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# The International Criminal Tribunal for the Former Yugoslavia: Unforeseen Successes and Foreseeable Shortcomings

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## INTRODUCTION

As the International Criminal Tribunal for the former Yugoslavia (ICTY) proceeds through its ninth and most visible year of existence, it is now possible to look back at its work to date and begin to assess its potential legacy. The record is mixed. On the one hand, the ICTY's achievements have exceeded the boldest hopes of its creators. However, in several important respects, it has failed to make a difference in the region itself.

With the arrest of former Yugoslav President Slobodan Milosevic and his subsequent transfer for trial to The Hague by the Serbian authorities, the ICTY suddenly achieved a level of credibility previously unforeseen. In a few short months, Milosevic went from the pinnacle of power in Serbia and the leading role in the unfolding tragedy in the former Yugoslavia to that of the accused in the dock, from regional kingpin to a solitary accused, facing the most serious criminal charges under international law.

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Milosevic's transfer to The Hague is the capstone of the tribunal's somewhat improbable rise from the margins of the international arena to that of a serious international institution that is not only having a significant impact in the region, but is also laying the groundwork for the International Criminal Court (ICC). This rise to international significance has defied the tribunal's critics, who saw the tribunal as simply a fig leaf for the failure of the "international community" to stop the carnage in the former Yugoslavia, particularly in Bosnia, during the dark days of the early and mid-1990s.<sup>1</sup> The critics have been proven wrong: the ICTY has grown into an effective court, which has painstakingly administered trials that are widely perceived as fair. In the process, the tribunal's judges have developed an important body of international law and criminal procedure that will serve as critical guideposts for the ICC as well as other prosecutions for serious violations of international humanitarian law.

The tribunal has also had a significant impact in the territory of the former Yugoslavia, as a number of individuals associated with heinous acts of barbarism have been brought to the bar of justice or have disappeared from the scene. These developments are important if there is to be a return to peace in the region and not simply the absence of conflict, which more accurately describes the current

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state on the ground. It is axiomatic that peace and stability cannot exist with war criminals in positions of power.

These are substantial achievements that will be explored more fully below. At the same time, there is another fundamental sense in which the tribunal has been much less successful. Unfortunately, principally due to a failure in design and, to a lesser extent, in implementation, the tribunal's long-term impact on the systems of justice in the area of conflict has been minimal.

Even more fundamentally, as the tribunal begins to move towards the latter stages of its life as an institution, it has made scant contribution to the prosecution of war crimes and crimes against humanity—the pillars of its subject matter jurisdiction—in the courts of the states of the former Yugoslavia. Thus, the irony may be that despite the millions of dollars spent on building a judicial infrastructure in The Hague, there is virtually no effective enforcement of these important laws in the courts that ultimately matter most, i.e., the region's domestic courts. This result may well have impacted the choices of the international judicial and quasi-judicial mechanisms for the future in areas of conflict, including the ICC and courts in Kosovo, East Timor, Sierra Leone, none of which follow the model established by the ICTY or its sister, the International Criminal Tribunal for Rwanda (ICTR).<sup>2</sup>

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## HISTORICAL OVERVIEW OF THE TRIBUNAL'S INSTITUTIONAL DEVELOPMENT

The ICTY was established in 1993 by the United Nations Security Council, pursuant to its powers under Chapter VII of the United Nations Charter to preserve international peace and security.<sup>3</sup> From a legal perspective, the reliance on Chapter VII was significant, as the tribunal's powers are rooted in the Charter's broad grant of authority to the Security Council for matters regarding international peace and security. Thus, as a matter of international law, the tribunal's orders are, at least in legal theory, mandatory on UN members, all of whom have an obligation to "cooperate fully with the International Tribunal."<sup>4</sup>

In addition to the powers that flow to it via its Chapter VII status, the tribunal's Statute provides that the tribunal "shall have primacy over national courts" and that the national courts must defer to the tribunal if the latter decides to prosecute a particular individual.<sup>5</sup> The seat of the tribunal was placed in The Hague, in the Netherlands, with English and French as its official languages.<sup>6</sup> Thus, the architects of the tri-

bunal's Statute clearly placed primary responsibility for the prosecution of war crimes in authorities that would presumably be free from local influences and, at the same time, created an institution that by definition was geographically and linguistically remote from the region of conflict.<sup>7</sup> The latter factors were further magnified by the application of laws that were largely undeveloped (i.e., war crimes) through a court that used *sui generis* procedures unfamiliar even to the best-trained lawyers in the region.

