 28, 2011). For example, nationalists focused exclusively on the cases where the ICTY seemed biased against Serbs, while moderates justified decisions that their voters did not support as being the consequent of political pressure from the outside (Dragoljub Žarković, editor of Vreme, Interview, August 31, 2011). In March of 2004 Serbian Prime Minister Vojislav Koštunica decided to appease the nationalists by adopting a law which provided all Serbian war crimes inductees with compensation for lost salaries, and help to their spouses, siblings, parents and children for travel and accommodation costs (Čedomir Antić, historian, Interview, August 26, 2010). Members of the government justified this move as simply helping people who are only guilty of being Serbs (Čedomir Antić, historian, Interview, August 26, 2010), thus furthering the negative view of the ICTY as an institution trying to impose guilt on the Serbian community.

Even the few politicians who themselves believed in bringing the accused war criminals to trial did not want to declare this view publicly for fear of electoral repercussions – and worse. (As argued above, the assassination of Prime Minister Djindjić appeared to be a consequence of Djindjić’s openly supportive stance toward the ICTY.) If such leaders overcame their fears and chose to support the ICTY and its public awareness policy, there might had been an opening for a more positive interpretation of the ICTY. One of my interviewees, Borka Pavičević, the director of the Centre for Cultural Decontamination in Belgrade, said that this would have required an atypical amount of courage and “leaders who are willing to stand up in parliament and say that the reason why the ICTY exists is because we did not prevent a genocide” (Interview, July 8, 2011). Clinical psychologist Žarko Korač confirmed that Serbia needed brave leaders that could guide their electorate through these challenging times (Interview July 8, 2011). The students whom I spoke to agreed that their political leaders needed to shift the discourse from one of “delivering” people to the international community to one of “fulfilling” responsibilities and facing the past (Focus group, July 27, 2011). Latinka Perović argued that, even if the population did not appear ready for self-reflection and transformation, the governments should not have been “supporting the nation in things that are harming the nation for the purpose of [their] reelection.” “This is not responsible leadership,” she concluded (Interview, August 8, 2011). Unfortunately then, the government discourse that dominated was
one where the ICTY was interpreted as an institution to bargain with - political elites exchanged alleged war criminals for aid and future membership in the EU. This view has prevailed for the last two decades and has been integrated into the already established nationalist narratives.

Defensive nationalism and the ethnic trap

For those who held suspicions about Western powers even before the ICTY was set up, the tribunal became a clear marker of ‘the West’s’ intention to target Serbs. Tim Judah argues that the early decisions of the tribunal to indict mostly Serbs reinforced the Serb belief “that the whole world was against them” (1997, 239). The editor of a journal who identified his audience as “educated, nationalist, conservative democratic elite” told me that whatever chance the tribunal had at making a meaningful impact was lost with the NATO bombing of Serbia which destroyed all of the remaining trust in the international community (Djordje Vukadinović, editor of *Glavne Srpske Političke Misli*, Interview, August 9, 2011). This view was also evident in the comments of Zorica Kuburović, fiction writer and medical doctor, who argued that the ICTY was evidence of Europe’s betrayal of Serbia, and turned non-nationalists into nationalists (Interview, July 7, 2011). Once the roots of this defensive narrative were established and ‘confirmed’ through the creation of and the initial decisions at the ICTY, the tribunal’s efforts to indict alleged war criminals from all warring sides did not seem to weaken the defensive nationalism among my Serbian interviewees.

Throughout his trial, Milošević emphasized that the tribunal was a tool of NATO and the US since it was completely dependent on their financial and military assistance. The fact that Milošević was handed over to The Hague on St. Vitus Day, the day of the Battle of Kosovo Polje (Black Birds), which was fought against the Ottomans in 1389 and is the foremost symbol of Serb victimization in Serb nationalist accounts, only furthered Milošević’s cause. One politician expressed his view that Milošević’s trial furthered support for the extreme nationalist camp: “My genuine belief is that Mrs. Del Ponte [Chief Prosecutor of The Hague Tribunal] was the best head of an electoral campaign that the Radical Party ever had” (Quoted in Moghalu 2006, 21).

Indeed, Milošević’s strategy was not only convincing for Serbs but for international audiences as well; after Milošević’s presentation of the destruction caused by NATO in Serbia, the *New Yorker* concluded that “Horror for horror, [Geoffrey Nice, the lead prosecution attorney] was outdone by Milošević (Lelyveld 2002, 82).
Vojislav Šešelj, another ultra-nationalist, voluntarily surrendered to the ICTY because he “relish[ed] the prospect of an international audience for his denunciations of Western policy in the Balkans” (Simpson 2003, A6). Nationalist and even some moderate interviewees found Šešelj very entertaining; “watching Šešelj in court is like watching Big Brother,”64 commented one of my interviewees in Banja Luka (Ivan Žijaković, professor of Sociology, Interview, July 12, 2011). My interviewees agreed that Šešelj was a political mastermind with superb manipulation skills and many of them found his strategy extremely destructive to the authority of the tribunal. They argued that in its attempt to ensure Šešelj’s right to defend himself, the ICTY failed to limit his freedom even in circumstances when he ridiculed judges, publicly exposed witnesses under protection, and “destroy[ed] the dignity of the court” (Djordje Popović, research fellow at Belgrade Centre for Security Policy, Interview, June 23, 2011).

Šešelj wanted the audience to perceive him as a victim of the court. However, the audience was not aware that one of the reasons why his case had been going on for over nine years was because he demanded that every document he received be translated into Cyrillic script, even though he was fully capable of using the Latin alphabet, claimed Dubravka Stojanović, historian and professor of philosophy (Interview, September 8, 2011). As an ICTY defense attorney told me, what people did not realize is that in each case the defense team went to The Hague to see whether they could defend and minimize the sentence, but if they felt that the possibility was small, “they play politics and do not play by the rules, they discredit and insult the court and its laws” (Toma Višnić, Interview, August 4, 2012). The most problematic aspect was that in the eyes of the Serbian audience the accused war criminals outperformed the tribunal during trial hearings. This diminished the authority of the international court and transformed it from an instrument of justice into a tool for defensive nationalism and ridicule. Thus, on the one hand my interviewees argued that they were victims of powerful Western countries in the guise of the ICTY, and on the other hand they did not take the tribunal seriously. Both approaches are defensive mechanisms which domestic actors used strategically.

Glorification of indicted war criminals as ‘victims’ of the international community, and ‘heroes’ of the nation was the most common expression of defensive nationalism in all of the former Yugoslav countries. Among the Serbs in Serbia and BiH, the glorification of indicted war criminals started with Milošević and continued with others. For example, in a 1995 survey

64 The interviewee is referring to the popular television reality show Big Brother, rather than the character from George Orwell’s novel Nineteen Eighty-Four.
Bosnian Serb General Ratko Mladić polled as the second-most popular figure among Bosnian Serbs, who referred to him as “our savior” (Block 1995, 7; see also Vučinić 1995). The former Prime Minister of Republika Srpska confirmed that the view among Bosnian Serbs had not changed, arguing that the great majority of people - “up to 100 percent” - believed that Mladić was a hero but had learned not to share this opinion with foreigners (Mladen Ivanić, Interview, July 15, 2011). I believe he was trying to warn me that some people perceived me as a foreigner (because I spent the last 17 years in North America) and therefore might downplay their admiration of alleged war criminals in my presence. I had the sense that this was true among some of my interviewees in Republika Srpska who doubted my status as an independent researcher and refused to be officially interviewed or go into great detail about their beliefs during our discussions. However, I felt that the majority of my interviewees in Serbia and about half of my interviewees in Republika Srpska trusted my connection to former Yugoslavia and identified me as someone who was genuinely interested in hearing their views on the tribunal.

Radovan Karadžić was the former President of Republika Srpska whose trial at the ICTY commenced on 26 October 2009 and was ongoing during my interviews. Similar to Mladić, almost two-thirds of Bosnian Serbs regarded him a ‘hero’ rather than a ‘war criminal’ (Onasa 2008). The glamour that communities assigned to these leaders was based on the idea that these leaders were defending the nation and should therefore be excused for any crimes that they committed in the process. After Biljana Plavšić, the former President of Republika Srpska (1996-8) and convicted war criminal, finished her sentence in Sweden, she was escorted back to Republika Srpska by the current President of Republika Srpska Milorad Dodik. An engineer in Banja Luka argued that Plavšić was given royal treatment because of the fact that she admitted that she lied at the tribunal (in order to ‘save’ the Serbian people) (Slobodan Popović, Interview, July 11, 2011). Unlike in post-WWII Germany where war criminals and those associated with them were banned from politics, in the Balkans they were welcomed back with open arms. “Everything is upside down here,” said one of my interviewees in Republika Srpska and expressed his frustration at the fact that people did not understand that “war crimes can be committed in defense and in offense” (Slobodan Popović, Interview, July 11, 2011). A student of criminal law pointed to the same dangerous logic according to which no person from any side of the conflict can be held accountable for their crimes as each side believes that they were defending themselves (Petar Žak, Interview, August 5, 2011).
To summarize, what the ICTY did not anticipate was that those who supported or tolerated alleged and convicted war criminals were aware of the committed crimes but excused them based on the belief that such crimes were executed by all sides and, more importantly, carried out in the interest of entire communities. The view that Serbs, Croats and Bosnian Muslims were equally guilty and equally responsible for atrocities and that the ICTY distorted this reality was quite commonly expressed in my interviews (see also Peskin 2008, 34). This view was also emphasized by nationalist politicians for more than two decades. Even if we think of it as a product of propaganda, it had been ingrained in the communities that the ICTY was meant to serve. General defensiveness was more pronounced in Republika Srpska than in Serbia because the Dayton structure of government in BiH encouraged ethno-centric politics and because the war had been fought on Bosnian soil and thus more people felt their lives and the lives of their families and friends had been in danger. Residents of Republika Srpska were the most willing to justify the actions of their leaders and to blur the lines between combatants and civilians because their communities were most directly threatened, and numerous civilian adolescent males participated in the fighting. Many of my interviewees were Serbian refugees who had moved to Banja Luka from the Federation side as a result of the war. These individuals expressed the greatest degree of animosity and cynicism towards rival nations as well as the international community.

The dominance of ethnic and nationalist narratives was also the reason why most of my interviewees believed that domestic trials could not yield any legitimate results unless they were monitored by the international community and decisions were made by foreign judges, which was not the case to that point. The ICTY had begun transferring cases to national courts, and trials had begun in Croatia, BiH, and Serbia. Many of my interviewees, even if critical of the ICTY, admitted that the local justice systems in the region were not independent enough from political influence to carry out impartial trials (Djordje Popović, research fellow at Belgrade Centre for Security Policy, Interview, June 23, 2011; Sonja Biserko, president of the Helsinki Committee for Human Rights in Belgrade, Interview, June 24, 2011). Speaking of the national court in BiH, a former President of Republika Srpska argued that the national court was very politicized and that ethnic groups were lenient towards the accused from their side and extremely harsh towards the accused from other ethnic groups. For this reason he found international monitoring necessary. Yet, he acknowledged that the impartiality of the national court was improving and that politicians often manipulated people’s perceptions of the national court by
exaggerating the biases of the court to match their own political agenda (Dragan Čavić, Interview, July 13, 2011). Therefore, I found it extremely difficult to separate whether the governing elites were acting strategically and being guided by their political agendas or whether they were expressing their true beliefs which were based, at least in part, on the defensive nationalist narrative. Although it may not make a difference which it is, I hypothesize that most often the two overlapped.

Imperialism and conspiracy theories

In my fieldwork I encountered two common assumptions about the intentions of ‘the West,’ especially the US. The first was that the US, specifically, and ‘the West,’ more generally, used the ICTY to manifest their power in the world and propagate policies of colonialism and imperialism over smaller nations. The role of the US was emphasized because the US facilitated the Dayton Peace Agreement, which recognized the need for cooperation with the international criminal tribunal established through the 1993 Security Council resolution. Skepticism was boosted by the perception that the US bound the people of the former Yugoslavia to cooperate with an international criminal tribunal yet the US itself did not abide by the rules of international criminal law since it did not ratify the Rome Statue on the ICC.

My interviewees stated that the imposition of a foreign institution to judge people’s actions came as a shock (Djordje Pavičević, professor of political science, Interview, July 6, 2011). Zorica Kuburović, a physician and novelist, expressed her anger: “No one asked us if we wanted a court, I find it aggressive to impose this court” (Interview, August 30, 2011; see also Slobodan Samardžić, professor of international relations and vice president of the Democratic Party of Serbia, Interview, September 1, 2011). Thus, from the very beginning the tribunal was perceived as an imperialist act. Milovan Jovanović, a talk show host employed in the private sector argued that there was no point in complaining since the ICTY was just proof of “how the world of big powers functions” (Interview, August 20, 2010). For Jovanović and many others the tribunal was established because the big powers wanted to judge the Balkan wars and write history as they saw fit (see also Slobodan Samardžić, professor of international relations and vice president of the Democratic Party of Serbia, Interview, September 1, 2011). Interestingly, these interviewees were realist, rather than neoliberal, in their perception of the tribunal. “Global
justice is impossible, it is not implementable in the world of realpolitik,” stated a former journalist and critic (Zoran Ćirjaković, Interview, June 24, 2011).

A number of my interviewees made explicit connections to colonialism, the most interesting of which were made by my moderate and liberal participants. Staša Zajović, a lifetime activist and founder of Women in Black, an NGO which has been highly critical of the nationalist regimes over the years, claimed that “the problem is that we see colonialism in these global institutions of justice. Why is the US not going to be tried for any crime, but every African dictator may be?!“ (Interview, July 28, 2011). Former journalist and critic Zoran Ćirjaković bluntly summarized this argument:

Look at the ICC. It is black people or enemies of the US. Belgium never faced its past and its crimes. For example, the eleven million people that were killed under Belgian rule in Congo. Every Srebenica is awful but they cannot tell me that one Srebenica is more awful than one hundred Srebrenicas (Interview, June 24, 2011).

The fact that individuals who were in favour of political change and were highly critical of nationalist regimes felt so strongly about what they perceived as the imperialistic nature of the ICTY was most troubling for the legitimacy of the tribunal. This reflects a postcolonial critique that needs to be considered alongside the nationalist narratives. While the two come from different premises they converge on the selective nature of global justice.

The second assumption, which often followed the first, was that the goal of this imperialistic court was to depict the Serbs as the group most responsible for the Yugoslav wars. This was undoubtedly the most prevalent view among my interviewees in Republika Srpska and was quite common in Serbia as well. Slobodan Popović, a member of the Social Democratic Party of BiH summarized the view: “The Serbs mainly believe that The Hague is a political court against Serbs, made for Serbs, to try Serbs” (Interview, July 11, 2011). Mladen Bajagić, a professor at the Criminal Police Academy in Belgrade, argued that a significant part of the Serbian population believed that the only goal of the tribunal was to ‘Satanize’ the Serbs (Interview, August 29, 2010). “The purpose of the court was to illustrate the power of the mighty, to show that Serbs deserve a public beating!” confirmed Zorica Kuburović (fiction writer and physician, Interview, July 7, 2011; see also Dušan Gujanić, attorney, June 22, 2011).

To support their assertions that the tribunal was biased against Serbs my interviewees most often pointed to the disproportionate number of Serbs who were accused and sentenced, as well as the disappearance of certain prosecution witnesses in cases against Croats and Bosnian
Muslims. Moreover, numerous legal experts pointed to the ad hoc nature of the court, which to them meant that the court was constructed specifically to try Serbs and that the rules could be changed throughout the process in order to ensure the desired outcome (Slobodan Samardžić, professor of international relations and vice president of the Democratic Party of Serbia, Interview, September 1, 2011). Also, some of my interviewees were dissatisfied with the repeated choice of Western prosecutors, and questioned the sources that provided the funds for the tribunal (Ratko Dmitrović, editor of Vesti, Interview, July 27, 2011; Slobodan Samardžić, professor of international relations and vice president of the Democratic Party of Serbia, Interview, September 1, 2011). The most extreme version of this conspiracy theory involved the argument that bodies of Serbian casualties were buried in Bosnian Muslim graves in order to raise the number of Bosnian Muslim casualties and minimize the victimization of Serbs (Ivan Šijaković, professor of sociology, Interview, July 12, 2011; staff at the Republika Srpska State Commission for the Documentation of War Crimes, Discussion, July 12, 2011). This version was mainly present in Republika Srpska and was repeated to me by various community leaders and educators with conviction.

Lack of leadership and political will

The ICTY’s task was extremely difficult in the absence of local politicians who supported more positive interpretations of international justice. “Serbs will not listen to an international organization,” argued Nebojša Randjelković, a professor of history of law and vice president of the Liberal Democratic Party (Interview, June 23, 2011). My interviewees implied that the ICTY needed to ally with local leaders who believed that facing the past and seeking a version of justice acceptable to the three rival groups would contribute to a better future for their societies. Yet, Dubravka Stojanović, a professor of philosophy, argued that there were none or very few individuals who held this perspective and that those who did usually had little access to power. The only individuals that some of my interviewees identified as falling into this category were the former Prime Minister of Serbia Zoran Djindjić, who was assassinated, and Čedomir Jovanović, the leader of the Liberal Democratic Party, which has a small urban following and most Serbs consider radically liberal. Stojanović argued that, in general, most leaders had not gone through such a realization themselves, as they did not engage in a process of self or group reflection on the events of the 1990s (Interview, September 8, 2011).
Most of my interviewees emphasized that local leaders needed to guide the population through a political transition. This reflects a strongly hierarchical view of how a country should be ruled. Every time the Serbian government transferred an alleged war criminal it announced that the reason for the transfer was “because Serbia had to do so,” implying international pressure in the decision and that but for the pressure, the Serbian government would not send any inductee to the tribunal. Nebojša Randjelković argued that what was needed instead was a government which stated that “Ratko Mladić was given up because he is accused of war crimes and it is on him to prove his guilt or innocence at the ICTY. [Serbia] should not suffer as a nation because of him” (a professor of history of law and vice president of the Liberal Democratic Party, Interview, June 23, 2011). Journalist Miloš Milošević similarly argued that the ICTY was an opportunity which the local leaders could have used to re-identify their communities through a dialogue of “some of us are guilty … but let’s reinvent ourselves since we are tainted” (Journalist, Interview, August 26, 2010). These opinions indicate that my interviewees were accustomed to authoritarian rule and a system where governments are the main architects of identity and reproducers of narratives who tell their citizens what to believe.

My interviewees in Serbia also argued that for a country where only six percent of individuals had a university degree the road to democracy was long and leaders needed to take the initiative to educate their populations (Nebojša Randjelković, a professor of history of law and vice president of the Liberal Democratic Party, Interview, June 23, 2011). However, this argument assumes that a higher level of education is necessary for democracy to flourish. Theories that stipulate preconditions, such as education, for democracy are disproven by the success of democracy in India for example, where education levels are quite low yet democracy functions well (Kohli 2001). Placing the blame for the lack of democracy on what is perceived as a low level of post-secondary education was a way for my interviewees to hide behind a ‘top-down’ understanding of politics, failing to acknowledge the role of ordinary people in creating and sustaining narratives on the tribunal and past events. This point illustrates the failure of my interviewees to recognize the agency of ordinary people either to organize politically or admit their role in creating the situation of which they do not wish to be a part.

Velimir Curgus Kazimir, the director of the Media Archive in Belgrade, expressed the view that post-Yugoslavs were unwilling to process and digest the information that is available on war crimes. According to Kazimir, self-development was delayed because of “a mix of guilt and embarrassment” and facing these feelings publicly is shameful in the Balkan culture.
An expert of public opinion in Serbia told me: “we are delaying the catharsis that we need to go through by refusing to accept that The Hague is about actual events that took place which we need to face, rather than a necessity we are forced to go through” (Srbobran Branković, Interview, August 11, 2011). As feelings of guilt, embarrassment, and shame were not dealt with, they took the form of frustration, and even anger, when the subject of the tribunal was brought up. Latinka Perović, a renowned Serbian historian and former politician, claimed that this was because of “the mirror that the ICTY put in front of us” which continuously reminded us of our flaws (Interview, August 8, 2011).

Sonja Biserko, president of the Helsinki Committee for Human Rights in Serbia, said that “[p]revention and reconciliation were certainly not achieved in any way by the ICTY because there is no political will [at the local level] – there is no connection to the politics in the country” (Interview, June 24, 2012; see also Borka Pavičević, director of the Centre for Cultural Decontamination, Interview, July 8, 2011). My interviewees were quite pessimistic about the availability of exceptional leaders with political will for long-term change, not only in former Yugoslavia but also on a global scale. As a student of political science told me “politicians who are brave can be counted on one hand” (Focus group, July 27, 2011). Leaders who were strong enough to argue that those accused of war crimes should be alienated from society, at least until their guilt or innocence was proven, even if the accused were people from their close circle, were few. This situation is not unique to Serbia and BiH but is quite common in post-conflict societies, including Rwanda. As a historian who studied Serbia’s relationship with the ICTY explained to me, leaders who were willing to engage in “self-criticism” and “self-destruction” were few, and “Serbia does not have a Nelson Mandela or Willy Brandt” (Predrag Marković, Interview, July 26, 2011).

Impact of media

According to my interviewees, not only was the media in Serbia and BiH not critical and analytical but they often trivialized and exoticized the ICTY and its cases. A superficial approach to covering the proceedings was most common: reports were “surface” and “event-oriented,” including a focus on “famous people” or trivial information (Nebojša Randjelković, professor of history of law and vice-president of the Liberal Democratic Party, Interview, June 23, 2011; Ratko Dmitrović, editor of Vesti, Interview, July 27, 2011). There was also a lot of emphasis on
the high salaries of ICTY employees, such as the salary of the Prosecutor, which spoke to the
general public’s concerns about the imperialist nature of the court. Mladen Ivanić, former Prime
Minister of the Serbian Republic and leader of the Party of Democratic Progress, argued that in
BiH the Tribunal was “exotic news” because it was treated as entertainment (Interview, July 15,
2011). It is interesting that he used the term “exotic,” which refers to something originating in or
characteristic of a foreign country, mysteriously different, and even strange, when speaking
about an international court. This reveals how distant the locals in Serbia and BiH felt from the
ICTY. They did not feel a sense of ownership but instead expressed that this strange foreign
creation had been imposed on them.

