

Vassar College

Digital Window @ Vassar

Senior Capstone Projects

2020

Law and politics at interplay: how the international criminal tribunal for the former Yugoslavia shaped the course of war in the Balkans

Jordan A. Moss
Vassar College

Follow this and additional works at: https://digitalwindow.vassar.edu/senior_capstone

Recommended Citation

Moss, Jordan A., "Law and politics at interplay: how the international criminal tribunal for the former Yugoslavia shaped the course of war in the Balkans" (2020). *Senior Capstone Projects*. 1019.
https://digitalwindow.vassar.edu/senior_capstone/1019

This Open Access is brought to you for free and open access by Digital Window @ Vassar. It has been accepted for inclusion in Senior Capstone Projects by an authorized administrator of Digital Window @ Vassar. For more information, please contact library_thesis@vassar.edu.

Law and Politics at Interplay:

How the International Criminal Tribunal for the Former
Yugoslavia Shaped the Course of War in the Balkans

Jordan A. Moss
May 2020

A Senior Thesis submitted in partial satisfaction of the requirements for the degree Bachelor of
Arts in International Studies

Adviser, Robert K. Brigham
Adviser, Stephen R. Rock

Abstract

Armed conflict in the Balkans from 1990 – 1995 took roughly 200,000 lives and displaced around 2 million more. By 1993, the mounting human rights abuses occurring in the region prompted the United Nations Security Council to establish an ad hoc court purposed for the prosecution of war criminals. The International Criminal Tribunal for the Former Yugoslavia (ICTY) marked the first time that a war crimes tribunal was created during an ongoing conflict, thus raising the question: what role did the ICTY play in shaping the conduct and outcome of the war in the Balkans? Studying the impact of the tribunal necessitates a historical and political awareness of the (f)actors that influenced its construction and implementation. After thorough analysis of both the war and the tribunal, this thesis uses documentary evidence from actors who worked closely with the tribunal in order to tell the story of the ICTY and its influence on war in Bosnia. I ultimately argue that the tribunal was a humanitarian project undergirded by Western policy interests that enabled the Clinton administration to delay much-needed military intervention and later exclude Bosnian Serbs from the Dayton Accords. This had both positive and negative effects on the conflict's progression towards peace, as well as on the development of international humanitarian law. Although focused specifically on the ICTY, the study more generally highlights the political nature of international law and how it allows Western powers to regulate legal justice.

Table of Contents:

| | |
|--|---------------|
| Preface | pg. 4 |
| Acknowledgements | pg. 6 |
| Map of the Former Yugoslavia (1991) | pg. 7 |
| Part I. The Conflict | pg. 8 |
| <i>Historical Overview</i> | pg. 10 |
| PART II. Creation of the Tribunal | pg. 24 |
| PART III . The Tug of War Between Peace and Justice | pg. 34 |
| <i>Conflicting Accounts</i> | pg. 34 |
| <i>Narrative Analysis</i> | pg. 42 |
| PART IV. Legacies and Insights | pg. 45 |
| Appendices | pg. 49 |
| Works Cited | pg. 60 |

Preface

This thesis was submitted in the midst of the COVID-19 outbreak that has, in the spring of 2020 alone, altered our entire world. The virus has impacted my project in unfortunate ways: I am unable to access previous research; I have limited contact with professors and advisors; and my field work in the Balkans was cut short. Yet the novel coronavirus' effect on me has been marginal in comparison to communities who are not so privileged. This pandemic has shed light on the lingering impacts of war and displacement, as those living in unstable environments (both politically and financially) are less likely to have the necessary means for protection and treatment. Although my research is specifically focused on conflict in the Balkans, I am still attentive to the many areas of the world that have endured mass atrocity. As today's pandemic heightens the plight of marginalized communities, bear in mind that, even when this outbreak resolves, old challenges will persist. I therefore dedicate my writing not only to the resilient communities in Bosnia and Herzegovina, but also to those affected by past and current conflicts whose hardships are compounded by COVID-19.

Over the past eight months, this project has taught me about the political and cultural history of a deeply misunderstood area of the world and the people who inhabit it. I am lucky to have received funding from the International Studies Department at Vassar College for field research in Bosnia and Herzegovina. The time I spent in BiH has been invaluable to strengthening my knowledge of the conflict and passion for the subject matter. Having the opportunity to experience such a beautifully complicated and captivating country fundamentally changed my approach to this project, as well as how I carry myself forward. I hope that the images in my appendices can convey, even marginally, the striking realities of the previously war-torn region. Although my approach to this thesis centralizes macro-scale political and

judicial work, it has nonetheless sparked profound appreciation for the strength of a population whose struggle has been historically shaped by higher-level actors, but instead attributed to tribal hatreds.

Studying the Balkans has allowed me to, in a sense, “connect the dots backwards” and form a comprehensive knowledge of the countless factors that shape periods of violence. I’ve come to understand how conflict places seemingly unrelated factors at an interplay that is not always visible or beneficial to peacemaking processes. I have therefore discovered the value – and difficulty – in finding points of connection between disparate events and political actions, which has in turn sharpened my uniquely critical approach to international relations, history, and law. As I continue to learn about the complicated relationship between IR and IL, I remain interested in the pursuit of global humanitarianism. I am driven to further study the difficult questions that ask how international legal bodies can best serve justice in the face of a political sphere that prioritizes domestic interests over human rights. A spectrum of advisors, professors, friends and family have helped me develop the skills necessary to finding progressive solutions to today’s outwardly unsolvable problems.

Acknowledgments

First, thank you to my generous advisors for their guidance while writing this thesis. Your ability to challenge me while simultaneously providing support and constructive criticism has refined my work and enhanced my education at Vassar. Thank you to Tim Koechlin for your unending encouragement; you have taught me how to confidently navigate, and learn from, the world around me. I am incredibly grateful for the IS faculty, donors and students who have presented me with countless opportunities to gain a new perspective. To my wonderful housemates and friends, thank you for accompanying me these past four years as we collectively struggled, learned and messed around. Each of you has taught me more than what words on a page can convey. Thank you to Luke Lefebber for capturing, and accompanying me in, some of the most breathtaking experiences of my life. Your help throughout this process goes far beyond your photography and ability to drive stick. And finally, thank you to my family. I apologize for the hours spent tucked away, but appreciate your willingness to provide me with the space necessary to produce a thesis I am proud of.

Map of the Former Yugoslavia (1991)



©ICRC

Source:

ICRC. Map of Yugoslavia. *Case Study, Armed Conflicts in the Former Yugoslavia, 1991*. 1998. Available at: <https://casebook.icrc.org/case-study/case-study-armed-conflicts-former-yugoslavia>

PART I: The Conflict

“The incidents and actions that make up a life cannot be fully realized without also conveying a sense of place” – Anthony Everitt

The International Criminal Tribunal for the former Yugoslavia (ICTY) sought to deter human rights abuses¹ and establish peace in the midst of a multiethnic, triangulated armed conflict that showed little to no signs of compromise. In May of 1993, the United Nations Security Council established the tribunal in response to the mounting human rights violations occurring in Croatia and Bosnia and Herzegovina. As the first ad hoc court created during an ongoing conflict, the ICTY was unprecedented. The tribunal’s unique temporal position created significant opportunities to deter future crimes, render justice to victims, and contribute to sustainable peace(making) in the Balkans. This project hence raises serious questions about the impact of international criminal jurisdiction on the course of armed conflicts as well as on peacemaking and the development of international law.

Given the United States’ central role in tribunal creation and conflict resolution, this thesis uses viewpoints of multiple U.S. actors who worked closely with the ICTY in the early stages of its formulation. Attitudes toward the tribunal vary and rarely align between actors, so the following research utilizes documentary evidence to tell the story of the tribunal and its impacts on the war in Bosnia. I argue that the International Criminal Tribunal for the former Yugoslavia was less effective in deterring war crimes than originally intended and alternatively served Western policy interests in the region. The ICTY presented a token alternative to U.S. military intervention during the war and enabled the Clinton administration to remain virtually uninvolved in conflict resolution until it became financially and politically costly to do so. When

¹ Specifically, grave breaches of the 1949 Geneva conventions, violations of the laws and customs of war, genocide and crimes against humanity.

negotiations began as a result of NATO bombing, American diplomats then used the tribunal as a tool to simplify negotiations by excluding Bosnian Serbs.

A comprehensive understanding of the conflict, the tribunal, and the actors involved is hereby necessary to adequately analyze the ICTY's influence on war-time politics. As uncovered in Chapter 1, the conflict in the Balkans was profoundly complex; an intricate history of power-play politics and ethno-nationalism, exacerbated by political actors both globally and domestically, fueled violence that proliferated throughout the former Yugoslavia. Chapter 2 exhibits how the International Criminal Tribunal for the former Yugoslavia was equally as complicated in its design, philosophy, and application. The ways in which the tribunal operated throughout the war is a topic of contention that is addressed in Chapter 3, in which the argument outlined above is devised from the strongest aspects of various interpretations of the ICTY. Chapter 4 then illuminates the tribunal's legacies in the development of international law and reflects on the relationship between politics and legal justice.

In order to solidify and contextualize my argument, the following chapter provides a chronology of the Balkans conflict starting with the former Yugoslav President Joseph Broz Tito's² rise to power and ending with the Dayton Peace Agreement. The historical overview incorporates manifold components of conflict (i.e. international press, legal justice, military intervention, diplomacy) that are otherwise seen as unrelated, offering an indispensable view into the nuanced political landscape of the conflict that shaped the ICTY's role in the war. A condensed timeline of the conflict is available for reference in Appendix 2.

² Hereafter referred to as Tito.

Historical Overview

The dissolution of the Socialist Federal Republic of Yugoslavia (SFRY), then comprised of six republics and two provinces, occurred during a series of wars that took place between 1991 and 2001 (Appendix 1). While Eastern Bloc countries sought independence from the Soviets, violence between warring factions ebbed and flowed during multiple Yugoslav wars that made for the contours of a single, nuanced armed conflict (Appendix 2). Although the Balkans' diverse demographics have prompted interethnic animosity that is not exclusive to the recent warring period, it would be misleading to oversimplify explanations of the humanitarian crisis in the 1990s to tribal hatreds alone.³ Similarly, flows of violence should not be observed in only one direction. Initial increases in Serbian nationalism fueled human rights abuses against other ethnic and national groups, yet violence against “the other” was piloted by actors of all parties involved. While it is easy and alluring to abridge the intricacies of Balkan history, it is important to view the conflict from various perspectives that recognize the turmoil of the 1990s as an outgrowth of governmental actions and policies.

In the midst of a post-war Europe, Tito⁴ transformed Yugoslavia into an autonomous, single-party Communist state that was independent from the regulations of the Soviet Bloc. The region's autonomy from the Eastern Bloc was a direct result of ‘Titoism’ – the rejection of Moscow as the supreme Communist power, the refusal to make Yugoslavia a Soviet satellite state, and an underlying focus on regional patriotism.⁵ Tito's rule is considered by many to be a

³ The “ancient hatreds” thesis of Robert Kaplan's *Balkan Ghosts: A Journey Through History* had a profound effect on President Clinton's deliberations pertaining to conflict in the Balkan region. Kaplan's argument that the Balkans are destined to be plagued by ceaseless, deep-rooted conflict infiltrated the minds of many and permitted a culture of global neglect and inaction.

⁴ For the sake of brevity and clarity, I found it necessary to begin the historical backgrounding of the conflict after the death of Joseph Broz Tito, and continue by concentrating on the principal occurrences throughout the country's violent partition up until the Dayton Peace Agreement.

⁵ Tony Judt, *Postwar: A History of Europe Since 1945*, New York: Penguin, 2005. Page 140.

period of ethnic harmony resulting from his constitutional blueprint, which balanced power among each of the Yugoslav republics.⁶ While true to an extent, inter-state harmony existed more so because of Tito's active repression of nationalism and decentralization of power. Subsequently, his death on May 4th, 1980 marked a transition in Yugoslav leadership from a one-party state to a collective presidency that left the Yugoslav population with expectations of state-disintegration.⁷

Tito's repression, not dissolution, of ethnic grievances enabled Slobodan Milosevic's rise to power within a Yugoslav state that lacked political leadership and unity. The future Serbian President understood that the nationalist tendencies of his people could be marshalled to harness political power. An arousal of nationalist sentiments during Milosevic's visit to Kosovo in 1987 provided him with the mechanisms through which he would gain mass support for Serbian supremacy.⁸ Aspiring to create a larger, ethnically homogenous Serbia, Milosevic reinvigorated ethnic nationalisms and gained influence over the Yugoslav People's Army.⁹ Neighboring republics of Slovenia and Croatia grew wary with discontent as Milosevic ascended to the Serbian presidency in 1989. Within the next two years, 88.5% of Slovenian voters favored independence, and the legislatures of both the Republics of Croatia and Slovenia passed resolutions with the goal of dissolving the republics and proclaiming independence from the Federation.¹⁰ In referendums in December of 1990, the people of Croatia and Slovenia voted in

⁶ Yugoslavia during this time consisted of a federal parliament, along with six republican parliaments and two provincial parliaments, that each reflected the makeup of its state.

⁷ Tito imparted to Yugoslavia a collective presidency that consisted of a body of nine members who rotated yearly in the President of the Presidency, which governed by consensus. The Presidency selected a Prime Minister who served a four-year term with no independent authority. Fergus M. Bordewich. "Yugoslavia Since Tito." *The New York Times*, 13 April 1986. Available at: <https://www.nytimes.com/1986/04/13/magazine/yugoslavia-since-tito.html>.

⁸ Laura Silber and Allan Little. *Yugoslavia: Death of a Nation*. Penguin Books, 1997. Page 37.

⁹ Ibid.