The early issues that faced the tribunal's leadership, however, did not relate to the tribunal's remoteness from the region, but rather to its seeming irrelevance to the horrific events taking place in the former Yugoslavia, as well as to the very international political actors that created the tribunal. Clearly, prior to the Dayton Accords, signed in December 1995, hostilities on the ground made effecting arrests and gathering evidence extremely difficult, all the more so in that the tribunal has no police force or coercive power of its own. However, even after the Dayton Accords entered into force, committing all states and entities involved in the conflict to cooperate with the tribunal and also establishing a NATO-led peacekeeping force that had the power to make arrests and ensure cooperation, this situation did not change for some time. As it turned out,

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NATO initially had little intention of fulfilling this aspect of the Dayton Accords. Thus, despite the repeated protests of the tribunal leadership, indicted individuals such as Radovan Karadzic and Ratko Mladic reportedly passed through NATO checkpoints with impunity, and the tribunal appeared to be reduced to a virtual irrelevancy.

By the spring of 1997, more than three years after its creation, the tribunal had only a handful of accused in custody despite indicting many times that number, causing at least one leading commentator to call for its disbandment.<sup>8</sup> The summer and fall of 1997, however, brought a significant shift of circumstances in the tribunal's fortunes. The newly installed Blair government in the United Kingdom took the lead and effected several significant arrests or "snatches" in Bosnia during the summer of 1997. This was followed by a successful United States effort that led to the voluntary surrender of ten indicted Croats in

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October 1997. The tribunal rapidly became busy conducting trials and applying its rules and procedures. Its resources also increased markedly with these increased activities, with a substantial growth in both its budgetary resources provided by the United Nations, as well as significant voluntary contributions by supportive states, including two additional donated state-of-the-art courtrooms.

Unfortunately, both Croatia and the Federal Republic of Yugoslavia remained defiant in their non-cooperation with the tribunal, and most of those on trial in The

Hague were not the most serious perpetrators of alleged crimes in the conflicts in the former Yugoslavia. However, with a more robust commitment by the peace-keeping forces in Bosnia (by this stage known by its acronym SFOR) and a significant shift in the political landscape in Croatia following the death of President Franjo Tudjman in December 1999, the tribunal's effectiveness and credibility continued to progress. With increased support from the international community at large, leading to additional and more significant arrests, and greater cooperation in the region, the tribunal's judges began to issue decisions and judgments—both at the trial level and on appeal—and to hone the court's Rules of Procedure and Evidence. These decisions have given shape to international humanitarian law, which previously had consisted primarily of treaties and academic treatises that had not been applied in practice.

Thus, by the end of 1999, when Judge Gabrielle Kirk McDonald retired as the tribunal's president, she was able to report with regard to the tribunal:

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[It is] a fully operational international criminal court... From little more than the first Judges and their ideas on how to proceed, the tribunal is now regularly holding trials and appellate proceedings. The tribunal's decisions on both procedural and substantive matters are on the cutting edge of the development of international humanitarian law. Many of the legal issues adjudicated by the tribunal have either never been dealt with before, or have been dormant since the end of the Second World War... [T]he experience of the tribunal has laid the foundation for the establishment of a practical and permanent system of international criminal justice. The tribunal has demonstrated that it is possible to dispense international justice from a court located hundreds of kilometers from the scene of the crimes. It issues arrest warrants, which are executed by States or SFOR, resulting in the transfer to The Hague of those indicted for serious violations of international humanitarian law. The tribunal provides these accused with fair and expeditious trials, while ensuring protection for the victims and witnesses. While this system is not perfect, given the lack of the tribunal's enforcement powers, its experience certainly has contributed to the successful conclusion of the Rome Treaty for the establishment of a permanent International Criminal Court.<sup>9</sup>

