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Beyond Victor's Justice? The Challenge of Prosecuting the Winners at the International Criminal Tribunals for the Former Yugoslavia and Rwanda

VICTOR PESKIN

Abstract. For human rights advocates, the notion of “victor’s justice” has become increasingly distasteful in the decades since Nuremberg. At first glance, the victor’s justice problem that plagued the Nuremberg and Tokyo tribunals appears to have been transcended by the International Criminal Tribunals for the Former Yugoslavia (ICTY) and Rwanda (ICTR) given their mandate to prosecute all serious violations of international humanitarian law. But the tribunals’ lack of police powers give states wide latitude to withhold the vital assistance the tribunals need to investigate atrocities and bring suspects to trial.

The aim of this article is to evaluate the tribunals’ approach to the victor’s justice question and assess the extent to which they have held the victorious protagonists in the Balkan and Rwandan conflicts accountable for atrocities committed during wartime. The article imparts two main lessons about the difficulties that international tribunals confront when attempting to prosecute war crimes suspects from the winning side of an armed conflict. First, tactics by states targeted by a tribunal can significantly limit a tribunal’s ability to realize justice in a fair and even-handed manner. Second, tactics by powerful international actors in relation to a targeted state can significantly constrain or expand the space in which a targeted state can act to undermine a tribunal. In certain situations, the tribunals may increase the prospects of state cooperation by crafting effective strategies to subject the state’s behavior to international scrutiny and condemnation.

INTRODUCTION

In some quarters of the International Criminal Tribunals for the Former Yugoslavia (ICTY) and Rwanda (ICTR) “Nuremberg” and “Tokyo” are spoken with reverence. As the forerunners of today’s United Nations ad hoc war crimes tribunals, prosecutors and judges in The Hague and Arusha praise the post–World War II military tribunals for providing them with vital legal precedents and institutional building blocks. However, as much as the ICTY and ICTR look to Nuremberg and Tokyo for legal guidance, they also have taken deliberate steps to improve on the flaws of these seminal tribunals. The contemporary tribunals have been concerned with bringing not only more fairness to the treatment of defendants, but also more fairness to the process of deciding whom to prosecute. A fundamental aim of these new

courts has been to prosecute war crimes suspects from both the winning and the losing side of armed conflicts. This concern with bringing a semblance of balance to prosecutions is an outgrowth of the critique of “victor’s justice” that still taints the Nuremberg and Tokyo tribunals. In short, these were victor courts because they prosecuted the crimes of the Axis powers, but not the Allied war crimes committed during the bombing of civilian targets in Europe and Japan (Robertson 1999).

The global human rights movement that emerged in the aftermath of World War II has been built on the principle of the universality of human rights. A corollary of this principle is that all victims of human rights abuses deserve justice regardless of which side they belong to. This sentiment is seen in the statements of international jurists and policymakers. “There is no moral or legal basis for immunizing victorious nations from scrutiny. The laws of war are not a one-way street,” Telford Taylor (1992: 641), a Nuremberg prosecutor, wrote in the conclusion of his account of the trials. Looking ahead to what was the soon to be established Hague tribunal, Madeleine Albright, the then U.S. ambassador to the United Nations, vowed that the new international court “will be no victor’s tribunal. The only victor that will prevail in this endeavor will be the truth,” she promised (Scharf 1997: 54).

At first glance, today’s UN war crimes tribunals appear to have transcended the victor’s justice problem. Many tribunal officials and advocates hold this view, raising several reasons to support their contention. First, they argue that the origin and structure of the ad hoc tribunals prevent them from being victors’ courts. Whereas the victors established the Nuremberg and Tokyo tribunals with the express purpose of punishing only the losers, the United Nations, a body that was neither a direct party to the Balkan or Rwandan conflicts, established the ad hoc tribunals. Second, the tribunals’ mandate allows the prosecution to investigate and prosecute serious violations of international humanitarian law on all sides of the conflict.¹

Yet, the international character and broad mandate of these courts do not ensure that war crimes suspects from the winning sides of these conflicts will face trial. Although the states of the former Yugoslavia and Rwanda (along with all UN member states) have a binding legal obligation to provide the tribunals full and immediate cooperation,² states possess the power to stymie the courts. The tribunals’ lack of enforcement powers gives the governments of the former Yugoslavia and Rwanda wide latitude to withhold the vital assistance the tribunals need to investigate atrocities, issue indictments, and prosecute war crimes suspects. Although having no formal role in the tribunals’ operations, the victor governments can effectively sabotage or otherwise control the court’s prosecutorial agenda by withholding cooperation. In the process, these states may turn the tribunals into vehicles of victor’s justice. At its core, the tribunal’s battle to overcome the victor’s justice problem is a battle over state cooperation.

State influence over the tribunals can reap great benefits for victorious governments by enabling them to have their suffering in the war acknowledged and their vanquished enemies prosecuted on the world stage, while leaving their own war crimes unexamined and unpunished. By the same token, governments defeated in war can also wield significant control over the tribunal by withholding

cooperation, as underscored by Serbia's open defiance of The Hague tribunal during the Milosevic era.

The aim of this article is to evaluate the tribunals' approach to the victor's justice question and assess the extent to which they have held the victorious protagonists in the Balkan and Rwandan conflicts accountable for atrocities committed during wartime. Toward that end, the article analyzes the political struggles waged between each tribunal and the winners of these respective wars. Despite the unspeakable human suffering and enormous death tolls, in a political sense clear winners emerged from the Balkan and Rwandan conflicts. In the Yugoslav wars of succession, Croatia emerged as the clear winner by virtue of its resounding defeat of Serb forces and the realization of its goal of an independent state. In the Rwandan conflict, the Tutsi-led Rwandan Patriotic Front (RPF) emerged as the victor insofar as the former rebel group took power after defeating the extremist Hutu government forces that had engineered the genocide.

The article imparts two main lessons about the difficulties that international tribunals confront when attempting to prosecute war crimes suspects from the winning side of an armed conflict. First, tactics by states targeted by a tribunal can significantly limit a tribunal's ability to realize justice in a fair and even-handed manner. Second, tactics by powerful international actors in relation to a targeted state can significantly constrain or expand the space in which a targeted state can act to undermine a tribunal. This interaction between the targeted state and the "international community" is key to determining whether victor's justice essentially prevails. Nevertheless, tribunals are not powerless to act. In certain situations, the tribunals may increase the prospects of state cooperation by crafting effective strategies to subject the state's behavior to international scrutiny and condemnation.