¹⁰ Glenn E. Curtis and Library of Congress. *Yugoslavia: A Country Study*. Washington, D.C.: Federal Research Division, 1992.

favor of secession from Yugoslavia, and the two states later declared independence on the 25th of June, 1991.¹¹ A ten-day war between Slovenia and the Yugoslav People's Army (JNA) produced light bloodshed and ultimately resulted in Slovenia's withdrawal from the Socialist Federal Republic of Yugoslavia. War in Croatia, which started in July of 1990, was much grislier and more protracted. Although Croatia was granted independence in January of 1992, Croats lost roughly one-third of their territory and 10,000 persons, prompting the country to engage in territorial war until ultimate ceasefire in the Balkans in 1995.¹²

The conflicts in Croatia and Slovenia were relatively bloodless affairs in comparison to Bosnia and Herzegovina (BiH) because the two countries had ethno-religiously homogeneous populations with few Serbian inhabitants (Appendix 3).¹³ After the succession of Croatia and Slovenia, the neighboring republic felt increased pressure to align with, or succeed from, the Yugoslav State. As the most ethnically heterogeneous republic in Yugoslavia, Bosnia and Herzegovina's political domain included three major political parties, each representing one of the main ethno-religious communities; Croats, Bosniaks (Muslim Bosnians) and Bosnian Serbs. Alija Izetbegovic represented the Muslim-dominated Party of Democratic Action (SDA) while Radovan Karadžić led the Bosnian Serbs (SDS), both accompanied by an adversary Croatian-Bosnian branch called the HDZ. Bosnia's varied political assembly gave power to each of these parties, and effectively represented the republic's diverse demographic.¹⁴ But in 1992 the Bosnian Republic was faced with a major decision regarding independence, and its disparate

¹¹ M. Cherif Bassiouni. *The Law of the International Criminal Tribunal for the Former Yugoslavia*.

¹² Uk Heo. *Civil Wars of the World: Major Conflicts Since World War II, Volume 1*. ABC-CLIO, 2007. Page 315.

¹³ The vast majority of residents in Slovenia and Croatia were nationals of Catholic religion. The majority of residents in Serbia were nationals of Orthodox Christian religion. On the other hand, the Bosnian demographic was mixed between Bosniaks (Bosnian Muslims), Croats (Catholics), and Serbs (Orthodox Christians). See appendix 3.

¹⁴ The Assembly was 41% Muslim, 35% Serbian, 20% Croat. Additional figures unavailable because COVID-19 has restricted physical access to this source. Noel Malcolm. *Bosnia: A Short History*. NYU Press: Updated Edition, 1 October 1996.

political factions inhibited unanimous decision making. Serbs maintained that it was their right to remain in Yugoslavia, while Croats called for independence, and Muslims sought sovereignty.¹⁵ What ensued was a triangulation of political unrest that had inadequate, and tumultuous, solutions: remain in Yugoslavia and risk losing autonomy under Serb leadership or declare independence and risk civil war with Bosnian Serbs.

Radovan Karadžić foretold how “it was clear that Bosnia could not survive... the Serbs were almost a hundred percent sure that they wanted to stay in Yugoslavia... [and] the Croats and Muslims were almost a hundred percent sure that they wanted to leave.”¹⁶ The President of the Republika Srpska seemed to have anticipated the complicated fate of Bosnia and Herzegovina. By early 1992 the Serb-controlled JNA began to move into the northeastern and mountainous regions of Bosnia after declaring Serbian Autonomous regions (SOA’s),¹⁷ and ultimately announced the creation of the Serbian Republic of Bosnia under the Yugoslav Federation on January 9.¹⁸ The Serbian Republic of Bosnia (better known as the Republika Srpska), acting to dissolve the coalition between the SDS, SDA and HDZ, produced the spark that ignited war in the spring of 1992. Fighting erupted between Bosnian Serbs and Bosnian Croats along the Neretva River in Bosanski Brod on March 22, 1992.¹⁹

The Republika Srpska began shelling Sarajevo on April 6, 1992 after the European Community formally recognized Bosnia as an independent state. Karadžić responded by naming himself as head of the Bosnian Serb state, with Sarajevo as the Republic’s new capital.

¹⁵ Laura Silber and Allan Little. *Yugoslavia: Death of a Nation*. Penguin Books, 1997. Page 211.

¹⁶ Ibid, 220.

¹⁷ Serbian Autonomous Regions, or SOAs, were Serb-inhabited areas within Bosnia and Croatia that were proclaimed as the autonomous districts under the Serbian Republic of Bosnia, later the Republika Srpska.

¹⁸ Laura Silber and Allan Little. *Yugoslavia: Death of a Nation*. Penguin Books, 1997. Page 218.

¹⁹ Misha Glenny. *The Fall of Yugoslavia: The Third Balkan War*. Penguin Books: Edition 3, 1996. Page 167.

Under the command of the Serbian Republic of Bosnia, the JNA – alongside other paramilitary groups – helped Karadžić gain control of the city by surrounding Sarajevo and cutting off supply lines in a successful effort to starve the city. (Appendix 4). Resultingly, militias from Muslim, Croat, and Serbian communities fought for control and territory throughout Bosnia. With no single command structure for Bosnian militant groups, Sarajevo was reduced to rubble in the midst of indiscriminate mortar attacks and unrelenting violence that remains as the longest military siege in the history of modern warfare (1992-1996) (Appendix 5A.).²⁰

In an interview with a Sarajevo tour guide, the anonymous interlocutor recounted how “psychologically it was hard to accept” the realities of war, such as “risking your life to receive water from breweries or food from humanitarian aid stations... and having no electricity or gas.”²¹ He described how active snipers were littered throughout buildings and, at the height of the siege, more than 3,000 shells fell upon the city a day (Appendix 5B.).²² Staggering reports of Sarajevo casualties during the siege incentivized the first international intervention on behalf of the UN Security Council (UNSC). UNSC Resolution 757, adopted May 30, 1992, implemented economic sanctions that restricted the flow of goods into and out of Yugoslavia with the exception of humanitarian aid.²³ The siege of Sarajevo marked the beginning of fierce press coverage on the Balkan wars, which pressured political administrations and higher level international bodies to intervene. Although prodded to protect human rights, the George H. W. Bush administration and NATO were averse to military intervention, especially given the

²⁰ Laura Silber and Allan Little. *Yugoslavia: Death of a Nation*. Penguin Books, 1997. Page 234.

²¹ Breweries, which held silos of water underground, were often the sole source of water for citizens during the siege because water and power lines were sabotaged by Bosnian Serb forces in an attempt to starve the city.

²² Anonymous. *Interview by Jordan Moss. Personal and Historical Interview*. Sarajevo, Bosnia, 9 March 2020. Fact checked citation: United Nations. “Study of the Battle and Siege of Sarajevo – Part 1/10. UN Commission of Experts: S/1994/674/Add. 2, 27 May 1994. Available:

<https://web.archive.org/web/20010222115037/http://www.ess.uwe.ac.uk/comexpert/ANX/VI-01.htm#I.H>

²³ UN Security Council. *Security Council Resolution 757*. S/RES/757, 30 May 1992. Available at: <https://www.refworld.org/docid/3b00f2122c.html>.

upcoming U.S. Presidential election period in fall of 1992.²⁴ President Bush, similar to other NATO actors, refused to deploy troops into Bosnia in order to advance domestic interests and remain outside the bounds of conflict. Instead, members of the UNSC began organizing the ICTY as an alternative interventionist measure that would appease humanitarian protests. Yet, despite these efforts to halt the bloodshed occurring in Sarajevo, the city, along with many of its sister regions, endured mass violence until the conflict's resolution.

Bosnian Serb military strategy aimed to create a "Greater Serbia" by connecting Serbian enclaves in Bosnia and Croatia to the Republic of Serbia.²⁵ Defense expert Paul Beaver explains how General Mladić, the commander of Bosnian Serb forces, pushed for the "consolidation of Serb-held territories..., the eradication of Muslim enclaves within them such as Gorazde, and the severance of... military links between Muslims in Bosnia and those in the Sandzak area of Serbia."²⁶ *Etničko čišćenje*, or ethnic cleansing, was the term used to describe this ongoing systematization of mass atrocity.²⁷ Although not coined at the time, "atrocities crimes" is an umbrella term that encompasses genocide, crimes against humanity (including ethnic cleansing) and war crimes.²⁸ All factions of the conflict perpetrated these large scale atrocity crimes, but cleansing campaigns were primarily conducted by Croats and Serbs, most often against Muslim

²⁴ President George H. W. Bush served as the 41st President of the United States from January of 1989 until January of 1993. Bill Clinton beat President Bush in the fall election period of 1992 and assumed the role of President of the United States in January of 1993.

²⁵ UN Security Council. *Final Report of the Commission of Experts Established Pursuant to the Security Council Resolution 780 (1992)*. S/1994/674, 27 May 1994. Available at: https://www.icty.org/x/file/About/OTP/un_commission_of_experts_report1994_en.pdf.

²⁶ Roger Cohen. Serbian General Who Calls the Shots: Determined and Calling West's Bluff. N.Y. TIMES, 17 April 1994. Available at: <https://www.nytimes.com/1994/04/17/world/conflict-balkans-serbian-strategy-serbian-general-who-calls-shots-determined.html>.

²⁷ Ethnic cleansing has not been recognized as an independent crime under international law and has no concrete definition. A UN Commission of Experts defines ethnic cleansing as "... a purposeful policy designed by one ethnic or religious group to remove by violent and terror-inspiring means the civilian population of another ethnic or religious group from certain geographic areas." UN Security Council. *Final Report of the Commission of Experts Established Pursuant to the Security Council Resolution 780 (1992)*. S/1994/674, 27 May 1994.

²⁸ David Scheffer. *Genocide and Atrocity Crimes*. Genocide Studies and Prevention: An International Journal: Vol. 1: Iss. 3: Article 3, 2006.

communities. Of the two, Serb forces were more regimented in their crusade and initially concentrated assaults in the Northwest of Bosnia near Banja Luka and the Drina Valley.²⁹ Cleansing campaigns during the early years of conflict were swift and unrestrained due to the lack of a tangible threat, viz. military deployment, on behalf of the Bush administration. Given President Bush's focus on re-election and the ICTY's lack of arrest mechanisms, Serbian war criminals felt emboldened to continue such violence.

Ethnic cleansing came in various forms. The early stages of Mladić's purge ensured that Muslim lives crumbled to the point of collapse; they were fired from jobs, their houses and businesses attacked, and they were prohibited from traveling by car or making phone calls.³⁰ Many were forced to sign over their rights to property as they fled their homes. Floods of refugees moved through Bosnia's mountainous terrain towards "safer" regions in Croatia and Slovenia.³¹ International press coverage was nearsighted, focusing only on the siege of Sarajevo. Thus an increasing number of refugee encampments went unnoticed by the international community, which, in turn vastly underrepresented the extent of ethnic cleansing during the war. As stories of detention camps in northern Bosnia were under-circulated in comparison to coverage on Sarajevo, the Sava and Drina Rivers became home to various prison facilities for non-Serb civilians (Appendix 6). These camps fulfilled purposes "such as mass killing, torture [and] rape," and played a central role in the stratagem of ethnic cleansing.³² Major recognition of mass atrocity did not occur until Roy Gutman, an American journalist, shed light on the extent of

²⁹ These areas were highly concentrated with Bosnian Serbs, making it easier to consolidate power and gain control over the territory. In turn, controlling this territory would allow Serbian forces to link Serb-controlled areas of Croatia and Bosnia with the larger Serbian Republic.

³⁰ Samantha A. Power. *A Problem from Hell: America and the Age of Genocide*. New York: Perennial, 2003. Print. Page 250.

³¹ Migration throughout the war was extremely dangerous and taxing. Thousands of Bosnian refugees were slain by snipers and landmines, or died from exhaustion, as they attempted to escape onslaughts of violence.

³² M. Cherif Bassiouni. *The Law of the International Criminal Tribunal for the Former Yugoslavia*. Transnational Publishers, 1996. Page 60.

human strife in Bosnia after visiting the Manjača camp and interviewing Muslim prisoners. Gutman's continuous reporting on the conditions and realities of the Omarska and Keraterm camps eventually unleashed a torrent of international outrage that called for immediate intervention.³³

Global responses to the ongoing crisis in Yugoslavia up to this moment were limited; the international community's high-level actors and non-governmental bodies did have a presence in the conflict, but their impact was narrow. The United Nations, Human Rights Watch, and similar organizations published reports on the ongoing crisis that emphasized the sadistic nature of humanitarian abuses.³⁴ What resulted was the implementation of the United Nations Protection Force (UNPROFOR), UN Safe areas, Resolution 757, and the ICTY, all of which enabled the international community to veil protracted inaction with humanitarian charades.³⁵ Silber & Little summarize how, until military action was taken, Western tactics for aid "enthusiastically [addressed] the symptoms of conflict, without making any real effort to challenge its causes."³⁶ As the number of displaced people rose to over 1 million by mid-July of 1993,³⁷ Bosnian and Croat political leaders called for Western actors' or NATO military intervention. Unfortunately, requests for forceful intervention from the international community were swept under the rug and continuously overshadowed by domestic political interests.

³³ Samantha A. Power. *A Problem from Hell: America and the Age of Genocide*. New York: Perennial, 2003. Print. Page 275 – 277.

³⁴ Human Rights Watch, *Human Rights Watch World Report 1993 - The former Yugoslav Republics*, 1 January 1993, available at: <https://www.refworld.org/docid/467fca72a.html>.

³⁵ It should be acknowledged that these "charades" of humanitarian aid were still of good use in some cases and did make an impact on the amount of lives that were saved (although UN Safe Areas were ultimately harmful). In general, the tactics for humanitarian aid strategies were utilized for far too long as an alternative to military intervention.