My interviewees said that one problem was that most journalists were not educated
enough and sufficiently trained in the legal particulars of the ICTY to be capable of explaining
the proceedings, and even less so to critique them (Dubravka Stojanović, historian and professor
of philosophy, Interview, September 8, 2011). The other problem my interviewees identified was
that media which had been financially unstable was vulnerable to selling what the public and its
sponsors wanted to buy (Velimir Curguz Kazimir, director of Media Archive, Interview,
September 7, 2011). Žarko Korač, professor and clinical psychologist and founder of the Social
Democratic Union, expressed the view that while media sources should have been leading the
consciousness of the public, they also needed to please their readership by reaffirming their
views, and therefore the media faced a difficult situation (Interview, July 8, 2011). The editor of
Vreme, Dragoljub Žarković, stated that he had tried to invest much of his journal’s funds and
efforts into reporting on the ICTY but he encountered nothing but setbacks. After one of his
journalists, Dejan Anastasijević, wrote a piece criticizing the sentencing of Serb paramilitaries
the Scorpions as too lenient, the journalist’s home was attacked with a hand grenade. Moreover,
Žarković argued that the audience rejected the subject and that his sales went down every time he
chose the ICTY as the cover story (Interview, August 31, 2011).

In this sense, the relationship between the media and its audience in Serbia and BiH can
be compared to the relationship between political leaders and their followers – both the media
and politicians were not willing to experience short-term losses in support for long-term
betterment. However, my interviewees often underestimated the willingness of the public to shift
their attitudes. For example, when a video of the Serbian paramilitary group, the Scorpions, and
their crimes was played on Serbian national television there was no backlash and this incident
contributed greatly to a degree of acceptance of Serbian crimes (Predrag Marković, historian,
Interview, July 26, 2011; see also Dragovic-Soso 2012, 168). This example indicates that Serbian public opinion was not impervious to change and that shifts were possible. Still, the key structural point was that in this deeply politicized and divisive context the media had little independent power without endangering the survival of their organizations and the safety of their staff. Thus, their role was often reduced to that of ‘puppets’ who carry out the will of those who fund them.

The mandate

Trying to ensure just outcomes

Moderates, nationalists, and radical nationalists all agreed that the tribunal had been unsuccessful at providing justice for the 1990s conflicts on the territories of BiH and Croatia. I expected to find propagators of defensive nationalism and conspiracy theories arguing that ICTY was biased. What was more unexpected was that many of my most liberal interviewees as well as my pro-ICTY interviewees (who supported the existence of the tribunal and Serbia and BiH’s full cooperation with the institution, and called for their societies to admit their guilt and face the past), also felt that the institution was biased. Their support for the institution was based more on the desire for a better future through acceptance of the ICTY decisions and the international perception. It is not that these interviewees did not believe that every Serb tried at ICTY was guilty of war crimes and crimes against humanity; they would have likely agreed that the sentence for each case was just. The problem was that they also believed that there were many equally guilty individuals from the Croat and Bosnian Muslim sides who were not brought to court. Therefore, even if each individual case was considered a singular ‘just outcome,’ the overall picture was perceived collectively as an ‘unjust outcome.’

Many of my interviewees argued that this result was to some degree inevitable because the architects and key employees of the ICTY were heavily influenced by perceptions established by international media in the early 1990s. Journalist and doctoral candidate Zoran Petrović ‘Piroćanac’ argued that when he was in the field in 1992 the foreign journalists he encountered already had a set view which identified the Serbs as the main aggressors. He believed that this pre-judgment and “demonization” of Serbs continued throughout the 1990s and influenced the ICTY from the very beginning (Interview, June 24, 2011). While many of my interviewees
agreed that it was understandable that more Serbs than Croats or Bosnian Muslims were accused at the ICTY because Serbia sent its armed forces to BiH and Croatia, they argued that proportionally the ratio of Serb convictions was still too high (Ljilja Smajlović, journalist and president of the Serbian Association of Journalists, Interview, August 25, 2010; see also Dragan Čavić, former President of Republika Srpska, Interview, July 13, 2011). “If you look at the statistics, you’ll see that accused Serbs have 900 years of imprisonment together, and all of the others together didn’t even get 300 years of imprisonment. Serbs have a millennium of imprisonment,” argued attorney Dušan Gujanić (Interview, June 22, 2011). Professor of political science Radmila Nakarada described her view, which she believed was shared by the majority of the population in Serbia:

The court did not perform the function it was supposed to – to have a balanced relationship and a balanced approach to all the crimes and all the victims in the same manner. It is perceived as an anti-Serbian court. Consider the number of people that have been indicted and the number of sentences that have been passed. Comparatively speaking, for the same crimes different sentences have been passed.

Nakarada did not think that this outcome was inevitable, arguing that “[t]he institution could’ve gone a long way if it had demonstrated a consistent adherence to law and to the equal treatment of all actors involved in the crimes.” She also emphasized that she was not trying to equalize guilt. “I am not saying that responsibilities are equal” she continued, but the problem was that “the court seems to be operating more in the interpretation of the conflict where the dividing line between black and white is very clear and where angels and demons are recognizable” (Interview, August 19, 2010).

My more liberal interviewees spoke with less frustration and did not have the same feeling of betrayal in their explanation of the ICTY bias, however they seemed to be conveying a similar idea. Borka Pavičević, the director of the Centre for Cultural Decontamination, argued that “Relativity of crimes is a problem, the big Serbian crime covers up all the smaller crimes” (Interview, July 8, 2011). Nebojša Randjelković, professor of history of law and vice-president of the Liberal Democratic Party, found many aspects of the ICTY problematic yet argued that full cooperation with the tribunal was necessary. He argued that the US declared the Serbs “the bad guys” and instead of trying to convince the superpower that it was wrong, what Serbs needed to do was to try to convince the superpower that they were not as bad as it seemed, and to try to

It is interesting that the same problem was evident in Rwanda with the ‘big Hutu crime’ overpowering all Tutsi crimes.
get on the US’ good side. “Nuremberg did not try any ‘victorious’ generals and Serbs should not expect better treatment from the US than the Germans had” (Interview, June 22, 2011).

While the word ‘injustice’ was often used to describe the overall functioning of the court, there were specific cases and events that particularly upset my interviewees in Serbia and BiH. Many interviewees commented that at the very beginning the tribunal should have issued arrest warrants for all four leaders involved in the war, which would have included both the Bosnian Muslim Alija Izetbegović and the Croatian Franjo Tudjman in addition to Serbia’s Slobodan Milošević and Republika Srpska’s Radovan Karadžić (Djordje Vuković, CESID, Interview, July 28, 2011). While the ICTY indicated that Tudjman would have been indicted as a leader of a joint criminal enterprise, this decision was not taken before his death in December of 1999. The case of Naser Orić, a wartime commander of the Bosnian Muslim forces, was particularly upsetting for a great majority of my interviewees. Orić was found guilty of failure to prevent murder and cruel treatment of Serbian prisoners in Srebrenica and was given a two-year prison sentence (which he had already served during his time in detention at the ICTY) (Sense Agency, May 23, 2008). The perception among my interviewees in Serbia and Republika Srpska was that this sentence was highly unjust and comparable to a sentence given to a burglar for a petty crime, rather than a sentence in keeping with Orić’s actual crimes (Mladen Bajagić, professor at the Criminal Police Academy, Interview, August 29, 2010).

The trial of Croatian General Ante Gotovina also emerged as extremely controversial during my interviews. In 2011 Ante Gotovina and Mladen Markač were sentenced to 24 years and 18 years respectively for the killing and expulsion of ethnic Serbs in an offensive to retake the Krajina region. During my fieldwork in 2011, my interviewees in Serbia and Republika Srpska found this judgment to be extremely lenient. Many of my interviewees in Serbia and Republika Srpska were either forced out of the Krajina or had personal connections with some of the 200,000 Serbian refugees who were forced out of Croatia and went into exile in Serbia and Republika Srpska. Moreover, my interviewees repeatedly expressed their frustration with the unexplained disappearances and suicides among prosecution witnesses in this case (Dragoljub Žarković, editor of Vreme, Interview, August 31, 2011; Mladen Bajagić, professor at the Criminal Police Academy, Interview, August 29, 2010; students of political science at the Belgrade University, Focus group, 27 July, 2011). I imagine that their frustration with the case would be even stronger now as Gotovina and Markač were acquitted in late 2012. Serbian Deputy Prime Minister, Rasim Ljajić, said that the appeals decision was "proof of selective
justice which is worse than any injustice." He further expressed his opinion that this was "a move backwards and the public opinion on the tribunal [in Serbia] will be worse than it already is" (Qtd. in BBC News Europe 2012).

My interviewees were also angered by the way the tribunal treated external actors. The decision of the ICTY not to hold NATO responsible for its military operations in 1999 (when many observers pointed to clear violations of international law by NATO) bolstered the arguments of skeptics of international law who deemed global justice as selective (Ljiljana Smajlović, journalist and president of the Serbian Association of Journalists, Interview, August 25, 2010; see also Kittichaisaree 2000). Ljiljana Smajlović argued that Carla Del Ponte was not independent in making her decision not to conduct an investigation of NATO activities in the region. She expressed her belief that Del Ponte’s decision was influenced by powerful countries’ protection of their forces.

This belief that the most powerful countries will never be held accountable for their crimes in the same way that the less powerful countries are was clear in the closing statement of my interview with Dragan Čavić, the former President of Republika Srpska:

Yes, it is true that the 300066 people that died during the [NATO] bombing is a crime. Yes, it is true that the US will never be held responsible for Vietnam, or for any crimes in Libya. But the powerful are not held responsible for their crimes. China will never be held responsible for human rights abuses; they have too much power. North Korea has committed many crimes but they have a nuclear bomb so no one will judge them (Interview, July 31, 2011).

In addition to identifying the Tribunal as an institution which delivered ‘biased’ and ‘victor’s’ justice, my interviewees identified this type of justice as collective and to be applied to entire communities and nations. In one sense this was surprising because the ICTY prosecutors made numerous attempts to emphasize individual guilt over collective guilt. At the beginning of Milošević’s trial on February 12, 2002, the chief Prosecutor, Carla Del Ponte, declared that

[t]he accused in this case, as in all cases before the Tribunal, is charged as an individual. He is prosecuted on the basis of his individual criminal responsibility. No state or organization is on trial here today. The indictments do not accuse an entire people of being collectively guilty of the crimes, even the crime of genocide … Collective guilt forms no part of the Prosecution case.

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66 The Serbian government estimates that at least 2,500 people died and 12,500 were injured (Ristić 2013). Human Rights Watch was able to verify 500 civilian deaths throughout FR Yugoslavia (outside of Kosovo), with other sources stating from 1,200 to 5,700 (HRW 2000, “The Crisis in Kosovo”).
The distinction between individual and collective culpability was especially difficult in a societal context where, as previously noted, the distinction between the interests of the individual and those of the group, or leaders and combatants on one hand, and the public on the other, was blurred. While the tribunal could ensure that the legal process was carried out correctly and as cautiously as possible – and it is possible that the ICTY had done a respectable job in its legal functions – the institution had little control over the interpretation of this process. As Zoran Ćirjaković, a Serbian critic and journalist, argued, “everything is collective here. Every talk of individual guilt is logical in the court but it doesn’t work here” (Interview, June 24, 2011; see also Djordje Popović, research fellow at the Belgrade Centre for Security Policy, Interview, June 23, 2011). He said that in former Yugoslavia the tendency to collectivize guilt was based on “a constant need on all sides to present themselves as the Jews of the Balkans … People tend to see their own ethnic group as eternally innocent” (Interview, June 24, 2011). Sonja Biserko, president of Helsinki Committee for Human Rights, blamed the political elite for this phenomenon, arguing that “even when ICTY tries to speak of individual crimes, the elite that goes [to ICTY] and the elite that runs the country hides behind this being a collective history” (Interview, June 24, 2012). Biserko therefore implied that ‘group guilt’ was mainly a construction of the accused and their allies and therefore a manipulation tool employed by the nationalist camp. However, many of my interviewees disagreed with Biserko and instead argued that ICTY’s proceedings collectivized guilt in a detrimental way.

The most problematic legal element, which those who accused the ICTY of assigning ‘group guilt’ used to further their argument, was the doctrine of joint criminal enterprise. “Joint criminal enterprise,” which was the basis of many ICTY cases, can be traced back to the Tadić Appeals Chamber judgment, and is a theory of international criminal participation that addresses the collective, widespread and systematic context of crimes that are “carried out by groups or individuals acting in pursuance of a common criminal design.” Kai Ambos argues that the joint criminal enterprise doctrine assists with the usual difficulty of proving the often less visible contributions of individual perpetrators (Ambos 2007, 159). A number of my interviewees explicitly criticized the use of joint criminal enterprise charges, and argued that the term was abused and used as a device to incriminate Serbs (Milovan Jovanović, private television show host, Interview, August 20, 2010). A frustrated interviewee commented on the abstract definition of joint criminal enterprise and asked: “Who is not included in this crime?” (Slobodan Samardžić, professor of international relations and vice president of the Democratic Party of
Serbia, Interview, September 1, 2011; see also Branka Jovanović, former journalist and founder of the Green Party, Interview, August 3, 2011). While Zoran Krasić was well-known for his extreme nationalist views, he noted that those involved in the joint criminal enterprise were referred to as “Serbian forces” during trial proceedings which only supported the interpretation that “this legal concept is used to make us all guilty” (attorney and vice president of the Radical Party, Interview, August 2, 2011).

In the early years of the tribunal, and specifically during the trial of Milošević, the prosecution engaged in contextual and historical discussions on the Serbian nation, which proved to be a great setback when the tribunal officials tried to convince their audience that the court assigns guilt on an individual basis. A journalist explained that in the early proceedings the ICTY seemed to be lecturing its audience on Serbian history and trying to reconstruct the pre-war context in order to prove that Serbs had expansionist intentions. She noted that the court could have avoided this perception by simply asking Milošević himself whether he had intentions of creating a “Greater Serbia,” without making assumptions on the expansionist tendencies of the entire group (Branka Jovanović, former journalist and founder of the Green Party, Interview, August 3, 2011). It is difficult to pinpoint the exact cause of the collectivization of guilt because it could be the international law itself, the manipulation of its interpretation by the accused leaders, the nationalism ingrained in the context, or, most likely, a combination of these factors. There is however no question that the prevalent opinion among my interviewees in Serbia and BiH was that the ICTY identified Serbs as collectively guilty.

A significant number of my interviewees stated that they would have preferred a classical justice approach, meaning Nuremberg-style trials of key actors responsible for the war. Among these was the recently deceased top expert in international law and human rights, Vojin Dimitrijević, who was a professor of international law and international relations, the Director of the Belgrade Centre for Human Rights, and holder of two honorary doctorates from McGill University and University of Kent at Canterbury. During our interview Dimitrijević revealed that he wished that the ICTY had concentrated on only a few of the most important cases. “It should’ve been like Nuremberg – short, fast, hard, and done,” he said. Instead, ICTY’s approach was “too broad and the net of transitional justice was too wide, as it included truth commissions, shaming, etc - a hodge podge!” He continued to stress that the ICTY lacked organization, material, understanding of chronology of the conflict, and good-quality witnesses. Most of all, the ICTY lacked conviction. Dimitrijević concluded the interview by arguing that in old
societies, like those in the Balkans, the clean old style of crime and punishment or classical Western justice was needed because “you can’t treat entire societies like minors, entire societies cannot be rehabilitated, especially not old societies” (Interview, August 20, 2010). He argued that a Nuremberg style approach to accountability would have punished the key responsible actors quickly while denying them the stand to spread nationalist propaganda and incite defensive nationalism among the population during prolonged trials. The fact that the country’s top expert in human rights and international law had such divergent opinions from the international architects of the tribunal is quite problematic. Many of my interviewees agreed with Dimitrijević that a mechanism of Nuremberg-style classical justice for the few major leaders in the region would have been most appropriate (Dragoljub Žarković, editor of Vreme, Interview, August 31, 2011; Vladimir Petrović, historian at the Humanitarian Law Centre and former intern at the ICTY, Interview, August 3, 2011). We would expect that international legal experts would seek counsel from their local counterparts before deciding on the form of transitional justice to institute in a particular community. Yet, during my fieldwork in BiH and Serbia I did not come across a local expert in the legal field or a human rights professional who believed that the model which the international community chose was particularly well-suited for former-Yugoslavia. In fact, most seemed to be saying the exact opposite.67

The aim of reconciliation

As in the case of the ICTR, the aim of reconciliation was the most controversial aspect of the ICTY mandate. The decision of the tribunal architects to include this objective was criticized by the great majority of my interviewees from all political factions and a variety of professions. The main problem was the underlying assumption that reconciliation follows from or is positively correlated with procedural justice. As in the case of the ICTR, most of my interviewees were not

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67 The reader may wonder whether Bosnian Muslims, as the biggest victims of the Bosnian conflict, shared the critical views explained in this section. In the first chapter I explained the difficulty of separating interviewees’ identities and generalizing findings based on ethnic identity. Still, I summarize my findings here, although I do not claim that the views of my Bosnian Muslim interviewees can be generalized to the entire Bosnian Muslim community. While at first somewhat hopeful, my Bosnian Muslim interviewees argued that they became increasingly distanced from and disempowered by the tribunal with time. Many stated that the tribunal decisions were buried in legal language which was difficult to understand and had little relevance to their actual experiences and perceptions. Similar to other interviewees, they argued that the tribunal serves the international community and legal experts that it employs rather than local needs. Moreover, like other interviewees, they became disappointed and defensive when Bosnian Muslim leaders were placed on trial. On the opinion of Bosnian Muslims regarding the tribunal, see also Saxon 2005.
even aware that reconciliation was one of the official objectives of international criminal tribunals. Former President of Republika Srpska Dragan Čavić expressed his surprise at my mention of reconciliation: “But the ICTY cannot reconcile, it can only give a final decision. No court can reconcile. This is very absurd” (Interview, July 13, 2011). Dragoljub Žarković, the editor of *Vreme*, expressed a similar point of view: “Reconciliation will not be built by the ICTY. This aim was ridiculous. Justice makes sense, but reconciliation has to be done by the people in the republics” (Interview, August 31, 2011; see also Slobodan Samardžić, professor of international relations and vice president of the Democratic Party of Serbia, Interview, September 1, 2011). Even those who had paid multiple visits to the tribunal, such as a defense lawyer Toma Višnič, were not convinced by the objective of reconciliation and argued that the ICTY should have focused solely on justice (Interview, August 4, 2012).

My interviewees overwhelmingly agreed that reconciliation was best conceived of not as a pursuit of the international community but as a ‘bottom-up’ process in which local actors are the key instigators. Dragan Čavić, former President of Republika Srpska, argued that reconciliation was entirely dependent on the political elite at home and did not take place in the context of courts (Interview, July 13, 2011). Milovan Jovanović, a television show host, explained that the international community should not fool itself into believing that they can fast-forward reconciliation. For Jovanović, reconciliation had nothing to do with the tribunal; the task fell onto agents of politics, media, culture, sport, and other spheres in the countries in the region (Interview, August 20, 2010).

What was most problematic was that in addition to agreeing that reconciliation should not in any way be the responsibility of the tribunal my interviewees also overwhelmingly agreed that there was little or no sign of reconciliation taking place in and between the former Yugoslav republics. According to Jovanović, the same interviewee cited above, “[h]onest reconciliation is a far cry. Right now it is all cosmetic – a play of the eye” (Interview, August 20, 2010). This reality was especially problematic in BiH because the country was divided into two political entities, and there was still a great degree of hostility between all three groups. Mladen Ivanić, former Prime Minister of Republika Srpska and leader of Party of Democratic Progress, explained that “[t]his idea that we are the victims will stay for centuries and for the ICTY to think they can change this is naïve. Each of the groups will continue believing this.” Ivanić claimed that he attempted to put a group of Serbs, Bosnian Muslims, and Croats together to write a common history of BiH but did not achieve anything as their views differed greatly (Interview,
Miodrag Živanović, professor of philosophy and founder and president of the Social Liberal Party in BiH, had a similar view of reconciliation in BiH, arguing that the ICTY did not have an important effect on reconciliation because ethno-nationalist constructions prevailed and decades of “denationalization” were needed for any meaningful process of reconciliation to begin (Email questionnaire, August 22, 2010).

The responses were similar in Serbia. Vesna Pešić, former diplomat and MP in Serbia, explained that it was absurd for the ICTY to think that they could encourage reconciliation “when the conscience here is totally different” and the populations have not “faced the past” or “lived a catharsis” (Interview, August 10, 2011). A key reason why reconciliation will be quite difficult to achieve in the region was summarized particularly well by Slobodan Samardžić, professor of international relations and vice-president of Democratic Party of Serbia, who spoke to the international community in the following passage:

Croatia thinks of the war as a liberating war. Serbia thinks of it as a civil war. This will stay. … Maybe three generations from now historians can look at the facts and write one story. But for today, do not force the past in our face, but focus on things that can be changed (Interview, September 1, 2011).

Perhaps the most troubling finding was that some of my interviewees, and not only those from the radical nationalist factions but many moderates as well, believed that the ICTY had a perverse impact on reconciliation. Radmila Nakarada, Slobodan Samardžić, and Nebojša Randjelković are three professors who expressed this view (Interviews, August 19, 2010, September 1, 2011, June 23, 2011). Samardžić claimed that this was a result of what he found to be an extremely aggressive campaign by the ICTY, which aggravated nationalists and triggered radical campaigns (see also Dragoljub Žarković, editor of Vreme, August 31, 2011). Nakarada argued that the ICTY reinforced damaging beliefs that were detrimental to reconciliation attempts, including for example, the image of Bosnian Muslims as the absolute victims, and the image of Serbs as the only villains. Moreover, she added, all of the ethnic groups had reacted in a defensive manner arguing that none of their own deserved to be tried at The Hague and pronouncing the alleged war criminals to be national heroes, a situation which was not a good basis for reconciliation.