The article will begin with a brief overview of the atrocities committed by the Croatian armed forces and the Rwandan Patriotic Front. I will then turn to an examination of the tribunals' respective attempts to prosecute these atrocities and the tactics that states have used to obstruct tribunal investigations. In the conclusion, I will discuss the ways in which the victor's justice problem may damage the legitimacy of the ad hoc tribunals.

THE CRIMES OF THE VICTORS

The crimes committed by the winners in the Balkan and Rwandan conflicts have been overshadowed by the enormity of the crimes committed by the losers. Especially in the Rwandan context, the Tutsi are viewed internationally as victim, because they were the targets of the genocide. The West's failure to intervene magnified their victimization. The Croatian and Rwandan governments initially called on the United Nations to create tribunals to prosecute Serbian and Hutu crimes, respectively. At the time there was little realization in Croatia's capital, Zagreb, and in Rwanda's capital, Kigali, that these courts could also one day turn to investigate the crimes of the victors.

After its declaration of independence in June 1991, Croatia lost a third of its territory and suffered heavy losses at Vukovar and other frontline towns at the hands of the Yugoslav People's Army (JNA) and breakaway Croatian Serbs. After this defeat, the fledgling Croatian state began to build up its armed forces in hopes of retaking the Krajina region that had become a self-declared state of the Croatian Serbs. In 1995, the Croatian military launched two well-planned military campaigns that quickly recaptured territory lost to Serb forces at the beginning of the war in 1991 and led to the consolidation of the newly independent Croatian nation.³ The success of the May and August 1995 campaigns (Operations Flash and Storm) marked a reversal of fortunes for the once anemic Croatian army and paved the way for the country's emergence as a regional power.

Croatia's decisive military victory led to the victimization of the Croatian Serbs.⁴ In Operation Storm, the larger of the two military campaigns, Croatian forces killed at least 150 Serbs, forced the disappearance of hundreds more, and drove between 150,000 to 200,000 Serbs out of Croatia in what at the time was the biggest refugee crisis of the Balkan wars (see ICTY indictment of Ante Gotovina (2001b); Silber and Little 1997: 358).⁵ President Franjo Tudjman insisted that the Serbs who left Croatia in 1995 were not forced out, but chose to leave on their own accord. However, evidence shows that Tudjman embarked on a policy of ethnic cleansing. Although Serbia remained the chief villain in the West's eyes, Croatia was not immune from criticism of its wartime conduct (Goldstein 1999: 254). For Croatian nationalists, the country emerged from its independence war—commonly referred to in Croatia as the Homeland War (*domovinski rat*)—not only as victor but also as victim because of its earlier suffering at the hands of the Serbs.

In the aftermath of the Rwandan genocide, there has been growing awareness of the humanitarian nightmare that left up to 800,000 Rwandans, mostly Tutsi, dead in the course of 100 days. In the common narratives of the genocide, there is relative silence about the extent of Hutu suffering and the role of the Tutsi-led Rwandan Patriotic Front army (RPF) in atrocities against Hutu civilians. The lack of international scrutiny of RPF war crimes has prevented a clear understanding of the extent of the killings and the possible role of the RPF leadership, including the current Rwandan president, Paul Kagame. In a real sense, therefore, the history of the 1994 conflict—as well as the role of the RPF in Rwanda and neighboring Congo since then—has not been written. There is, however, significant evidence that RPF soldiers carried out systematic murders both during and after the 1994 genocide (U.N. Commission of Experts 1994; Human Rights Watch 1999: 692–735). The RPF is responsible for killing more than 30,000 Hutu civilians during 1994, according to Human Rights Watch (Simons 2003: 2).

The Rwandan government does not deny that many Hutu were killed during 1994. However, government officials maintain that most of these crimes were revenge killings carried out by aggrieved soldiers acting alone upon learning that their families were murdered in the genocide (Interviews with Rwandan government officials 2002). The revenge motive certainly explains a portion of the killings. But evidence suggests that the pattern of killings was too extensive to be solely

attributed to individual anguish (Des Forges 1999; Prunier 1997). Given the RPF's cohesive command structure and its well-disciplined soldiers, it is possible that a sizeable number of the killings were carried out with the knowledge of or ordered by the higher echelons of the RPF. Human Rights Watch cites the decrease of atrocities in late summer 1994, under U.S. pressure, as proof that the Rwandan government had control of its forces (Des Forges 1999). Although these atrocities do not constitute genocide—because there was no attempt to exterminate the Hutu—they appear to constitute serious violations of international humanitarian law. Despite evidence of RPF atrocities dating back to the time of the genocide, the international community has not vigorously pushed Rwanda to either prosecute these cases domestically or cooperate with the ICTR's investigations (Des Forges 1999).

IN PURSUIT OF THE VICTORS

The tribunals' lack of enforcement powers means that in practice states cannot be compelled to cooperate with war crimes investigations. But bold defiance of international courts is not necessarily in a state's best interest. Frequently, governments seek to obstruct the tribunals while simultaneously cloaking their actions in the language of compliance or otherwise trying to avoid reproach from the tribunal and the international community. As demonstrated by our analyses of the Croatian and Rwandan cases, states can accomplish strategic obstruction in a number of ways. First, states can attempt to hide the extent of their noncompliance or claim that cooperation has been provided when in fact little or none has been forthcoming. Second, states can seek to justify their noncompliance on the basis of "good-faith" reasons, ranging from lack of state capacity to arrest fugitive suspects to the specter of domestic backlash and instability if suspects are turned over to the tribunal. Third, states can contest tribunal requests for cooperation by fashioning legal arguments that seek to persuade tribunals and the international community that the courts should forego particular investigations. Such arguments are usually advanced by states only as delaying tactics because the ICTY and ICTR's founding statutes gives the courts almost complete legal authority to receive full and immediate cooperation from states.⁶ Fourth, states can seek to justify their noncompliance or distract international attention from scrutinizing their compliance records by leveling attacks on the tribunal's own shortcomings. The following examinations of the Croatian and Rwandan cases underscore the tactics states use to disrupt tribunal efforts to bring a semblance of balance to prosecutions.