³⁶ Laura Silber and Allan Little. *Yugoslavia: Death of a Nation*. Penguin Books, 1997. Page 256.

³⁷ *Ibid*, 252. Footnote 7. Exact source information is unattainable due to COVID-19 restrictions.

Secretary of State James Baker explains that the U.S. government and policymakers initially argued that “it was time to make the Europeans step up... and show that they could act as a unified power” after World War II.³⁸ The situation in Bosnia was no different; to the American administration, conflict resolution in the Balkans should be a European obligation. American foreign policy specialists under the Bush and Clinton administrations believed that the U.S. should focus on a narrow collection of economic and security interests that did not include Bosnia’s “civil war.”³⁹ Occupied by Desert Storm and the death throes of the Soviet Union, the Bush administration was wary of entanglement in yet another crisis.⁴⁰ American national interests deterred the administration from involvement in 1992. As James Baker claimed, “we don’t have a dog in that fight.” But the Post-Cold War European community was still incapable of acting unilaterally and made no effort to pursue military intervention until it was driven by the U.S. and NATO in 1994. In the meantime, international efforts to placate the region’s violence emerged through noncombatant, humanitarian means like UN Safe Areas and the International Criminal Tribunal for the former Yugoslavia.

Serbs thus continued to fight a territorial war in aims of expanding religiously and ethnically homogenous terrain. By the end of 1993, Serbian forces controlled over seventy percent of Bosnian territory, leaving Croats and Muslims to quarrel over the remaining land.⁴¹ Cyclical attacks and reprisals between Muslims and Croats continued to weaken overall defense against the Serb forces. Triangulated tensions between these warring groups diminished the likelihood for ceasefire agreements, particularly due to the difficulty in dividing territory

³⁸ James A. Baker with Thomas M. DeFrank. *The Politics of Diplomacy: Revolution, War and Peace, 1989-1992*. Norwalk, CT: Easton Press, 1995. pg. 637.

³⁹ Samantha A. Power. *A Problem from Hell: America and the Age of Genocide*. New York: Perennial, 2003. Print. Page 261.

⁴⁰ Richard Holbrooke. *To End a War*. New York: Modern Library, 1999. Page 26.

⁴¹ John F. Burns. “Bosnian Serbs Begin to Question the Price of Victory.” *The New York Times*, The New York Times, 14 Nov. 1993, www.nytimes.com/1993/11/14/world/bosnian-serbs-begin-to-question-price-of-victory.html.

satisfactorily between opposing groups. As fighting progressed in 1994, there was mounting pressure on President Clinton to effectuate peace in the Balkans. The administration was poised to do so to countervail its recent failure in preventing the Rwandan genocide. Additionally, a second wave of neoconservatism added to the pressure for stronger peace-based foreign policy initiatives. Both factors made the cessation of violence between Bosniaks and Croats a necessary political strategy for the American administration to foster peace in the region.

The first step towards reaching this goal, and brokering a legitimate peace arrangement, was made when Bosniak and Croat forces agreed to federation and ceasefire in March of 1994. Under the auspices of Clinton and his administration, the Washington Agreement was signed by Bosnian Prime Minister Haris Silajdzic, Croatian Foreign Minister Mate Granic and Bosnian Croat Representative Kresmir Zubak.⁴² Presidents Franjo Tudjman and Alija Izetbegovic later initialed the agreement to the confederation, which established the Federation of Bosnia-Herzegovina in the Croat and Bosniak majority areas. Given that the plan arose from American interests in strengthening Bosnia's potential for ceasefire, many believed that it was a *quid pro quo* arrangement.⁴³ By agreeing to the truce, the American administration implied the likelihood of lift-and-strike policies ("lift" the arms embargo and "strike" militarily) against Bosnian Serbs and permitted Croatia and Bosnia "to circumvent the arms embargo... and change the military situation."⁴⁴ Regardless of carrots and sticks, the resulting agreement diminished hostilities between the two groups and facilitated allied efforts against Bosnian Serbs in warring and peacemaking contexts.

⁴² USIP. *The United States and Croatia: A documentary history, 1992-1997*. Vienna, Austria: USIA Regional Program Office, 1997.

⁴³ This notion ties closely back to the common argument that the American administration wanted to tip the scale of war to ensure that Bosnia would prevail.

⁴⁴ Peter W. Galbraith. *Washington, Erdut and Dayton: Negotiating and Implementing Peace in Croatia and Bosnia-Herzegovina*. Cornell International Law Journal: Vol. 30: Iss. 3, Article 1. 1997.

The war continued to take thousands of lives, and displace thousands more, throughout 1994. The siege of Sarajevo captured the majority of international attention. However, perhaps the most egregious events of the war unfolded outside of the capital city, partially due to faulty humanitarian aid tactics. As an alternative to militarized assistance, the implementation of UN “safe areas” entailed the demilitarization of ethnic enclaves that were meant to protect civilians, most often Bosniaks, in Serb-controlled areas of Bosnia. In reality, these territories paved the way for the unarmed concentration of ethnic groups that were then “starved out,” similar to Sarajevo, or cleansed from Bosnian Serb regions. The so-called safe areas had become, as President Izetbegovic noted, “the most unsafe [places] in the world,” as exemplified by the massacre of Srebrenica.

Srebrenica, a small town in the eastern region of the Republika Srpska, served as a place of refuge for Muslims throughout the war. As an extremely Muslim-concentrated enclave under which UNPROFOR offered virtually no military protection, Srebrenica was a sitting duck for Bosnian Serb cleansing campaigns. In July of 1995, after months of struggling to protect the enclave, Dutch peacekeepers vacated the region as a safety measure in response to a Serbian ultimatum to evacuate the city.⁴⁵ General Ratko Mladić led Serb offensives into Srebrenica over the coming days, subjecting Muslim civilians to continuous shelling and detainment. Flocks of refugees fled while the Serbian forces attempted to cleanse the city. On July 13th, Bosnian Serbs began moving thousands of Bosniak men and boys into rural regions north of the city. The fates of such men were initially unknown by the international community until aerial CIA surveillance

⁴⁵ Tom Barlow Brown. “It Was Hell: Dutch Troops Recall Failure to Stop Srebrenica Deaths.” *Balkans Insight*, 8 August 2019. Available at: <https://balkaninsight.com/2019/08/08/it-was-hell-dutch-troops-recall-failure-to-stop-srebrenica-deaths/>

systems spotted mass grave sites around Srebrenica.⁴⁶ Later legally deemed genocide, approximately 8,000 men and boys had been slaughtered and buried in remote fields and warehouses.⁴⁷ (Appendix 5C). Evidence of mass burials in areas like Čarakovo and Tomasica shook the international community to its core as more people became aware of the largest mass murder since World War II.⁴⁸ The fall of Srebrenica marked a turning point in the war. International actors were left no choice but to cross what General Sir Michael Rose calls the Mogadishu line, the demarcation between peace-keeping and peace-enforcement.⁴⁹

As “safe areas” continued to fall, unity between Western powers seemingly began to rise. Shuttle diplomacy began as Richard Holbrooke and his team spearheaded peace talks between the Croats, Bosnians and Serbs, although America’s diplomatic efforts gained limited traction in their beginning stages. A mortar attack on the 28th of August, 1995 killed 34 people in Sarajevo’s open-air marketplace and proved to be the last straw before Western military and diplomatic intervention gained momentum (Appendix 5D). NATO began bombing Bosnian Serb positions around Sarajevo on August 30, 1995 in its largest military action in history – Operation Deliberate Force (ODF).⁵⁰ International press coverage was enthusiastic about the West’s first use of force and reported how the long overdue attacks finally gave American and NATO forces the credibility they needed to “[sustain] the diplomatic initiative now under way.”⁵¹ Shuttle diplomacy commenced after the signing of the Patriarch Paper, which established Milosevic as

⁴⁶ ICMP. *Over 7,000 Srebrenica Victims Have Now Been Recovered*. International Commission on Missing Persons: Press Release, n.d. available at: <https://www.icmp.int/press-releases/over-7000-srebrenica-victims-recovered/>

⁴⁷ David Scheffer. *All the Missing Souls: A Personal History of the War Crimes Tribunals*. Page 101.

⁴⁸ Ibid.

⁴⁹ Ibid, 360.

⁵⁰ Richard Holbrooke. *To End a War*. New York: Modern Library, 1999. Page 102.

⁵¹ “Force and Diplomacy in Bosnia.” *The New York Times*, The New York Times, 31 Aug. 1995, www.nytimes.com/1995/08/31/opinion/force-and-diplomacy-in-bosnia.html.

the individual authority to negotiate for indicted Bosnian Serbs.⁵² Leveraged by the ICTY's indictments against Mladić and Karadžić, the agreement fundamentally changed the dynamic of negotiations by disregarding Bosnian Serb voices and centralizing Milosevic's need for lifted economic sanctions.⁵³

Holbrooke, now backed by the threat of credible force and economic sanctions, understood that the warring period was ripe with potential for a ceasefire and a negotiated settlement. Increased military cooperation between Bosnian and Croatian forces led to territorial gains in the summer of 1995 that, in conjunction with the subsequent NATO bombings, "gave [the Clinton administration] an avenue to a quicker diplomatic resolution."⁵⁴ Although the mapping aspect of negotiation took painstakingly long during the Dayton summit, most overriding territorial issues were essentially decided as a result of the Western Offensive.⁵⁵ After a short ceasefire period, sustained NATO bombing in September of 1995 finally pushed the Serbs to accept NATO and the UN's demands within an agreed timeframe. The resulting framework of the negotiated settlement at Dayton resolved the key issues on the table:

Bosnia and Herzegovina would continue to exist as a single state within its current boundaries. Bosnia would consist of two parts, the Muslim-Croat Federation and the Republika Srpska, and land would be allocated respectively at 51 and 49 percent of Bosnia. The government would be a three member presidency and parliamentary assembly, and would have authority over foreign relations, trade and other international

⁵² Ivo H. Daalder. *Getting to Dayton: The Making of America's Bosnia Policy*. Brookings Institution Press; First Edition, May 1999. Page 200.

⁵³ Richard Holbrooke. *To End a War*. New York: Modern Library, 1999. Page 106.

⁵⁴ International Institute of Strategic Studies. "A Fragile Peace for Bosnia. Strategic Survey: 1995/96." Oxford University Press, 1996. Page 132.

⁵⁵ Ivo H. Daalder. *Getting to Dayton: The Making of America's Bosnia Policy*. Brookings Institution Press; First Edition, May 1999.

policies. Refugees and internally displaced people would have the right to return to their homes or be compensated for loss of property.⁵⁶

The peace agreement reached at the Wright-Patterson Airforce base near Dayton, Ohio was formally signed in Paris on December 14, 1995 and concluded the three-and-a-half year war in Bosnia.⁵⁷ It was made possible by the changing tide of international engagement that arrived in undulations of military bombardment and diplomatic rigor in the latter half of 1995. As the price of inactivity rose before Dayton, Clinton's policy of containment and disengagement became unsustainable. Operation Deliberate Force marked not only a turning point in the war, but also in how American actors employed the ICTY. Before bombing, the tribunal was a means for pushing back intervention, whereas later it was a tool for excluding Bosnian Serbs from the Dayton summit. The exploitation of the ICTY as an apparatus for policy was enabled by its intrinsically political construction. In view of this, the next chapter will outline the basic structure, intended functions and philosophies of the ICTY at its outset in order to convey the politics of its creation and application.

⁵⁶ Ivo H. Daalder. *Getting to Dayton: The Making of America's Bosnia Policy*. Brookings Institution Press; First Edition, May 1999. Page 138.

⁵⁷ Europe – Miscellaneous. *Dayton Peace Agreement, General Framework Agreement for Peace in Bosnia and Herzegovina*, 21 November 1995, available at: <https://www.refworld.org/docid/3de495c34.html>.

PART II: Creation of the Tribunal

“In criticizing the law one serves justice.” – Jurist Dalloz

From before Slovenia’s secession in 1991 to the Dayton agreement in 1995, armed conflict in the former Yugoslavia attracted a plethora of international and domestic actors that attempted to quell the ongoing violence. While some succeeded and many failed, it was not until 1993 that cries for legal justice in the Balkans resulted in the formation of a tribunal for the prosecution of war crimes. Given the degree to which humanitarian abuse occurred during the conflict, decisive action was necessary to deter criminals from committing future crimes, render justice to victims, and promote peace in the region.⁵⁸ Yugoslavia marked the first time in history that an ad hoc war crimes tribunal was created during the course of a conflict when UN Security Council Resolution 827 was signed into effect in February of 1993. The International Criminal Tribunal for the former Yugoslavia (ICTY) was established pursuant to the UN Charter’s Chapter VII authority.⁵⁹ American actors in particular, such as Madeleine Albright, David Scheffer, and John Shattuck, propelled the project forward in the UNSC in order to make the ICTY a reality. In response to the region’s intricate and calculated violence, the tribunal set out to prosecute individuals from all ethnic and national parties who had committed war crimes from 1991 onward.

This was the first time since the Nuremberg and Tokyo tribunals that a court would attempt to hold individuals of any status responsible for the perpetration of atrocities during wartime.⁶⁰ The formation of the ICTY was generally greeted with optimism, but not without

⁵⁸ United Nations: ICTY. *About the ICTY | International Criminal Tribunal for the Former Yugoslavia*. International Criminal Tribunal for the Former Yugoslavia, available at: www.icty.org/en/about.

⁵⁹ UN Security Council. *Resolution 827*. S/RES/827, 25 May 1993.