Not everyone agreed that the ICTY was detrimental to reconciliation. Some interviewees felt that the ICTY had no impact, but it is striking that no interviewee felt that the ICTY had a positive impact on reconciliation. The view of Latinka Perović, a well-known historian and
former politician in Serbia, was worth noting: “It is not that the ICTY harmed reconciliation. If you deny responsibility you are undermining reconciliation. But, the situation is still too sensitive for reconciliation … To break up with nationalism is a very difficult thing” (Interview, August 8, 2011). The opinions of the younger generations were also important as these generations will have to address the issue of reconciliation for years to come. A few members of the Youth Initiative for Human Rights told me that the only way to achieve reconciliation is through personal connection and dialogue between victims from different sides. They argued that individuals could not connect emotionally and show empathy towards leaders who were tried at the ICTY; these leaders were too removed from the local communities (Interview, August 18, 2010). According to this group what was needed was storytelling by victims from various communities, something that the model of international criminal tribunals was not equipped to provide.

**Conclusion**

**Research archive or historian?**

In sum, my interviewees found the role of the tribunal to be ambiguous and confusing for themselves and the general public. A professor or political science argued that “[p]eople did not understand whether this is going to be a solely legal institution or something more, because at the beginning the tribunal seemed interested in the historical narrative” (Djordje Pavičević, Interview, July 6, 2011). A Belgrade historian confirmed this state of confusion about the tribunal’s interest in establishing a historical and a legal account, arguing that The Hague changed its goal from “deconstruction of events and history” to “individual punishment” (Predrag Marković, Interview, July 26, 2011). This impression that foreigners in possession of power and wealth were attempting to write Yugoslav history emerged in the early stages of the ICTY. The initial perception that the ICTY Prosecutor focused on elaborate and distorted contextual information set the scene for the backlash. Many of my interviewees emphasized that while the ICTY judgments will be written into history books, especially those published in ‘the West,’ this does not mean that people in local communities will accept these judgments. Instead, each group will write its own history. A university student summarized this view, arguing that, just as the Nuremberg and the Tokyo tribunals wrote a simple history of World War II, one
which did not hold anyone responsible for the bombing of large parts of Germany and for the
dropping of the atomic bomb, the ICTY will write a simplified and biased version of the war in
Yugoslavia (Interview, July 27, 2011; see also Dragoljub Žarković, editor of Vreme, Interview,
August 31, 2011).

There is one role that my interviewees, regardless of their ethnic background, profession,
or political orientation, assigned to the tribunal, which they identified as quite beneficial: the
tribunal represented a two-decade-old research repository on the conflict in the former
Yugoslavia. “The ICTY collected documents that would have never existed without it,” noted
Dubravka Stojanović, a historian and professor of philosophy at the University of Belgrade
(Interview, September 8, 2011). The President of the Helsinki Committee for Human Rights in
Belgrade Sonja Biserko argued that while the ICTY did not accomplish justice, truth, or
reconciliation, it was a relevant institution for the region because “despite how these cases turn
out and despite the fact that Milošević died in the custody of the court and before his judgment,
the documentation is most useful as there will be a time to research all of the cases” (Interview,
June 24, 2012). Even those highly critical of the tribunal, such as journalist and president of the
Serbian Association of Journalists Ljiljana Smajlović who accused the tribunal of having a
reverse effect on regional reconciliation and identities of the groups involved, accepted that The
Hague was beneficial for saving and securing historical records. She acknowledged that because
of the tribunal there was more information available on the 1990s wars today, including specific
records on what the leaders decided to do, when, and why (Interview, August 25, 2010).
However, becoming a research archive was not the main aim of the ICTY and understanding
thoroughly the causes behind the negative elements of the ICTY narratives is crucial.

Who is being served?
The main and most destructive narrative that came out of my interviews was the view that the
ICTY was a political tool employed by Western countries to pursue their political objectives on
the world stage. This view spoke to the tribunal’s imperialistic role in painting history as the
biggest world powers intended it to be remembered. In this narrative the main beneficiary was
‘the West.’ Even my most liberal, and my pro-ICTY participants spoke of the relativity of crimes
at the tribunal and the fact that a crime identified as ‘big’ by ‘the West’ obscures all other crimes
in a conflict. My data thus indicate that the creation of a hierarchy of victims and a hierarchy of
perpetrators, identified on the basis of collective, rather than individual, guilt, was not avoided. It appeared to many of my interviewees that NATO aggressors had effectively received amnesty for their crimes, while Serbs received a “millennium of punishment.” Legal and human rights experts seemed to agree that traditional Nuremberg style justice applied to a few key leaders would have been a better strategy if individual guilt was the true objective of the international community. In regards to the objective of reconciliation, there was a clear consensus among my interviewees that reconciliation should not have been included in the mandate and that no benefits emerged out of this aim, while there were significant detriments to the peace process. Unfortunately then, other than its useful role in creating a research archive, the ICTY was perceived as an institution that served Western powers more than the population of the former Yugoslavia. It seemed that in its crusade to bring justice to the Balkans the tribunal failed to communicate and convince its local audience that justice was its basic intention.
One of my most memorable interviews was with an elderly professor who has spent his entire life in Rwanda. At the time of the genocide, he was 44 and lived in Butare. When the massacres began in his town, he was on the list of targets. He recounted watching mountains of human bodies form as he waited for his turn. Miraculously, he survived the genocide. I did not ask him to elaborate on his escape or the gory details of what he had witnessed. He recounted those details several times during witness testimonies in Arusha, each time speaking in front of the accused. It was a rare instance to have a Rwandan interviewee share personal experiences and opinions without me prodding and interrogating the interviewee for answers. In a context where freedom of speech was limited and the wrong statement could have resulted in a prison sentence, most Rwandans self-censored. Most did not feel at ease expressing their views in the lobby of a state-owned hotel.\(^68\) I realized that this interviewee was different. He was retired. He was not politically active. His children were out of the country. He had less to lose. Other than pausing the conversation when the server approached to bring his tea, he did not self-censor and I let him speak without interruption.

Despite his age, or because of it, the professor was willing to tell all. I remember thinking that two decades of recovery did too little for this man’s feelings of anger and disappointment. About thirty minutes into the conversation I brought up the issue of the International Criminal Tribunal for Rwanda (ICTR). He said that the tribunal’s importance was undeniable “because the context of the war was so horrible.” “[The war] was like a volcano – when it splashes it goes everywhere. It goes beyond your imagination,” he said. For this reason, time and money should be spent to find the truth about the past, he argued. He was as furious with the Rwandan Patriotic Front (RPF) for their alleged war crimes as he was with the génocidaires. “If they are guilty, let them be judged. If they are clean, that too will be proven… If you are innocent, why are you afraid?!” he said. He criticized the government’s infringement on civil liberties: “There is no individual space for thinking here.” After a short ironic laugh, he continued: “People who are

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\(^{68}\) The interviewee chose the location of our meeting.
very disciplined are those who commit genocide. We have a German character. There is no place for debate and questioning. … This is terrible.” He concluded with a comment on his President’s attempt to control the narrative on Rwanda’s violent past. “What is a person? He cannot stop a match of history,” the professor said, suggesting that Paul Kagame is not the one to determine how and to whom accountability and responsibility are assigned (Interview, November 23, 2011).

My interview with the professor highlights a number of pervasive themes that shape the Rwandan context and the perception of the ICTR. In this chapter I address these themes and show how they influence narratives on the tribunal. The purpose of the chapter is to thus describe the historical and political environment in which the ICTR has functioned for two decades and set the scene for the following chapter where I present the majority of my data from Rwanda.

The strength of the Rwandan state, and Paul Kagame’s decision to rule his regime with a firm hand, including projects of social and political engineering, significantly shape narratives on the ground. Limited democratization, autocratic rule, and human rights abuses significantly reduce debate and divergence over, as well as organizing on the subject of, international trials. I build on this argument by considering suggestions that Rwanda’s accomplishments in focused bureaucratic governance and economic development compensate for the lack of multiplicity and openness in transitional justice narratives, and public dialogue in general. My findings confirm the arguments of scholars who argue that praise of economic progress and good leadership by “Friends of the new Rwanda” ignores evidence of growing inequality and structural violence. In the third part of this chapter I examine the impact of external factors, such as international pressure on the Rwandan regime to cooperate, and donor monitoring of the regime’s violations of human rights at home and in neighbouring countries. I conclude that checks on the Rwandan government from donor governments have been minimal which has enabled the Rwandan government to manage its affairs and shape general perceptions on the tribunal. One of the main reasons for the leniency of Western donors, such as the American and British governments, towards the RPF regime and these governments’ support for a hands-off approach on the tribunal is what some scholars have referred to as “genocide credit” (Reyntjens 2013), namely the favouritism the RPF regime allegedly enjoys because of feelings of guilt on the part of American

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69 Among other actors, “Friends of the New Rwanda” include Bill Clinton and Tony Blair (and the American and British administrations more generally) as well as Bono and Pastor Rick Warren (Reyntjens 2013, xiii).

70 See for example, Reyntjens 2013, Straus and Waldorf 2011, and Uvin 2003.
and British governments over international inaction in 1994. The RPF regime has proven skillful at employing victimhood narratives of the genocide against the Tutsi to frame itself as the ‘liberator’ while shaming the international community and exploiting genocide credit when facing criticism over its style of governing, including its dealings with the ICTR.

The strong state
The Rwandan genocide took place during a civil war which began on 1 October 1990 with the invasion of Rwanda by the RPF, an armed group of Rwandan exiles from Uganda. An unexpected turn of events took place three and a half years into the war and dramatically changed the conflict and Rwanda’s history. On 6 April 1994 assailants shot down the plane carrying President Juvénal Habyarimana from Arusha where he had met with regional heads of state who were trying to convince him to implement the terms of the Arusha peace agreement signed in August 1993. The genocide which resulted in the systematic killing of between 507,000 and 850,000 Rwandan citizens (Des Forges 1999, 15-16; Prunier 1998, 265) began within hours of Habyarimana’s death.\(^\text{71}\) The genocide was organized and conceived by a small group of hardliners from the inner circle of Habyarimana’s government. These hardliners disapproved of Habyarimana’s power-sharing agreement with the RPF. In addition, at the request of the RPF, a number of them – Coalition pour la Défense de la République (CDR) members – were to be excluded from the transitional government agreed upon in Arusha (Fujii 2009, 52). This extremist faction therefore decided to employ whatever means necessary to remain in power. In Kigali this meant instructing the Presidential Guard, specially trained militia, and soldiers to target anyone not firmly in the extremist camp. This included opposition leaders, among them prime minister Agathe Uwilingiyimana, (Hutu and Tutsi) political moderates, journalists, and human rights activists (Des Forges 1999, 188-9; Dallaire 2004, 232; Fujii 2009, 54). Militia set up roadblocks and perpetrated violence against anyone who opposed this self-appointed interim government and its genocidal aims, as well as anyone with a Tutsi identity card, and anyone who “looked” Tutsi (Des Forges 1999).\(^\text{72}\) Outside of the capital, in addition to soldiers, professional

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\(^{71}\) The lower figure is Alison Des Forges’ and the higher figure is Gerard Prunier’s. Generally scholars and journalists speak of Habyarimana’s plane crash as the trigger for mass scale violence, however following Fujii (2012, 19, 121) I note that certain incidents of Tutsi-targeted violence preceded the plane crash and were an important element of the genocidal process.

\(^{72}\) Fujii (2009) demonstrates that Hutu and Tutsi were social labels (referring to social origin, status, or place of birth) first, which took ethnic meaning during processes of state expansion. While the ethnic meanings of the Tutsi
militia, and National Police, local elites and political entrepreneurs took the lead role in perpetrating violence and enlisting residents into genocide (Fujii, 2009, 2-3). Lee Ann Fujii argues that whether and to what degree ordinary people bought into the state-sponsored “script for genocide” and participated in genocidal activities did not depend on ethnic fears and hatreds, but local ties and group dynamics which varied across regions and communities (2009, 19; see also Straus 2004). Fujii emphasizes that, ultimately, the conflict “came down to moderates versus extremists” so that “politics and power trumped ethnic loyalties every time” (Fujii 2009, 56). The genocide lasted 100 days and ended with the RPF taking Gisenyi on 18 July 1994 and declaring victory over the genocidal forces (Prunier 1995, 299).

Since its 1994 victory, the RPF-led government has rebuilt state institutions in Rwanda, including transportation, infrastructure, health, and education services (Des Forges 1999, Thomson 2011; McDoom 2012). This is part of the government’s ambitious policy of development and reconstruction, which includes good governance, poverty reduction, low corruption rates, decentralization, and transparency. Dominated by President Paul Kagame, the government has also pursued impressive projects of social and political engineering, including ambitious experiments in reconciliation and transitional justice. The ICTR proceedings have been taking place alongside this Kagame-driven, hands-on, and donor-supported approach and the response to the tribunal needs to be interpreted within this political context.

The regime’s grip on transitional justice

The RPF and the tribunal

The main issues that have caused tensions between the Rwandan government and the ICTR are accusations of war crimes and crimes against humanity against the RPF. In 1992 Africa Watch found that the RPF committed serious human rights violations, and in 1993 an international commission of inquiry reported executions, pillaging and forced deportations by the RPF (Africa Watch 1992; Federation internationale des droits de l'homme (Paris), Human Rights Watch (New

and the Hutu labels gained importance during European colonization, they did not originate with the European colonizers (as the government of Rwanda currently argues) (45, 61). Throughout Rwanda’s history Tutsi and Hutu categories were malleable and varied across regions (Newbury 1988: 11; see also Newbury 2001; Newbury and Newbury 2000). Moreover, the episodes of violence between the Tutsi and the Hutu were never ethnic at the start (Fujii 2009, 10-11). Each time, politically threatened elites employed official institutions and practices to turn political contests and political violence into ethnic realities and ethnic violence. As Fujii (2009) finds, “with stereotypes, the ethnicity of a person is what those in power say it is” (124).
York), Union interafricaine des droits de l'homme et des peoples (Ouagadougou) & Centre international des droits de la personne et du developpement democratique (Montréal) 1993, 66-75). According to these and other sources, the RPF forces massacred tens of thousands of civilians in Rwanda between April and September 1994. The number reported ranges from 25,000 to well over 100,000, with the higher number being accepted in more recent times (Des Forges 1999, 728; Prunier 1997, 427).\(^{73}\) A UNHCR report, the Gersony Report, the original of which was suppressed by key US officials, served as grounds for the Security Council to ask the ICTR to prosecute all crimes committed in Rwanda, not simply genocide crimes committed against the Tutsi (UNHCR 1994). Furthermore, in June 1998 an investigative team sent by the UN General Secretary found that during the 1996-7 violence in Congo large-scale war crimes were committed against Hutu refugees, with 200,000 refugees missing. The investigative team suggested that further investigations be carried out because the Rwandan Patriotic Army (RPA), the armed wing of the RPF, may be responsible for acts of genocide (UN Security Council 1998, 96). There is also evidence that the RPF committed crimes in northwestern Rwanda during the Rwandan government’s anti-insurgent campaign in that part of the country in 1997 and 1998 (Waldorf 2011).

Despite such accusations, the ICTR has not indicted a single RPF suspect. With the ICTR mandate set to expire on 31 December 2014, it is unlikely that this will change. The fact that the ICTR has not pursued prosecutions against all sides of the conflict makes it significantly different from the ICTY. This point is particularly interesting because the RPF has been accused of having killed significantly more civilians than the Bosnian Muslim forces yet while the ICTY has prosecuted Bosnian Muslims, the ICTR has not prosecuted anyone from the RPF (Peskin 2011, 176). The main reason for this is that the RPF regime has been quite successful at obstructing the attempts of the ICTR to prosecute RPF members and fulfill its mandate, and key international actors have been willing to turn a blind eye. The RPF regime also has greater freedom of movement in its cooperation with the ICTR than the former Yugoslav republics do in their relations with the ICTY because, unlike the former Yugoslav states which are negotiating membership into the European Union, Rwanda has no such interests.

The first prosecutor of the ICTR, Richard Goldstone (1994-6), focused on setting up the ICTR and securing the cooperation of the RPF-led government. The second prosecutor Louise

\(^{73}\) On RPF crimes against civilians, see also Ruzibiza 2005; Dallaire 2004; Umutesi 2000; Gasana 2002.
Arbour (1996-9) expressed her concern for RPF crimes and quietly opened a preliminary probe into RPF crimes at the end of her tenure. Prosecutor Carla Del Ponte (1999-2003) is best known for her vigorous efforts to address alleged RPF crimes. She announced in April of 2002 that she planned to issue indictments against RPF suspects. She faced enormous resistance from Kigali where the Rwandan government argued that Del Ponte should focus exclusively on suspects from the genocidal regime. Del Ponte responded by denouncing the Rwandan government for not keeping its promises and disrespecting the ICTR mandate. She hoped that publicly criticizing the RPF would result in international backing for the ICTR in the same way that her public criticism of the Bosnian, Serbian and Croatian governments resulted in support for the ICTY. However, the Rwandan case differed significantly as it appears that the American and the British governments were more loyal to the Rwandan government than the ICTR (Del Ponte 2011). The Rwandan government continued to retaliate vigorously, by shaming the Tribunal, refusing to cooperate with it, imposing burdensome travel requirements on witnesses traveling to Arusha to testify, and putting significant pressure on the UN to remove Del Ponte from her post. The persistent lobbying from Kigali and the backing for the regime from Washington and London seem to be the reasons why the Security Council did not renew Del Ponte’s appointment as the ICTR prosecutor (Reyntjens 2011, 18; Del Ponte 2011). Interestingly enough, Del Ponte was reappointed as the ICTY prosecutor but her ICTR post was given to Hassan Jallow (Peskin 2011, 174).

Jallow (2003-) has tried to avoid the controversy that he saw Del Ponte go through by arguing that the ICTR should prosecute RPF members only if a domestic legal system is unable or unwilling to do so. Deciding whether a government is genuinely ‘willing’ or ‘unwilling’ to prosecute the accused is a subjective matter. Jallow transferred one case to the Rwandan military court, the case of four RPF suspects accused of the June 1994 massacre of the archbishop of Kigali, twelve clergy, and two others. There were two problems with this decision. First, the difference between Jallow’s approach and that of the ICTY is that the ICTY gained the cooperation of all governments involved in prosecuting the most important cases at The Hague before entrusting these governments with trying some of their own. The second problem, examined in greater detail in the next chapter, is the fact that the majority of my interviewees from a variety of political factions as well as outside observers viewed the Rwandan military trials as a government sham and did not believe that these trials would contribute to justice for past crimes. The military trial for the June 1994 massacre ended with light sentences for the two
junior officers and the acquittal of the two higher-ranking officers. The senior RPF officers who are believed to have ordered the massacre were not prosecuted, and the crimes were categorized as war crimes rather than the higher charge of crimes against humanity (HRW 2009, “Letter to the Prosecutor”; HRW 2009, “Letter to the ICTR Chief Prosecutor”). As Victor Peskin concludes, “[Jallow’s] prosecutorial choices are shaped by the Tribunal’s fragile relationship with, and enduring dependence on, the Rwandan government” (Peskin 2011, 181).

The coup by local courts

Local courts play a much bigger role in Rwanda than in BiH and Serbia, and have much more influence over the interpretation of the tribunal than in the other two countries. Unlike in BiH and Serbia, my interviewees in Rwanda made reference to the local gacaca courts, which the RPF established in 2001, and compared them to the ICTR. Because most Rwandans participated in the gacaca, a judicial system which the Rwandan government created to deal with the enormous backlog of accused génocidaires, they were much more informed on these than on the tribunal (Steflja 2012, 6). For this reason it is crucial to understand the gacaca alongside which the tribunal had to function. The gacaca transmitted the official government-led vision of transitional justice and reconciliation into local communities, as well as a domestic policy of a unified Rwandan national identity. This national vision and the ICTR vision sometimes complemented each other but they were also often at odds.

Gacaca was supposed to be an innovative attempt to promote accountability and the rule of law. The government of Rwanda claimed that gacaca is a “novel” yet “traditional” judicial initiative because gacaca incorporates the traditional values of Rwandan dispute resolution mechanisms. Critics dispute this claim arguing instead that “the Gacaca system is a distinctively modern phenomenon despite its traditional appearance” (Ingelaere 2009, 507; see also Ntampaka 2003; Sarkin 2001; Vandeginste 2000; Meierhenrich 2013). Most importantly, the government and its supporters framed the gacaca as a relatively speedy way of handling the prosecution of hundreds of thousands of imprisoned Rwandans. In addition, the government had an interest in ensuring its authority and legitimacy by emphasizing its own courts, hence its decision to stress the gacaca process. Bert Ingelaere identifies a three-point structure on which the gacaca are

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74 I published parts of this section in Africa Portal (Steflja 2012).
75 While in this section I provide a brief overview of the gacaca for contextual purposes, my interviewees’ attitudes towards the gacaca will be addressed in the next chapter.
based. First, *gacaca* courts judge the majority of the accused in their respective administrative units. (Ordinary courts, including the ICTR and national courts, judge instead key orchestrators of genocide). Second, the *gacaca* function by decentralizing or popularizing justice, with each *colline* (hill) carrying out its own trials and lay persons serving as judges. Third, confession, a discursive element, is key to the process as it is the main way of collecting information and allowing for the ‘truth’ to surface from the bottom-up (Ingelaere 2009, 515-6; see also Ingelaere 2008; Waldorf 2006).

Amnesty International (2002), Human Rights Watch (2011), and Penal Reform International (2009) were among the first to declare their disapproval of numerous elements of the *gacaca* process. Human Rights Watch and Amnesty International criticize the low standard of legal professionalism and human rights infringements, such as the inability of most defendants to obtain legal assistance in a country with approximately 60 lawyers in total. They also point to *gacaca* judges, lay people who received very brief legal training. Amnesty International in particular has been severely critical of the credibility of the *gacaca* justice system because it does not meet minimum international fair trial standards. These early criticisms have been complemented by the work of scholars and researchers. For example, Jens Meierhenrich argues that the *gacaca* are a form of “lawfare” which involves the abuse of legal procedures for the purpose of governing and oppression (2013). Don Webster argues that the most problematic fact about the *gacaca* courts is that they have triumphed over ordinary courts and some of the cases tried in formal courts were overturned by these informal courts. Webster also argues that the *gacaca* condemn anyone who was in a position of authority in 1994, which means that authorities who resisted the genocidal campaign were not recognized for their efforts (Webster 2011, 192).