The Croatia Case

The ICTY began investigating Croatian atrocities against Serbs in the Homeland War not long after its conclusion in 1995. This decision by Richard Goldstone, the South African judge who was the first chief prosecutor of the ICTY and the ICTR, signaled the tribunal's intent to seek accountability for the crimes of the victors. Goldstone's move was not altogether surprising given his pursuit of war

crimes suspects from all sides of the Bosnian conflict. Moreover, the investigation of Homeland War atrocities by Croats made strategic sense because the ICTY had an abiding interest in appearing neutral to all sides of the Balkan conflict. Upholding neutrality by achieving proportionality in indictments could arguably boost the court's legitimacy in the region and in turn increase its chances of receiving state cooperation across the board. The importance of neutrality was especially important when it came to Serbia where nationalists leveled strong attacks against the tribunal for its supposed anti-Serb bias.

The ICTY had already faced obstacles in its efforts to obtain cooperation from the Croatian government for war crimes committed by its proxy Bosnian Croat soldiers in Bosnia. The tribunal, however, would face much more daunting barriers when it came to scrutinizing Croatia's conduct in the Homeland War.⁷ Under the authoritarian rule of President Franjo Tudjman, who led Croatia until his death in December 1999, this war was effectively off limits to ICTY investigators. The government's resistance to the tribunal's investigations stems in part from the almost mythic status the independence struggle and the final victory in Operation Storm acquired in Croatia. For Tudjman and his nationalist backers, the memorialization of the Homeland War became a cornerstone of the nation-building project as well as the font of the ruling party's legitimacy. Defending the dignity of the Homeland War became a way for nationalists to keep the memories of Croatia's independence struggle fresh in peoples' hearts and minds. Croatian nationalists tried to turn the tribunal's objective of determining individual guilt on its head by arguing that the tribunal's investigations actually cast collective blame on Croats and criminalized the Homeland War (Peskin and Boduszynski 2003: 4). But for Tudjman there was more at stake than simply protecting the reputation of the Homeland War. Permitting tribunal investigators access to national archives and key witnesses could lead to the indictments of top military and political leaders, including Tudjman himself.

The Tudjman government employed several tactics in its effort to obstruct investigations. First, the government used a legal approach by insisting the tribunal had no jurisdiction over Operations Flash and Storm because they were supposedly legitimate police actions and of short duration (Government of Republic of Croatia White Paper 1999). This was a thinly veiled attempt to delay the tribunal's investigations, because the ICTY enjoyed the legal right to investigate all armed conflicts in the Balkan wars. Second, the government sought to distract attention from its obstruction by criticizing the tribunal for its failures to prosecute Serbs suspected of committing atrocities against Croats.

Tribunal officials pressed Tudjman for cooperation and frequently criticized his conduct. However, from September 1996 through August 1999 the ICTY did not issue a formal complaint to the UN Security Council regarding Croatia's non-compliance in Homeland War investigations (see Mundis 2001). Foregoing the use of the UN complaint mechanism appears to have been based in part on the Security Council's decision not to apply sanctions or take other punitive steps against recalcitrant Balkan states (personal interviews with tribunal officials, 2003). The

tribunal's August 1999 complaint to the Security Council criticized Croatia for its ongoing obstruction of the Homeland War investigations as well as for its refusal to transfer to the ICTY two indicted Bosnian Croat suspects wanted in connection with massacres in Bosnia. The Security Council was reluctant to apply sanctions or seriously punish Croatia. Nevertheless, the tribunal's belated decision to report Croatia's noncompliance to the Security Council mobilized some international pressure on Croatia by embarrassing it on a world stage. Under mounting international pressure, Tudjman indicated his intent to transfer the Bosnian Croat suspects to the ICTY, but still refused to recognize the tribunal's legal right to trump state sovereignty and probe the Homeland War atrocities.⁸

For the ICTY, the best hope of bringing the victors to justice lay in domestic political change and the emergence of a more cooperative government in Zagreb. The death of Tudjman in December 1999 and the defeat of his nationalist Croatian Democratic Union (HDZ) party in national elections in January and February 2000 transformed Croatian politics overnight and altered the dynamics of state cooperation in the tribunal's favor. Croatia's electoral revolution ushered in a six-party coalition government, led by a former Communist, Ivica Račan, and his Social Democratic party (SDP), that pledged increased cooperation with the ICTY as a way to repair the country's war-torn economy and speed the country's entry into the European Union (EU) and other Western institutions.

In a major breakthrough, Račan acknowledged the ICTY's jurisdiction over Operations Flash and Storm and took other steps to increase cooperation. However, the government's acceptance of the ICTY's right to investigate the Homeland War did not mean that the ICTY's struggle to obtain cooperation would suddenly come to an end. After a brief honeymoon, a new period of struggle emerged between the tribunal and the government (see Erözden 2002).

Prime Minister Račan, constantly concerned about holding his coalition together, maintaining public support, and not provoking a nationalist backlash, proceeded cautiously on fulfilling his promises of full cooperation. The government appeared especially reticent on the most critical aspect of cooperation—the arrest and transfer of indicted war crimes suspects to The Hague. Although the nationalists were no longer in charge, they retained significant sway over issues relating to the celebrated Homeland War. The government soon found itself buffeted by conflicting forces. The international community applied significant pressure, while offering attractive incentives, to increase cooperation. But the nationalists raised the domestic costs of cooperation by equating the arrest and transfer of suspects with a betrayal of national interests and the dignity of the independence struggle (Peskin and Boduszynski 2003). The new government constantly played a balancing game. To the world, it portrayed itself as a strong proponent of cooperation; to its people, it posed as a strong defender of the memory of the Homeland War and the indicted Croatian generals who enjoyed the status of national heroes. Not surprisingly, the volatility of the cooperation issue sparked major political crises after the first two instances in which the ICTY's third chief prosecutor, Carla Del Ponte of Switzerland, handed down indictments against Croatian generals.