⁶⁰ The Nuremberg and Tokyo War Crimes Tribunals only prosecuted high-level political and military officials from the losing parties in WWII, whereas the ICTY prosecuted individuals from all sides of the conflict at all levels.

some contention. Those responsible for its construction encountered both structural and philosophical debates about the court's legal authority, integrity, and structure. The tribunal was unique in its creation, marrying aspects of previous military tribunals with new legal foundations. After lengthy disputes between various state actors, namely over the permanent judges, head prosecutor, and organizational structure, the International Criminal Tribunal for the former Yugoslavia materialized in 1993. Although assessments of the tribunal vary, the ICTY undoubtedly established a unique legal structure for prosecuting war criminals as well as a foundation for the development of future ad hoc criminal tribunals.

As war intensified in Croatia and Slovenia, increasing ethnic and religious nationalism led to an onslaught of violence. By the end of 1992, international actors such as the United Nations Human Rights Commission and the International Committee for the Red Cross began to identify breaches in international humanitarian law occurring in Yugoslavia.⁶¹ Helsinki Watch reported that Serbs in the region “systematically violated the most basic tenets set forth in international human rights documents” and called for national courts to “investigate, prosecute and punish those responsible.”⁶² Requests for national prosecution gained little traction because of the probability of noncompliance on behalf of Yugoslav states, and therefore drove the international community to brainstorm ideas for alternative judicial action. Proposals for international prosecution gained momentum as Roy Gutman's images of detention camps generated public outcry that drew parallels between Yugoslavia and the Holocaust.⁶³ The need for justice in the Balkans was answered when the UN Security Council launched the

⁶¹ Virginia Morris and Michael Scharf. *An Insider's Guide to the International Criminal Tribunal for the Former Yugoslavia*. The Journal of National Security Law, Vol. 1, No. 1, 1995.

⁶² Human Rights Watch. “Human Rights Abuses in Kosovo 1990-1992.” Yugoslavia, 1992, www.hrw.org/legacy/reports/1992/yugoslvia/.

⁶³ Roy Gutman. “Serbs Have Slain Over 1,000 in 2 Bosnia Camps, Ex-Prisoners Say.” Los Angeles Times, 2 August, 1992, www.latime.com/archives/la-xpm-1992-08-02-mn-5646-story.html

Commission to Investigate War Crimes in the former Yugoslavia.⁶⁴ From this point forward, various individuals and organizations affirmed that a second Nuremberg would await the perpetrators of ethnic cleansing,⁶⁵ leading to the approval of UNSC Resolution 808 that initiated collaboration between member states in drafting the tribunal's statute.⁶⁶

Justifications for the creation of the ICTY under Chapter VII of the United Nations Charter were met with varying responses. Chapter VII permits the Security Council to respond to threats of peace, breaches of peace, and the maintenance of peace, but nowhere is “there an explicit authority to build criminal tribunals.”⁶⁷ Critics of the tribunal's UNSC legislative foundation predominately argued for establishment by treaty, which would provide states with choice in consenting to the obligations of the tribunal. Other states, like Mexico and France, proposed that the General Assembly (GA) partake in drafting and reviewing statutes.⁶⁸ These alternative bases for authority had potential benefits but also had several disadvantages pertaining to efficiency and authority. Formulation by treaty or the inclusion of the GA would add lengthy phases of negotiation and ratification that would hinder the pace at which the tribunal would be created. Additionally, sovereignty provided by the treaty approach complicated multilateral ratifications and the uncertainty of state membership was antithetical to the effectiveness and urgency of adjudication. The ICTY as a subsidiary organ of the Security

⁶⁴ The Resolution established the Commission to Investigate War Crimes in the Former Yugoslavia, which was tasked with assembling evidence of atrocities in the region after 1990. UN Security Council. *Resolution 780*. S/RES/780, 6 October 1992.

⁶⁵ David Scheffer. *All the Missing Souls: A Personal History of the War Crimes Tribunals*. Princeton University Press, 2013. Page 16.

⁶⁶ UN Security Council. Resolution 808. S/RES/808, 22 February 1993.

⁶⁷ Samantha Power. *A Problem from Hell: America and the Age of Genocide*. New York: Harper Perennial, 2007. Page 21.

⁶⁸ UN General Assembly. *Submissions of France and Mexico*. U.N. Docs: A/47/922-S/25540, S/25266 and S/25417, 1993.

Council thus enabled swifter decision making that ensured all states were liable under its authority.⁶⁹

Under Security Council authority, the International Criminal Tribunal for the former Yugoslavia both deviated from and mirrored its predecessors in a few fundamental ways. The ICTY is often deemed the first true international crimes tribunal because it enforces international humanitarian law on behalf of all member states in the Security Council, as opposed to the small number of states who enforced the Nuremberg and Tokyo tribunals.⁷⁰ Creators of the ICTY, such as Madeleine Albright and John Shattuck, hastened its formulation in order to establish the tribunal during the conflict, as opposed to Nuremberg and Tokyo tribunals that prosecuted the defeated party's nationals post-conflict. In doing so, the ICTY aimed to deter criminals from war crimes and render justice to victims in order to promote peace in the former Yugoslavia.⁷¹ The Yugoslav tribunal borrowed a necessary mechanism of international justice from Nuremberg and Tokyo: legal primacy over domestic courts.⁷² Both the United Nations' and United States' proposals to the Security Council promoted primacy of the tribunal.⁷³ Judicial power over domestic courts was fundamental to the statute of the International Criminal Tribunal in Yugoslavia because of the limited likelihood for adequate prosecution of war criminals in the region.

⁶⁹ M. Cherif Bassiouni. *The Law of the International Criminal Tribunal for the Former Yugoslavia*. Transnational Publishers, 1996. Page 210.

⁷⁰ Thomas W. Pittman. *International Justice: The International Criminal Tribunal for the former Yugoslavia*. American Bar Association. Vol. 5, Issue 3. 2016.

⁷¹ United Nations: ICTY. *About the ICTY | International Criminal Tribunal for the Former Yugoslavia*. International Criminal Tribunal for the Former Yugoslavia.

⁷² UN Security Council. *Draft Charter of the International Tribunal for Violations of International Humanitarian Law in the Former Yugoslavia*. UN Doc. S/25575, Annex II. 1993. [hereinafter U.S. Draft Charter].

⁷³ *Ibid.*

State impunity, or the notion of a “victors tribunal,” was rejected by the Security Council.⁷⁴ Any person who “planned, instigated, ordered, committed or otherwise aided... in the planning, preparation or execution of a crime” would be held responsible for their actions.⁷⁵ The web of ethno-nationalist tensions within the conflict generated breaches of humanitarian law by actors on all sides, obliging the tribunal to place criminal charges upon people from all backgrounds given viable legal evidence.⁷⁶ Although the majority of punishments were placed upon Serbs – a statistic with seemingly political undertones – data on the ICTY exhibits how the tribunal followed a just legal model based on gravity of crimes, levels of responsibility, and chain of command.⁷⁷ Equitable prosecution also required the imposition of superior responsibility, which claims that crimes committed by a subordinate do not relieve their superior from criminal responsibility.⁷⁸ The ICTY considers superior responsibility as a central facet to its adjudication because it demonstrates “that an individual’s senior position can no longer protect them from prosecution.”⁷⁹ The decision to uphold superior responsibility was tirelessly backed by Secretary of State Madeleine Albright as a means through which international law could reveal to the world that those who instigate violence would be held accountable on an individual basis.⁸⁰

With the victors-trying-the-vanquished model forsaken, architects of the International Criminal Tribunal aimed for a collaborative production of legal structures on behalf of “the

⁷⁴ Although, it should be taken into account that Western powers, viz. the United States, intended to ensure that Bosnian Serbs “lost” the war.

⁷⁵ United Nations. *Statute of the International Criminal Tribunal for the Former Yugoslavia*. Updated: September 2009. International Criminal Tribunal for the Former Yugoslavia, Article 7.

⁷⁶ United Nations: ICTY. *Mandate and Crimes Under ICTY Jurisdiction*. International Criminal Tribunal for the Former Yugoslavia, available at: www.icty.org/en/about/tribunal/mandate-and-crimes-under-icty-jurisdiction.

⁷⁷ James Meernik. “Victor’s Justice or the Law?” *The Journal of Conflict Resolution*: Vol. 47, No. 2. April, 2003.

⁷⁸ United Nations. *Statute of the International Criminal Tribunal for the Former Yugoslavia*.

⁷⁹ United Nations: ICTY. *About the ICTY | International Criminal Tribunal for the Former Yugoslavia*.

⁸⁰ *Ibid.* This also protects entire communities from being held collectively responsible (i.e. collective guilt) and helps spark processes of healing and reconciliation.

entire international community pursuant to the authority of the United Nations.”⁸¹ The tribunal’s *Manual on Developed Practices* explicitly argues how “the international community, and not just the war-time victors, acted to establish a tribunal for prosecuting persons in order to deter the commission of further crimes.”⁸² While deterrence was relatively weak, the Yugoslav tribunal was effectively fulfilling its aim of global interconnectivity and fairness. Yet it is important to note that the ICTY was driven forward by members of the UNSC like the United States. The international community’s inclusionary model was limited to major powers, which ensured that the most basic aspects of its structure were aligned with the interests of international actors within the Council. In turn, higher-level political actors had more agency to shape the tribunal, and later utilize it to their own benefit.

The adoption of Resolution 827 established the constitutional structure and authority on which the tribunal initiated and operated a search to fill positions within the court. As opposed to Nuremberg, the Yugoslav tribunal’s search for judges was lengthy and arduous due to requirements of unanimous approval between the states sitting on the Security Council and General Assembly. Election processes were extensive; a state could propose two candidates for the position of permanent judge and the General Assembly would elect a maximum of 16 judges by majority vote. Permanent judges would serve for four years and would then be eligible for re-election.⁸³ The Secretary-General noted that “due account should be taken of the experience of the judges in criminal law, international law... and human rights law.”⁸⁴ In regards to elected officials, governments like Russia and the U.S. each had specific demands that lead to disputes

⁸¹ Michael J. Matheson and David Scheffer. *The Creation of Tribunals*.

⁸² United Nations: ICTY. *ICTY Manual on Developed Practices*. International Criminal Tribunal for the Former Yugoslavia, 2009.

⁸³ United Nations: ICTY. *Election Process*. International Criminal Tribunal for the Former Yugoslavia, available at: www.icty.org/en/about/chambers/election-process.

⁸⁴ UN Security Council. *Report of the Security-General Pursuant to Paragraph 2 of the Security Council Resolution 808*. United Nation: S/25704, 3 May 1993.

about a range of individuals from diverse backgrounds. One major request was from Secretary of State Madeleine Albright, who ardently insisted that “[the United States] is... determined to see that women jurists sit on the tribunal and that women prosecutors bring war criminals to justice.”⁸⁵ Generally, the United States was a well-respected driving force in the structuring of the tribunal, and Albright’s pleas were answered when American Gabrielle McDonald was elected along with “one other woman and nine men, each from a different country.”⁸⁶

Finding an acceptable prosecutor for the tribunal proved much more challenging than filling roles for judges. Prosecutors were tasked with “investigation and prosecution,” including the responsibility of clarifying issues of law, procedure and evidence.⁸⁷ And so, with the requirement of a unanimous vote looming, the fifteen-member Security Council was caught in a tug-of-war trying to find the “perfect” prosecutor. Conflicting political interests thwarted the search process and impaired the ICTY’s ability to deliver timely, credible threats before Dayton. The UNSC worked to resolve disputes, including but not limited to Russia’s blocking of NATO-country candidates or Muslims, and so it wasn’t until June of 1994 that Richard Goldstone was selected as a valid candidate.⁸⁸ An international lawyer without NATO ties or previous ties to the Balkans, Goldstone fulfilled the Council’s requirements and was unanimously sworn in by UNSC Resolution 936 after approximately a year of searching.⁸⁹ The extended period of time taken for appointment processes sheds lights on the many political considerations that shaped the tribunal, as well as their adverse impact on delivering credible threat and deterrence.

⁸⁵ UN Security Council. *Provisional Verbatim Record of the Three Thousand Two Hundred and Seventeenth Meeting*. S/PV.3217. 1993.

⁸⁶ David Scheffer. *All the Missing Souls: A Personal History of the War Crimes Tribunals*. Princeton University Press, 2013. Page 30.

⁸⁷ Michael J. Matheson and David Scheffer. *The Creation of Tribunals*.

⁸⁸ Bassiouni, M. Cherif. *The Law of the International Criminal Tribunal for the Former Yugoslavia*. Transnational Publishers, 1996.

⁸⁹ UN Security Council. *Resolution 936*. S/RES/936. 4 July 1994, available at: <http://unscr.com/en/resolutions/doc/936>.

A second but no less important issue was the organization and judicial structure of the tribunal. Multiple proposals concerning the court's structure were submitted to the UNSC. The United States' draft proposal included a trial court with three panels, an appeals court and an independent chief prosecutor, all of which would be appointed by the Security Council.⁹⁰ This draft charter was ultimately rejected, and instead the UN Secretary General's proposal of two trial chambers, an appeals chamber elected by the General Assembly, and a prosecutor appointed by the Security Council was accepted.⁹¹ The Secretary General's proposal, as opposed to the United States', ensured that each position was appointed by a global authority, again adhering to the internationally cooperative characteristic of the tribunal. The structure of the court also granted the Trial and Appeals chambers with legal agency, as each was influenced by the jurisprudence of its judges. Such agency was integral to the Yugoslav tribunal's unprecedented decision to blend properties of different legal traditions, namely between common and civil law.⁹² Legal decisions were thus formed in a comparative system that catered to the distinctive needs of each case, and later used as a template for the ad hoc tribunals of Rwanda and Sierra Leone.