Some studies suggest that fear, prejudice, and resentment of families of the convicted increased since the establishment of the *gacaca* in 2002. The same studies highlight that social distrust levels have gone up mainly because testimonies — which play an integral part of the *gacaca* process — are not necessarily truthful and can create social animosity and tensions in communities (Rettig 2011, 201-3). Because of their discursive public nature, *gacaca* proceedings were meant to bring a degree of restorative justice in a similar manner that truth and reconciliation commissions seek to do. An important aspect of restoration and reintegration is understanding the reasoning behind the actions of perpetrators; however, *gacaca* participants rarely pose the question of ‘why’ and the process is modeled more on criminal trials than truth.
commissions or traditional conflict resolution and reintegration rituals (Ingelaere 2009, 511, 515-6).

Another problem is the way in which the gacaca deal with ‘truth-telling.’ Gacaca sanctioned the speaking of the truth according to a prosecutorial logic which Ingelaere argues is contrary to established customary and societal practices. Gacaca’s Judeo-Christian model of truth-speaking was implemented in a non-compatible “socio-political environment mediated by a culture of deceit and dominated by a war victor” (2009, 507).76 “A cult of secrecy” and “consensus of the subjects” are integral elements of Rwandan culture functioning in such a way that the moral value of a statement is derived not from its correspondence to reality but from its usefulness in a complex context (de Lame 2005, 289; Retting 2011, 202). Moreover, gacaca establishes a community’s ‘truth’ by relying on the vision of a particular group of survivors – who qualifies as a ‘survivor’ is narrowly defined by the gacaca law, enabling only the Tutsi to be survivors and not the many Hutu who lost family. The views of most Rwandans, who comprise 80 percent of the population and who actually witnessed the atrocities (because they were not necessarily in hiding during the genocide), are not considered (Rettig 2011, 203).77 Finally, gacaca was established by the ‘war victors’ – the RPF regime is the outcome of a military victory and total defeat of the Rwandan government forces – which has resulted in a monopoly on historical truth and political space available in these transitional justice mechanisms.

Other sources emphasize certain positive elements of the gacaca. These include the opportunity for the accused to present their case, to bring witnesses who add to the testimonies, and to appeal and contest the categorization of their crime and sentence (Chakravarty 2006, 133-5). Certain non-governmental organizations, such as Lawyers Without Borders, Citizen’s Network and Penal Reform International, were more supportive of the gacaca and were important contributors of professional and technical advice and resources. Some scholars note that the gacaca had the potential to instigate dialogue, and complement purely judicial approaches, as well as national and international judicial orders (Wierzynska 2004; Clark 2007; Clark 2009; Clark 2010; Betts 2005).

Both the gacaca and the ICTR have been criticized by international sources for their lack of ‘inclusiveness.’ The alleged crimes of the RPF have not been addressed by either of the systems and, consequently, not all victims have been recognized. This significantly limits the

76 On truth-telling and social forgetting see also Buckley-Zistel 2005, 2006.
77 On the official RPF ‘Truth’ see Ingelaere 2009, 521.
potential of these institutions to influence reconciliation. As a project conceived by the Rwandan government, *gacaca* has generated a specific and singular history. In this context, the ICTR had the opportunity to affirm the *gacaca* version of history or, instead, balance it with other unrecognized versions of events, which is what many of my interviewees expected it to do.

**The limits of democratization and genocide credit**

If multiple versions of history are to exist and multiple truths are to be recognized a degree of political openness is required in the domestic context. Strategically limiting freedom of speech, press, and association constrains political participation and political competition, as well as the possibility for diverse voices to speak out on the topic of transitional justice. My findings show that the Rwandan context makes debate over and divergence on the subject of international trials quite difficult. Merely voicing an opinion that is different from the official narrative of the government leads to uneasiness and personal sacrifices, and it can be harmful to career ambitions and possibly dangerous physically and emotionally. For example, questioning the governments’ policy towards the ICTR, as well as its approach to defining victims and determining culpability for past crimes, is difficult in a context where one can be accused of insulting the memory of genocide victims, denying that a genocide took place, sabotaging the process of political normalization, and propagating the philosophy of *génocidaires* (Reyntjens 2013, 129). The government’s constant references to the genocide against the Tutsi is a way of emphasizing the status quo, especially the narrative which defines the Tutsi as the only legitimate victims of the conflict and the Hutu as the group to be feared. This fear strategy maintains support for the RPF and keeps the international community at a distance (Reyntjens 2013, 192). The RPF regime has extended this victimhood status to itself, even though the regime is composed mainly of returnees who did not experience the genocide but invaded or moved to Rwanda after the genocide. By branding itself a victim the regime labels all opposition to the RPF as morally and politically aligned with those guilty of genocide (Reyntjens 2013, 192). In this context, organizing political opposition or civil society based on views that diverge from the government’s is essentially impossible.
Elections

After the RPF victory, observers of Rwandan politics were hoping for a transition to democracy. They were disappointed to find that, as is the case in most political transitions, Rwanda’s path from dictatorship to democracy has not been straightforward. The Rwandan government has been accused by scholars and researchers of concentration of power and human rights abuses at the cost of inclusiveness and liberation. Rwanda does not have a competitive political environment and some observers argue that this is because free and fair elections would result in the RPF losing power (Reyntjens 2006, 1109). For this reason, the RPF has put great effort into marginalizing and suppressing independent political activity. The RPF targets any political group or individual which seeks to democratize the system or form any kind of political opposition (Longman 2011; Fujii 2009). A few notable examples among many are: 1) the banning of a new political party called the Party for Democratic Renewal (PDR) – Ubuyanja established in 2001 by former President Pasteur Bizimungu (Hutu) and former Transportation and Public Works minister Charles Ntakirutinka (Tutsi) and the arrest of a number of its founders and members; 2) the banning of the Democratic Republican Movement Party (MDR), because of its wide political support especially among the Hutu majority, during the run up to the 2003 elections; 3) the prevention of the Democratic Green Party of Rwanda, which mainly included dissident Anglophone RPF members, from registering for the 2010 election and the beheading of the vice-president of the party during the election campaign; 4) the trial and sentencing of Bernard Ntaganda, leader of PS-Imberakuri opposition party, to 4 years of imprisonment in 2011, for endangering national security, “divisionism,” and attempting to organize demonstrations without official permission, and 5) the attack and arrest of Victoire Ingabire, the 2010 presidential candidate of the United Democratic Forces (FDU) – Inkingi, who called for all perpetrators to be held accountable for their crimes, and her sentencing to 8 years in November of 2012 (Grant 2010; Longman 2011; Political prisoner, Interview, December 5, 2011). Despite numerous similar incidents and years of a closed political climate, a culture of fear and self-censorship and an active, skillful propaganda by the RPF regime, it is possible that the RPF would win a free and fair election today because the RPF has brought stability albeit at the price of any kind of liberty whatsoever.78

78 I thank Lee Ann Fujii for this point.
Smaller political parties continue to function. However any political opposition hopefuls are aware that criticism against the regime can be interpreted as “promotion of divisionism,” “genocidal ideology,” or “denial of genocide” which are grounds for legal charges and imprisonment (Longman 2011, 33-5; Grant 2010). My findings suggest that a striking similarity exists between the RPF-led government and the previous Habyarimana regime: political power is concentrated in a small clientelistic network of leaders. Habyarimana’s *akazu* has been replaced by a small clique around Kagame, which includes only a select few RPF members. This setting creates a situation where the Rwandan population at large now feels as insecure as it did before the genocide. Many of my interviewees of all backgrounds reflected on this grim point. It is not surprising that in such circumstances – where opposition parties are unable to represent different views of the tribunal – Rwandans looked to the international community to provide an alternative view and serve those who were unable to serve themselves.

**Restrictions on freedoms**

Freedom of speech

Because the regime does not tolerate public criticism, expressing an opinion on the tribunal which is not in-line with the government’s view of the tribunal becomes highly controversial and possibly dangerous (Longman 2011; Grant 2010). A recent example that illustrates the deep desire of the RPF elite to control the country’s image is its strenuous efforts to discredit the most recent edited volume on post-genocide Rwanda, *Remaking Rwanda: State Building and Human Rights after Mass Violence*. A number of RPF members, including the Communication Specialist in the Ministry of Local Government, created a blog named “Remaking Rwanda: Facts and Opinions on the ground” with the aim of discrediting the book and personally attacking the authors. While this response might seem unusually defensive and extreme, it has been the norm in the Rwandan context. The regime justifies such limitations of freedoms by wrapping them up in the new ideology of national unity and reconciliation, which includes reeducation programs and the replacement of group identification by a single ‘Rwandan’ label. The regime’s policy of condemning those who identify as Hutu, Tutsi, or Twa, or criticize government policies has complicated and limited research in Rwanda, especially projects that study the management of
diversity and reconciliation between former rivals (Thomson 2011; Ingelaere 2011; Ansoms 2011; Straus and Waldorf 2011; Verwimp 2013).

Freedom of association

As with the political opposition, civil society has been neutralized. Many autonomous civil society organizations have been targeted on the same basis as political parties – with allegations of “promoting divisionism and genocidal ideology.” In addition, civil society organizations have had a difficult time staying independent from government actors. The regional human rights organization Ligue pour la defense des droits de l’homme pour la region des grands lacs (LDGL) has argued since 2001 that “Rwanda surprises particularly by the weird collusion between the government and important sections of civil society. Thus the spaces of free expression are almost all occupied or reduced to the minimum in order to prevent any contestation” (LDGL 2001). For example, the government accused the Rwandan League for the Promotion and Defense of Human Rights (LIPRODHOR), the main human rights organization in Rwanda which monitored genocide trials in the country, of “genocidal ideology.” A number of LIPRODHOR members were arrested and threatened, the leadership fled abroad, and the organization was banned in 2004. I spoke to members of the organization who still function undercover in Rwanda. They argued that the Kagame-led regime is implementing the same limitations on the League that the previous Habyarimana-led regime had implemented (Interviews, December 15, 2011). Since Rwandans face such limits on their freedom of association and expression, it is not surprising that there are no independent civil society groups working closely with the tribunal. Ibuka, which represents the survivors of the genocide, has been the only association actively working with the tribunal, but Ibuka also maintains very close relations with the government. In fact, the RPF has installed members of Ibuka in leadership positions of other civil society organizations, including Coalition des ligues et associations de defense des droits de l’homme (CLADHO) and Comité de coordination des organismes d’appui aux initiatives de base (CCOAIB) (Reyntjens 2006, 1107). These moves call into question the non-governmental status of these organizations. Having independent civil society organizations provide assistance, information, and witnesses to assist the defense at the tribunal was unimaginable in this context where the government would have likely accused their members of having participated in the genocide.
Freedom of press

The image of the media in Rwanda was tainted in the 1990s because of the use of media, most notably radio, to promote the 1994 genocide. Aware of media power, and the fact that, as one of my interviewees said, “Rwandans see the radio as the law” (University lecturer and witness in Arusha, Interview, November 24, 2011), the RPF has maintained tight control over the press, radio, and television. Since the RPF took power many have accused them of intimidating the press through the arrest, and even murder, of several journalists and editors (LDGD 2002; Article 19, 2013; Reporters Without Borders 2012; HRW 2012). The LDGL argues that “[p]apers run by Hutu are at greater risk, but even those published by Tutsi returnees face threats and closure when they openly challenge regime policy” (LDGL 2002, 135-8).” A government body called the Media High Council (MHC) regulates the content of the press. Reporters Without Borders concludes that before the 2010 elections the MHC suspended about 30 radio stations and newspapers (RWB, 2010). One of the latest incidents was the trial and sentencing of Agnès Nkusi Uwimana and Saidati Mukakibibi, from the newspaper Umurabyo, to seventeen years and seven years, respectively, in jail which was then reduced to four years and three years, respectively, in 2012, for publishing texts critical of the government and the President. The latest Human Rights Watch report argues that “after years of intimidation and a further crackdown on independent media in 2010, there are almost no independent Rwandan journalists operating in Rwanda” (HRW 2012).

The limitations placed on media freedom became clear to me in my attempt to interview the Media High Council Executive, Patrice Mulama. A number of my interviewees, including those who were highly critical of the current regime, advised me to speak to Mr. Mulama suggesting that, unlike most individuals representing government bodies, he would be willing to answer my questions openly and honestly. I first spoke to Mr. Mulama on the telephone and he agreed to meet me. However, when I called him on the day of our interview to confirm our appointment, he told me in a hasty and disappointed tone that he had been fired from his position the night before and that therefore he did not believe that he could contribute to my study in any meaningful way (January 12, 2012). I found out later that Mr. Mulama was fired for circulating a letter which accused the police of media harassment and unlawful arrest of journalists and called for government officials to intervene (Mugabe 2012). It seems that, despite his respected record, Mr. Mulama became a casualty in a police dispute with the media, in which the regime valued
the interest and the image of the police over protection of journalists. The Mulama incident is an example of the extensive constraints that the Rwandan media faces.

It is not government censorship however that the interviewees identified as most limiting, but a form of self-censorship and the fact that financial resources are often tied to government-supported enterprises. Journalists practice self-censorship for fear of political repercussions and they see it as a smart career move since social mobility is quicker if one has government ties (Graduate student, Interview, November 2, 2011). A professor of sociology and anthropology of genocide defined Rwanda as a clientelistic setting where an individual who wants to advance in his/her career should not overindulge in criticizing the party in power (Interview, January 9, 2012).

The second element which enables silence and self-censorship to persist in Rwanda is what a number of my interviewees defined as a “monolithic culture.” My interviewees described Rwandan culture as “monolithic” because “following” is nurtured and ingrained in people’s behaviour. They identified this as a consequence of an enduring and long-standing context in which people are economically and politically dependent on those in power (Interview, January 9, 2012). A survivor of the genocide and a witness to the pre- and post-genocide regimes echoed this view: “There is no tradition of debate in Rwanda. Debating is a Western style of learning. This is not changing. This is society and mentality. A dictator succeeds in such circumstances. It is in this context that a genocide happens.” He argued that not much has changed in the post-genocide period: “Yes it is the same today too. … Yes, if the president orders them to kill today, they will kill.” “There is no individual space for thinking,” he concluded (Interview, Nov 23, 2011). Another interviewee of similar stature and years of experience confirmed the prevalence of a “follower” culture and the dangerous political implications of this. This interviewee, who was a lecturer, translator and writer and experienced the pre- and post-genocide regimes, expressed his view that “[i]t is not easy to educate people on ethics. People know what is good and what is bad but when it comes to implementation, people simply follow” (Interview, November 23, 2012). A woman who ran a human rights organizations during the Habyarimana government and after the genocide described the specific way in which, according to her, this “monolithic culture” affects the trials. She claimed that if government officials accuse a person of participation in genocide, the societal response is to assume or to outwardly support that the person is guilty and that those who work for the accused are allies of the guilty. She explained that, because overt questioning of government actions is not common in Rwandan society,
Rwandans do not have the tradition of presumed innocence (Interview, January 9, 2012). In this context, it is not surprising that media rarely address the tribunal cases, other than repeating government and Ibuka announcements. However, just because people appear to go along with government actions and pronouncements does not mean that they believe or approve of them – it is more likely that they fear repercussions if they act otherwise.

**The shortcomings of the booming economy and regional interests**

Praise for Rwanda’s economic success by sources inside and outside of the country has been used to justify many problematic policies and deficiencies in other areas, including democratization, human rights, and growing inequalities. The state of the Rwandan economy has affected how much pressure the international community and international donors place on the RPF regime to cooperate with the ICTR. Rwanda’s development record is one of the main reasons for the lenient treatment and minimal scrutiny the Rwandan government has received from the international community (Grant 2010). “The fact that Rwanda is ranked 183 out of 195 countries for freedom of the press, for example, is outweighed by the fact that the per-capita GDP has tripled,” argues Richard Grant (2010). Possibly, this is also one of the reasons why international donors and the UN Security Council have been willing to overlook Rwanda’s inadequate cooperation with the ICTR, and why Rwanda has experienced different treatment than BiH and Serbia.

Rwanda’s economic success is undeniable, especially in terms of economic growth, pro-business environment, and technocratic competence. Paul Collier, a World Bank economist and author of the famed “The Bottom Billion,” argues that “Rwanda has pulled off a rare ‘hat trick’ of rapid growth, sharp poverty reduction and reduced inequality” (qtd. in Terrill 2012). Kigali is a booming city, with new buildings emerging across the city every few months, and an information technology center, celebrated for its optic fiber Internet (Grant 2010; Longman 2011). The Rwandan government argues that Rwanda is a developmental state, along the lines of the Asian Tigers, and portrays the country as the Singapore of Central Africa. This comparison also suggests a strategy of “performance legitimation,” according to which limiting political freedom is justified in the name of economic development through the active intervention of government (Longman 2011, 41). My interview with the President of the Senate confirmed just how much the current RPF government embraces this strategy. When I asked the President of the
Senate about Rwanda’s attitude towards human rights via national, local, and international courts, he responded: “What are human rights standards? If you ['the West'] have standards, they don’t work. And, if you ['the West'] had standards, then why didn’t you stop the genocide?” (Interview, November 29, 2011). He expressed the view that there cannot be a uniform vision of human rights applied to all countries and that the criterion needs to change depending on context.

While Rwanda deserves praise for its economic performance, Rwanda’s economic growth owes a lot to foreign aid and the regional role the country has acquired since the genocide. Donor assistance represents an enormous amount of Rwanda’s budget – about 40-50 percent. British aid has been instrumental in assisting one million Rwandans to climb out of poverty in the last five years, which is the fastest rate of poverty reduction in Africa (Al Jazeera 2012). Rachel Hayman argues that “donors in Rwanda do not appear naïve to the underlying political problems in Rwanda, but they get caught up in the development success story that Rwanda represents (at least, on the surface).” Hayman warns against turning a blind eye to serious political problems and accepting Rwanda as a “good enough democracy” because such attitudes parallel the attitude the international community had toward the previous Habyarimana regime even leading up to the genocide (Hayman 2011, 127; See also Uvin 1998).

Rwanda’s economic achievements are tied to its regional activity. While Rwanda has promoted the East African Community and pursued trade with its neighbours, its role in the Democratic Republic of Congo (DRC) is problematic to say the least. Rwanda has managed to exercise a great amount of military and economic control over its huge Western neighbour and has repeatedly been accused of reaping economic benefits from the violence and illegal resource exploitation in the DRC (Reyntjens 2010, 24; UN 2001; Nichols 2012; Lemarchand 2009; Prunier 2009). The estimates suggest that in 1999 Rwanda’s revenue from diamond, gold, and coltan from the DRC equaled about 6.4 percent of Rwanda’s GDP and 146 percent of its official military expenses. In 2000 the revenue from coltan alone was about the equivalent of Rwanda’s official defense expenditure (Senat de Belgique 2003; Stefaan 2003). The UN similarly estimates that in 1999-2000 the Rwandan Patriotic Army made at least 250 million dollars during its 18 months in DRC (UN 2001). The violence in the DRC continues. It escalated recently in November of 2012 when M23 rebels, backed by Rwanda, captured the key city of Goma, which amplified the opportunities for illegal exploitation. The intervention of a brigade of UN troops with a tough mandate, the Congolese army, as well as the pressure of the British and American administrations on the Rwandan government to reduce its ties with the M23, resulted in the
defeat of the M23 in November of 2013 (BBC News Africa 2013; Pflanz and Blair 2013). The most recent reports however accuse the M23 of regrouping and recruiting fighters in Rwanda (Charbonneau and Nichols 2013).

Irrespective of the source behind Rwanda’s recent economic boom, the UNDP warns against excessive enthusiasm for Rwanda’s economic growth because “Rwanda’s high growth rates are deceptive in that they hide large and growing inequalities between social classes, geographic regions and gender” (UNDP 2007; Terrill 2012). An Ansoms (2009) finds that Rwanda’s Gini coefficient rose from 0.47 in 2001 to 0.51 in 2006 and seems to be getting worse. Economic power is primarily concentrated in the same hands as political power – an inner circle composed of mainly Anglophone Tutsi returnees from Uganda, RPF generals, and a select few who are part of or closely connected to the current regime. That said, certain individuals are more favoured than others and the composition of the inner circle is not static. In fact, several individuals who were in the inner circle at one point have recently fled the country (Daily Monitor 2010; Mukombozi 2013; Sebarenzi and Mullane 2009).

Genocide credit has been one of the main reasons why Rwanda’s donors have not been stringent with donor requirements and have been passive about the shortcomings of Rwanda’s economic growth and human rights abuses. The Rwandan government seized the opportunity to manipulate the genocide morality narrative early on and has employed it against international criticism over the years (Grant 2010). When criticism is pointed at Rwanda, the typical response of the Rwandan government is to reflect it back at the source. For example, when a UN report criticized Rwanda for supporting rebels in the DRC, Rwandan officials responded by accusing its authors of “outright lies,” the unwillingness of the UN and the international community to “confront their own failures and weaknesses” (“Statement” 2008), and “a continuous ploy by powerful countries to disregard the truth when it comes to Rwanda [and] to hide their guilt after they abandoned Rwandans during the genocide” (“UN Report” 2008; See also Reyntjens 2013, 134). Two decades after the genocide, President Paul Kagame regularly uses his twitter account to remind his population of the international community’s guilt: “President #Kagame: there is nothing we could do about international inaction during the Genocide so we focused on what we could do” (Presidency | Rwanda @UrugwiroVillage 2014). This strategy has proven so successful that, despite Rwanda’s dependence on international aid, donor agencies have been reluctant to criticize the RPF regime (Zorbas 2011). Reyntjens notes that “since 1994 [Rwanda] has tackled the rest of the world as if it were a global superpower” (2013, 134). A slight shift
took place in 2012 when Britain, US, Sweden and the EU suspended a part of their aid to Rwanda because a UN report found that Rwanda helped create, arm and support M23 rebels who have caused the worst violence in years in the DRC (Nichols and Charbonneau 2012). How Rwanda’s donors react in the future is yet to be seen. However there is no doubt that for the past nineteen years Rwanda has faced a generous and permissive international community.

The Rwandan government has been able to strategically emphasize a dialogue of genocide credit, self-reliance, economic development, bureaucratic competence, as well as the adoption of certain donor preferences and donor rhetoric (on for example, on gender mainstreaming). In a number of ways, the RPF has modeled its approach on that of Israeli governments. In fact, Rwanda has a close partnership with Israel and looks up Israel in order to explore domains where Israel has strengths, such as military, economy and victim-centered nationalism (Ori 2013). Rwanda’s ‘booming’ economy has been a great instrument of distraction from and justification for the regime’s human rights record and lack of cooperation with the ICTR.