Of course, many issues remained, and the tribunal's effectiveness and credibility were still subject to debate. Its proceedings continued to be lengthy, and while this was to some extent understandable due to the complicated factual and legal issues raised, questions emerged regarding whether the rights of the accused to expeditious trials were being ignored.<sup>10</sup> Moreover, as atrocities were reported in Kosovo during 1999, it was clear that the tribunal's work did not have a significant deterrent impact on the alleged new crimes. To be fair, however, it must be noted that the tribunal was just beginning to emerge as an effective institution and could hardly be expected to serve as a real deterrent in Kosovo when even intensive international diplomacy had failed. Other criticisms were more telling. The lack of a clear prosecutorial strategy and a variety of inefficiencies continued to hamper the tribunal's operations and raise questions about its efficacy as an institution.

Despite these difficulties, the number of trials increased significantly prior to 1999, leading the Security Council to amend the tribunal's Statute to add an additional trial chamber. More high-level accused, including Mladic's chief of staff and other senior military and political figures, were arrested or had voluntarily surrendered. The increase in the court's trial and appellate work led to the creation of *ad litem* or temporary judges to hear the burgeoning caseload. These temporary judges began work in the latter part of 2001.<sup>11</sup> The tribunal, even prior to the arrival of Milosevic, had risen from a small coterie of staff to almost 1,200 employees with an annual budget nearing \$100 million.<sup>12</sup>

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With this infrastructure in place, the tribunal was in a position to deal with significant figures such as Milosevic. With Milosevic's fall from power and subsequent transfer to The Hague, the new regime in Serbia represented a change in attitude by the state most hostile to the tribunal. Although cooperation obviously remains much less than satisfactory with Serbia and, to a lesser extent, with Croatia, and although such key figures as Mladic and Karadzic still are at large, the trial of Milosevic is nonetheless indicative of the tribunal's newfound and hard won status. While many problems and issues remain, the tribunal has established itself as a credible international judicial body and has provided important precedents and guideposts for the ICC.

### A LESSON LEARNED FROM THE TRIBUNAL EXPERIENCE

Despite the very real achievements of the ICTY, there are a number of levels on which it has not been successful. Some of these are technical in nature and have been noted above, in particular the length of the proceedings. Others relate to strategy and overall efficacy—these will be left for a later time. There is, moreover, a strategic failure in that the tribunal has not had much impact on the development of courts and justice systems in the region, particularly in relation to war crimes. The justice systems in almost all of the states of the former Yugoslavia are simply not equipped to provide fair and impartial trials for all ethnic groups, and this sad fact is even more true in the war crimes context.<sup>13</sup> The tribunal's failure to affect this situation stems largely from its very design, including its remoteness from the region.

The failure of the tribunal to have an impact on certain critical justice issues in the region has at least two important aspects. First, the tribunal has not provided assistance in the reform of the justice systems in the region. More critically, it has done little to assist in preparing the local prosecutors and courts to carry out investigations and trials regarding war crimes. Thus, outside the relatively small number of accused who have faced or will face trial in The Hague, there are no effective mechanisms to bring to justice the scores of other perpetrators who committed serious violations of international humanitarian law in the territory of the former Yugoslavia.

When one considers the vast resources that have gone into the ICTY—approaching \$500 million<sup>14</sup>—the lack of impact on at least preparing and buttressing the local courts for prosecutions for war crimes is troubling. The underlying reason for this situation, no doubt, stems from the tribunal's mandate. While the tribunal was established as a mechanism to restore peace and security in the region, it was not given any specific role in constructing or improving the domestic justice systems or assisting in local war crimes prosecutions. Thus, other than the Prosecutor's work in the field to carry out investigations, everything else, including the trials themselves, occurs, by design, in The Hague.