Racan's main tactic—during the two indictment crises in summer 2001 and fall 2002—was to assuage the international community by promising to arrest and transfer the generals to The Hague and then finding ways to avoid doing so. The government's decision to delay the arrests of two indicted war crimes suspects—General Rahim Ademi and retired general Ante Gotovina—in July 2001 increased the chances that the suspects would not be arrested. The government found that delay gave it time to gauge the strength of the conflicting pressure from the international and domestic lobbies and to act accordingly. Although the international community called on Croatia to arrest the indicted suspects, it did not appear ready to take as strong a stance as it had taken against Serbia, whose cooperation with the tribunal appeared to be of greater importance. If the international community balked at punishing Tudjman for noncooperation, it appeared even more unlikely that it would do otherwise with a pro-Western government that had already made significant improvements in its cooperation record and in shedding the country's authoritarian past.

After the dramatic arrest of Slobodan Milosevic in June 2001, Del Ponte traveled to Zagreb to press the Racan government to take immediate action to arrest Ademi and Gotovina, who had recently been indicted for their role in Homeland War atrocities.⁹ Del Ponte's decision to pursue the Ademi and Gotovina indictments after the arrest of Milosevic, Croatia's long-time nemesis, helped insulate her from charges of anti-Croat bias. Nevertheless, the indictments sparked a coalition crisis that led to the resignation of four cabinet ministers and fears of a government collapse. Racan's pledge to arrest Gotovina and Ademi won widespread praise from Western leaders, but the prime minister failed to follow through on his promise. Ademi surrendered to ICTY officials in late July 2001, whereas government delay enabled Gotovina to flee and evade arrest. Government officials denied that they facilitated Gotovina's escape and continue to maintain they do not know where he is hiding. Del Ponte has strongly criticized Zagreb and has long insisted that Gotovina is hiding in Croatia and that the government has the power to arrest him. As of mid-March, 2005, Gotovina remains a fugitive.¹⁰

The Croatian government's handling of the next Homeland War indictment further demonstrates its ability to undermine the tribunal's authority while presenting a cooperative image to the international community. News of the indictment of Janko Bobetko, the former army chief of staff and the highest ranking Croatian suspect indicted by the ICTY, ignited a firestorm of protest in Croatia in September 2002. Racan quickly announced his opposition to the Bobetko indictment. But Racan was careful to advance a legal argument against the indictment, a move that enabled him to maintain that he supported cooperation even as he flagrantly defied the tribunal's authority.

The government lodged two legal appeals with the ICTY in an effort to delay arresting Bobetko. The ICTY Appeals Chamber dismissed the appeals. Still, Racan balked at arresting Bobetko. The government next used Bobetko's failing health as a new excuse to avoid cooperation. The government's apparent aim was to postpone taking action long enough so that the 83-year-old Bobetko would be declared too

ill to stand trial. Delay made strategic sense because the ailing Bobetko was not expected to live long enough to make it through a lengthy trial. In the end, Bobetko's deteriorating condition and his death in April 2003 resulted in an ideal resolution to the crisis for Racan because it spared his government international criticism and damage to its EU membership bid for failing to arrest the general.

Racan's electoral defeat in November 2003 and the return to power of the conservative HDZ party sparked worries at the tribunal of an imminent decrease in state cooperation. In fact, under the leadership of the new prime minister, Ivo Sanader, Croatia's cooperation has improved significantly. In early March 2004, Del Ponte charged two high-ranking Croatian generals, Mladen Markac and Ivan Cermak, in connection with atrocities committed against Serb civilians during and after Operation Storm in 1995. A month later, Del Ponte issued indictments against six Bosnian Croats for their role in atrocities committed in Bosnia in 1993. In late May 2004, she indicted former Croatian general Mirko Norac. After all of the indictments, the suspects in question promptly surrendered to tribunal authorities.

Sanader's rapid progress on these indictments stands in sharp contrast to Racan's foot dragging on the Gotovina and Bobetko indictments. Interestingly, the more recent indictments did not spark domestic crisis as the previous indictments had. To be sure, some nationalists argued that the new indictments criminalized the Homeland War and cast collective blame on Croatians. But other nationalists either supported the handover or remained relatively silent.

Sanader succeeded in shaping the public debate over the generals' fate by forcefully articulating that failure to send them to The Hague could jeopardize Croatia's bid to join the European Union. Sanader defined the imminent handovers as serving Croatia's national interest even as he continued to challenge the indictments as unfair attacks on Croatia's conduct during the war. It is important to emphasize that Sanader faced fewer risks than Racan did when it came to handing over Croatian war crimes suspects. First, Sanader's nationalist credentials insulated him from the withering attacks that Racan might have faced had he facilitated the handovers. Second, the political consequences of Sanader's failure to move quickly to arrange these surrenders were particularly stark given the European Union's initial decision in spring 2004 on whether to move forward with Croatia's EU candidacy.

In the Balkans, Chief Prosecutor Del Ponte built on the investigations of her two predecessors—Richard Goldstone and Louise Arbour—to pursue the tribunal's quest to hold war crimes suspects from all sides of the conflict accountable. Tudjman's refusal to countenance investigations of the Homeland War and his death effectively won him a reprieve from indictment. Similarly, Bobetko's failing health ensured that he would not face international prosecution. To date, it is unclear whether Gotovina—the most important Croatian war crimes suspect still living—will appear in The Hague. In early 2005, the EU increased pressure on the Croatian government to arrest and hand over Gotovina. The government's failure to do so prompted the EU, in mid-March 2005, to halt membership talks with Croatia. Regardless of what happens with Gotovina, the ICTY has made major strides in its pursuit of war crimes suspects from the winning side of the Balkan

conflict given the arrests of four Croatian generals, Rahim Ademi, Mladen Markac, Ivan Cermak, and Mirko Norac. These arrests—as well as the public indictments against Gotovina and Bobetko—placed a spotlight on Croatia’s wartime conduct. That spotlight promises to grow stronger when these defendants stand trial.