If however we take a closer look at the particulars of the Rwandan economy and the country’s leadership we find serious flaws, which should suggest a more cautious approach on the part of the international community. In addition, the regime’s abuse of moral arguments and its victim-centered rhetoric have made research on questions of guilt and reconciliation that this dissertation tackles especially difficult. Asking whether available transitional justice mechanisms serve all victims of the Rwandan conflict is a sensitive matter as such questions can lead to accusations by the regime and its supporters that one is attempting to minimize the genocide against the Tutsi and the suffering of its victims. Moral arguments on the genocide are exploited to a point that the regime presents itself as a victim of genocide and includes under this umbrella of victims Tutsi returnees who have been out of Rwanda for decades before the genocide while entirely ignoring victims of recent RPF violence and human rights abuses. This chapter illustrated that tackling such questions is even more difficult for locals whose physical and professional security is susceptible on a daily basis.
Chapter VI: Domestic Responses – International Criminal Tribunal for Rwanda (ICTR)

“Stopping a genocide is not like stopping a football match.”

The opening quote came from the head of a student organization. At the time of our interview, he was in his early twenties and was therefore a toddler or preschooler during the genocide. Many of his friends and colleagues were orphaned by the genocide. He grew up in the context of firm rule by the Rwandan Patriotic Front (RPF), including social and political engineering and a one-sided framing of history. His student organization lobbied for scholarships for Tutsi survivors of the genocide and their children. By contrasting the genocide with a football match, this student-leader meant to argue that the RPF’s violence against the Rwandan population in 1994 was necessary to bring an end to atrocities against the Rwandan Tutsi. Following this reasoning, he expressed his view that RPF crimes should not be part of the international tribunal’s mandate (Interview, November 23, 2011).

This student-leader was among RPF supporters who acknowledged RPF war crimes but argued that these crimes should be forgiven because of RPF’s role as liberators in the genocide. My interviewees who denied accusations of RPF war crimes condemned this view. The majority of my interviewees, which included moderate supporters of the RPF and individuals who were part of the opposition, also condemned this view but for an entirely different reason: they called for justice for all victims.

The overwhelming majority of my interviewees from various backgrounds claimed that the decision to establish the tribunal, in response to a request from the Rwandan government, was grounded in the central idea that no one, no state or individual, ought to be beyond justice. Therefore, the mere establishment of the International Criminal Tribunal for Rwanda (ICTR) was an important achievement for Rwandan communities. The findings suggest that at the launch of the tribunal and during the early stages of its proceedings my interviewees believed that the intentions of the international community were genuine. My interviewees believed in the desire
of the ICTR architects to bring the rule of law to Rwandans, demonstrate international recognition of the crimes that took place, and convey a message against impunity for prevention purposes beyond the Rwandan context.

Many of my interviewees also argued that by establishing the tribunal the international community had the aim of alleviating its sense of guilt for failing to prevent the genocide in Rwanda. They however argued that this self-serving goal did not diminish the tribunal’s wish to bring the rule of law to Rwandans. Victims and their families from all backgrounds believed that the tribunal would bring them a sense of justice. Many of my interviewees believed that the tribunal would recognize the wrongs of the previous regime, especially Habyarimana’s discrimination against certain groups and factions, and write the 1994 genocide into the history books. Others believed that the tribunal would keep a watch on the current regime and prevent reverse discrimination. Most of my interviewees, with the exception of government and military officials implicated in the crimes, believed that the tribunal was there to make sure that no crime goes unrecognized. The establishment of the tribunal was therefore met with considerable support in Rwanda. In these early stages, my interviewees believed that not only did the ICTR carry important lessons for ‘new Rwanda’ as the ‘judicial laboratory,’ but it also had the potential to ‘write the history’ of the country.

The establishment of the tribunal was also viewed as important for Rwanda’s stability, its foreign policy in the region, and its international image and membership in the international community. For these reasons the RPF-led regime had an interest in cooperating with the ICTR and government officials recognized the international will required to establish the tribunal, even if they often viewed the institution as a symbol of Western guilt. Rwandan officials cooperated with the ICTR for the benefit of the ‘new Rwanda,’ which is highly dependent on international donors and political allies, mainly the American and British governments. Rwandan officials spoke of international criminal trials as an obligation for all members of the United Nations, and, (at least officially,) respected them as such.

However, as Rwanda’s aid was not tied to its cooperation with the tribunal, securing aid was not the main reason for the RPF regime’s support for the ICTR. A key role of the ICTR was its contribution to negative peace, or the absence of direct violence. Specifically, the regime hoped that the tribunal would capture former leaders involved in the genocide and defuse opposition coming from outside of the country. This is why so many RPF members and their fervent supporters expressed their disapproval of the low number of people tried at the ICTR. For
them, justice meant capturing everyone who had played a hand in the genocide and was part of the previous regime (because they assumed that a person who served under the previous regime and subsequently fled the country was guilty or was potential opposition to the new regime). They also hoped that the ICTR would strip the fugitives of any political influence. As time passed the actions of President Paul Kagame and the small clique around him suggested that the priority of eliminating potential opposition was even more imperative than justice for past crimes. The powerful ruling clique also disapproved of the part of the ICTR mandate which sought to address all war crimes and crimes against humanity, including those committed by RPF members, and did everything in its power to prevent the prosecutors from fulfilling this goal.

For most of my interviewees, however, – including those who were in Rwanda before and during the conflict (and are thus its greatest victims), as well as many returnees – the ICTR was supposed to bring justice to victims from all sides. My findings also suggest that for most of my interviewees the ICTR was supposed to address any genocide crime, crime against humanity, and war crime. According to the educated elite whom I interviewed, the ICTR was especially meant to aid victims who could not help themselves and who had not been served by the Rwandan government. Following this argument, I claim that the ICTR was supposed to serve as a supranational check on the justice sought by the government and use its supranational powers to address any loopholes and biases at the domestic level.

As the tribunal embarked on its work reservations about its early trials focused on technical and organizational issues. However, before its tenth anniversary more fundamental concerns about the inability of the ICTR to carry out its primary goal of justice also emerged. Despite a few committed prosecutors, the ICTR did not detain any RPF members accused of war crimes and crimes against humanity, with the last prosecutor simply abandoning this goal and leaving such cases to the Rwandan military courts. The overwhelming majority of my interviewees believed that the disciplinary courts of the RPF military were in no way capable or willing to try their own and therefore viewed this decision as a mockery of justice. I argue that this turn of events was key in revealing the weakness of the ICTR and contributed to a shift in opinion and skepticism about the tribunal’s purpose and meaning in Rwandan society.

In regards to reconciliation, most of my interviewees viewed reconciliation as a futile objective of the tribunal from the very beginning. For the few who believed that just outcomes can facilitate reconciliation, the ICTR’s failure to secure just outcomes for all sides also meant a failure to advance reconciliation aims. The overall perception of the tribunal was that it did not
serve the ‘the people of the community.’ Instead, as many of my interviewees argued, the tribunal served the interests of the governing RPF elite by reinforcing their hold on power and reaffirming Western (mainly American and British) support for the current regime. My interviewees also argued that the tribunal served Western powers as a vindication for shameful (in)actions in the past, mainly international community’s failure to stop the genocide in Rwanda. Moreover, some interviewees noted that the tribunal served Western legal experts as an experiment of international law. The accusation by educated elites that the tribunal did not serve the interests of local communities was confirmed by the ineffective public outreach campaign of the tribunal. The ICTR authorities failed to establish local channels to convey information in a way that was understood by the local population, which caused further frustration and, more importantly, denied a sense of local ownership and legitimacy.

**Outreach policy and public awareness**

**Impact of the ICTR**

Information on the ICTR barely penetrated the general public, indicating that the tribunal had not partnered effectively or adequately with local forces. While ICTR information offices and libraries had been set up around the country, these spaces were visited only by specific groups of people, such as legal specialists and students of law and foreign researchers. I found that outreach was even more inadequate in Rwanda than in BiH and Serbia. The few outreach and public awareness programs that ICTR information offices and libraries were able to implement, such as presentations on the ICTR in high schools, were dependent on short-term grants and continuously lacked funding (International organization employee, Interview, November 8, 2011). Also, programs that involved high schools only reached a very small margin of the Rwandan youth as the overwhelming majority of Rwandans cannot afford to send their children to secondary school. Consequently, very few Rwandans, even among the educated elite, knew who had been arrested, found guilty, or sentenced, and for what. That does not mean that people were not interested. Numerous interviewees emphasized that they wanted to know who selected the ICTR witnesses and on what basis, why prosecutor Carla Del Ponte was dismissed, and why the RPF was not tried for the war crimes and crimes against humanity that it was accused of. Hassan Jallow, Chief Prosecutor of the ICTR, explained that the reason why the ICTR stayed
away from publicizing its work was its belief that legal work should speak for itself (ICTJ 2009). However, my interviewees were hungry for information, analysis, and explanation to understand cases, legal proceedings, and rendered judgments.

My interviewees had the perception that, as an international court, the ICTR had the capacity and the funds to summon whomever it wished. As one lecturer mentioned, “the ICTR has the power to try whomever it wants” (Interview, November 15, 2011). Thus, when the ICTR detained or acquitted a particular person, or gave a long or a short prison sentence, the audience was confused and wanted an explanation. The frustration was obvious in the tone of my interviewees. A teacher who spent his entire life in Rwanda demanded answers to the following questions: “Why can’t people volunteer to go to the ICTR? Who chooses the witnesses? Is it the government? Why do others get to go, and why not me?” He also spoke about his concern for his students: “If people from the ICTR do not come to encourage the students to talk they cannot take the initiative themselves” (Interview, November 15, 2011). A returnee, an attorney completing her PhD in law in Canada, echoed similar frustrations in her speech: “There is no clear policy of informing the people … I don’t know whether the ICTR is aware of what kind of population it is meant to serve. They should serve those who cannot serve themselves. And that means going beyond – mainly speaking to communities, which I have not seen them do” (Interview, November 14, 2011).

Interviewees who felt that they did not have the answers that they needed easily turned to skepticism and conspiracy theories about the intentions of the international community. When I asked the interviewees what they though was the reason for inadequate information on the tribunal some grew increasingly frustrated with the tribunal and started to question the intentions of the UN Security Council. Many interviewees mentioned that the tribunal was established out of UN guilt because of the failure of the UN to prevent the atrocities that took place in 1994. A government official claimed that “the ICTR’s purpose is to minimize the failure of the UN in 1994” (Interview, November 10, 2011). He suggested that powerful countries used the ICTR to shape the interpretation of past events and influence future events. Interestingly, on this point, RPF government officials who were skeptical of the ICTR agreed with those who believed that the ICTR represented Western political interests (Employee in an international NGO, Interview, November 28, 2011). The interviewees offered two possible reasons for what they saw as the international community’s desire to influence the interpretation of past events: powerful countries, such as United States, United Kingdom, and France, either wanted to minimize their
inaction in preventing the genocide, or worse, in the case of France, they wanted to cover their tracks because they facilitated the murderous actions of the previous regime.

Many Rwandans considered the UN to be detached from Rwandan experiences and post-conflict needs: “the ICTR has not been able to break this ‘foreign’ glass” (Attorney and university lecturer, Interview, November 14, 2011). My interviewees felt betrayed by the UN and did not trust that UN institutions, including the ICTR, were able or willing to understand and contribute to the needs of Rwandan people. This negative perception of the ICTR was reinforced by the location of the ICTR headquarters in Kigali. The ICTR headquarters were located in the exact same building that was home to the United Nations Assistance Mission for Rwanda (UNAMIR) during the genocide in 1994. Many Rwandans blame UNAMIR for failing to prevent the genocide. Force Commander of UNAMIR, Lieutenant-General Roméo Dallaire, has expressed great disappointment over not being able to attain permission from his superiors to take preventative action by raiding extremists’ arms caches (Dallaire 2003, 221-327). Under-staffed and under-resourced, Dallaire and his troops transferred innocents from all sides, established unofficial safe areas, and rescued terrified civilians all while moving between and negotiating with belligerents at great risk (Dallaire 2003, 375-420; see also Dorn 2004, 119-28). UNAMIR did not, however, manage to prevent the most brutal phase of the genocide, which is at the root of the negative perception that Rwandans have of the UN. The fact that the same well-recognized UN flag colours were displayed on the ICTR building (which was the former UNAMIR building), gave people the impression that there was no difference between the two institutions (Attorney and university lecturer, Interview, November 14, 2011). While the UN was probably more concerned with choosing a safe and well-protected compound for the ICTR headquarters than with symbolism, this situation did not improve the image of the UN among Rwandans. This conflation also shows that people interpret actions in ways that actors do not intend.79

Some of this negative attitude was generated by the lack of knowledge and understanding of the legal procedures in Arusha. This point was confirmed by the more positive responses from interviewees who had a direct experience at the ICTR. Rwandans who went to Arusha to testify, as witnesses for the defense or prosecution, as well as media representatives who went to observe the proceedings, had a more positive opinion of the tribunal (NGO employee and journalist, 79 I thank Lee Ann Fujii for this point.
Interview, January 5, 2012). Those who went to Arusha had a better understanding of the legal processes and often felt that the length and the cost of the trials were justified. While in the early stages of the tribunal there were complaints about the treatment of witnesses, the witnesses that I interviewed said that they felt protected and comfortable at the ICTR. These witnesses did however emphasize that they did not share their experiences and their opinions with friends and colleagues because they wanted to avoid social tension as a result of differences in opinion (University lecturer and witness in Arusha, Interview, November 24, 2011; Former journalist and inmate, Interview, December 6, 2012; Former prefect and inmate, Interview, December 2, 2012).

Some of the criticism regarding the practical and operational issues, such as duration, cost, and location of the proceedings, was likely a consequence of ineffective outreach programs by the ICTR. My interviewees lacked the basic information about the workings of the tribunal and the reasons behind the tribunal’s cost, duration, and location. In the view of many, the ICTR was too costly and procedures took a long time. Trials took several years to complete and the ICTR’s annual budget exceeded $100 million (Foreign Policy Association 2011). UN Resolution 955 required that individuals be tried without delay, yet Barria and Roper estimate that the average trial from arrest to appeal took four and a half years. Moreover, as the number of detainees increased, the waiting time for trials also increased. The ICTR President Navanethem Pillay recognized that processes take a long time: “despite efforts of the judges and of all supporting sections, trials continue to be long [and] drawn out and often defy the best-laid plans.” The ICTR officials explained that “judicial proceedings at the international level are far more complicated than proceedings at national level” (Foreign Policy Association 2011).

Moreover, translation of documents and trial proceedings into three languages, as well as the failure by witnesses from Rwanda to appear, were slowing down the process (Barria and Roper, 2005, 362). There was no question that the delay was problematic for both the accused, who had a right to a fair and speedy trial, and the victims, who wanted to see justice done so that they could move on with their lives. “Justice delayed is justice denied” was one of the most common phrases the interviewees used when answering the question about the length of the tribunal proceedings.

Many of my interviewees pointed to the high cost of the tribunal, and compared the high cost of the ICTR to the low cost of the local gacaca trials. Rwandan president Paul Kagame was quick to point out that the ICTR spent US$ 1.7 billion for 72 completed cases (45 sentenced, 17 pending appeal, 10 acquitted, and 9 accused at large). He contrasted this with the total cost of
US$ 48.4 million for almost 2 million local *gacaca* cases brought to court (Rugyendo 2012; ICTR 2012; Gacaca Courts 2012). Some ICTR officials recognized this problem. Tim Gallimore, the former spokesman for the ICTR prosecutor, argued that the ICTR could have hired legal experts from East Africa at a lower cost instead of relying on UN staff with international salaries. He also believed that some of the defendants were rich Rwandans who fled the country with significant funds and therefore had the financial means to pay for their own defense (Foreign Policy Association 2011).

Some interviewees expressed the view that the main reason for the lengthy and expensive ICTR proceedings was the tribunal’s location in Arusha. A number of interviewees from various backgrounds thought that siting the ICTR on Rwandan territory would not have harmed the neutrality of the tribunal and threatened the security of witnesses and detainees. These interviewees argued that any extra funds the international community would have had to spend on security in Rwanda would have been balanced out by the elimination of expenses for the transportation of witnesses, lawyers and investigators to Arusha. According to these interviewees, having the tribunal located at ‘the scene of the crime’ would have improved the access to evidence and witnesses. Moreover, they argued that placing ICTR employees and locals in close proximity with one another would have encouraged human contact and possibly, over time, sensitized the population to the work of the tribunal and sensitized the ICTR employees to the Rwandan context. Lastly, they claimed that having the ICTR in Rwanda would have been a significant contribution to the development of the national judicial system (Attorney and university lecturer, Interview, November 14, 2011; Government official, Interview, November 10, 2011; Physician and board member for an NGO, Interview, November 15, 2011; Attorney in an organization representing survivors, Interview, November 14, 2011). From the very beginning the Rwandan government agreed with this point of view, claiming that “deterrent effect of the trial and punishment will be lost if the trial were to be held hundreds of miles away from the scene of the crime” (Barria and Roper 2005, 355).

Not all interviewees agreed on this issue of location. Many were skeptical of the ability of the UN to provide adequate security and neutralize strong political influences if the tribunal was on Rwandan ground. They argued that Arusha was a good location for the ICTR because it was the most stable setting in the region of Great Lakes and because of its symbolic image as the city where peace negotiations took place (Former minister and political prisoner, Interview, December 6, 2011; International NGO employee, Interview, November 28, 2011).
Explanations by the ICTR officials, such as the statements by Tim Gallimore above, suggest that the Tribunal consumed a lot of time and a lot of funds because the tribunal was an institution which learned through trial and error, which is a time consuming process. The problem was that such explanations of the length, cost, and location of the tribunal rarely reached Rwandans. While the reasons offered by ICTR officials might or might have not justified the length, cost, and location of the tribunal, informing Rwandans on such matters would have provided them with answers and might have mitigated skepticism on the part of those who accused the ICTR of being a corrupt money-eating machine. Understanding that these operational problems of the ICTR were at least in part a consequence of the complexity of the ICTR might have contextualized the continuous comparisons between the local gacaca trials and the ICTR. In addition, informing Rwandans on the accomplishments of the ICTR, such as due process, would have made it more difficult for the Rwandan government to frame the gacaca as the better mechanism and minimize important shortcomings of gacaca that numerous experts have recognized (see Ingaëlere 2009; Ntampaka 2003; Sarkin 2001; Vandeginste 2000; Meierhenrich 2013; Webster 2011; Rettig 2011).

Ideally, a public awareness program on the ICTR would have provided an alternative view and contributed to a wider debate on the institution. As an NGO employee suggested, the debate needed to be a “multi-voice” one (International NGO employee, Interview, November 28, 2011). He argued that explanation and analysis needed to come from multiple sources and needed to involve many civil society groups, rather than the one-dimensional view of the Rwandan government or the one-dimensional (and externally-imposed) view of the tribunal. Another suggestion was the creation of a joint structure comprising of experts in law and other professionals who would have engaged in explanation and debate at public meetings and on radio and television (University lecturer and witness in Arusha, Interview, November 24, 2011).

Impact of political actors

Response of the target government

More than half of my interviewees argued that the government of Rwanda bore responsibility for informing its people about the proceedings taking place at the ICTR, rather than the tribunal itself. However, there were many problems with relying on the government of Rwanda for public
awareness on the tribunal. First, the tribunal did not want to ally too closely with the RPF for neutrality and independence purposes. This decision made sense considering the RPF regime’s infringement on basic freedoms of speech, association, and press80 (Longman 2011; Grant 2010; Reyntjens 2006; LDGD 2002; HRW 2012; RWB 2012). Second, the Rwandan government did not spend its limited resources on publicizing the work of the tribunal because it disagreed with some of the judgments and sentences. The tribunal prosecutors accused members of the Rwandan government of war crimes and crimes against humanity (Attorney and university lecturer, Interview, November 14, 2011; Physician and board member for an NGO, Interview, November 15, 2011). Third, the government of Rwanda had its own system of justice – the local gacaca courts – to promote. With all that in mind, the ICTR needed to find other means of reaching out to the general public.

Yet, it is not entirely accurate to say that the Kagame-led government did not publicize the work of the ICTR. When the Ministry of Justice, in partnership with survivors’ groups, such as Ibuka, did not agree with a decision, they voiced their dissatisfaction. This dissatisfaction was often announced on the national radio, which was the most effective propaganda instrument in the country. As an elderly university lecturer, who had experience living and working under the current and previous regime, argued, “automatically people think it is law if it is said on the national radio” (University lecturer and witness in Arusha, Interview, November 24, 2011). To make things worse, “the speaker of the ICTR only gets on TV when there is a conflict” (Attorney and university lecturer, Interview, November 14, 2011). A highly-ranked official in the Catholic Church expressed the view that, in situations of disagreement, the government publicized ICTR ineffectiveness but also intimidated the tribunal by threatening to stop cooperation (Interview, December 1, 2011; Peskin 2011). Thus, ordinary people’s awareness of the ICTR often came from the criticisms leveled by the Ministry of Justice and Ibuka. It is not surprising that the general attitude towards the tribunal was overwhelmingly negative. Elites however distinguished between the government’s manipulation of information and its relationship with the tribunal on the one hand, and their own dissatisfaction with the tribunal for endorsing the RPF hold on power on the other hand.

80 See chapter 5 for detailed analysis.
ICTR’s endorsement of the RPF hold on power

One way in which the ICTR made a crucial contribution to RPF’s control of power was in its ability to capture genocide suspects outside of Rwanda and bring them to justice in a way that the Rwandan government could not do on its own. My interviewees appreciated the international will and action involved in capturing key suspects in exile. In its early stages, the ICTR had difficulty getting countries in the region to cooperate fully and to transfer suspects to the tribunal. Article 28 of Resolution 955 requires all UN members to cooperate fully with the ICTR. However, Kenya and the Democratic Republic of Congo (DRC), both of which hosted a large number of Hutu refugees as well as militants implicated in war crimes, refused to transfer some of the leaders accused of genocide. Barria and Roper explain that these countries’ reluctance was likely motivated by the struggle for balance of power in the region. Kenya and the DRC preferred Rwanda’s previous regime led by Juvénal Habyarimana. By contrast the new RPF government was considered an ally of Uganda’s Yoweri Museveni, a rival of the Kenyan and the DRC regimes. In its later stages, the ICTR was more successful, gaining the cooperation of more than twenty states, including the DRC which finally transferred two people in 2002 (2005, 360).