The scope of jurisdiction of the Nuremberg and Tokyo tribunals included crimes against peace, crimes against humanity and persecution on religious, political or racial grounds.⁹³ In comparison, the ICTY outlined in its statute a list of violations that are included in the court's jurisdiction, explicitly mentioning breaches of the Geneva Conventions, violations of the laws

⁹⁰ M. Cherif Bassiouni. *The Law of the International Criminal Tribunal for the Former Yugoslavia*. Transnational Publishers, 1996.

⁹¹ UN Secretary-General. *Report of the Secretary-General Pursuant to Paragraph 2 of Security Council Resolution 808*. UN Doc. S/25704. 1993. New York: UN, 3 May 1993.

⁹² Thomas W. Pittman. *International Justice: The International Criminal Tribunal for the former Yugoslavia*. American Bar Association. Vol. 5, Issue 3. 2016.

⁹³ United Nations. *Charter of the International Military Tribunal - Annex to the Agreement for the prosecution and punishment of the major war criminals of the European Axis ("London Agreement")*, 8 August 1945.

and customs of war, the crime of genocide and crimes against humanity.⁹⁴ Yugoslavia built upon the previous military tribunal's jurisdiction by introducing the crimes of torture, detention and rape into international criminal law.⁹⁵ As a whole, the International Criminal Tribunal extended the definition of war crimes while also disbanding head-of-state immunity. Additionally, the court reserved the right to create and amend rules of procedure and evidence when needed. As Article 15 specifies, "the judges... shall adopt rules of procedure and evidence for the conduct... of appropriate matters." Judge Meron summarizes this aspect of the tribunal well when stating that "[in] a sense, the Security Council was the legislature," and rules of procedure are frequently amended to fulfill the tribunal's goal of personifying international justice and collective conscience.⁹⁶

The culmination of the International Criminal Tribunal for the former Yugoslavia's structure, philosophy and stratagem provided the UN court of justice with the ability to influence the nature of war in the Balkans. While the ICTY had an apparatus for deterrence and justice, it lacked the extensive financial support⁹⁷ necessary to enforce indictments or make arrests during its early years. The structure of the tribunal was shaped by political considerations that also prolonged its procurement period. Before the Dayton agreement, these pitfalls had a direct effect on its credibility in the eyes of war criminals Mladić or Karadžić. As discussed in the next chapter, deterrence was minimal before the ceasefire in 1995. Yet the tribunal's legacies on the

⁹⁴ United Nations. *Statute of the International Criminal Tribunal for the Former Yugoslavia*. Updated: September 2009. International Criminal Tribunal for the Former Yugoslavia.

⁹⁵ Ibid.

⁹⁶ Theodor Meron. *The Making of International Criminal Justice. A View from the Bench*. Oxford University Press, 2011.

⁹⁷ There was substantial debate about how the Tribunal should be funded that clearly affected its ability to perform its mandated responsibilities before Dayton. The General Assembly (GA) initially created a voluntary trust fund for contributions to the tribunal, but, given the contention over the ICTY, funding was limited until it was decided that the GA's budget would cover the ICTY. M. Cherif Bassiouni. *The Law of the International Criminal Tribunal for the Former Yugoslavia*. 212.

development of international law are far reaching into the present day and continue to inform justice initiatives in war-torn areas. Recognizing the philosophical foundations of the tribunal's structure and conception shed light on the influence that state actors, especially those on the Security Council, have on international courts, as well as the subsequent repercussions of such political influence.

PART III: The Tug of War between Peace and Justice

“History is often made of seemingly disparate events whose true relationship to one another becomes apparent only after the fact.” – Richard Holbrooke

Philosophical underpinnings of the International Criminal Tribunal for the former Yugoslavia afford observers a basis for understanding the intentions and goals of the ad hoc court. The number of motives for pursuing prosecution of Yugoslav war criminals is congruent to the manifold contributors to its creation and implementation, offering insight to the complicated relationship between the tribunal’s aims and impacts. Individuals ranging from the same and opposing administrations hold different views regarding the court’s influence on conflict resolution. Yet questions pertaining to the impact of the ICTY on the conflict before Dayton remain relatively unanswered. An array of prominent actors under the Clinton administration have written about their experiences with the ICTY, ranging from establishment to implementation. Therefore, in order to take a concrete stance on the subject, it is necessary to engage with various personal, historical and political perspectives. The following section will offer a synopsis of the differing views held by actors who worked closely with the tribunal in order to provide a holistic understanding of its functions and effectiveness. The second section of this chapter will then analyze these individual accounts and devise a culminating assessment of the ICTY’s role in the Balkans.

Conflicting Accounts

The quest for justice by the Nuremberg and Tokyo tribunals proved less challenging than the struggle for international accountability that unfolded in the former Yugoslavia. The ICTY in particular had no basis on which to model its mid-war behavior, making some of its uncharted

activity contentious. Although some believed that political activity would thwart the effectiveness of international jurisdiction, others like the U.S. Ambassador to the United Nations Madeleine Albright, and the Assistant Secretary of State for Human Rights, John Shattuck, recognized international criminal tribunals' potential for effective deterrence. Many instrumental actors in the development and application of the ICTY were Americans who optimistically viewed the tribunal as a means through which justice could be delivered for the cultivation of peace. Madeleine Albright, the leading advocate for the ICTY, made "the tribunal a top issue in all... bilateral relationships with governments... in and outside the region."⁹⁸ She argues how her faith in the tribunal was crucial to American involvement in Bosnia, stating that the ICTY deterred criminals from committing future crimes and "built a strong case of law upon which future prosecutions for crimes against humanity... may be built."⁹⁹ Albright's teammate John Shattuck mirrors her sanguine outlook.

Shattuck describes how the tribunal had a rough start; the project was underfunded as few were willing to push it forward.¹⁰⁰ He acknowledges the argument that the United States created the tribunal in order to "assuage the guilt of those who are on the inside feeling frustrated," a valid view in light of increased press coverage during the war.¹⁰¹ Yet Shattuck counteracts these arguments by noting how the tribunal became more than a paper institution around 1994 when it transformed into a political instrument.¹⁰² Investigatory work and indictments allowed state

⁹⁸ Madeleine Albright. *Madam Secretary: A Memoir*. Harper Perennial; Reprint Edition, 2013. Page 184.

⁹⁹ *Ibid.*

¹⁰⁰ There was substantial debate about how the Tribunal should be funded that clearly affected its ability to perform its mandated responsibilities before Dayton. The General Assembly (GA) initially created a voluntary trust fund for contributions to the tribunal, but, given the contention over the ICTY, funding was limited until it was decided that the GA's budget would cover the ICTY. M. Cherif Bassiouni. *The Law of the International Criminal Tribunal for the Former Yugoslavia*. 212.

¹⁰¹ David P. Briand and Leigh Swigart. Interview with John Shattuck. *The Ad Hoc Tribunals Oral History Project*. Brandies University: International Center for Ethics, Justice and Public Life, 2015. Page 11.

¹⁰² *Ibid.*, 14.

actors like Richard Holbrooke to leverage himself in negotiations with Milosevic, especially after the Serbian President continuously denied control over Bosnian Serbs. In Shattuck's view, the information presented to Milosevic on Serbian war crimes "gave Holbrooke the... credibility to threaten more bombing, or... another indictment."¹⁰³ Albright and Shattuck complement one another in their view that the tribunal's investigative work granted U.S. interests with credible threat, and thus pushed Bosnian Serbs to reduce their infliction of human rights abuses. While the argument regarding diplomatic leverage is well-founded, the tribunal's slow start contradicts the notion of deterrence that Albright and Shattuck promote.

Not all participants in the development of the ICTY felt so confident about its potential to positively shape the conduct and outcome of the war. Professor Cherif Bassiouni served as chairman of the UNSC Commission to Investigate Human Rights Violations in the former Yugoslavia (1992-1994), and was involved in the adoption of the ICTY's statute. As Bassiouni developed the tribunal, he specified that its "existence will depend on whether it will be able to achieve some justice and engender some deterrence."¹⁰⁴ With the goals of justice and deterrence in mind, he was cognizant of the heavy role that perception of the tribunal would play in generating deterrence.¹⁰⁵ Bassiouni was aware of the negative perceptions taken towards the tribunal at the time of its conception; many viewed the tribunal as a disruption to ongoing negotiations. Members of the Security Council additionally argued against the propriety of the tribunal in light of the current political considerations, however, the need for quick action ultimately induced members to accept the statute.¹⁰⁶ Although Bassiouni was confident that the

¹⁰³ David P. Briand and Leigh Swigart. Interview with John Shattuck. *The Ad Hoc Tribunals Oral History Project*. Brandeis University: International Center for Ethics, Justice and Public Life, 2015. Page 11.

¹⁰⁴ M. Cherif Bassiouni. *The Law of the International Criminal Tribunal for the Former Yugoslavia*. Transnational Publishers, 1996. Page 215.

¹⁰⁵ Ibid.

¹⁰⁶ Ibid, 201 – 202.

ICTY contributed to “the restoration and the maintenance of peace,” he recognized that the expedited pace at which the tribunal was created inevitably caused mistakes, misuses and delays.¹⁰⁷

David Scheffer, senior adviser to Albright and later Clinton’s Ambassador-at-large for war crimes, also played a major role in constructing the Yugoslav tribunal. The American lawyer and diplomat is pragmatic in his interpretation of the tribunal, and is refreshingly candid about how he strives to better understand the implications of the failures and achievements of what he calls “credible justice.”¹⁰⁸ Scheffer embodies the reality that people working towards the same cause can have entirely different analyses of its impacts. Operating directly under Albright, Scheffer contended with deterrence: would creating a tribunal *actually* deter the actions of war criminals? In the ICTY’s lifetime, Scheffer felt he had to “prove a negative,” and found that deterrence is a “bizarrely twisted objective fraught with inflated expectations and unpredictable outcomes.”¹⁰⁹ He faintly mirrors Albright’s optimism that countries consumed by atrocity can learn deterrence, yet is more cynical. Scheffer’ recognizes that while enterprise in the quest for Yugoslav justice lies in the tribunal’s deterrent potential, tangible judicial threats did not materialize soon, or firmly, enough.¹¹⁰

During the first three years of violence in the Balkans, few tangible judicial threats existed, as the period following the tribunal’s establishment was characterized by sluggish development and troubleshooting. When taken together, the lack of direct consequences for state

¹⁰⁷ M. Cherif Bassiouni. *The Law of the International Criminal Tribunal for the Former Yugoslavia*. Page 236.

¹⁰⁸ David Scheffer. *All the Missing Souls: A Personal History of the War Crimes Tribunals*. Princeton University Press, 2013. Page 4.

¹⁰⁹ Scheffer exhibits deterrence as a relative concept by drawing parallels to the criminal courts of Detroit: “How effectively has the death penalty or the multiplicity of municipal, state, and federal courts deterred murderers in American Society? Have the criminal courts... ended all violence and theft there?” Ibid, 5.

¹¹⁰ Ibid, 18.

actors and the tribunal's slow start belittled the deterrent effect of the ICTY. Declarations against the competency of the tribunal by officials in the FRY, SRBiH and RSK speak to the scant respect paid towards the judicial entity.¹¹¹ Samantha Power claims that the tribunal never reached its deterrent potential because it lacked the enforcement abilities to legitimize deterrent threats. The lengthy processes of trial and error that the tribunal underwent in its beginning stages signified the UN body's lack of authority or intent to punish those responsible. Judicial inaction during the majority of the conflict made for "missed opportunities to deter," and the ensuing silence of the international community could be interpreted as "consent or even support" of genocide.¹¹²

Power's *A Problem from Hell* reinforces how the United States' and United Nations' approaches to the ICTY were often neglectful and focused on removing the crisis from global headlines rather than punishing crimes.¹¹³ Coverage of Bosnian concentration camps struck a chord in the public that led to increased cries for Western action. Of the many strategies demanded by international communities, military intervention was favored alongside jurisprudence. Establishing an international war crimes tribunal was hence seen as a token alternative to the tougher choice of military intervention, which the U.S. worked actively against. In this sense, the ICTY was a low-cost, low-risk substitute for military measures that would subdue public interests and appeal to voters.¹¹⁴ In connection to Misha Glenny's argument that the United States and NATO used humanitarian means to address symptoms of conflict but not

¹¹¹ M. Cherif Bassiouni. *The Law of the International Criminal Tribunal for the Former Yugoslavia*. Transnational Publishers, 1996. Page 217.

¹¹² Samantha Power. *A Problem from Hell: America and the Age of Genocide*. New York: Perennial, 2003. Print. Page 507.

¹¹³ Ibid, 91.

¹¹⁴ David Scheffer. *All the Missing Souls: A Personal History of the War Crimes Tribunals*. Princeton University Press, 2013. Page 18.

their root causes, the “softer” option of the ICTY gave Western powers an alibi for prolonged inaction.¹¹⁵

The ICTY’s limited capacity for direct judicial action in its youth phases also enabled global superpowers to veil their idleness. Power and Scheffer concurrently argue how the drawn-out “search for certainty” of war crimes allowed government officials to prolong inaction under the guise that legal justice was on its way.¹¹⁶ Instead of aggressively searching for pertinent evidence, American bureaucrats turned a blind eye to investigations in order to shelter national interests from the implications of full-fledged involvement. The tribunal allowed them to claim that they were, in some fashion, intervening in Bosnia, even though it was a hollow threat. Clinton often cited the tribunal as a crucial initiative in Yugoslav policy processes, but failed to discuss other enforcement options (military, economic or diplomatic) under the pretexts of “policies and circumstances that coexisted with the Yugoslav Tribunal.”¹¹⁷ His recognition of the ICTY as vital to Balkan peace shows that Clinton understood the tribunal’s futility, and instead used it as a tool for pushing back the intervention timeline. Various authors have linked the Western alliance’s militant cowardice to its abuse of the ICTY as a “crutch upon which... [it eased] its conscience.”¹¹⁸ Essentially, the moral justifications that originally undergirded the tribunal were quietly written off and used as a scapegoat for the West’s lack of decisive military action.