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This design is flawed in several respects. It became clear early on that more would have to be done to build and strengthen local prosecutors and courts if a significant number of individuals were to be brought to justice for war crimes. The tribunal was never intended, and could never have hoped, to try more than the principal perpetrators of the atrocities in the former Yugoslavia—its number is limited by the tribunal's relatively small capacity to conduct multiple investigations and trials. Clearly, if the prosecution of other perpetrators were to occur in the future, local capacities would have to be built up substantially. As far as reform of the justice systems in the region, this task was left primarily to other international actors. For example, in Bosnia, the Office of the High Representative (OHR) takes the lead on these issues. This is an appropriate division of labor in a number of respects; however, the failure to make the tribunal part of the legal reform process at least in Bosnia, particularly on war crimes matters, represents a failure of the imagination by all concerned.

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While there is considerable debate as to the proper approach to address justice issues in post-conflict societies such as the former Yugoslavia and to assess the efficacy of truth commissions and of war crimes prosecutions, it is odd that the experience of the ICTY relating to war crimes has been so little shared with the region.<sup>15</sup> There are several significant exceptions to this failure to help build or educate the region regarding the tribunal's work, and these will be discussed below. However, in the critical area of assisting in building the regional capacity of courts generally and prosecutors specifically to prosecute war crimes charges, the record is an unimpressive one.

Judge McDonald, during her term as ICTY president (1997-1999), clearly recognized the difficulty of conducting proceedings in The Hague in unfamiliar languages and employing procedures and laws not well understood in the region. As a result, she established an Outreach Program that was funded by outside contributions and not by UN funds. This program, which has been in operation since 1999, is aimed at educating the peoples in the region, starting with local legal professionals, about the tribunal, its purposes, and its work.<sup>16</sup> Prior to the creation of the Outreach Program, the tribunal's work was subject to gross distortions and disinformation in many areas in the former Yugoslavia. As a result, many misunderstood the tribunal and its work, and the tribunal became a political football for certain unscrupulous politicians in the region who cynically manipulated these misunderstandings. The Outreach Program was established to combat these distortions and, in this sense, it has had a number of successes in trying to educate the public and the legal profession in the region.

Despite the importance of the Outreach Program, it was only intended to serve a limited purpose and role as a public information vehicle, and there has been little systematic effort by the tribunal or by the international community at large to make the work of the tribunal relevant to the national justice systems in the region. The most significant step in this regard has been the Rules of the Road program, established pursuant to an agreement reached in 1996 in Rome between the parties to the Dayton Accords.<sup>17</sup> Under this agreement, the states of the former Yugoslavia agreed that the ICTY Prosecutor would first review all war crimes prosecutions that were to be conducted at the domestic level. The ICTY Prosecutor would then certify that, in appropriate instances, these cases should go forward, i.e., that a *prima facie* case for prosecution existed under international standards. If the case did not meet the relevant standards, the Prosecutor would not certify it, and it would not go forward. This was an innovative first step to try to ensure that at least some oversight would be given to war crimes prosecutions by the domestic authorities.

Unfortunately, the Rules of the Road program was the first and only semi-systematic step undertaken to involve the expertise of the tribunal with the domestic authorities in the region. It was, first of all, a very limited contribution, as it relied on a review only of documents (or, in more colloquial terms, a paper review) by the ICTY Prosecutor to ensure that a *prima facie* case existed before a trial began. Thus, it did help to ensure that certain minimum standards were followed. However, this limited review did not impart the experience of tribunal prosecutors to local prosecutors. Moreover, there was no training component or pedagogical element to this program, and local prosecutors thus received only a limited amount of assistance as a result. Finally, the Rules of the Road program had no real follow up, as the local prosecutor was more or less left on his or her own to pursue the case after receiving the ICTY Prosecutor's imprimatur. It is worth noting that the program was not aimed at judges or courts and did nothing to strengthen the respective justice systems as a whole.

It is also only fair to note that through the Outreach Program and other contacts tribunal judges, staff, prosecutors, and officials all have had interactions with judges and prosecutors in the region, and that a few of the latter have also visited the tribunal. While there is no doubt that information regarding war crimes prosecutions and trials has been imparted to legal professionals in the region, these occasional contacts and exchanges are just that—there has been no systematic attempt to impart the tribunal's technical expertise.