The tribunal kept in its custody mainly political and military leaders, senior government administrators, as well as a few media and religious actors. Barria and Roper estimate that approximately 75 percent of those indicted were subsequently arrested, with one of the most important cases being that of former Prime Minister Jean Kambanda (2005, 360). Capturing and trying those that Rwanda could not arrest and try on its own was a major contribution to the objective of ensuring that ‘no one is beyond the law.’ However, even more important was the fact that detaining the suspects assisted the Rwandan regime in achieving security and political stability. As a top-level government official argued, the biggest contribution of the tribunal to the RPF regime came in the form of “negative peace” because “the tribunal prevented those who are against the regime to run free and organize attacks and invasions” (Interview, November 14, 2011). I argue that this contribution of the tribunal also affirmed the major powers’ support for RPF rule, especially British and US commitment to Paul Kagame’s leadership for the past eighteen years. The reasoning behind the replacement of Carla Del Ponte81 (Del Ponte 2011) and the decision of the current prosecutor Hassan Jallow to drop the inquiries on alleged RPF war

81 Human Rights activist Alison Des Forges also experienced a great amount of hostility from the Kagame regime, despite being the key expert witness in Arusha, because of her commitment to justice for all and accountability for crimes committed by all sides, including alleged RPF crimes. I thank Lee Ann Fujii for this information.
crimes was likely founded in the same political alliance. The tribunal thus significantly served RPF interests by enforcing its political power and securing its monopoly on power.

**Impact of media**

Some of my interviewees expressed the view that it was the responsibility of the media to ask the ICTR to account for its work and contribute to the diversification of opinions on the ICTR. Most of my interviewees saw the Rwandan media as lacking the capability and independence to make any significant contribution. When I asked my interviewees about the different media in Rwanda, they clustered newspapers, television, and radio stations into one category, describing them all as a ‘side-kick’ of the government. Whatever efforts private media and journalists made to report on key events, they faced significant restrictions (LDGD 2002; Mugabe 2012; RWB 2012; HRW 2012; Article 19, 2013). Government and RPF hardliners often sneered at the journalists’ attempts to critique and debate political issues, branding them as ‘unprofessional’ behaviour. Well-thought out and well-written critiques were difficult to come by as such skills were not taught and encouraged in schools (University lecturer and witness in Arusha, Interview, November 24, 2011). Moreover, an employee of Rwanda’s Media High Council, a government body that monitors all media outfits in the country, argued that information, rather than analysis and debate, is the job of journalists (Interview, November 28, 2011). Even outside Rwanda, hardliners who support Kagame’s regime believe that criticizing the government in any way is unforgivable.82

The lack of press freedom in Rwanda had undoubtedly affected the ability of the media to address the work of the tribunal in any thorough or meaningful way. An Anglophone Rwandan psychiatrist and director of a research institute in Kigali used an interesting analogy to express how the Kagame regime functioned in terms of media: “Our government has an obsession to control everything. It is a problem. Look at a family as an example. I cannot control where my

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82 An example of this is the smear campaign carried out by diaspora hardliners (as well as hardliners within Rwanda) against Paul Rusesabagina after he criticized the RPF. Rusesabagina, who inspired the film *Hotel Rwanda*, has criticized the RPF government for being undemocratic and argued that Rwanda will only attain peace with an inclusive government (George 2006; BBC News 2010). Most recently, Rusesabagina has accused the government of Rwanda of “creating a generation of second-class subservient citizens bound down by the eternal shame and guilt of genocide” (Rusesabagina 2013). In response, fervent RPF supporters within and outside Rwanda have launched a campaign that denounces Rusesabagina as a traitor and criminal who allegedly supports the FDLR in Congo (George 2006; BBC News 2010; Laing 2010). The campaign is likely a consequence of RPF fears that Rusesabagina will organize a political opposition (George 2006).
daughter is. I can try to talk to her but I cannot constantly follow her and control her. Kagame needs to realize this” (Interview, January 11, 2012).

My interviewees argued that one of the main reasons why the tribunal failed to reach Rwandan communities is because it failed to use a successful outreach method. About 70 percent of the Rwandan population is literate but Rwanda lacks a reading culture (UNICEF 2012; Ruterana 2012). Consequently, the radio would have been the most effective method to inform Rwandans about the ICTR. The overwhelming majority of my interviewees believed that an ICTR radio station or an ICTR daily time slot within the national radio station, during which Arusha events would be transmitted, translated, and debated in Kinyarwanda, would have been the best outreach method. They argued that this could have brought Arusha into Rwandan homes so that the ICTR was not perceived as it is today – as “the [foreign] ‘other,’ detached from Rwanda, focusing on theories, not real life” (Attorney and university lecturer, Interview, November 14, 2011). Possibly, this could have prevented the disconnect people feel between international events and their daily lives by, for example, clarifying the link between their local gacaca courts and the tribunal. As one participant argued, “a radio could have made the people feel that the international community is with them” (Attorney, Interview, November 22, 2011). Yet, there is no guarantee that better outreach would have resulted in greater trust of the legal process as people can feel cut off from the process even if informed and intimately familiar with it. This was evident in the case of the local gacaca trials (Rettig 2011).

In conclusion, the lack of ICTR presence in Rwanda thus left significant space for the Rwandan government to shape general attitudes towards the tribunal.

The mandate

Trying to ensure just outcomes

The circumstances which Rwanda faced in 1994 – more than 100 000 people in national prisons, numerous fugitives outside the country, and only a few dozen trained lawyers in the entire country even before the genocide (Des Forges and Gillet 1995) – ruled out the possibility of applying civil law to genocide cases. In this context, the mere establishment of the ICTR was a crucial contribution to ensure a degree of classical Western justice in Rwanda. My interviewees noted that initial expectations were quite high, as Rwandans from various factions believed that
the ICTR would provide the high quality justice that courts in Rwanda could not. Expectations included due process, professional behaviour on the part of the defense and prosecution, independent judges, protection of witnesses, and assurance that victims are served and defendants are given a fair trial. My interviewees anticipated that the highest efforts and legal standards would be applied at the international tribunal (Interview, International NGO employee, November 28, 2011).

For its part, the government established an elaborate local system of ‘justice on the grass’ which it framed as a traditional mechanism for addressing genocide crimes in an inexpensive and efficient manner. Many critics point out that *gacaca* was neither traditional nor particularly inexpensive and efficient (Ingelaere 2009; Ntampaka 2003; Sarkin 2001; Vandeginste 2000; Meierhenrich 2013; Rettig 2011). The *gacaca* sanctioned a prosecutorial logic which was not traditional to Rwandan communities (Ingelaere 2009), and was more efficient in controlling the local population and limiting political opposition than in providing justice (Meierhenrich 2013; Webster 2011). In addition, local communities had their own aims for the *gacaca*; the trials became a tool for settling community and family disputes over land, property and even marital infidelity (Rettig 2011).

The tension between the type of justice provided by the local *gacaca* system and the type of justice provided by the ICTR was clear from the very beginning to my interviewees. While *gacaca* and the ICTR were supposed to try individuals at different levels of responsibility for the same set of atrocities, the two justice systems seemed incompatible. While the ICTR provided classical retributive justice, the government framed the *gacaca* as a traditional dispute resolution mechanism, where confession was a key discursive element to the process and where lay persons carried out trials and served as judges. As a former governor and professor argued, while one justice system – the *gacaca* – was framed as respectful of Rwandan culture and tradition, the other – the ICTR – presented a case for classical Western justice (Interview, December 14, 2011). It is thus not surprising that my interviewees rarely made the link between the two. As discussed in the previous chapter, the *gacaca* trials were part of an elaborate government project which sought to construct the official ‘truth’ about the past, as well as numerous local schemes that the residents of various communities constructed. Due-process justice was not the key aim of the *gacaca*, which explains the confusion over the lack of clear connection between the *gacaca* and the international tribunal.
Interviewees from all sides emphasized that the tribunal was supposed to serve those who could not serve themselves. Many interviewees emphasized that the international community was not supposed to serve current RPF politicians but victims of the genocide and the civil war who were still waiting for justice (Attorney and PhD Candidate, Interview, November 15, 2011). These interviewees counted on the international community to rectify weaknesses and flaws in the government-led justice and reconciliation efforts, especially to bring justice to Hutus who lost their families as a result of RPF crimes, an issue which the government was not willing to address. My findings suggest that Rwandan elites realized that Kagame’s regime was generating frustration among the majority Hutu group and expected the international watchdog to address the grievances of the Hutu victims, which the government was ignoring.

This issue of which victims the ICTR should have represented and who the ICTR should have tried was most controversial. At the establishment of the ICTR the Rwandan government wanted to limit the scope of crimes to be considered at the tribunal to genocide and to exclude war crimes and crimes against humanity, including criminal acts committed by the RPF after July of 1994. The government did not get its way: Resolution 955 included war crimes and crimes against humanity in addition to the crime of genocide (Barria and Roper 2005, 355). However, the ICTR only arrested suspects who served in the Juvénal Habyarimana regime until July 1994, and not one individual from the RPF was indicted (Kamatali 2003, 127). One of the reasons for this is that the tribunal has no enforcement powers and therefore relies on states and external actors to make arrests.

There were a number of interesting responses to the topic of who should have been tried at the tribunal and how inclusive the ICTR mandate should have been. Army generals, government officials and fervent supporters of the RPF who were either involved in the liberation of Rwanda or moved to Rwanda after the genocide from Uganda argued that the timeframe considered by the ICTR should have extended back to the early 1990s, and preferably the 1960s. They argued that a more historically and contextually inclusive approach to discrimination and violence against the Tutsi should have been taken (Government official, Interview, November 17, 2011; Bureaucrat and RPF member, Interview, November 13, 2011; Head of NGO, RPF supporter and returnee, Interview, November 15, 2011).

However, when it came to war crimes committed by the RPF, the response was quite different. During a few interviews with former militants I felt uneasy and at times unsafe raising the question of RPF crimes. I posed a broad suggestive question instead: “Are there any
individuals who are not from the génocidaire group that should be brought in front of the tribunal?” If the answer was “No, what do you mean?” with a look of scorn on the person’s face (Government official and retired RPF soldier, Interview, November 12, 2011; Government official, Interview, November 17, 2011), I felt uncomfortable following up with a question which accused the RPF specifically. In such situations, the moment I mentioned the possibility of “other” and “unrecognized” crimes, I felt that the interviewee’s perception of me changed from considering me a curious student willing to listen and learn to an ally of the ‘enemy’ whose purpose was to provoke questions about RPF crimes and make inappropriate accusations. (The ‘enemy’ in this case would have been anyone critical of the RPF regime. In such interviews, international human rights organizations, such as Amnesty International and Human Rights Watch, were commonly specified as adversaries of Rwanda because these organizations insisted that the RPF be held responsible for their crimes.\(^83\)) This group of interviewees, as well as organizations that represented survivors,\(^84\) often took the opportunity to shift the conversation from RPF crimes to a critique of the ICTR for not detaining all of the fugitives accused of genocide and for giving lenient sentences to those detained (International NGO employee, Interview, November 28, 2011; Bureaucrat, Interview, November 10, 2011). This group of interviewees was however an exception. Most of my interviewees were not as extreme in their views and most acknowledged RPF crimes. My Tutsi interviewees who acknowledged RPF crimes were generally those who lived through the genocide and my Tutsi interviewees who held extremist views were generally returnees in post-genocide times (Professor, Interview, January 9, 2012; Professor, Interview, Nov 23, 2011; Political Prisoner, Interview, December 5, 2011; Employee of state broadcasting agency (ORINFOR), Interview, November 30, 2011; Government official and retired RPF soldier, Interview, November 12, 2011).

Many RPF supporters and government officials, most often returnees from Uganda, acknowledged RPF crimes but argued that the ICTR should not concern itself with these crimes because the national military courts enforce discipline among army personnel. However, these military trials were not, or not adequately, publicized. The lack of transparency made it very difficult for spectators to judge the fairness and legitimacy of the military trials. The great majority of my interviewees could not point to specific military trials. In fact only one case came

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\(^{83}\) An example being the late Alison Des Forges who worked for Human Rights Watch and died in the Buffalo place crash in February 2009.

\(^{84}\) Only Tutsi victims of the genocidal regime were represented in these organizations as only the Tutsi were recognized as survivors by the Kagame regime.
up in the interviews. An attorney commented that “someone should go into military records and tell us who is judged, for what, and how” (Interview, November 14, 2011). We would expect that, if the military trials were conducted fairly and displayed an effort to attain just outcomes, the government would publicize the trials as part of its aim to end impunity – just like the government celebrates its gacaca model. We would also expect the RPF to publicize the trials internationally in order to diminish international criticism over unaddressed RPF crimes.85

A possible reason for the government’s quiet approach to military trials is that, as some academics have noted, these trials are token sacrifices for widespread human rights abuses that have not been reported and addressed. Alana Tiemessen (2004) argues that the government’s decision to try RPF crimes in regular military tribunals rather than in gacaca (or the ICTR) highlights the government’s imposed discourse of the conflict. The government frames RPF crimes as crimes that were a result of the civil war, rather than the genocide, and the RPF members responsible for the crimes as military personnel who deserve regular military justice, as opposed to the genocide militia who deserve gacaca justice. Tiemessen notes that the government’s decision is in spite of the fact that the gacaca Organic Law has jurisdiction over crimes committed between October 1990 and December 1994, thus including both the civil war and the genocide (2004).

In addition, the Rwandan government does not distinguish between RPF killings committed as a result of the 1990-4 civil war and the revenge killings committed during and after the genocide. Some analysts argue that many Hutu were eliminated by the Rwandan Patriotic Army (RPA) as part of a planned extermination of political opponents, which implies a genocidal character to these acts (Uvin 2000). The government denies this claim and frames the genocide as the crime of the Habyarimana regime, and the RPF killings as individualized crimes by certain ‘bad’ members of the current regime (Packer 2002). In that sense the criminals of the current regime are military personnel, while the criminals of the past regime are génocidaires.

I asked my interviewees whether they believed that the military trials were conducted fairly and attained just outcomes. The most common answer was “I don’t know.” While it is true that, as I mentioned above, military trials were not publicized and were considered an ‘internal’ matter, I also presume that many people were concerned about the consequences of speaking out.

85 I made this point to a supporter of the regime who quickly dismissed it arguing that the Rwandan government has more important issues to address than publicize military trials. I have difficulty accepting this explanation because the Rwandan government is very concerned about its image in the international community. The blog The Remaking Rwanda: Facts and Opinions on the ground (2011) is an example that illustrates this point.
against the government and did not feel comfortable answering this question. A good example was an employee of an international organization who had an interest in becoming a member of parliament. When I asked whether the military had carried out quality justice, he laughed nervously a few times before answering that “you can never make everyone happy” (Interview, November 2, 2011). Fervent RPF supporters responded “Yes” without elaborating much and suggested that “the people should just trust the government and the military” (Attorney and returnee from Uganda, Interview November 22, 2011).

My interviewees (from no particular group) who were in Rwanda during the genocide argued that there is no reason why the RPF should be conducting their own separate trials. After all, they claimed, a superior body – the UN Security Council – set a mandate that included both genocide crimes as well as crimes against humanity and war crimes. Furthermore, they claimed that “military trials are a mockery” since “there is no point in the military judging themselves because you cannot judge someone that you ordered to commit crimes” (Employee in an international NGO, Interview, November 28, 2011).

Some of my interviewees argued that alleged RPF crimes were the second part of the mandate and that genocide was the ultimate crime which needed to be prioritized in the proceedings. These individuals expected the ICTR to prosecute all genocide suspects before accusing the RPF of war crimes and crimes against humanity. Supporters of this view implied that placing suspected RPF members on trial at the same time as suspected génocidaires would have been perceived as an attempt to balance out crimes committed by two sides (Chair of a survivors’ organization, Interview, November 17, 2011). Yet, considering the fact that the ICTR was unable to detain and prosecute every genocide suspect in the world, especially since its operation was limited to 2014, this request was unrealistic and seemed to be an excuse for not addressing the RPF crimes (Foreign Policy Association 2011).

Another reason given for postponing the trials of accused RPF members was the stability of the country and its people. One interviewee expressed the view that “[p]eople suffered enough and do not want their hopes about progress destroyed” (Attorney and university lecturer, Interview, November 14, 2011). However, it is important to recognize that this particular interviewee referred to the suffering and the progress of particular segments of society – the RPF and its supporters. This had very different implications for the hopes and dreams of anyone outside of the RPF clique. Another interviewee continued on a similar note: “A country that comes out of total destruction needs a strong vision. People are looking for protection and
to move on . . . It is ok to sacrifice justice for politics sometimes” (Director of a research institute, Interview, January 12, 2012). Other interviewees noted that this argument has been made for years by RPF extremists, in fact, as soon as the first prosecutor, Carla Del Ponte, raised the question of RPF crimes. For example, a former government minister who fell out of favour with the regime when he tried to start a political party argued that emphasizing the stability of the country at any cost might have been appropriate in the 1990s, but was not justified eighteen years after the genocide. He further questioned: “Why would people’s hopes, desires, and strenuous efforts of the past eighteen years be destroyed by the trials of just a few people?” “Surely, if RPF members accused of crimes are removed from the current leadership and put on trial, there will be good potential leaders left in the RPF, and in Rwanda generally,” he said (Political prisoner, Interview, December 5, 2011). Thus, while the government and RPF extremists emphasized that Rwanda was still in a crucial period of stabilization, a lot of my interviewees did not seem convinced and grew increasingly impatient with such explanations.

The Tutsi interviewees who were in Rwanda before and during the 1990s, who were adults with established careers during the Habyarimana and the Kagame regime, and who lived through the genocide and have therefore seen much of what took place, most often argued that the ICTR should have tried everyone accused of any war crime or crime against humanity (Government minister, Interview, November 4, 2011). Like many Rwandans inside and outside of Rwanda, as well as many foreigners, these interviewees accused the tribunal of ‘selective justice’ and bias against the Hutu. A professor who has lived in Rwanda his entire life, was 44 at the time of the genocide, and went to Arusha three times to testify against accused génocidaires was truly disappointed with the ICTR’s decision not to try the RPF. He argued that “[j]ustice is not for a category of people, justice is for everyone. You cannot just deal with one side. Carla Del Ponte was a courageous woman (because she insisted on trying alleged RPF crimes)” (Interview, November 23, 2011). Elderly and retired interviewees were more willing to express their opinions and accuse the tribunal of selective justice because they could avoid professional repercussions that interviewees of middle age could not. Middle-aged Hutu ran the risk of being imprisoned based on accusations about involvement in the genocide, and critics of the government (regardless of background) ran the risk of imprisonment for their political views.

Many returnees who did not work for the government agreed that the ICTR should have tried everyone accused of any war crime or crime against humanity. A lawyer who grew up in Uganda and was educated in the US was quite insistent:
“I am not sure if the ICTR is in Rwanda now doing any research on suspected crimes of the RPF. … If they already started this research then what happened to that evidence? Why hasn’t the ICTR asked our government to send these people? What political interests are behind this? The government should not create selective justice. Let the investigation come up and deal with it. Clear their files. Maybe they will be declared innocent … but if they are not they should be punished for what they did. They can seek apology if they want, let them be, but you can seek it after a justice process, after you have been convicted and convinced that what you did is wrong” (Interview, November 22, 2011).

A number of interviewees stated that they wanted the suspected RPF leaders to be tried at the ICTR so that the “clean and courageous” within the RPF would be left to lead the country (Former minister and political prisoner, Interview, December 6, 2012; Priest in the Evangelical church, Interview, November 4, 2011). A professor who taught sociology and anthropology of genocide and had extensive experience in Rwanda as well as abroad argued: “This file must be opened. That is my opinion. As long as it is not open it is a threat to unity and reconciliation … This is a bomb waiting to explode … We need serenity and calm for the future so we need this information” (Interview, January 9, 2012).

A student who was a returnee from Congo and whose parents were killed during the genocide spoke about the crimes committed by the RPF in north Rwanda in 1997. During his studies in the north-west region he met numerous students whose parents had been killed by the RPA in the context of a continued armed struggle between RPA soldiers and armed groups composed largely of soldiers of the former Rwandan government (ex-FAR) and of members of the militia that participated in the 1994 genocide. In August of 1997, Human Rights Watch reported that while “the Rwandan government has the right and duty to protect its citizens … there is no excuse for killing unarmed civilians or combatants who have laid down their arms.” The report condemned the attack on unarmed civilians and estimated the number of killed to be in the thousands (HRW 1997). My student interviewee expressed his view that anyone who committed a crime during this time also deserved to be punished (Interview, November 16, 2011).

Genocide survivors argued that the international community ought to have served as a watchdog in Rwanda and ought to have sent a warning to any future perpetrators of war crimes and genocide crimes more often than returnees. A professor of media law who was a préfet during the genocide was quite critical of the ICTR for its silence on RPF crimes. He argued that “[i]t is a case that war crimes happened. Here [in Rwanda] and outside [in Congo]. Read the
investigation on the Rwandan refugees in Congo."\(^{86}\) He described what he believed should have been the tribunal’s message: “The international community is watching and intervening by way of justice … The ICTR should give us hope that our leaders will not lead us to another war or genocide” (Interview, December 14, 2011). This opinion is in line with the view that international tribunals should act as deterrents against the commission of future crimes, which I discuss in detail in the second chapter. The interviewee’s statement suggests that by failing to try RPF alleged criminals the ICTR failed to send a message to RPF leaders, including President Kagame, about the international community’s willingness to intervene on behalf of citizens.

I interviewed a brave Hutu teacher who taught Rwandan history and coordinated projects on sensitive topics, careers that Hutu rarely engaged in after the genocide because they feared repercussions. He expressed that he felt the pressure to limit his teaching ambitions and sharing his opinions publicly because of his ethnic identity and because he spent two years in the camps in Congo. These background facts could have resulted in the accusation that he was involved in the genocide. He stated that he kept his views about the ICTR to himself, even if at times he would have liked to express his opinion that there were contradictions in certain cases and that at times the tribunal was misled. He mentioned some cases in which he thought that a person was wrongfully accused, and others in which he thought that a guilty person was released. “People who were here during the genocide know what happened. They know the truth,” he said. This particular interviewee counted on the international community and Rwandans outside of Rwanda to react in support of those who were wrongly accused or those who needed to be acknowledged for saving people (Interview, November 17, 2011). The fact that Rwandans who were in the country and were witness to events, such as this history teacher, felt uneasy to speak out was highly problematic. It meant that exposing the ‘truth’ was left mainly to those who were not there during the war and the genocide, did not see what happened, and were “friends of government” (although that too was an uncertain status that could change at any point).