Not only did the tribunal provide an alternative to military involvement, it also delayed peace processes in the region. NATO’s unwillingness to intervene militarily was warranted by judicial lip-service, and true peace negotiations began only after NATO began bombing in

¹¹⁵ Glenny, Misha. *The Fall of Yugoslavia: The Third Balkan War*. Penguin Books: Edition 3, 1996.

¹¹⁶ Samantha Power. *A Problem from Hell: America and the Age of Genocide*. Page 506.

¹¹⁷ David Scheffer. *All the Missing Souls: A Personal History of the War Crimes Tribunals*. Page 19.

¹¹⁸ Ibid.

August of 1995.¹¹⁹ Operation Deliberate Force was the first military response taken by Western alliances, and it resulted in the opening of negotiations between Yugoslav and American actors. Despite NATO airstrikes marking a turning point in the war, Power acknowledges that the lunge toward peacemaking was long overdue and Western powers' use of humanitarian instruments like the ICTY perpetuated policies of nonconfrontation.¹²⁰ Skepticism against judicial interference in peacemaking also existed during the crisis period. British Prime Minister John Major and French President François Mitterrand opposed the ICTY because “they believed holding killers accountable would interfere with [the] search for a negotiated settlement.”¹²¹ The conviction that pursuing justice delays peace reflects the paradigm that history continuously tugs and pulls between justice and peace, often with the latter triumphing over the former.

American diplomat Richard Holbrooke is the key player that sits in the midst of this tug-of-war. Holbrooke is pragmatic in his interpretation of the International Criminal Tribunal for the former Yugoslavia, and identifies the utility of the tribunal while also highlighting its imperfections. Taken alone, Holbrooke views the tribunal as “little more than a public relations device,” but, as the only mechanism for addressing notorious war atrocities, he admits that it was imperfect yet vital.¹²² Its relative ineffectiveness before the Dayton summit in 1995 was juxtaposed by how it later “emerged as a valuable instrument of policy that allowed” diplomats to bar significant indicted war criminals from negotiations and public office.¹²³ Regardless of Milosevic's plea that indicted criminals – namely Mladić and Karadžić – were integral to

¹¹⁹ Operation Deliberate Force was NATO's first air campaign that launched a series of precision strikes against selected targets in Serb-held areas of Bosnia and Herzegovina. The campaign lasted two-and-a-half weeks and was critical to bringing the Bosnian War to an end. Ryan C. Hendrickson. *History: Crossing the Rubicon*. NATO: NATO Review, 205.

¹²⁰ Samantha Power. *A Problem from Hell: America and the Age of Genocide*. Page 305.

¹²¹ Ibid, 483.

¹²² Richard Holbrooke. *To End a War*. New York: Modern Library, 1999. Page 189 – 190.

¹²³ Ibid.

peacemaking, Holbrooke refused to compromise on the authority of the tribunal. His firm stance on indictments acutely shaped the character of negotiations and effectively diminished the authority of Pale Serbs in the political sphere.¹²⁴ In general, Holbrooke's account of the war does not pay close attention to the ICTY, which is telling of its overall function in the war, but he does provide valuable insight into how the tribunal was utilized as an effective tool for policy in the United States' diplomatic and military objectives.

While the International Criminal Tribunal's served Western policy objectives, Holbrooke also records that the threat of prosecution had narrow deterrent effects on Serbian leaders' actions. *To End a War* describes how John Shattuck's work with the ICTY focused global attention to atrocity crimes in the region and increased pressure on Milosevic to halt abusive practices.¹²⁵ During meetings with Milosevic, Holbrooke demanded access to war crimes sites, conveying to the Serbian leader that American forces were serious about the tribunal and indictments. The world later recognized "the value of John Shattuck's highly publicized, highly focused efforts" when Milosevic continuously tried to separate himself from the actions of Bosnian Serb war criminals and testified that he held no influence over them.¹²⁶ For example, Milosevic covertly denied relation to Željko Ražnatović, better known as Arkan, one of the most infamous war criminals in the conflict. Yet Holbrooke noted how Arkan's activity in western Bosnia decreased immediately after confronting Milosevic about the perpetration of atrocity crimes.¹²⁷

Throughout *To End a War*, Holbrooke grapples with the tribunal's efficacy. In his view the court had faint deterrent effects yet positively served diplomatic efforts. Similar to this

¹²⁴ David Scheffer. *All the Missing Souls: A Personal History of the War Crimes Tribunals*. Page 106.

¹²⁵ Richard Holbrooke. *To End a War*. New York: Modern Library, 1999. Page 189 – 190.

¹²⁶ Ibid.

¹²⁷ Ibid.

multifaceted approach of the tribunal, other actors' perspectives on the ICTY are equally as intricate and conflicting. Therefore, how – and to what extent – the International Criminal Tribunal for the former Yugoslavia impacted the course of the crisis in the Balkans remains a topic of contention. Each author provides a narrative picture of the tribunal that adds to its paradoxical complexion. While some remain proponents for the effectiveness of the tribunal in deterring and reconciling mass atrocity, others maintain that it prolonged violence and shielded Western interests. The collective consideration of these individual perspectives allows for a more comprehensive analysis of the ICTY's impacts pre-Dayton. In the next section, topics such as deterrence, national interest, military intervention and humanitarian (in)action will be measured against one another in order to assess the legitimacy of various opinions of the tribunal.

Narrative Analysis

At the necessary risk of cynicism, it is essential to deny confirmation bias; although the view of criminal justice as omnipotent in addressing atrocity and establishing peace is attractive, history tells us differently. The International Criminal Tribunal for the former Yugoslavia was preventative *and* permissive in the face of atrocity, and should not be considered the principal factor in defending peace in the Balkans. Both Richard Holbrooke and David Scheffer concede that the tribunal did generate deterrent results against Milosevic's and Bosnian Serb's military conquests, but they were relatively weak and short-lived.¹²⁸ The extensive length of time taken before the tribunal was established also hampered its ability to deter criminals, as it was not fully functioning until after the Dayton agreement. From the outset, the ICTY was subjected to high

¹²⁸ Richard Holbrooke. *To End a War*. New York: Modern Library, 1999. Page 189 – 190.

levels of internal criticism by Western bureaucrats, effectively eroding the tribunal's authority and presenting hollow judicial threats to those it sought to deter.

As the actuality of deterrence disintegrates, the most suitable way to view the role of the tribunal is as a humanitarian tool for affecting and fulfilling Western interests in Bosnia. When preliminary goals of deterrence materialized to an extent that was lower than anticipated, American actors altered their use of the ICTY and employed the tribunal in negotiations and responses to international press. Before military intervention, the interplay between the ICTY and global media was most prevalent in the U.S.'s defense of inaction through humanitarian claims. The tribunal was used as an apparatus to pageant Western action in Bosnia as a justice-serving, humanitarian alternative to the more effective military means. Both American administrations in the years before Dayton opposed military involvement in the region and utilized the tribunal as an alternative interventionist measure that appealed to public desire for justice and action. As an effective pacifier to cries for Western engagement, the tribunal delayed military and diplomatic operations. Given that Operation Deliberate Force was the catalyst for opening the pathway to negotiation and ceasefire, the American use of the tribunal extended the period of violence before Dayton.

However, the tribunal was advantageous in alternative peacemaking efforts. One of the most productive aspects of the tribunal was its ability to legally exclude Bosnian Serbs like Mladić and Karadžić from negotiations in Dayton. Richard Holbrooke applied the ICTY's legislation when it was useful in simplifying his negotiations with Milosevic, Izetbegovic and Tudjman.¹²⁹ Leaving Bosnian Serbs out of negotiations lessened the potential for disagreement between the parties and made Milosevic the sole voice of Serb populations. In addition to

¹²⁹ Richard Holbrooke. *To End a War*. New York: Modern Library, 1999. Page 189 – 190.

simplifying channels of negotiation, excluding Bosnian Serbs from the negotiating table publicly delegitimized the Republika Srpska and devalued its influence in the political domain. The Dayton Agreement specified that indicted war criminals were unable to hold public office, which also paved a smoother path towards non-violence in the region after 1995.¹³⁰ Although there is no way of predicting the course of peace otherwise, the exclusion of indicted criminals increased the probability of reaching a negotiated settlement between the parties by diminishing the voice of aggressive players and the potential for ongoing violence.

Before the Dayton summit in 1995, the International Criminal Tribunal for the former Yugoslavia was structurally incapable of serving justice. Hopes of curtailing human rights abuses and bringing action against war criminals were left unfulfilled by indictments without arrests. Standing alone, the tribunal was insufficiently equipped to reach its initial goals during the war. Yet the ICTY did stir the course of conflict when it was aligned with international press, public interests, and military and diplomatic processes. The outcomes of interplay between the International Criminal Tribunal for the former Yugoslavia and international politics and press were beneficial and harmful to the conflict's trajectory. The humanitarian jurisprudence of the tribunal assisted in the political paralysis of the Bosnian Serb faction during the Dayton negotiations, while at other times providing the United States and NATO with the means to camouflage and prolong their inaction. Incorporating the authority of the tribunal into non-judicial branches of the conflict thus made for a potent policy tool that was used by Western powers in their interest, whether it be pushing back the timeline intervention or excluding Bosnian Serbs from peacemaking.

¹³⁰ OSCE. *The General Framework Agreement for Peace in Bosnia and Herzegovina*. Dayton, OH: Organization for Security and Co-operation in Europe, 14 December 1995.

PART IV: Legacies and Insights

“By examining the interaction of great power politics and foreign relations law and framing them as potentially complementary systems of constraints, the theory also leads to potentially fruitful avenues of thought on the convergence of American politics, foreign relations law and international relations theory.” – Daniel Abebe

Evidently, the ICTY had nuanced effects on war and peace in the Balkans, as well as NATO and American politics. These implications, whether fruitful or destructive, flow from the court’s judicial framework and the West’s application of it. The ICTY’s pitfalls are equally as informative as its successes, and provide insight that is relevant to the development of international humanitarian law and politics. Since the beginning of the conflict in the Balkans to today, almost every region in the world has borne witness to identity-based violence and mass atrocity. Albeit unfortunate, there is no question that there will be future bloodshed that echoes the cries from crises like the Balkans, Rwanda and Cambodia. Holbrooke reminds us that there will be other Bosnias in our lifetime – ones that demand refined and multifaceted peace initiatives alongside flexible and nimble political leadership.¹³¹ Thus it is valuable to scrutinize the histories of international judicial bodies in order to more fully understand the malleability of law to its environment. Using the ICTY as a microcosm for understanding the complicated relationship between law, armed conflict and politics can strengthen the international community’s capacity for ending deadly conflict.

Although the Yugoslav tribunal was ineffective as a deterrent before 1996, it nonetheless played a considerable role in the safeguarding of international human rights. The ICTY further augmented the Rules of Procedure and Evidence “to ensure the trial rights of the accused,” which now forms the basis for the rules of evidence and procedure in international humanitarian law.¹³²

¹³¹ Richard Holbrooke. *To End a War*. New York: Modern Library, 1999. Page 372.

¹³² United Nations: ICTY. *Legacy of the ICTY in the former Yugoslavia*. ICTY: Conference Proceedings. Sarajevo, 6 November 2012.

Similarly, the tribunal also shaped procedural law by broadening the scope of individual criminal responsibility, meaning that the responsibility for war crimes falls on all individuals who commit them. As opposed to the jurisdiction of the previous military tribunals, the statute of the ICTY specified the extent of responsibility: “those who plan or induce the commission of crime, prepare, execute or help in any way are also culpable.”¹³³ The requirement for individual responsibility instilled by the ICTY stemmed from its fundamental belief that state sovereignty does not shield individuals from their crimes.

Precedent set by the International Criminal Tribunal for the former Yugoslavia is not limited to procedural law. The court also expanded important areas of international law that continue to be enforced today. An important area of international humanitarian law that the ICTY increased in scope was that of sexual violence and human trafficking. The ICTY maintained that “rape and sexual enslavement could be considered crimes of war,” which are often used in ethnic cleansing schemes to intimidate, delegitimize and terrorize enemies.¹³⁴ By proving that the prosecution of wartime sexual violence is possible, the ICTY deemed rape as a form of torture, and sexual enslavement as a crime against humanity.¹³⁵ Additionally, the tribunal’s development on rules of procedure took industrious steps towards ensuring victims of violence do not face retribution by allowing witnesses to testify under pseudonym.¹³⁶ The explicit charges for wartime sexual violence made by the ICTY symbolized a landmark judgement of rape as a weapon of war that is now customary in international humanitarian law.

¹³³ Hortensia D. T. Gutierrez Posse. *The Relationship Between International Humanitarian Law and the International Criminal Tribunals*. International Review of the Red Cross, March 2006. Available at: https://www.icrc.org/en/doc/assets/files/other/irrc_861_gutierrez.pdf

¹³⁴ Madeleine Albright. *Madam Secretary: A Memoir*. Harper Perennial; Reprint Edition, 2013. Page 184.

¹³⁵ United Nations: ICTY. Crimes of Sexual Violence. International Criminal Tribunal for the Former Yugoslavia. Available at: <https://www.icty.org/en/features/crimes-sexual-violence>

¹³⁶ Ibid.