The Rwanda Case

For the ICTR’s first few years, the question of investigating Rwandan Patriotic Front atrocities did not cross the prosecution’s radar screen. The ICTR investigators who arrived to a war-torn Rwanda in 1995 were justifiably consumed with the dual tasks of investigating the genocide and building an international tribunal from scratch. These tasks were initially more overwhelming than they should have been because of the lack of adequate international community support and the UN’s hiring of a court bureaucracy hobbled by incompetence and nepotism (Off 2000). The ICTR’s chronic administrative problems would greatly slow the pace of prosecutions and trials for years to come. In contrast to the ICTY that long had to settle for “small fish” suspects, the ICTR actually had many “big fish” suspects in custody who were the alleged masterminds of the genocide. Yet, the ICTR squandered its chance to demonstrate that it could bring such suspects quickly to trial.

Even had the ICTR been a model of bureaucratic efficiency, it is likely that its energies initially would still have been exclusively focused on investigating the genocide. For Richard Goldstone, the first chief prosecutor of both the ICTR and the ICTY, there were several reasons not to pursue RPF indictments during his tenure. First, in his view, the Security Council created the court primarily to prosecute the genocide (personal interview 2003). For Goldstone, the magnitude of genocidal crimes wrought by the Hutu extremists so outweighed the RPF’s massacres that the prosecutorial choice was clear. “My attitude . . . was to give priority in investigations and prosecutions to the most guilty,” Goldstone recalled (personal interview 2003). In his view, there was a great difference between the scale and intent of the Hutu crimes—which he rated as nine and ten on a hypothetical scale—and the Tutsi crimes—which he rated as much lower. “We didn’t have enough resources to investigate all the nines and the tens,” he explained. “And the RPF, who acted in revenge, were at ones and twos and maybe even fours and fives,” he said.

Issuing indictments against the victors—without sufficient evidence of atrocities—was for Goldstone not sound prosecutorial policy. “I certainly didn’t have evidence of massive crimes committed by the RPF,” he said (Personal Interview 2003). “I wouldn’t have issued an indictment against [Bosnian Muslims] for the sake of . . . saying what an even-handed chap I am. I think crimes have to be of the magnitude that justify doing it.” One could argue that Goldstone’s pressing task to investigate the genocide and his short tenure justified his decision not to open RPF investigations. Yet, significant evidence of RPF crimes did exist as far back as 1994. In fact, the U.N. Commission of Experts, an investigative body created by the Security Council before the establishment of the ICTR, found evidence of significant RPF abuses and recommended that in addition to prosecuting Hutu

genocide suspects, a tribunal prosecute these crimes (U.N. Commission of Experts 1994).

Goldstone does not list potential Rwandan retribution against the tribunal as a factor in his decision not to investigate the RPF. Nevertheless, he was likely aware of Rwanda's possible reaction given the government's turbulent relationship with the ICTR and a 1996 government threat to suspend cooperation with the tribunal over an unrelated conflict (personal interview with Goldstone 2003).¹¹ Whereas prosecuting Serbs, Croats, and Muslims made strategic sense in conveying the tribunal's neutrality to all sides, prosecuting both sides of the Rwandan conflict made little strategic sense for eliciting state cooperation because doing so would likely stir resistance from the RPF government without increasing the prospect of cooperation from the Hutu forces who had fled into exile at the end of the genocide and were now stateless.

After Goldstone's departure from the tribunals in September 1996, the question of RPF investigations became a growing concern for the prosecution. With the tribunal's increasing awareness of the crimes committed by the RPF came an awareness of the political dangers of embarking on such investigations. Goldstone's successor, Louise Arbour of Canada, reportedly feared that the Rwandan government might carry out reprisals against her investigators based in Rwanda to derail the investigations of RPF officers. "The Rwandan government was reading my mail," recalls Arbour. "We were infiltrated. They knew what I was doing. So if I sent someone off to do an investigation of the RPF, they might be killed. I wouldn't do it" (Off 2000: 331). Nevertheless, toward the end of her tenure, Arbour opened a preliminary probe of RPF atrocities. The probe, which was carried out quietly and cautiously, laid the groundwork for Del Ponte's subsequent investigation of specific RPF war crimes suspects.

Some former ICTR officials who worked in Rwanda during this period are skeptical that the Kigali government would have actually harmed investigators (personal interviews 2003). However, Arbour's statement underscores the palpable sense of fear among some at the ICTR that the government was determined to intimidate the tribunal to keep it focused exclusively on Hutu suspects. The Rwandan government's ability to exert control over the tribunal was demonstrated in late 1999, several months after Arbour left the tribunal, when it suspended cooperation to protest an Appeals Chamber decision to release Jean-Bosco Barayagwiza, a top Hutu genocide suspect whose due process rights were violated when he was kept in pretrial detention beyond the stipulated time period. For two weeks, the Rwandan government blocked Del Ponte, the new chief prosecutor, from traveling to Rwanda. Full cooperation was restored only after the Appeals Chamber, in a rare and highly controversial move, reversed its original decision. Although the Barayagwiza controversy concerned the prosecution of a Hutu and not a Tutsi, it nevertheless demonstrated the government's willingness to withhold cooperation as a means to force the tribunal's hand.

Despite formidable political barriers, Del Ponte decided to open a full-fledged investigation into RPF atrocities. In December 2000, Del Ponte announced that a

team of investigators had begun to probe RPF atrocities. Although she could not have expected an easy road ahead, Del Ponte's decision to publicly confront the taboo subject of RPF atrocities and pursue investigations was a bold move. Rwandan President Paul Kagame initially assured Del Ponte of his full cooperation. This pledge was a boost to tribunal officials, given the Rwandan government's ability to withhold cooperation. However, the government subsequently derailed Del Ponte's investigations.