The general climate of imposed silence, fear and intimidation, disappearances, attacks on civilian organizations, spying on and arrest of students prevented dialogue on the past (Uvin 2003; Kron 2010). Silence and an atmosphere of obedience, rather than critical thinking, among students was fostered early – before college – at ingando, solidarity camps which most students attended after high school. Josh Kron argues that indoctrination begins at Ingando because the

\(^{86}\) It is important to note that the ICTR mandate only covers the period of January 1994 to December 1994, which excludes some of the crimes my interviewees referred to.
students are taught that the problems between the Hutu and the Tutsi were constructed by Belgian colonists and that the RPF was a national liberation movement that committed no significant crimes during the ‘liberation’ of Rwanda (2010). A Christian Aid report on government accountability, human rights and freedom of speech recommended as early as 2004 – on the tenth anniversary of the genocide – that it was time for Rwanda “to open up” in terms of civil liberties (2004). Yet, with the twentieth anniversary of the genocide this year, not much had changed in terms of space for dialogue.

Interviewees who were most vocal about demanding justice for RPF war crimes tended to be older people from the northern province. A returnee explained that “[t]hey [the people in the northern province] were there during those hard periods and differentiate between forces that committed different crimes. … They will tell you whether it was the RPF, génocidaires or rebels that are responsible” (Attorney, Interview, November 22, 2011). This was another example of Tutsi support for Hutu who experienced crimes at the hands of the RPF. This particular interviewee was referring to casualties of the ongoing fighting in the north, first during the RPA invasion in 1990 and later in 1997-9, in the context of a continuing armed struggle between RPA soldiers and an armed group of insurgents, generally called abacengezi. The abacengezi were composed largely of soldiers of the former Rwandan government (ex-FAR) and of members of the militia that participated in the 1994 genocide (HRW 1997). Both the abacengezi and the RPA wreaked havoc on civilians. The RPA managed to push the insurgents back across the border into DRC, however, the government continued to depict the abacengezi as a major threat to Rwandan security and used the abacengezi to justify continued need for military supplies and military presence in Congo (HRW 2000).

The north of Rwanda has been particularly important in Rwandan political history and this was reflected in the interviews that I conducted in that part of the country. When I spoke to the professors and administrative staff at the only university in the north I realized how alienated they were from the rest of the country. A top academic administrator at the school told me that he preferred not to travel to the capital because he was highly skeptical and distrustful of people from Kigali, which is a hub of the RPF elite (Interview, December 15, 2011). Historically, northerners have kept themselves apart (Fujii 2009, 72-3). This is largely related to the fact that when Habyarimana was himself a northerner, and the senior-most officer in the northern-controlled army when he ousted Kayibanda from power. Habyarimana’s rise to power led to the rise of the north as well. Habyarimana used his policy of équilibre ethnique et régional to keep
rivals in check and favour the Hutu from the north who were overrepresented in secondary and post-secondary education (Fujii 2009, 72-3). Habyarimana also used this policy to reward the Tutsi from the center and the south, while keeping the Hutu from those regions in check. By the 1980s factions within the north begun competing for power and Habyarimana favoured the faction from his préfecture in the north, Gisenyi, and most of all the abakonde, the landowning class that Habyarimana’s wife belonged to (Fuji 2009, 72-3). This political history reveals power struggles across as well as within regions, which is what my interviewees alluded to when they emphasized the importance of conducting research in the north of the country.

In addition to northerners, I found that older-generation and retired Tutsi who were in Rwanda during the genocide were most open about speaking out and were key informants in my study. Unlike my younger and middle-aged interviewees, retired Tutsi did not fear being accused of having participated in the genocide or joining factions of the political opposition. The 62 year-old Tutsi professor quoted earlier expressed the view that the majority of Rwandans who were in the country during the genocide and its aftermath, both Tutsi and Hutu, believed that the ICTR should have tried the accused RPF members but were not going to risk saying this publicly. “They did not need a university education to see it [RPF crimes], if they were here in Rwanda they saw it with their own eyes,” he said (Interview, November 23, 2011).

My interviewees regarded the ICTR “a parody of justice” because they perceived the Tribunal as a weak one-sided institution “serving the winners.” In this sense my interviewees agreed with critics who argue that tribunals are victor’s courts (see Damaska 2008; Mutua 1997; Kittichaisaree 2000). One of my interviewees expressed the view that inaction on the part of the ICTR had serious consequences because if war crimes were not recognized as such they could not be prevented in the future. “The more the international community is silent about war crimes in Africa, the more they will happen … The ICTR thus leaves the population to the fate of warlords … The tribe that was almost exterminated won the war but now that tribe is in power and will take revenge,” he said (Former governor and professor of media law, Interview, December 14, 2011; see also Employee in an international NGO, Interview, November 28, 2011). The implication is that the ICTR gave amnesty to the RPF, which was not a good foundation for justice and reconciliation but a dangerous route because amnesty was selective as it was only offered to one side in the conflict. As one of my interviewees commented, “[f]ull amnesty is not right if it is not given to both sides” (Researcher, Interview, December 14, 2011). A former governor and university professor argued that the main problem with genocide is that
“a big crime covers all small crimes,” yet “we somehow still need to find a way to prosecute war crimes committed by the winner.” He suggested that the ICTR could have tried the RPF and reduced their sentences, thus taking into account the fact that they were liberators without giving them complete amnesty (Interview, December 14, 2011).

When I asked about the reasons behind the tribunal’s decision not to prosecute members of the RPF, the majority of my interviewees voiced frustration and skepticism of the UN and the ICTR. A 62 year-old professor argued:

I don’t know what the UN executive council fears, but they do not need to fear the Rwandan government. The Rwandan government is not over and above the world. It may take a long time to convince them to cooperate but eventually they would have to accept. It’s a matter of principles … [Speaking to the Rwandan government he says,] If you are innocent why are you afraid? (Interview, November 23, 2011).

On this issue, many interviewees were very skeptical of the intentions of large global powers, mainly the United States and United Kingdom. Sentiments such as “the ICTR is being run by the invisible hand of the US and the UK who feel ashamed for not helping when they should have” were common among interviewees (Researcher, Interview, December 14, 2011). Some accused the ICTR of hiring employees from a particular ideological camp and with particular political incentives, and thus putting up selection barriers for those who wished to see the entire ICTR mandate fulfilled (Employee in an international NGO, Interview, November 28, 2011; Former minister and political prisoner, Interview, December 6, 2012). These interviewees therefore supported the view that tribunals are about who has most power in international relations as they reflect the interest of the most powerful states.

Other interviewees were more suspicious of the intentions of the Rwandan government and argued that the international community was being manipulated by the extremely skillful RPF regime which played the ‘genocide card’ at its convenience. A number of my interviewees expressed the view that the politicization of victimhood was a favourite strategy of the Rwandan regime (Researcher, Interview, December 14, 2011; University student, Interview, November 15, 2011). A member of a local human rights organization agreed, pointing out that the international community seems to be trapped in an unfortunate pattern when it comes to its policies in Rwanda: “It is because the international community feels guilty that they do not interfere and let the Rwandan regime do what it wants. However, they will regret their actions because something will happen in Rwanda again. The international community will feel guilty once again for not
having interfered” (Attorney and chair of a local NGO, Interview, December 15, 2011). Another troubling argument that came from a well-established interviewee who used to be employed in Kagame’s government was that, in addition to failing to prevent future crimes, the actions of the international community are counterproductive. He argued that current leaders, including President Kagame fear that the international community is waiting for their political term to end in 2017 and will bring them to trial as soon as their time in office is complete (Interview, December 6, 2011). The implication of this argument is that fear of prosecution may be motivating these leaders to hold on to power at whatever cost to society. The interviewee’s argument is therefore consistent with warnings by scholars who follow Raymond Aron’s 1966 argument that war crimes trials may make conflict and authoritarian situations more brutal.87

The aim of reconciliation

In addition to justice, ICTR’s second major aim was reconciliation. Indeed, the aim of reconciliation was given uppermost importance in the mandate since it was written as the first objective of the tribunal on the ICTR website, ahead even of the aim of justice. Resolution 955 clearly states that the ICTR will contribute to the “maintenance of peace” and “a process of national reconciliation” (Barria and Roper 2005, 357, 362-3). Indeed, the ICTR was the first international tribunal created for the purpose of national reconciliation. Yet, the link between international justice and reconciliation was unclear theoretically (see Damaska 2009; Clark 2008; Teitel 1997; Leebaw 2008) and, as my finding in this section illustrate, practically. Tensions in the UN Security Council during debates on this issue illustrated that there was no inherent logical connection between the two objectives. For example, the Czech Republic’s representative argued that the ICTR “is hardly designed as a vehicle for reconciliation … Reconciliation is a much more complicated process [than conducting international trials]” (qtd. in Barria and Roper 2005, 362-3). Also, as discussed earlier, the tribunal’s remote location in Arusha made it disconnected from the people it was supposed to reconcile. Moreover, many tensions had emerged in the past eighteen years between the tribunal and the ‘nation’ it was supposed to reconcile, all of which diminished its ability to act as a means to national reconciliation.

Only a few of my interviewees (from no particular group) supported ICTR’s aim of reconciliation, arguing that any degree of justice contributed to the process of reconciliation. For

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87 See also examples in Bass (2000) and the discussion in chapter 2.
these believers, justice was a precondition for reconciliation and the link between the two phenomena was clear. Their view was similar to the thinking of some UN Security Council members who stressed that “the prosecution of persons responsible for serious violation of international humanitarian law would . . . contribute to the process of national reconciliation and to the restoration and maintenance of peace” (Kamatali 2003, 115-6).

The majority of my interviewees however disagreed, failing to recognize any necessary connection between the two. Most Rwandans agreed with the UN Security Council members who argued that “the Tribunal might become a vehicle of justice, but it is hardly designed as a vehicle of reconciliation” (Kamatali 2003, 115-6). These opinions are reinforced by the school of thought which argues that retributive justice is not necessarily compatible with reconciliation. This school argues that the process of trial and punishment, as well as truth-finding often result in further frustration (unless they are followed by dialogue between the victim and the perpetrator, and an apology and/or forgiveness). The legal process separates the ‘guilty’ and the ‘innocent’ in a way that the two sides seem starkly opposed and distinct, whereas the process of reconciliation requires that they come together at midpoint (Damaska 2009). Jean Marie Kamatali explains that “the victim is most of the time brought to confront aggressive lawyers asking him to describe and revive in the cold and intimidating atmosphere of a courtroom the deep, personal, and cruel memories of what the perpetrators forced him to endure” (2003, 132).

For this reason a large number of my interviewees argued that the role of the tribunal should have been limited to justice - classical retributive justice - which teaches law and order and prevents impunity, rather than focuses on reconciliation. As a director of a research institute in Kigali argued, “[j]ustice in not about reconciliation. …The ultimate role of a judge is to separate good from the bad” (Interview, January 12, 2012). One of Rwanda’s top experts in law expressed that “[j]ustice, done properly, can actually go against reconciliation, especially because so many people participated in the crimes … Even though you need to stop impunity in these circumstances, you need to let the majority be free in order to reconcile” (Legal expert and university lecturer, Interview, November 19, 2011). This man was a returnee and despite his difficult personal experience, he argued that the goal of reconciliation requires that most people are not brought to justice but go unpunished. The interviewee implied that an amnesty process similar to the one set up by the Truth and Reconciliation Commission in South Africa might have been a better option for Rwanda. Rather than implementing a blanket amnesty, the South African TRC implemented a conditional amnesty process where amnesty was awarded based on the
applicant’s willingness to publicly explain the circumstances surrounding the human rights violations s/he committed. Whether the TRC’s conditional amnesty furthered reconciliation in South Africa (and would had been a good model for Rwanda to follow) is a point of debate in the literature on South Africa. Studies show that for some victims and perpetrators the TRC created an opportunity for “understanding” their former enemies and therefore had a positive effect on reconciliation (Abrahamsen & Van der Merwe 2005). For other victims and perpetrators the TRC did not establish a clear link between amnesty and reconciliation and even fueled feelings of enmity and antagonism (Abrahamsen & Van der Merwe 2005; Guelke 1999; Wilson 2001; Chapman & Spong 2003).

It is surprising that with all of this in mind, the UN made national reconciliation conditional on justice: “The political and social stability of Rwanda depends on the reconciliation of its citizens whatever their ethnic or tribal belonging. Yet, this reconciliation will have to be achieved through a good administration of justice” (qtd. in Kamatali 2003, 116). What was most astounding about the reconciliation aspect of the ICTR mandate was the fact that the tribunal did not manage to convince even its own employees in Rwanda of this goal. The head of the ICTR outreach campaign in Rwanda told me that he believed that “reconciliation is a country’s own work” and the ICTR did not have much to contribute in this sphere (Interview, November 8, 2011). Perhaps then it is not surprising that the executive secretary of the government body which was given the tasks of national unity and reconciliation, the National Unity and Reconciliation Commission (NURC), did not believe in the tribunal’s goal of reconciliation and was extremely skeptical of the intentions of the UN. “You have to live with [the UN] anyways but that doesn’t mean you trust them. They are exploitative and their policies are oppressive,” said the executive secretary on NURC to me (Interview, November 14, 2011). A key problem that emerges out of this point is that not only were national and international actors not cooperating on the goal of reconciliation but they were also extremely distrustful of each other.

The overwhelming majority of my interviewees believed that reconciliation must be a domestic, rather than an international, development. One of my interviewees expressed the view that reconciliation should be a Rwandan “act of politics” and “a social need,” which does not rely on international justice but on political and social methods of consciousness raising and conflict resolution at the local levels (Director of a research institute, Interview, January 12, 2012). Barria and Roper argue that “the ICTR represents an international attempt to forge national reconciliation, because the national courts and government are either institutionally weak or not
disposed to healing the society” (2005, 363). However, my data suggest that for an international project to have a chance at forging national reconciliation, the efforts of the international community need to permeate local communities and different political factions, and matter to the people in question. Many of my interviewees suggested that the ICTR was more accountable to its creators, the UN and the international community, than to Rwandans. Kamatali argues that the ICTR can be interpreted as “an international instrument of relief for the benefit of the spectators of the 1994 genocide whose conscience needed to be eased and whose credentials as ‘civilized nations’ needed to be reaffirmed by the creation of such a tribunal” (Kamatali 2003, 119; see also Bloxham 2008; Megret 2002). Without a developed outreach program focusing on the sensitization of the population, it was unrealistic to expect that the ICTR could have led the way to consciousness raising in Rwanda.

Most of my interviewees argued that the international vision of reconciliation that the ICTR promoted and the national vision of reconciliation that the gacaca courts promoted differed significantly and were largely incompatible. While the interviewees often criticized the gacaca courts on the quality of justice that they provided, when it came to reconciliation, the overwhelming majority suggested that, at a general level, the gacaca had more potential in moving the country towards reconciliation than the tribunal. The reason for this is that the gacaca forced individuals to face and confront those they wronged or failed to help during the genocide, and gave survivors the opportunity to tell their story. This does not mean that the gacaca necessarily improved social trust or relations in these local communities – in fact, some of the evidence suggests otherwise (Rettig 2011). It is thus unclear whether the gacaca contributed to reconciliation directly, however, at the very least, the gacaca can be credited for forcing a meeting of survivors, perpetrators, accomplices, witnesses, and bystanders in a given community. For this reason, many of my interviewees noted that, even though the gacaca process significantly discriminated against the accused and denied them the right to a fair trial, the gacaca had an advantage in regards to the reconciliation process. A teacher who has been in Rwanda his entire life said “the gacaca courts manage[d] to reconcile better than the tribunal” because the tribunal was “closed off” and not welcoming towards ordinary Rwandans (Interview, November 15, 2011). A perpetrator who was serving his time in Travail d'Intérêt
General (TIG) argued that in general “reconciliation is a big mask” in Rwanda. His comment speaks to the perception that reconciliation is a performance put on for foreign audiences by the Rwandan government and Rwandan citizens who are afraid to go against government wishes. He expressed the view that the gacaca courts were better than the ICTR in their contribution to reconciliation for one reason – the two ethnic groups could face each other and talk (Interview, January 13, 2012; see also Employee of international NGO, Interview, November 9, 2011).

Fervent gacaca supporters, most often government employees, argued that, unlike the ICTR, gacaca trials brought back one’s neighbour through confession, apology, and reduced sentences. Moreover, according to an attorney and university lecturer, gacaca empowered people and communities. This interviewee argued that gacaca gave people the responsibility to believe in their work and create their own justice by asking lay people to conduct the trials and serve as judges (Attorney and university lecturer, Interview, November 14, 2011). The chairperson of a civil society group specializing in reconciliation argued that “the ICTR acted globally but thought locally, the local [narrow-minded] interest being that of the UN.” He stated that, on the other hand, “the gacaca acted locally, but thought globally,” with a local interest in rebuilding communities and a global interest in promoting peace and reconciliation (Interview, November 15, 2011). Such views on the gacaca are in the minority among international scholars and experts on Rwanda, who are most often critical of the gacaca (Webster 2011; Meierhenrich 2013; Human Rights Watch 2011; Amnesty International 2002; Rettig 2011; Ingelaere 2009). A notable exception is Phil Clark, an academic based in Britain who has been a fervent supporter of the gacaca and the RPF regime more generally (Clark 2007; Clark 2009; Clark 2010).

Yet, interviewees from all backgrounds agreed that the ICTR was too individualistic, and that by putting single perpetrators in the spotlight the ICTR environment was not conducive to collective dialogue and exchange. Interviewees noted that huge differences in the living conditions in domestic and international prisons were a source of frustration for both perpetrators and survivors. There was a general sense among interviewees that the leaders of genocide were assured better standards of life in international prisons while those who carried out their orders served their sentences in much worse conditions in national prisons. This caused a sense of frustration on the part of ordinary prisoners who saw their wealthy superiors living in better conditions despite the severity of their crimes. This situation also caused frustration for victims.

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88 TIG are community work [or ‘reintegration’] camps in Rwanda established for people who were convicted of participating in the genocide and whose prison sentence was reduced.
who often found themselves in worse living conditions than the perpetrators who were responsible for their suffering (Former journalist and inmate, Interview, December 6, 2012; Physician and board member of an NGO, Interview, November 15, 2011). Therefore, the tribunal’s commitment to respecting human rights and assuring the well-being of prisoners inadvertently incited resentment among the local population, which was also not conducive to the aim of reconciliation.

My interviewees highlighted another weakness of the ICTR which harmed the tribunal’s goal of reconciliation: the tribunal did not pursue reparations in any significant measure. They argued that the tribunal might have had a higher chance at reconciling different parties if material or non-material (psychological, emotional, and spiritual) compensation was involved (Employee in international organization, Interview, Nov 2, 2011; Attorney in an organization representing survivors, Interview, November 14, 2011). While it was possible for a victim to bring a civil case before a domestic court for reparation, the victim had to wait until the end of the criminal case before beginning the civil case (Kamatali 2003, 131-2). Since most victims focused on their daily survival, it was unlikely that they could invest their time or whatever little resources they had in a civil case. Moreover, as I argued earlier, the victims were rarely informed about the content and the timeframe of the ICTR. Scholars such as Larry May, emphasize the close relationship between reparations and reconciliation. May (2011) argues that “[t]he failure by victors or others to make reparations to vanquished victims will leave the society that has been damaged with an unresolved grievance that can fester and grow over time to such an extent that it also jeopardizes long-term peace in the region” (17; See also Nsanzuwera 2005). It is important to note that May’s definition of victims is much more inclusive than the Rwandan government’s exclusive focus on Tutsi victims of the genocide. May argues that “loss often occurs to innocent civilians who were not responsible or even liable for the aggressive war even though their government was indeed the aggressor” and would therefore likely call for reparations to all victims of the Rwandan conflict.89 The sole focus on retributive justice at the expense of reparative justice implied a trade off between the goal of justice and the goal of reconciliation and, according to May, long-term peace.

Lastly and most importantly, the key problem that the ICTR faced in accomplishing its aim of reconciliation was the fact that in the process of reconciliation different truths needed to

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89 For further literature on problems and benefits of reparations, as well as the specific relationship between reparations and international law see Falk 2006.
be voiced. A top-tier official in a university argued that “you need to recognize different truths even if you cannot reconcile the truths. ... Say the different views to open dialogue. When you hide your truth you cannot be corrected or proven right” (Interview, December 15, 2011). Scholars such as Leigh Payne argue that dialogue and disagreement on interpretations of the past are precisely what post-conflict societies need on their route to recovery (2008). Moreover, if we base national reconciliation on justice then national reconciliation can only take place if all sides believe that justice was achieved. Because some victims were not recognized and their families could not mourn openly, emotions were suppressed, paving the way for further hostility rather than reconciliation (Researcher, Interview, December 14, 2011; Barria and Roper 2005, 363).

Conclusion

Research archive or historian?

Has the Tribunal succeeded in writing the recent history of Rwanda and, if so, whose history? My interviewees agreed that the archives of the tribunal documented Rwanda’s recent past. They often reflected on whether the originals or the copies should be transferred to Rwanda or left in Arusha where they are currently stored (for the obvious reason that the UN is supposed to be secure and neutral ground). However, it is crucial to acknowledge that while my interviewees supported the documentation of the genocide by the ICTR, this does not mean that they uncritically believed the version of events as documented by the ICTR. Most interviewees did not think that the facts presented at the tribunal were indeed representative of the historical events that occurred because the tribunal dealt with only a part of the truth and neglected RPF crimes.