There are several explanations for this result. The ICTY did not have a mandate or the resources to actively assist the local authorities, and, as the record shows, the tribunal has had enough difficulty in pursuing its own cases. In the case of the Rules of the Road program, the ICTY Prosecutor has had to rely on donated funds from supportive states, as well as expertise contributed by non-

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governmental organizations (NGOs). The Outreach Program has never received funding from the United Nations and has had to rely exclusively on donations, which illustrates the view that the tribunal's impact on the region in general, let alone on the region's justice systems, is of marginal interest to UN policymakers.<sup>18</sup> Moreover, the Outreach Program's work has rightly focused on public and professional educational efforts and does not have sufficient resources to do more. The authors of the tribunal Statute not only created the tribunal as quite separate and apart from the region, with the local authorities legally obliged to defer to the tribunal Prosecutor, but also made no provision for creating sustainable links with the region. Therefore, the ICTY has no clearly stated obligation to support or build the judicial system in the region.

In the early years of the tribunal's work, the practical effect of this approach was not of great consequence, as the governments of Croatia and Serbia were both uncooperative. Moreover, until the end of 1995, the conflict continued to rage in Bosnia. However, following the Dayton Accords and subsequent improved relations with the countries in the region, and as the tribunal has become a credible judicial institution, the tribunal's remoteness from the region becomes all the more striking. The United Nations has spent hundreds of millions of dollars creating a uniquely important court, which has clearly served a significant role in the region, yet a huge opportunity will be lost. Instead of serving as an important tool of legal development and as a catalyst for local war crime prosecutions, the tribunal will apparently fold its operations without contributing much to either the justice systems in the region or the prosecution of war crimes.

This result is all the more striking when one considers the increasingly urgent call for the tribunal to complete its work and to leave remaining prosecutions to the local courts.<sup>19</sup> As noted earlier, as of now, the local courts and prosecutors are in no position to deliver fair trials and impartial justice on war crimes matters. There is no doubt that the process of legal reform is difficult in the extreme and that conducting war crimes prosecutions presents even greater challenges. Yet, if those who created the ICTY Statute expected that the bulk of war crimes prosecutions would occur in local courts—and surely they should have foreseen this—then provision should have been made for the tribunal to play an active role in this regard.

Numerous roles for the tribunal can be envisioned, and the tribunal could have played an important and constructive developmental role on war crimes

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issues in the region. For instance, with a modest amount of resources, it could have trained local prosecutors, monitored court proceedings involving war crimes issues, contributed technical expertise, trained judges, and provided expertise on victims' issues. If the tribunal's mandate had allowed for such sharing of expertise and if it had been provided the resources to do so, the tribunal could have, in coordination with other international agencies and NGOs, played a significant role in preparing local courts for war crimes cases. The failure to do so casts a shadow over the tribunal's very real achievements.

Of course, it can be argued that without cooperation from the national authorities such assistance would have been rejected or manipulated. This certainly

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was true during the earlier stages in Serbia and Croatia when these governments were not cooperative with the tribunal. However, in Bosnia, where the majority of the alleged atrocities occurred, the presence of the international community through OHR, NATO, and the UN would have made such contributions possible. Indeed, other organizations, such as the American Bar Association Central and East European Law Initiative (ABA-CEELI) and the Independent Judicial Commission, have conducted extensive

training programs for lawyers and judges in Bosnia and other parts of the former Yugoslavia. In the case of Croatia and Serbia, the change in the national authorities' attitudes may have allowed for some role for the tribunal, particularly with reform-minded judges and prosecutors.

It is only fair to note that most of the responsibility for these shortcomings lies not with tribunal officials. Indeed, they could hardly be expected to take on these tasks as they are outside the tribunal's mandate. Moreover, tribunal officials have, within the limits of that mandate, taken steps to address the lacunae in the mandate, by creating the Outreach Program and participating in the Rules of the Road program. Nonetheless, regardless of where the fault may lie, the fact remains that little has been done to prepare the local courts for prosecutions or delivering justice on the critically important issue of war crimes in the former Yugoslavia. This is all the more troubling in that the window for using the tribunal's expertise will be coming to a close in the relatively near future.<sup>20</sup>

Approaches to war crimes in other post-conflict situations that have been addressed since the establishment of the ICTY seem to be more cognizant of the importance of developing the local legal systems. In the cases of East Timor, Kosovo, Sierra Leone, and others, international judges sit together with local judges, rather than as a separately constituted court far away. We should not take

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these different approaches out of context, but there does now seem to be a realization that there must be a link to local judges and prosecutors.