In sharp contrast to her open struggle with the Croatian government, Del Ponte's struggle with the Rwandan government over RPF investigations took place behind closed doors and largely free of the media's scrutiny. The tribunal's "special investigations," as the RPF probe was dubbed by Del Ponte, were so secret that many high-ranking prosecution officials were not privy to their status.¹²

Del Ponte's patience and relative public silence did not continue indefinitely. In 2002, Del Ponte brought the RPF issue to center stage. In so doing, she staked her credibility on the success of these investigations. In April 2002, Del Ponte issued a statement criticizing the Rwandan government for its noncooperation and indicated plans to issue the first indictments against RPF officers by the end of the year. While signaling her commitment to hold the government accountable, the announcement may have backfired by giving the government advance warning of her indictment timetable and an opportunity to interfere further with her investigations.¹³

After Del Ponte's April announcement, the government turned up the heat on the tribunal by further attacking the court's credibility and undermining international support for the "special investigations." The government did not immediately take issue with Del Ponte's pursuit of RPF crimes. The success of the government's strategy lay in its ability to put the tribunal and its poor administrative performance and slow progress on genocide cases on "trial" in the court of international opinion in an effort to deflect attention from the government's refusal to cooperate. Although the government's line of attack was not new, it seemed to intensify during 2002. Despite significant improvements in the administration of justice, the ICTR continued to make embarrassing missteps that gave the Rwandan government a seemingly endless round of ammunition to assail the tribunal. For instance, the revelation that two Hutu defense investigators employed by ICTR had been arrested by the tribunal on genocide charges fueled government charges that the tribunal had become a safe haven for genocidaires (Peskin 2002: 21–25).

The Rwandan government's criticisms appear to have reduced diplomatic support for Del Ponte's bid to investigate RPF atrocities and issue indictments (personal interviews with Western diplomats 2002). In its political battle with Kigali, the tribunal's international reputation became a critical variable. In the face of continuous criticism, Del Ponte and other ICTR officials failed to respond effectively and build support among diplomats (personal interviews 2002). This failure of diplomacy—accentuated by the tribunal's 20-month failure to hire a permanent deputy prosecutor who could supervise the Office of the Prosecutor on a daily basis and act as a consistent diplomatic presence in Rwanda—appears to have further damaged Del Ponte's effort to build international support for the RPF investigations.¹⁴ But

the tribunal's diplomatic outreach was not the only factor to consider. The United States and Britain, Rwanda's most trustworthy allies, did not take strong steps to support Del Ponte's pursuit of RPF crimes. American diplomats expressed concern that RPF indictments could weaken the Kagame regime and, in turn, potentially destabilize Rwanda. Moreover, both the United States and Britain had an interest in bolstering the Rwandan government and obtaining its cooperation on issues of more importance to Washington and London, such as Rwanda's withdrawal from the Congo where a regional war had raged since 1998.

The Rwandan government also took steps to warn the tribunal of the high price it would pay for Del Ponte's RPF investigations. In early June 2002, the government instituted travel restrictions that blocked Tutsi genocide survivors selected by the prosecution to testify in two trials at the court's headquarters in Arusha, Tanzania. Without witnesses, the tribunal was forced to adjourn two trials for most of the summer. The Rwandan government denied that its action was tied to the RPF investigations, but tribunal officials and diplomats in Kigali believed otherwise (personal interviews 2002). The government showed that it could effectively hold witnesses hostage and virtually bring the wheels of justice to a halt.

The government's decision to bar witness travel was one of the most damaging acts of noncompliance in the history of both ad hoc tribunals. Yet this crisis did not garner much international attention and the Rwandan government received little criticism. The lack of media attention—and Del Ponte's inability to use her international stature to turn this into a prominent issue—made it easier for Western policymakers to downplay both the threat to the tribunal's viability and the question of RPF indictments.

The lack of international focus on the ICTR's problems was magnified by the tribunal's slow response to the witness crisis. Hoping that the government would allow witnesses to travel soon, tribunal officials allowed the trials to be disrupted for a month and a half before registering a formal complaint with the Security Council. It would take the Security Council close to six months to take action, and when it did so it declined to rebuke Rwanda. Instead, the Security Council went no further than to remind Rwanda of its obligation to cooperate. The UN's passivity underscores the critical role the international community can play in limiting or expanding the space in which a target state can act to undermine a tribunal. Under belated US pressure, the Rwandan government allowed the witnesses to travel to Arusha in August 2002 (Human Rights Watch Annual Report 2002). Yet, the resumption of witness travel did not mean Kigali had a change of heart about cooperating with the ICTR's "special investigations."

The tribunal's formal complaint against Rwanda at the UN and Kigali's strong rebuttal demonstrated the contentiousness of the victor's justice issue.¹⁵ Now that the issue was out in the open, the Rwandan government made no bones about attacking the tribunal for its investigations of RPF crimes. Del Ponte "is deeply immersed in the ethnic arithmetics and negationist theories of 'equal guilt.' This remains unacceptable," charged Martin Ngoga, the Rwandan government's representative to the ICTR (Foundation Hironnelle 2002). Government officials insisted

that the investigations were the prerogative of the domestic courts despite the fact that the ICTR has the legal right to decide which cases it will prosecute.

The end of 2002 came and went without Del Ponte handing down her promised indictments against RPF officers. The stalemate between the tribunal and the government persisted, but the government was not content with the impasse. Although the government had effectively stymied Del Ponte's "special investigations," the possibility remained that Del Ponte could issue indictments based on evidence obtained outside Rwanda. The government employed a new tactic; taking direct aim at Del Ponte. Beginning in late 2002, government officials began to call for Del Ponte's ouster. Again, the international community would tip the balance of power in Kigali's favor.

Fortunately for the government, the approaching end of Del Ponte's four-year term (in mid-September 2003) created an opportunity to mount a campaign at the United Nations against her. By July 2003, after extensive lobbying of UN delegations, the Rwandan government appeared to have secured the support of the United States and Great Britain for a plan to dismiss Del Ponte from her position as chief prosecutor of the ICTR (Simons 2003: 2). Del Ponte's bid to retain her job was dealt a further blow when UN Secretary General Kofi Annan recommended that the Security Council appoint a chief prosecutor for each tribunal, dismiss Del Ponte from her ICTR responsibilities, and retain her at the ICTY (Barringer 2003). Del Ponte initially fought back, accusing the Rwandan government of trying to block RPF indictments (*Agence France Presse* 2003) and indicating that she may resign her post at the ICTY in protest. In the end, however, Del Ponte did not put up a vigorous fight to keep her post at the ICTR or resign from her role as chief prosecutor of the ICTY.