A university lecturer I interviewed conveyed disappointment over the tribunal’s selective truth. He had hoped that the ICTR would write a more objective history. Otherwise, he argued, the task would be left to the government of Rwanda. He suggested that the government’s version would not be inclusive of the views of all Rwandans in the country, Rwandans in exile, and the international community. He asked, “should we change history every time the government changes?” (Interview, November 15, 2011). While no official manuals on the civil war and the

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90 A part of the archives have recently been transferred from the ICTR in Arusha to the Mechanism for International Criminal Tribunals (MICT) also located in Arusha. More transfers of archives are planned for the future and MICT’s purpose-built facility in Arusha is scheduled to be completed in 2016 (UNMICT).
genocide were distributed to teachers and professors in Rwanda, I noticed that an official interpretation of the past events existed and that people practiced self-censorship in the classroom just as they did in daily life. During my classroom visits and my interviews with instructors and students I found that instructors usually did not steer away from the official story, for fear of offending victims of genocide or, worse, being accused of having participated in, justified, or denied the genocide (Instructor, Interview, November 15, 2011; Instructor, Interview, November 17, 2011; Instructor, Interview, November 23, 2011; An individual in a high-ranking administrative post in a university, Interview, December 15, 2011; Undergraduate student, Interview, Nov 15, 2011).

Usually, it is the task of historians to write history. However, in an environment where freedom of expression was limited, by collecting evidence and conducting cases which convey multiple truths, the ICTR could have spurred a debate about the past. Historians could have then used the tribunal’s rich documentation efforts to construct their versions of past events. Unfortunately, the evidence suggests that the ICTR did not realize this opportunity. By accepting the Rwandan government’s version of history, the ICTR disregarded other versions from within and outside the country. The ICTR thus inadvertently participated in the contestation over the ownership of history and the silencing of other ‘truths,’ legitimizing the RPF ‘truth’ in the process.

Who is being served?

Eighteen years after its establishment, the tribunal’s record on its goal of justice was at best checkered, with only a part of its mandate addressed. My interviewees saw the ICTR as failing to fulfill its mandate which tarnished the tribunal’s image as an independent international organization superior to any national government. The most damaging finding was the perception that the tribunal failed first and foremost to serve the broader Rwandan population. The ICTR rulings reinforced the interests of the RPF-led regime without addressing the expectations of the population that it provide justice for those who have not been served and who cannot serve themselves. Because the ICTR was perceived as an actor which sided with the government, the ICTR may have inadvertently contributed to the continuation of hostilities. By ‘taking sides,’ the ICTR provided an opportunity for furthering rival relations, with my interviewees often grouping the RPF government and the international forces into one side.
against all ‘other’ factions. Linking reconciliation to this one-sided and divisive ICTR justice was destined to fail. While the ICTR mandate emphasized the goal of reconciliation, the evidence on the ground suggested that the tribunal had no impact, and certainly not a positive impact on reconciliation.

The suggestion that the tribunal was not meant to serve Rwandan communities was further supported by the fact that the ICTR failed to explain its actions to the population in question. The ICTR was unsuccessful at cutting through different political factions and social barriers in order to reach out to local communities. My findings suggest that in order to attempt to gain a degree of trust and support from the local population, the ICTR needed to offer explanations of its accomplishments and its failures, and to identify local collaborators who could lobby in its favour. In a context where people were discouraged from being agents of analysis, debate, and critical thinking, where freedom of speech was limited, and where self-censorship was practiced for social and professional advancement purposes, the outreach efforts of the ICTR were a crucial opportunity for creating space for multiplicity. Yet, the narrative which prevailed among the educated elite suggested that the political alliance between the Rwandan government and major Western powers overpowered any efforts on the part of a few earnest prosecutors to serve the Rwandan communities. My data thus indicate that by failing to contrast the government’s narrative, the ICTR failed to provide Rwandans with a space for self-definition and instead reaffirmed the identities imposed by the Rwandan government.

Former US ambassador and ICTR prosecutor Pierre-Richard Prosper said in his vision of the ICTR that “[t]he way forward, I believe, is to make sure that justice is actually seen, felt, and understood by those who need it most: the people of the community” (Qtd. in Rettig 2011, 194). Unfortunately, the evidence largely points to the contrary. At best, the ICTR offers partial justice, and the communities in questions definitely do not understand the reasons for this.
Chapter VII: Conclusion

“My memory is again in the way of your history. … Your history gets in the way of my memory.”


My findings suggest that the two ad hoc tribunals were unsuccessful at overcoming distrust in the international community and establishing these institutions as legitimate and credible mechanisms of transitional justice. Essentially, the tribunals failed to realize that their audience’s perceptions of their accomplishments mattered more than their judicial accomplishments. First, in each case, local actors in power – those connected to past regimes which were responsible for the 1990s atrocities, and those who were part of new regimes – adapted well to the conditions set by international tribunals, manipulating the tribunals for their own political goals and influencing the perception of these institutions among the local populations. Second, in each case, the tribunals had a serious impact on domestic politics, feeding into power struggles between domestic and international actors and between factions on the ground, and significant effects on political transitions, many of which were unintended and contrary to the aims and expectations of the tribunals. This dissertation thus shows that international tribunals are not just another ‘theatre’ for domestic politics; something qualitatively different happens when these institutions are brought into domestic settings – politics takes a different, more powerful form.

The empirical findings of this dissertation confirm recent remarks by Louise Arbour, former Chief Prosecutor of the ICTY and the ICTR, who, reflecting back on her work at the tribunals, courageously recognized that “[i]nternational justice is a twenty year experiment which is now irreversible but nowhere close to what it was meant to be” (Arbour 2014). Arbour summarized the tribunals as “feel good initiatives of the Security Council” and in retrospect acknowledged that it was ambitious and naïve on her part and on the part of her colleagues to think that a judicial court could lead to reconciliation and forgiveness (Arbour 2014). In fact, after two decades of international trials, the political scene is grim in the countries in question:
right-wing nationalists returned to power in Serbia, autocrats were replaced by new strongmen in Rwanda, and complete political stagnation and a government structure that supports ethno-centric rule exists in BiH. This is not the outcome that the international community was hoping for when establishing the tribunals and, while the tribunals are not entirely responsible for the outcome, they inadvertently contributed to the entrenchment of such ‘wrong’ politics in all three cases.

My interviewees in Serbia and BiH believed that the ICTY had a paradoxical effect in domestic contexts in the sense that it furthered defensive nationalism, weakening the influence of moderate pro-change domestic factions, and enabling ethno-centric elites to continue to govern, manipulate, and polarize ethnic enclaves. The most surprising finding in Serbia was that politically opposed actors had the same view on the ICTY. Instead of triggering consciousness raising and a genuine shift towards accountability and reconciliation, the narrative which identified the ICTY as an imperialist institution of selective justice, where strongest global powers impose their accounts of history, prevailed among right-wing nationalists and left-wing post-colonialists. Rather than perceiving the ICTY as a credible institution whose aim was to reestablish the rule of law in their communities, my interviewees were cynical about the tribunal’s objective and felt disconnected to the degree that they exoticized the court as an imposed foreign body. Distrust and defensiveness were strongest among my interviewees in Republika Srpska in BiH where the ICTY was often associated with ‘the Western other’ and ‘the enemy,’ and conspiracy theories were rampant, confirming my expectation about the high level of defensive nationalism in a context where the ethno-centric government structure established by the Dayton Peace Agreement made communities especially prone to this corrosive type of nationalism. The prevalent narratives were largely a result of a number of problematic assumptions the supporters of the tribunal made about the political context in Serbia and BiH, including a misreading of the relationship between leaders and masses, the extent of political and ethno-nationalist polarizations, the lack of actual (vs. procedural) democracy, and the degree to which these were embedded in local communities.

This dissertation argued that the ICTR was similarly perceived as an institution which did not serve the people of the local communities. However, rather than pointing the finger at the tribunal for serving only Western interests (as was the case among my interviewees in Serbia and BiH, my interviewees in Rwanda accused the ICTR of serving the Rwandan government and the ruling RPF party. The belief that Western powers allied with Paul Kagame and his faction was a
result of the ICTR decision to try only one party to the conflict – extremists from the former regime – while failing to indict RPF members (and potentially French forces) for war crimes. The ICTR also failed to establish credibility and convey information to the local population, resulting in misunderstandings about its mandate and its aims. Perhaps inadvertently, the ICTR reaffirmed the Rwandan government’s narrative of the civil war and the genocide. The tribunal underestimated the serious ways in which the powerful Rwandan state, combined with very minimal checks from Western donor governments, autocratic rule, and grave limitations on human rights, such as freedom of speech and association, would inhibit its ability to function and attain its mandate.

Implications
What lessons can the tribunals offer for transitional justice mechanisms and international justice in particular? What are the implications for reconciliation and peaceful coexistence after extreme violence, war crimes, and crimes against humanity?

Justice (transitional and international)
The findings of this dissertation suggest that when deciding whether and how transitional justice mechanisms should be implemented in a particular context we need to start with in-depth knowledge of the local audience, local politics and consequences for the political transition (Toal and Dahlman 2011). This is all the more important as transitional justice is becoming a global custom, in the sense that either during or after every violent conflict there is an expectation that something should be done about the atrocities committed. What we have learned from the ad hoc tribunals is that effects which are problematic and contrary to expectations are likely to develop despite very good intentions on the part of a number of human rights activists, policy-makers, and legal specialists.

We need to understand the dynamics between local actors, and leaders and the masses, in particular. War crimes trials try individual crimes and individual criminals yet they are also meant to symbolize justice for mass violence and abuses in a more encompassing way. This scenario is not only disappointing for the majority of victims who do not feel that their justice has been served, but also enables the development of interpretations of the process which group
victims against perpetrators, create hierarchies of ‘guilt’ and ‘innocence,’ and incite disputes over legitimacy in history-writing. Such effects raise questions about the authority of transitional justice institutions and undermine the audience’s confidence in the judicial system. As Louise Arbour (2014) recently acknowledged, “[t]he law works by compliance not compulsion. The law needs to generate respect in order for people to embrace an international system.”

We also need to recognize the degrees and different types of detachment that may exist between populations on the ground and international institutions of transitional justice. Outputs of international courts should involve sentiments of trust, respect, and confidence rather than distrust and suspicion. If these institutions are going to have any influence over the local narratives that develop regarding transitional justice and reconciliation, rather than allow interpretations to be shaped and manipulated by powerful actors on the ground, international justice is going to have to place a much greater emphasis on outreach. Any attempt at outreach for a process which is not perceived as mainly locally-owned will inevitably come with the by-product of accusations of imperialism and victor’s justice where the victor is either the international community or powerful local actors misusing international law to quash and punish opposition and dissent. Higher hopes on the questions of local ownership, awareness and legitimacy, have been held for mixed legal models, such as the tribunals for Sierra Leone and Cambodia, which combine national and international efforts. Ideally, the mixed model is supposed to ensure local ownership through the court’s physical location in the affected country and the participation of local staff on the one hand, and the facilitation of independent and fair trials through UN involvement on the other hand (Hall and Kazemi 2003). In comparison to purely national or purely international courts, hybrids “may be more likely to be perceived as legitimate by local and international populations because both have representation on the court” (Dickinson 2003, 310). However, the literature on hybrids shows that mixed models are not an easy fix. In the case of Sierra Leone, local ownership was significantly limited by the fact that the senior positions were dominated by non-Sierra Leoneans, and the government appointed non-Sierra Leoneans to positions where Sierra Leoneans could have been appointed (Stensrud 2009). In the case of Cambodia, the balance shifted towards much stronger national control, empowering corrupt, incompetent and distrusted national judiciary, which became a source of new legitimacy problems (Stensrud 2009). Local involvement, ownership, and legitimacy are thus key issues that international justice faces at a more general level, and striking the appropriate formula for a particular society has proven to be a momentous challenge.
Accusations of imperialism are closely tied to the problem of international justice being applied selectively. The question of why some countries are labeled with and tried for genocide, war crimes, and crimes against humanity while others are not, even though they commit the exact same acts, remains perhaps the most prominent barrier to international criminal law. Louise Arbour (2014) acknowledges that twenty years after the beginning of this experiment of international justice, we still have to ask: “What happened to equality before the law?” Because international law is plagued by selectivity, the perception that Western legal procedures and conceptions of justice, fairness, and culpability are being imposed on weaker nations, which are handpicked by major world powers who ensure that they and their allies do not face accountability, will remain. My interviewees from all factions in the three countries persistently reminded me that the International Criminal Court has only ever indicted Africans. International courts have shown little traction in tackling, for example, Bahrain royal family’s suppression of pro-democratic uprisings, Yemen’s autocratic leader, horrendous atrocities taking place in the Syrian civil war, and actors responsible for the numerous casualties of the Lebanese civil war (instead of limiting justice in Lebanon to a trial for the assassination of one man – the former Prime Minister – at the Special Tribunal for Lebanon) (Polgreen 2012). The legitimacy of international approaches to transitional justice is acutely damaged by the inherent selectivity and veto power at the United Nations Security Council. This point was constantly brought up in my interviews and to a large degree has been internalized by populations on the ground.

Simply put, international justice should not be evaluated by its legal performance, ability to advance international law nor please Western human rights activists, but by its capacity to solve problems in post-atrocity settings. Specifically, domestic perceptions in favour of international institutions of transitional justice and credibility in the eyes of the communities on the ground are crucial if these institutions are to achieve anything more than please Western donors and diplomatic supporters. Moreover, given the problems reviewed here, it is prudent to consider carefully whether the interests of a particular affected society would be better served by other measures such as diplomacy, amnesties, national truth and reconciliation commissions, compensation and restorative justice, or perhaps even the prosecution of perpetrators under domestic criminal law (albeit recognizing the considerable problems of the Rwandan gacaca for example).

The interviewees in this dissertation were educated individuals who were most likely to be exposed to international media and informed on the subject matter of my inquiry, as well as
most likely to be opinion makers in their communities. We can speculate that, if such individuals stated that they were not adequately informed on and had negative views of the tribunals, the results among the broader population would only be more disappointing. What we learn from these local actors is not only important because the broader population has less access to information, but also because these opinion makers disseminate their views and colour how the rest of the population interprets issues regarding international justice.

What we learn from the different cases is that when the international tribunal is perceived as taking the side of the national government that does not mean that its impact on the ground is necessarily perceived as more effective. While ICTR’s relationship with the Rwandan regime contributed to the country’s political stability (because the tribunal helped eliminate political opposition), its ‘alliance’ with an authoritarian government stifled debates on transitional justice. My findings suggest that the problem is not that there is not a diversity of views or arguments in Rwanda on transitional justice but that these debates are not playing out in the open. In fact, the majority of my Rwandan interviewees were quite open to international influence, in spite of – or precisely because – the authoritarian context makes political opposition and organizing extremely difficult.

The relationship between the international efforts and the national governments were strikingly different in Serbia and BiH: What we learn there is that if the international tribunal is perceived as being hostile towards a relatively (or at least procedurally) democratic government and supporting of local (but also regional and international) opposition forces, then a different set of problems arise. Here the accusations leveled against the tribunal focused on grounds of imperialism and selective justice. Therefore, on the one hand, the results seem worse when the international tribunal is perceived as being hostile towards governments in power because local actors are likely to respond with chauvinism and nationalism. On the other hand, at least this outcome means that debates on international justice are occurring in the open and thus explicitly involving and reaching the local population.

A comparison of the three cases teaches an additional lesson: that a more effective outreach program by international courts, through education and various forms of media, might limit the negative response on the ground by better informing the population on the aims and proceedings of international justice, and thus potentially reducing the effects of framing and manipulation by political entrepreneurs. We can speculate that a well-thought out, well-funded, and far-reaching outreach program (which does not rely on any particular political alliance
between international courts and actors on the ground) might serve as a counterweight to the nationalists. While putting information out in the public arena seems dangerous (because it provides more material for manipulation by political entrepreneurs), the hope is that this information would be dispersed among different factions and channels and encourage a multiplicity of voices. The alternative – no awareness and no debate among the primary audience about international courts and about the best political route forward – is not a promising option.

Given what we now know about the tribunals we can caution that the International Criminal Court needs to think about the very specific circumstances in each of its cases, in particular how the international trials will affect domestic politics in the countries in question. A generic or ‘one size fits all’ approach will not suffice and may prove to be extremely damaging. The question of whether the means and freedoms to facilitate effective outreach and foster constructive public debate exist is key before a case is even taken up. Finally, the disconcerting findings of this dissertation lead us to conclude that international trials do not provide an uncomplicated or entirely positive suite of remedies; rather than reaching for these first, they should perhaps be the very last resort and only pursued after all other domestic/internal routes to transitional justice are exhausted.

Reconciliation

“Out beyond ideas of wrongdoing and rightdoing, there is a field. I will meet you there” (Rumi 1997, 36). If we interpret reconciliation as the ‘field’ in this quote by the celebrated Jalal ad-Din Rumi, it follows that mechanisms of transitional justice should diffuse divisive and binary roles and open a space for the construction of collective narratives acceptable to various parties, the rival groups as well as the international community. The findings of this dissertation are in line with this interpretation, suggesting that an approach that ‘humanizes’ the communities involved and, rather than generating feelings of collective guilt, blame, and shame, allows for a more general process of human understanding is more likely to lead to reconciliation. An equally important finding of this dissertation is that interviewees on the ground believe that the answer regarding reconciliation lies in a localized approach, which, even if it receives international support, needs to engage and be shaped by local actors.

A discussion of the responsibility of various actors, including international forces, by recognizing that others too have failed in their responsibilities, would be an attempt to get the
different communities to be more accepting of their own actions, and internalize their responsibilities. My assumptions follow Janine N. Clark’s argument that

> [i]f we believe that an entire nation is collectively guilty of heinous crimes, it follows that we will regard that nation as being fundamentally different from ourselves. If we proceed on this ‘us’/’them’ basis, we thereby close our minds to any possibility of comprehending why the crimes were committed in the first place (2008, 686).

The act of ‘humanizing’ proposed here is not intended to underplay the responsibility of war criminals and their accomplices. It is intended to raise the following question: Ultimately, can we be certain that we ourselves would not have done the same in a similar situation? Asking this question does not need to be followed by an uncritical, all-accepting, romanticized view of human solidarity. The implication is that if there is no space for searching for an understanding, people are defined according to their presumed, not their actual, roles in the atrocities, which results in guilt and innocence being assumed based on categorizations. The evidence suggests that international trials have encouraged talks of ‘saints and sinners’ and ‘victors and vanquished,’ which have led to further divisiveness. If the Tutsi and Bosnian Muslims are ‘survivors,’ the Hutu and the Serbs are correspondingly assumed to be ‘perpetrators.’ Perhaps it is obvious to say that experiences are much more complex than these dichotomies suggest, but the point is that international trials have not proven to be the best means for illuminating such complexities. The common saying ‘time heals all wounds’ has not applied to my interviewees in BiH, Serbia, and Rwanda. As John Steward put it, “while time does bring perspective, it does not heal the deepest wounds; only proactive, conscious healing heals” (Qtd. in Hintjens 2008, 90.) Healing and reconciliation are vital, because, again, to put it boldly, the tale of ‘never again’ that we try to tell ourselves is too simple – in reality, ‘again’ happens too often.

**Potential limitations and further questions**

This dissertation’s findings affirm the literature on “tribunal fatigue” which describes a general disappointment with the achievements (and lack thereof) of international justice, arguing that the study and practice of transitional justice (and of international justice in particular) has itself

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91 For example, often, (and without adequate understanding of the term, its origins, meanings, and applications,) scholars use ‘African’ ubuntu philosophy as the organic, communal, and implicitly more genuine way of achieving ‘collective personhood,’ including everything from compassion and unity to empathy, compromise, and hospitality. I do not make such claims; neither do I wish to exonerate the guilty and/or responsible under a veil of ‘simply being human.’
reached a stage of transition. Recent disenchantment with international criminal tribunals is in part driven by the multiplicity of goals assigned to transitional justice mechanisms generally and to international criminal tribunals in particular. Carsten Stahn argues that while international justice was considered “a remarkable success story since the end of the Cold War,” today “the idealism and faith in multilateralism that prevailed in the 1990s is fading” (2009, 2). Certain analysts criticize the quality of law, such as how information is obtained from witnesses, the strategic adoption of the doctrine of joint criminal enterprise and guilt by association, and the right to self-representation by defendants who mistreat the prosecution, witnesses, and trial chamber judges (see Combs 2010). Others point to the inefficiency of international justice, such as costly and lengthy processes with very modest accomplishments in terms of convictions, among them the UN Assistant Secretary General Ralph Zacklin who was involved in the establishment of these institutions (Zacklin 2004; Klarin 2004; Smith 2009). One of the limitations of this dissertation is that it does not examine the quality of legal procedures at the ICTY and the ICTR, nor evaluate the tribunal accomplishments (or lack there of) in terms of finances and efficiency. We would greatly benefit from future research that involves wide-ranging studies on the impact of international criminal trials. While the value of such analyses is undeniable, this dissertation sought instead to complement the evaluation of international justice by bringing attention to what I argue is the key audience of these institutions – local populations of the countries in question – and what this audience identifies as accomplishments and failures of international trials.

This dissertation also does not intend to generalize its findings to all institutions of international justice or suggest that other mechanisms of transitional justice are futile. It does however suggest the importance of a redirection in focus for policymakers, human right activists, and legal experts who have overlooked the fact that the final judgment rests with perceptions among local actors who will shape the futures of their societies in post-conflict times. In contrast to experts who are exceedingly concerned with these institutions’ contribution to the development of international humanitarian law, this dissertation calls for a shift to carefully consider domestic and contextual factors. This dissertation invites future research to explore points of disagreement as well as convergence and commonality between empirical findings in

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92 For example, in the closing lines of their article “Errors and Missteps: Key Lessons the Iraqi Special Tribunal Can Learn from the ICTY, ICTR, and SCSL,” Michael Scharf and Ahran Kang (2005) think it is crucial to highlight a question by an Iraqi judge who is excited about the potential of the application of the IST case law to future war crimes tribunals and emphasize the judicial legacy of institutions of international justice.
local communities and international offices – interlocutors are needed for information exchange and a dialogue on international versus local conceptions of international and transitional justice. The important element to consider is precisely which local actors and factions in each case are bargaining with international policymakers, and to therefore distinguish between the benefits to governments, leaders, particular groups, and the larger population. Thorough empirical evaluations of available mechanisms of transitional justice, and an openness to alternative and context-specific methodologies and solutions, which do not simply assume a judicial approach but may involve diplomacy, discourse, community, spirituality, story-telling, and art, are the future opportunities in the field. How transitional and international justice affect the domestic balance of powers and worldviews of domestic actors can contribute to peace and reconciliation or resurgence in violence and thus has serious implications for security and political transitions in the countries in question.
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