Not only did the ICTY further develop pre-existing law, it functioned as a model for other ad hoc criminal tribunals in the 1990s.¹³⁷ Humanitarian crises like Rwanda, Sierra Leone and Cambodia necessitated the creation of legal justice initiatives, triggering the subsequent formation of multiple ad hoc criminal tribunals. The Statute of the International Criminal Tribunal for Rwanda (ICTR) utilized a structure and “subject-matter jurisdiction which, apart from slight nuances, is essentially” the same as that of the ICTY.¹³⁸ Often referred to as the sister tribunal to the ICTY, the ICTR mirrored the ICTY’s three-pronged structure. The two tribunals even shared the same appeals chamber.¹³⁹ At the time of conception, the tribunals that grew out of the ICTY were timely and appropriate responses to instances of mass violence, but they were not designed for long-term implementation. Judges in the Appeals Chambers were eventually unable to handle the caseloads, and the UNSC grew concerned about the financial and operational difficulties that accompany ad hoc courts.¹⁴⁰

David Scheffer coined the term “tribunal fatigue” to explain the Security Council’s wariness and inability to sustain the construction of more war crimes tribunals in the 1990s.¹⁴¹ As a result, the International Criminal Court (ICC) was ratified in 1998 as a permanent forum with a jurisdiction *inter alia* over war crimes.¹⁴² While the ICTY and ICTR were temporary, they developed a strong body of law that future courts like the ICC could build upon. The ICC borrows principles of international humanitarian law central to the jurisprudence of the ICTY,

¹³⁷ Samantha Power. *A Problem from Hell: America and the Age of Genocide*. Page 479.

¹³⁸ Guenael Mettraux. International Crimes and the Ad Hoc Tribunals. Oxford Scholarship Online, January 2010. Available at: <https://www.oxfordscholarship.com/view/10.1093/acprof:oso/9780199207541.001.0001/acprof-9780199207541-chapter-1>

¹³⁹ Natalie Kraak. *A Comparative Study of the ICTY and ICTR and their “successes:” a deeper look at the legacy that will be left behind by these tribunals* [thesis]. Utrecht University, 2010.

¹⁴⁰ Christodoulos Kaoutzanis. *The UN Security Council and International Criminal Tribunals: Procedure Matters*. Springer International Publishing, 2020.

¹⁴¹ David, Scheffer. *All the Missing Souls: A Personal History of the War Crimes Tribunals*. Princeton University Press, 2013. Page 118.

¹⁴² UN General Assembly. *Rome Statute of the International Criminal Court (last amended 2010)*. 17 July 1998.

and further standardized the laws pertaining to individual criminal responsibility and rape as a weapon of war. The United Nations' decision to create a permanent court for war crimes speaks to the notion that the ICTY's shortcomings were also constructive. Before Dayton, the tribunal was unable to establish its credibility because it lacked funding and adequate arrest mechanisms. The ICC instead ensured that resources for international jurisdiction were concentrated into a single entity, as opposed to multiple ad hoc courts, in order to cultivate authority and a system capable of launching "quickly into the [investigation of] atrocity crimes."¹⁴³

Yet a fair judgement of the effectiveness and legacy of a policy must also take into account the policymakers and their intentions. In doing so, we can recognize that the varied effects that the ICTY had on the course of the wars in the Balkans, as well as on the development of international humanitarian law, directly resulted from higher-level decision making. This is not to say that the ICTY had no moral compass for protecting the human rights of those impacted by atrocities in the region, but rather that the edifice of the tribunal was fundamentally connected to power-politics. The historical and political contextualization of the tribunal needed to delineate its role in the war also elucidates important lessons about the nexus of international relations and law. Despite the advances in international law made since the establishment of the ICTY, we should continue to consider the tribunal a political project. As a result, we can more thoroughly understand the inextricable link between international law and politics that allows Western powers to develop, define, regulate and apply legal humanitarian initiatives as they please.

¹⁴³ David, Scheffer. *All the Missing Souls: A Personal History of the War Crimes Tribunals*. Princeton University Press, 2013. Page 164.

Appendix 1.

Map of the Former Yugoslavia (1991)



Source:

U.S Central Intelligence Agency. *Former Yugoslavia: A Map Folio, 1992*. Perry-Castañeda Library Map Collection: University of Texas Libraries.

Appendix 2.

Chronology

This chronology includes information relevant to the Balkans conflict that spanned from 1991-1995. It was made using an accumulation of research from the sources in each chapter, as well as the *Chronology of Serbs in Bosnia* report published by the Minorities at Risk Project.

| Date(s) | Event/Incident |
|------------------------------------|--|
| 29 November 1945 – January 1946 | Yugoslav monarchy is abolished by the signing of a new constitution that establishes the Socialist Federal People's Republic of Yugoslavia under Joseph Broz Tito. The constitution recognizes the six constituent republics of Serbia, Croatia, Slovenia, Bosnia-Herzegovina, Montenegro and Macedonia, along with autonomous provinces Kosovo and Vojvodina within Serbia. |
| 1948 | Disappointment with aid packages from the Soviet Union, and Tito's push for Yugoslav regional independence, leads to Yugoslavia's separation from the Soviet Union and other communist states. |
| 1940 – 1980 | Period of leadership under Tito, consisting of a federal parliament, six republican parliaments and two provincial parliaments that represents Yugoslavia's political makeup. Repression of nationalist sentiments is common during this period in order to diffuse inter-party tensions and 'ethnic' conflict. |
| 4 May 1980 | Death of Joseph Broz Tito. The former Yugoslav leader bequeaths to Yugoslavia a collective presidency that is unstable. |
| 1981 – 1989 | Slobodan Milosevic rises to power in a precarious political state. The utilization of nationalism helps him to gain power within the republic, and later gain influence over the Yugoslav People's Army (JNA). |
| October 1990 | Serbian Democratic Party (Republika Srpska) is established in Bosnia and deems itself the representative of Bosnian Serbs. |
| 25 June 1991 | Croatia and Slovenia declare independence. |
| 27 June 1991 | 10-Day war between the JNA (Yugoslav People's Army) and Slovenia. Slovenia ultimately withdraws from the SFRY. Outbreak of war occurs in Croatia as well, but it was more protracted. |
| July 1990 – January 1992 | The substantive period of war in Croatia against the JNA. Violence continues to occur in the country afterwards, yet this period is considered the main war between Serb and Croat forces. Croats lose 1/3 of their territory and around 10,000 people. |
| January 1992 | In an attempt to organize negotiations, the European Community (EC) indirectly recognizes Croatia as an independent entity from the SFRY and grants it independent status. |
| January 1992 | Serb-controlled JNA moves into northeastern regions of Bosnia after declaring Serb Autonomous Regions (SOAs), later announcing the solidification of the Republika Srpska. |

| | |
|--------------------------|---|
| March 1992 – April 1992 | Bosnian independence is confirmed in a Moslem-Croat referendum boycotted by Serbs. The first instances of fighting occur in areas of Bosnia like Bosanski Brod. |
| April 1992 | Shelling and siege of Sarajevo begins and continues until the end of war. EC recognizes Bosnia as independent. |
| 30 May 1992 | UNSC Resolution 757 implements sanctions on the flow of goods in and out of Yugoslavia. The United Nations implements the United Nations Protection Force (UNPROFOR) and “UN Safe Areas.” |
| July 1992 | Serbs control ~70% of Bosnian territory. Numbers of displaced people rises to over 1 million. |
| August 1992 | Global uproar occurs after Roy Gutman’s coverage of Bosnian detention camps and that mirror the Holocaust. |
| September 1992 | The UN (Cyrus Vance) and EC (Lord Owen) open an international conference in Geneva and in the attempt to develop a peace plan that ultimately fails in creating a viable or sustainable resolution. |
| 7 October 1992 | UN Security Council establishes a war crimes commission to investigate atrocities in Bosnia and Croatia. (ICTY). |
| November 1992 | Croat-Bosniak fighting heightens and triangulates tensions between Bosnian Serbs, Croats, and Bosniaks. This continues until early 1994. |
| March 1993 – June 1993 | Multiple signing attempts of the Vance-Owen Peace Plan are rejected by different parties in the agreement. The plan is considered unrealistic by June and is discontinued. |
| June 1993 – January 1994 | Attempts to find peaceful solutions between all parties continues while violence rises alongside death toll. Balkan political representatives call for Western military intervention. |
| January – March 1994 | NATO threatens to air-strike Bosnian Serbs as an attempt to generate deterrence against ethnic cleansing of Muslim enclaves. |
| March 1994 | The Washington Agreement is established, which creates a truce and ends fighting between Bosnian Croat and Bosniak forces. |
| September 1994 | The UN Security Council condemns Bosnian Serb’s ethnic cleansing schemes and imposes tighter economic sanctions on Bosnian-Serb controlled areas. |
| November 1994 | Bosniak and Croat forces align to fight against Bosnian Serbs in Northeast regions around Bihac. Serbs are driven out of the area, effectively turning the tides of the war and decreasing Bosnian-Serbs’ strength. |
| 14 February 1995 | The ICTY charges Bosnian Serb commander of the Omarska camp with genocide. Indictments made against 20 other Serb commanders, including Ratko Mladić and Radovan Karadžić. |
| June 2, 1995 | President Clinton announces the decision to commit American troops to aid UN peace operations in Bosnia. |
| July 1995 | Dutch peacekeepers evacuate UN Safe areas that “protect” ethnic enclaves due to Bosnian Serb attacks. Srebrenica and Zepa fall to Bosnian Serbs. |

| | |
|-------------------------------|---|
| 13 July 1995 | Genocide occurs in Srebrenica, as at least 8,000 men and boys are killed in the largest genocide in Europe since the Holocaust. The Bosnian conflict enters a new stage of international intensity and the humanitarian aid approach shifts towards military intervention. |
| 15 August 1995 | Shuttle diplomacy begins. Richard Holbrooke begins to negotiate a ceasefire between Croats, Bosniaks and Serbs. Bosnian Serbs are barred from negotiations due to indictments by the ICTY. |
| 30 August – 20 September 1995 | Operation Deliberate Force: NATO forcefully begins bombing Serb positions around Sarajevo, marking its largest military action in history. Military intervention, territorial advances against Serbs, and economic sanctions, gave Holbrooke the necessary leverage to negotiate a peace agreement. |
| 9 September 1995 | Warring factions agree to initiate a peace deal brokered by Richard Holbrooke. |
| 1 November – 21 November 1995 | Peace talks between leaders of Serbia, Croatia and Bosnia begin at the air force base in Dayton, Ohio. Peace negotiations continue for 20 days until issues of territory, governance and displacement are settled. Leaders agree to reconvene in Paris in December to sign final documents. |
| 14 December 1995 | The Dayton Peace Accord is formally signed in Paris and concluded the three-and-a-half year war in Bosnia and the former Yugoslavia. |

Source:

Minorities at Risk Project, *Chronology for Serbs in Bosnia*, 2004, available at: <https://www.refworld.org/docid/469f386dc.html>.

Appendix 3.

Ethnic Composition of the Former Yugoslavia (1992)



Source:

U.S Central Intelligence Agency. *Former Yugoslavia – Ethnic Majorities from Former Yugoslavia: A Map Folio, 1992*. Perry-Castañeda Library Map Collection: University of Texas Libraries.

Appendix 5.

Research Experience

This appendix contains a collection of photos from my field work in Bosnia and Herzegovina (March 8 – March 12, 2020). The scars of war remain hyper visible in present day BiH.
Photography by Luke Lefeber (Vassar 21’).

5A.



Pictured: Jajce Kasarna – military barracks built by the Austro-Hungarian army that later served as a military field hospital in 1915. The building was destroyed during the war in the 1990s by Serbian mortar attacks.

5B.



Pictured: Residual impacts of mortar attacks and shrapnel linger on buildings in Sarajevo's Old Town, formally known as Baščaršija.

5C.



Pictured: Srebrenica-Potočari Memorial and Cemetery for the Victims of the 1995 Genocide. Around 8,300 victims are honored in the memorial and an estimated 1,000 more are believed to still remain hidden in mass graves throughout Bosnia and Herzegovina.

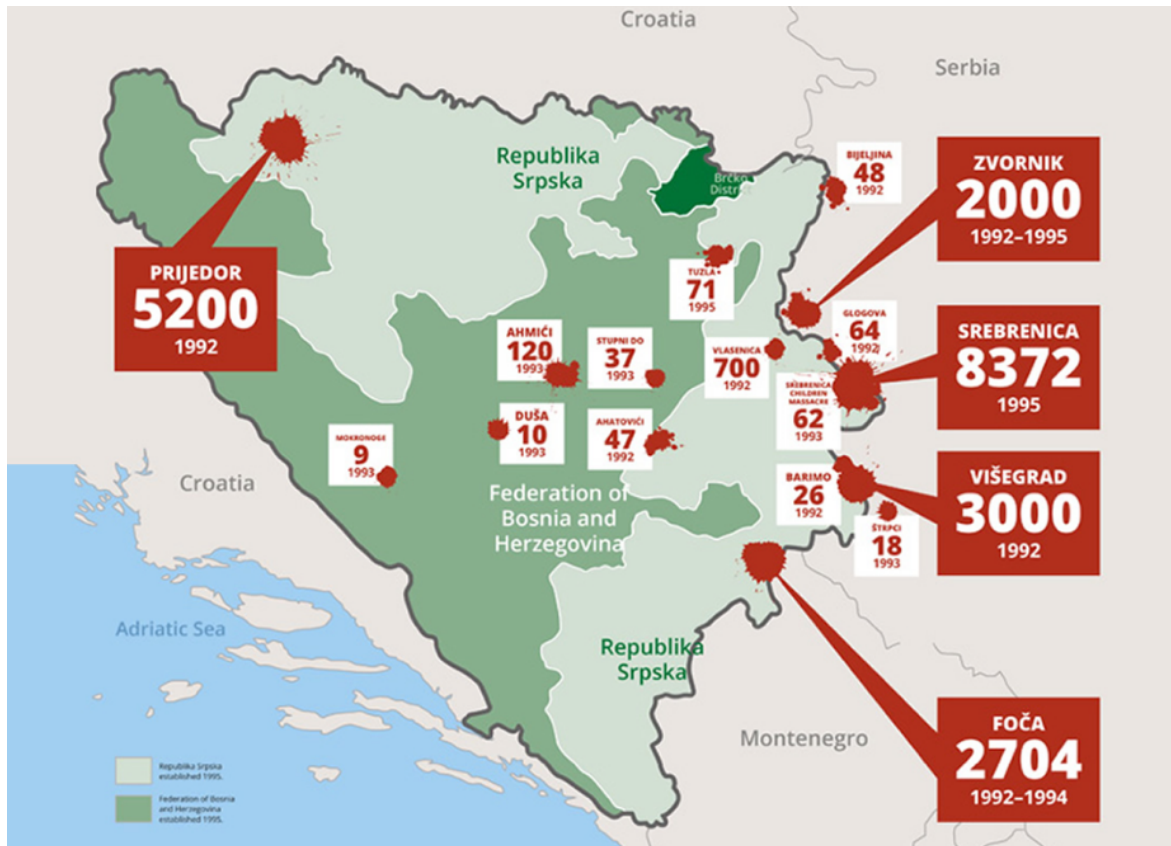
5D.