Annan maintained that the plan to separate the prosecutor's position was motivated solely by administrative concerns, most notably the need to speed the closure of the tribunal.¹⁶ The message here was that the tribunal's long-documented managerial failures required new leadership. However, the belated push for two separate chief prosecutors is suspect, given that the United Nations had long maintained the importance of having a single prosecutor to oversee both tribunals.¹⁷ The timing of the plan, in the face of intense Rwandan pressure, leaves the Security Council open to the charge that it sacrificed Del Ponte to appease Rwanda's anger and, perhaps, to stop the tribunal from issuing RPF indictments. "It's a political decision," Del Ponte charged (personal interview 2003). "What I know is that the United States didn't want . . . RPF indictments." U.S. and British officials vigorously deny Del Ponte's accusations (personal interviews 2003). Regardless of intent, the Security Council's move may jeopardize the "special investigations" because it is not clear if Del Ponte's successor will be willing to prioritize this issue. Moreover, Del Ponte's dismissal from the ICTR could diminish her standing in the Balkans, rendering it more difficult for her to wrest cooperation from Croatia and Serbia. In any case, the UN's action is likely to be a reminder of the costs to the tribunal of pursuing the victors and the penchant of the international community to withdraw support when it perceives the tribunal is exercising too much autonomy. Even if Del Ponte's

successor, Hassan Bubacar Jallow of Gambia, continues her investigations, the tribunal will still confront obstacles to its bid to issue RPF indictments. Time may be the tribunal's biggest enemy. The Security Council's 2005 deadline for issuing new indictments may further tie the prosecutor's hand and increase Rwanda's incentive to run out the clock just long enough to evade the reach of international justice.

Rwandan obstruction and the Security Council's decision not to renew Del Ponte's tenure dealt a serious blow to the tribunal's efforts to prosecute RPF officers. Yet, before her departure from the ICTR Del Ponte likely collected enough evidence—obtained from tribunal investigations conducted outside Rwanda—to issue indictments against some RPF officers, according to interviews with current and former tribunal officials. Some current and former ICTR officials, believing that Del Ponte likely had enough evidence to hand down indictments, suspect that Del Ponte chose not to do so for political reasons—perhaps due to intense American and British pressure or to safeguard her reappointment at the ICTY. Del Ponte, however, maintains that she did not issue indictments because the Rwandan government blocked her investigators from gathering sufficient evidence (personal interview 2003).

CONCLUSION

This article highlights a serious limitation of international criminal justice: There is no assurance that the International Criminal Tribunals for the Former Yugoslavia and Rwanda or the permanent International Criminal Court (ICC) will have the political fortitude to prosecute war crimes suspects from the victorious side of armed conflicts. States can frequently employ multiple tactics to block tribunals from delivering justice in an even-handed manner. In the absence of police powers under the tribunals' control, influential members of the international community can act as surrogate enforcers of a state's obligation to cooperate. However, these international actors can also enable a state to violate its obligation to cooperate by remaining silent or actively lend support when the question of the state's behavior arises.

The jury is still out on whether and the extent to which the tribunals are victor's courts, because the tribunals' struggles with the Croatian and Rwandan governments are ongoing. To date, however, the tribunals have confronted formidable obstacles from the Zagreb and Kigali governments. In relative terms, the ICTY has proved much more successful in its pursuit of the winners insofar as it has issued indictments against six Croatian generals suspected of responsibility in atrocities committed against Serbs and has obtained custody of four of these generals. In Rwanda, the ICTR has confronted much larger obstacles insofar as it has been blocked from even conducting investigations into the role of RPF officers in massacres of Hutu civilians.

Despite the ICTY's difficulties in bringing Croatian generals to trial, the tribunal has established an important precedent regarding the principle of

prosecutorial fairness. The ICTY has brought a semblance of balance to its indictments and prosecutions by prosecuting ethnic Serbs, Croats, and Muslims involved in the Bosnian conflict and by indicting some Kosovar Albanians accused of committing atrocities against Serbs in the Kosovo conflict. However, in this article I have drawn a distinction between the prosecutions in Bosnia—where no side proved victorious¹⁸—and the prosecution of Croatian generals suspected of committing atrocities in their victorious independence war.

It is important to note that the Balkan wars also produced other winners besides Croatia.¹⁹ In the Balkans, one might also consider the United States and the North Atlantic Treaty Organization (NATO) victors in light of the success of their 78-day bombing campaign that drove Serb forces out of Kosovo. To date, much of the discussion of victor's justice has been dominated by the issues surrounding the ICTY's decision not to bring charges against NATO forces in connection with civilian casualties in Serbia. Serbian nationalists and other tribunal critics have denounced the ICTY for victor's justice by prosecuting Serbs, but not Americans (Parenti 2002). The victor's justice critique has been a major rhetorical weapon in Slobodan Milosevic's effort to defend himself in his trial in The Hague. Milosevic and other tribunal critics also condemn the ad hoc courts for being inherently selective because some countries are targeted for international prosecutions (e.g., the former Yugoslavia and Rwanda) whereas other countries are not (e.g., Angola). A comprehensive understanding of the politics of the tribunals involves not only an analysis of the role of the winners and losers but also of the powerful and weak.²⁰

The need to prosecute all sides of the Balkan and Rwandan conflicts is justified not only on moral, but on utilitarian grounds. If the tribunals are to have any chance of deterring future conflict and contributing to social reconstruction, as it often claims it can, it needs the independence to prosecute all serious violations of international humanitarian law. Prosecuting the losers while leaving the winners immune will risk sending a contradictory message of accountability. Instead of promoting accountability, the tribunal's failure to prosecute the winners may actually promote impunity by teaching the lesson that atrocities will not be punished as long as one prevails in battle. Providing a semblance of balance in prosecutions is also crucial for the tribunal to realize its goal of providing an accurate historical record of the causes and consequences of ethnic conflict. A tribunal that is blocked from investigating war crimes on all sides of an armed conflict may bequeath an impoverished and distorted historical document that fuels denial of crimes for generations to come. The failure to examine the victor's crimes can in turn fuel revisionists on the losing side of the war to deny the existence or severity of their own atrocities. As in post-war Japan, cries of hypocrisy and double standard can be used as "a smokescreen" for nationalists to deny their own crimes (Dower 2002). Indeed, this is what is happening today as Serbian nationalists and exiled Hutu extremists rail against the tribunals in an effort to diminish their own culpability.