In the case of the ICC, that court will have a different jurisdictional basis than the ICTY.<sup>21</sup> In the ICC, the prosecution will occur locally unless the local authorities cannot or will not prosecute the charges. Thus, the ICC Statute looks first to the domestic authorities. Moreover, in order to join the ICC, State Parties will have to adopt extensive implementing legislation to ensure that they are in compliance with the provisions of the ICC Statute. It must, of course, be borne in mind that joining the ICC is a volitional act by a state, whereas the ICTY was forced upon the states of the former Yugoslavia by the Security Council via Chapter VII.

In view of the above, the ICC is in a position to interact much more extensively with states regarding the domestic prosecution of war crimes. Some may argue that the ICC Statute, however, does not explicitly call upon the ICC to do developmental work with domestic authorities on war crimes prosecutions. While this is true, given the relationship that State Parties will have with the ICC, a strong argument can be made that such assistance is within the spirit of the ICC Statute and thus can be legitimately provided. Of course, such assistance is more difficult to deliver if a State Party becomes hostile to the court and there is no strong international presence, as there was in Bosnia. In such cases, any kind of cooperation becomes difficult. Nonetheless, there is scope for this important assistance to be delivered in some cases, and the failure to use the ICTY's experience and expertise in the local courts in Bosnia should not be repeated. In the future, ICC officials should see the court as a part of the relevant region and its development and not as a far-removed institution as has been the case of the ICTY.

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## CONCLUSIONS

The ICTY has achieved more than its supporters would have thought possible just a few years ago. It is delivering fair trials to some of the principal alleged perpetrators of the atrocities in the former Yugoslavia. It is built on more solid foundations than the Nuremberg tribunal and does not fall prey to the arguments of "victors' justice." Indeed, Slobodan Milosevic's attempts to claim that the tribunal is illegitimate or that it is a political court are becoming increasingly ineffectual and marginal. He too will receive a fair trial, and justice will be rendered. The tribunal has also developed a set of workable procedures and rules of evi-

dence, drawing from both civil law and common law traditions. In short, despite problems, it is a credible court that is to be taken seriously, and it has served as the *sine qua non* of the ICC.

For these achievements, the tribunal's supporters can feel justly proud. There has been, however, a serious failure in the mandate of the tribunal, a failure that tarnishes the successes that the tribunal has seen. The ICTY has had little

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impact on the region's justice systems or on war crimes prosecutions and proceedings. This stems from a misconception of the tribunal as removed from the region. While there are good arguments that it should be located outside the region, the tribunal could have been important to the development of domestic courts in the former Yugoslavia. This is an opportunity lost not only for the international community, which invested heavily in the tribunal, but also for the people of the countries of the

former Yugoslavia. The possibility that local prosecution of war crimes can be conducted in a reasonably fair and impartial manner in the former Yugoslavia is now a very distant prospect indeed. The people of the region will, therefore, probably not see the many perpetrators who were not sent to The Hague face justice. This is a tragedy that may have been avoidable. Hopefully, it is a lesson from which the ICC, as well as other international efforts to promote and deliver justice, will learn. ■

## NOTES

1 See e.g., T. Judah, "The Star of The Hague," *The New York Review of Books*, April 25, 2002, 37-39. "When the court was created by the UN Security Council in 1993, no one took it very seriously and certainly no one then considered indicting Milosevic himself."

2 The ICTR has a legal basis similar to that of the ICTY, and some of the discussion contained herein is applicable to the ICTR. For information regarding the ICTR, see generally, P. Akhavan, "The International Criminal Tribunal for Rwanda: the Politics and Pragmatics of Punishment," *American Journal of International Law* 501 (1996): 90; C. Carroll, "An Assessment of the Role and Effectiveness of the International Criminal Tribunal for Rwanda and the Rwandan National Justice System in Dealing with the Mass Atrocities of 1994," *Boston University International Law Journal* (Fall 2000): 18.