Pictured: Sarajevo's open-air market that experienced the most deadly mortar attack during the city's siege. The vibrant Pijaca Markale (the Markale Market) is currently full-functioning and offers a variety of seasonal fruits, vegetables, flowers, etc.

Appendix 6.

Ethnic Cleansing Camps – Bosnia (1992 – 1995)



Source:

Remembering Srebrenica. *Ethnic Cleansing in Bosnia*. N.d. Available at:
<http://www.srebrenica.org.uk/what-happened/history/ethnic-cleansing-bosnia/>

Works Cited

- Albright, Madeleine. *Madam Secretary: A Memoir*. Harper Perennial; Reprint Edition, 2013.
- Anonymous. *Interview by Jordan Moss: Personal and Historical*. Sarajevo, Bosnia, 9 March 2020.
- Baker, James A. and Thomas M. DeFrank. *The Politics of Diplomacy: Revolution, War and Peace, 1989-1992*. Norwalk, CT: Easton Press, 1995.
- Bassiouni, M. Cherif. *The Law of the International Criminal Tribunal for the Former Yugoslavia*. Transnational Publishers, 1996.
- Bordewich, Fergus M.. *Yugoslavia Since Tito*. The New York Times, 13 April 1986. Available at: <https://www.nytimes.com/1986/04/13/magazine/yugoslavia-since-tito.html>
- Briand, David P. and Leigh Swigart. *Interview with John Shattuck. The Ad Hoc Tribunals Oral History Project*. Brandeis University: International Center for Ethics, Justice and Public Life, 2015. Page 11.
- Brown, Tom Barlow. "It Was Hell: Dutch Troops Recall Failure to Stop Srebrenica Deaths." *Balkans Insight*, 8 August 2019. Available at: <https://balkaninsight.com/2019/08/08/it-was-hell-dutch-troops-recall-failure-to-stop-srebrenica-deaths/>
- Burns, John F. "Bosnian Serbs Begin to Question the Price of Victory." The New York Times, 14 Nov. 1993, www.nytimes.com/1993/11/14/world/bosnian-serbs-begin-to-question-price-of-victory.html.
- Cohen, Roger. "Serbian General Who Calls the Shots: Determined and Calling West's Bluff." *N.Y. TIMES*, 17 April 1994. Available at: <https://www.nytimes.com/1994/04/17/world/conflict-balkans-serbian-strategy-serbian-general-who-calls-shots-determined.html>.
- Curtis, Glenn E. and Library of Congress. *Yugoslavia: A Country Study*. Washington, D.C.: Federal Research Division, 1992.
- Daalder, Ivo H. *Getting to Dayton: The Making of America's Bosnia Policy*. Brookings Institution Press; First Edition, May 1999.
- Europe - Miscellaneous. *Dayton Peace Agreement, General Framework Agreement for Peace in Bosnia and Herzegovina*, 21 November 1995, available at: <https://www.refworld.org/docid/3de495c34.html>.
- Galbraith, Peter W. *Washington, Erdut and Dayton: Negotiating and Implementing Peace in Croatia and Bosnia-Herzegovina*. Cornell International Law Journal: Vol. 30: Iss. 3, Article 1. 1997.

- Glenny, Misha. *The Fall of Yugoslavia: The Third Balkan War*. Penguin Books: Edition 3, 1996.
- Gutierrez Posse, Hortensia D. T. *The Relationship Between International Humanitarian Law and the International Criminal Tribunals*. International Review of the Red Cross, March 2006. Available at: https://www.icrc.org/en/doc/assets/files/other/irrc_861_gutierrez.pdf
- Gutman, Roy. *Serbs Have Slain Over 1,000 in 2 Bosnia Camps, Ex-Prisoners Say*. Los Angeles Times, 2 August, 1992, available at: www.latime.com/archives/la-xpm-1992-08-02-mn-5646-story.html.
- Heo, Uk. *Civil Wars of the World: Major Conflicts Since World War II, Volume 1*. ABC-CLIO, 2007. Page 315.
- Holbrooke, Richard. *To End a War*. New York: Modern Library, 1999.
- Human Rights Watch. *Human Rights Abuses in Kosovo 1990-1992*. Yugoslavia, 1992, available at: www.hrw.org/legacy/reports/1992/yugoslvia/.
- Human Rights Watch, *Human Rights Watch World Report 1993 - The former Yugoslav Republics*, 1 January 1993, available at: <https://www.refworld.org/docid/467fca72a.html>.
- ICMP. “Over 7,000 Srebrenica Victims Have Now Been Recovered.” International Commission on Missing Persons: Press Release, n.d. available at: <https://www.icmp.int/press-releases/over-7000-srebrenica-victims-recovered/>
- International Criminal Court. *About*. N.d. Available at: <https://www.icc-cpi.int/about>
- International Institute of Strategic Studies. “A Fragile Peace for Bosnia. Strategic Survey: 1995/96.” Oxford University Press, 1996.
- Judt, Tony. *Postwar: A History of Europe Since 1945*, New York: Penguin, 2005.
- Kaoutzanis, Christodoulos. *The UN Security Council and International Criminal Tribunals: Procedure Matters*. Springer International Publishing, 2020.
- Kaplan, Robert D. *Balkan Ghosts: A Journey Through History*. St. Martins, 1 April 1993.
- Kraak, Natalie. A Comparative Study of the ICTY and ICTR and their “successes:” a deeper look at the legacy that will be left behind by these tribunals [thesis]. Utrecht University, 2010.
- Lake, Anthony. *Six Nightmares: Real Threats in a Dangerous World and How America Can Meet Them*. Little Brown & Co, October 2000.
- Malcolm, Noel. *Bosnia: A Short History*. NYU Press: Updated Edition, 1 October 1996.

- Matheson, Michael J. and David Scheffer. *The Creation of Tribunals*. American Journal of International Law, Vol. 110, Issue 2. Cambridge University Press. 20 January, 2017.
- Meernik, James. "Victor's Justice or the Law?" *The Journal of Conflict Resolution*: Vol. 47, No. 2. April, 2003.
- Meron, Theodor. *The Making of International Criminal Justice. A View from the Bench*. Oxford University Press, 2011.
- Mettraux, Guenael. International Crimes and the Ad Hoc Tribunals. Oxford Scholarship Online, January 2010. Available at:
<https://www.oxfordscholarship.com/view/10.1093/acprof:oso/9780199207541.001.0001/acprof-9780199207541-chapter-1>
- Minorities at Risk Project, *Chronology for Serbs in Bosnia*, 2004, available at:
<https://www.refworld.org/docid/469f386dc.html>.
- Morris, Virginia, and Michael Scharf. *An Insider's Guide to the International Criminal Tribunal for the Former Yugoslavia*. *The Journal of National Security Law*, Vol. 1, No. 1, 1995.
- Murray, Douglas. *NeoConservatism: Why We Need It*. Encounters Books; first edition, 25 July 2006.
- NY Times. "Force and Diplomacy in Bosnia." *The New York Times*, 31 Aug. 1995,
www.nytimes.com/1995/08/31/opinion/force-and-diplomacy-in-bosnia.html.
- OSCE. *The General Framework Agreement for Peace in Bosnia and Herzegovina*. Dayton, OH: Organization for Security and Co-operation in Europe, 14 December 1995.
- Pittman, Thomas W. *International Justice: The International Criminal Tribunal for the former Yugoslavia*. American Bar Association. Vol. 5, Issue 3. 2016.
- Pittman, Thomas W. *International Justice: The International Criminal Tribunal for the former Yugoslavia*. American Bar Association. Vol. 5, Issue 3. 2016.
- Power, Samantha. *A Problem from Hell: America and the Age of Genocide*. New York: Perennial, 2003. Print.
- Power, Samantha. *Chasing the Flame: One Man's Fight to Save the World*. Penguin Books, 2 December 2008.
- Remembering Srebrenica. *Ethnic Cleansing in Bosnia*. N.d. Available at:
<http://www.srebrenica.org.uk/what-happened/history/ethnic-cleansing-bosnia/>
- Scheffer, David. *All the Missing Souls: A Personal History of the War Crimes Tribunals*. Princeton University Press, 2013.

- Scheffer, David. *Genocide and Atrocity Crimes*. Genocide Studies and Prevention: An International Journal: Vol. 1: Iss. 3: Article 3, 2006.
- Shattuck, John. *Freedom on Fire: Human Rights Wars and America's Response*. Harvard University Press, 31 October 2005.
- Silber, Laura, and Allan Little. *Yugoslavia: Death of a Nation*. Penguin Books, 1997.
- UNSCR. *Security Council Resolution 936*. S/RES/936. 1994, available at: <http://unscr.com/en/resolutions/doc/936>.
- UN General Assembly. *Rome Statute of the International Criminal Court (last amended 2010)*. 17 July 1998. Available at: https://legal.un.org/icc/statute/99_corr/cstatute.htm
- UN General Assembly. *Submissions of France and Mexico*. U.N. Docs: A/47/922-S/25540, S/25266 and S/25417, 1993.
- UN Secretary-General. *Report of the Secretary-General Pursuant to Paragraph 2 of Security Council Resolution 808*. UN Doc. S/25704. 1993. New York: UN, 3 May 1993, available at: <https://digitallibrary.un.org/record/166504?ln=en>
- UN Security Council. *Draft Charter of the International Tribunal for Violations of International Humanitarian Law in the Former Yugoslavia*. UN Doc. S/25575, Annex II. 1993. [hereinafter U.S. Draft Charter].
- UN Security Council. *Final Report of the Commission of Experts Established Pursuant to the Security Council Resolution 780 (1992)*. S/1994/674, 27 May 1994. Available at: https://www.icty.org/x/file/About/OTP/un_commission_of_experts_report1994_en.pdf.
- UN Security Council. *Provisional Verbatim Record of the Three Thousand Two Hundred and Seventeenth Meeting*. S/PV.3217. 1993.
- UN Security Council. *Report of the Security-General Pursuant to Paragraph 2 of the Security Council Resolution 808*. United Nation: S/25704, 3 May 1993.
- UN Security Council. *Resolution 757*. S/RES/757, 30 May 1992.
- UN Security Council. *Resolution 780*. S/RES/780, 6 October 1992.
- UN Security Council. *Resolution 808*. S/RES/808, 22 February 1993.
- UN Security Council. *Resolution 827*. S/RES/827, 25 May 1993.
- UN Security Council. *Resolution 936*. S/RES/936. 4 July 1994.

United Nations. *Charter of the International Military Tribunal - Annex to the Agreement for the prosecution and punishment of the major war criminals of the European Axis ("London Agreement")*, 8 August 1945, available at:
<https://www.refworld.org/docid/3ae6b39614.html>

United Nations. *Statute of the International Criminal Tribunal for the Former Yugoslavia*. Updated: September 2009. International Criminal Tribunal for the Former Yugoslavia, available at: https://www.icty.org/x/file/Legal%20Library/Statute/statute_sept09_en.pdf

United Nations. *Study of the Battle and Siege of Sarajevo – Part 1/10*. UN Commission of Experts: S/1994/674/Add. 2, 27 May 1994. Available:
<https://web.archive.org/web/20010222115037/http://www.ess.uwe.ac.uk/comexpert/ANX/VI-01.htm#I.H>

United Nations: ICTY. *About the ICTY | International Criminal Tribunal for the Former Yugoslavia*. International Criminal Tribunal for the Former Yugoslavia, available at: www.icty.org/en/about.

United Nations: ICTY. *Election Process*. International Criminal Tribunal for the Former Yugoslavia, available at: www.icty.org/en/about/chambers/election-process.

United Nations: ICTY. *Legacy of the ICTY in the former Yugoslavia*. International Criminal Tribunal for the Former Yugoslavia: Conference Proceedings. Sarajevo, 6 November 2012.

United Nations: ICTY. *ICTY Manual on Developed Practices*. International Criminal Tribunal for the Former Yugoslavia, 2009, available at:
https://www.icty.org/x/file/About/Reports%20and%20Publications/ICTY_Manual_on_Developed_Practices.pdf

United Nations: ICTY. *Mandate and Crimes Under ICTY Jurisdiction*. International Criminal Tribunal for the Former Yugoslavia, available at:
www.icty.org/en/about/tribunal/mandate-and-crimes-under-icty-jurisdiction.

U.S. Central Intelligence Agency. *Former Yugoslavia – Ethnic Majorities from Former Yugoslavia: A Map Folio, 1992*. Perry-Castañeda Library Map Collection: University of Texas Libraries.

USIP. *The United States and Croatia: A documentary history, 1992-1997*. Vienna, Austria: USIA Regional Program Office, 1997.