3 S.C. Res. 808, UN SCOR, 48th Sess., UN Doc. S/RES/808 (1993); S.C. Res. 827, UN SCOR, 48th Sess., UN Doc. S/RES/827 (1993).

4 *Ibid.*, S.C. Res. 827, at para. 4.

5 Statute of the International Criminal Tribunal for the former Yugoslavia, an annex to the Report of the Secretary-General Pursuant to Paragraph 2 of Security Council Resolution 808, UN Doc. S/25704 Ann. (1993), Art. 9. This power of primacy contrasts sharply with the jurisdiction of the ICC, which is based on "complementarity." Under the ICC Statute, the ICC authorities can commence a prosecution only where the domestic authorities cannot or will not prosecute a crime within their jurisdictions and a number of other conditions are met. See S. Williams, "Article 17: Issues of Admissibility," in O. Triffterer, ed., *Commentary on the Rome Statute of the International Criminal Court* (Baden-Baden: Nomos Verlagsgesellschaft: 1999), 392-94.

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- 6 The selection of these languages as working languages is consistent with UN practice, but it should be noted that, in particular, French is not spoken widely in the region as a second language. Thus, great expense was incurred in translating materials into French, which has a negligible audience in the region, while materials in the local languages of the former Yugoslavia remain largely unavailable.
- 7 The term “war crimes” in this context and as used hereafter in this article is intended to cover all of the crimes within the tribunal’s subject matter jurisdiction, not simply war crimes in the narrow technical sense of the term. These crimes are referred to as “serious breaches of international humanitarian law” in the tribunal Statute and include: grave breaches of the Geneva Conventions of 1949, crimes against humanity, violations of the law and customs of war, and genocide.
- 8 Theodor Meron, “Answering for War Crimes: Lessons from the Balkans,” *Foreign Affairs* 76(1) (January/February 1997): 2-8.
- 9 *Sixth Annual Report of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Former Yugoslavia Since 1991*, UN GAOR, 54th Sess., para. 205-212, UN Doc. A/54/187 (1999).
- 10 See *Experts Group Report*, UN Doc. A/54/634, S/2000/597 (November 11, 1999).
- 11 See *Report of Advisory Committee on Administrative and Budgetary Questions of the General Assembly of the United Nations*, UN Doc. A/55/806.
- 12 Information obtained from the ICTY’s website, <http://www.un.org/icty>.
- 13 For an overview of the state of judicial system in Bosnia, see “Judicial Reform Index for Bosnia and Herzegovina” (ABA-CEELI, October 2001). The judicial system receives only four positive marks out of 30 assessed categories.
- 14 See <http://www.un.org/icty>. This number will increase substantially over time, as the ICTY’s biennial budget for 2002-03 will exceed \$242 million.
- 15 See generally, Neil J. Kritz, “Transitional Justice: How Emerging Democracies Reckon with Former Regimes” (Washington, D.C.: United States Institute of Peace Press, 1995).
- 16 For a description of the Outreach Program, see L. Vohra and J. Cina, “The Outreach Program,” in Richard May et al., eds., *Essays on ICTY Procedure and Evidence* (The Hague: Kluwer Law International, 2001), 547.
- 17 See *Sixth Annual Report of the ICTY, Experts Group Report*, para. 187.
- 18 It should be noted that the Coalition for International Justice provided strong support to both the Rules of the Road project and the Outreach Program.
- 19 See e.g., UN Press Release GA/AB/3417 (December 6, 2001); Internews, “Ambassador Says United States Wants UN Tribunals to Conclude Work Soon” (February 8, 2002).
- 20 Ibid.
- 21 See note 2 above.
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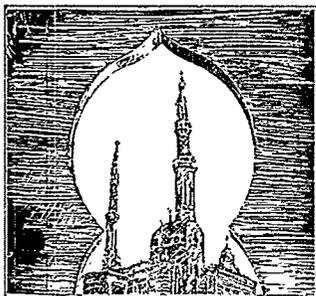
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