The refusal of the United States—the odds-on favorite to remain a winner in its future military conflicts—to submit to ICC jurisdiction has raised the specter of a hobbled court that may be able to prosecute war crimes suspects from weak states, but not from powerful ones. The history of today's ad hoc tribunals, however, shows that even small and relatively weak states can stymie international courts. The political obstacles strewn in the tribunals' path by the Croatia and Rwandan governments, and the international community's reluctance to consistently pressure these states to provide full cooperation, remind us that the courts' foundational principle of holding the victors accountable remains elusive. In the Nuremberg and Tokyo tribunals there was no pretense that justice was applied equitably to the different sides of the European and the Pacific-Asian wars. In contrast, today's tribunals have a more inclusive notion of what it means to bring war criminals to justice. The international character of the ad hoc tribunals and their claim of transcending the victor's justice problem give the courts a stronger basis for legitimacy. Precisely because the ICTY and ICTR are on their face not victor's courts in the same way that Nuremberg and Tokyo were, there is a tendency for tribunal supporters not to recognize that the courts can still become the instruments of the victors. The danger is not only that the courts may become victor's courts and perpetuate impunity instead of full accountability. The danger also lies in the prospect that the courts' prosecutions and judgments will be regarded in some quarters (especially in the West) as providing the official and definitive history of the wars in question. With the tribunals' international imprimatur, the actions and atrocities of the winning side may be further minimized or forgotten. Nuremberg and Tokyo's singular focus on Axis war crimes certainly overrode Allied wrongdoing. Yet, the deliberate exclusion of the victors' own offenses by the Nuremberg and Tokyo tribunals has also sparked scholars and observers to document these gaps and silences by reexamining the Allies wartime conduct (Sebald 2002).

The point of this article is to unearth the dynamics of victor's justice where victor's justice is not supposed to exist. A full rendering of the political battles between the tribunals and states is an essential part of the tribunals' historical record because it illuminates the often hidden imbalances that deter the realization of international justice.

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NOTES

1. Article 1 of the ICTY statute, titled "Competence of the International Tribunal," reads as follows: "The International Tribunal shall have the power to prosecute persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991 in accordance with the provisions of the present Statute." Article 1 of the ICTR statute, titled "Competence of the International Tribunal for Rwanda," reads as follows: The International Tribunal for Rwanda shall have the power to prosecute persons responsible for serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens responsible for such violations committed in the territory of neighboring States, between 1 January 1994 and 31 December 1994, in accordance with the provisions of the present statute."
2. Article 29 of the ICTY statute and Article 28 of the ICTR statute, both titled, "Cooperation and Judicial Assistance," outline states' binding legal obligation to cooperate with the tribunals. ICTY Article 29 reads as follows: "1) States shall cooperate with the International Tribunal in the investigation and prosecution of persons accused of committing serious violations of international humanitarian law. 2) States shall comply without undue delay with any request for assistance or an order issued by a Trial Chamber, including, but not limited to: a) the identification and location of persons; b) the taking of testimony and the production of evidence; c) the service of documents; d) the arrest or detention of persons; e) the surrender or the transfer of the accused to the International Tribunal."
3. Serbia returned the portion of Eastern Slavonia it seized in 1991 to Croatia in 1998.
4. Croatian atrocities against Serb civilians during the Homeland War also occurred in 1991 and 1993.
5. Croatian forces are also accused of unlawful killings during attacks against Serbs in the Medak Pocket area of central Croatia in the early 1990s (see ICTY indictments of Rahim Ademi [2001a] and Janko Bobetko [2002]).
6. See Note 1.
7. The question of handing over indicted Bosnian Croats to the ICTY, as Tudjman reluctantly did in 1996 and 1997, would not prove nearly as controversial as the question of handing over the Croatian generals because the Bosnian Croats were lower-level suspects and the military intervention in Bosnia was not as strongly supported in Croatia as was the Homeland War, which was fought on Croatian soil to regain national territory lost to the Serbs early in the war.
8. Tudjman balked at sending the two Bosnian Croat suspects to The Hague. After Tudjman's death, the new Croatian government sent the two suspects to the ICTY.
9. One indictment charged General Rahim Ademi with crimes against humanity for his role in commanding forces in the Medak Pocket area of central Croatia in 1993. The other indictment charged retired general Ante Gotovina with crimes against humanity for his role in commanding forces during Operation Storm in 1995.
10. In June 2003, Gotovina prompted speculation that he may surrender to the ICTY after he told a Croatian newspaper that he wanted to speak with tribunal investigators about the allegations against him.
11. Although the fledgling Tutsi government called on the United Nations to establish a war crimes tribunal, it cast the sole dissenting vote in the Security Council in November 1994 against establishing the court mainly because of the absence of the death penalty and the court's likely location outside Rwanda. At the time, the Rwandan government happened to hold a temporary seat on the Security Council. Because the government still wished to see its Hutu enemies face trial it has for the most part provided much-needed cooperation to the tribunal in its genocide investigations. See Peskin (2000).
12. Rather than assign a regular team of investigators to report to ICTR prosecution officials in Kigali, a team of several investigators reported directly to Del Ponte in The Hague.
13. Another interpretation, offered by a Western diplomat I interviewed in Rwanda, is that Del Ponte's announcement may have been a warning to the government that if it did not cooperate she would be forced to issue an indictment on the basis of the evidence already collected.
14. Del Ponte and her predecessors were based in and spent most of their time in The Hague.
15. Mirroring its earlier attacks on the ICTR, the Rwandan government issued an angry rebuttal to Del Ponte's complaint to the Security Council. Again, the government was able to shift the terms of the debate and avoid an in-depth discussion of RPF crimes.
16. In early August 2003, Human Rights Watch and several other human rights organizations called on the Security Council to ensure that Annan's proposal did not undermine the tribunal's RPF investigations. Importantly, however, Human Rights stopped short of opposing Del Ponte's dismissal. (Human Rights Watch 2003).
17. In 1999, a UN expert group concluded that having a single prosecutor for both tribunals was a sound idea.

18. Croatia was not a victor when it came to its military intervention in Bosnia. Because this article is focused on the question of victor's justice, I have not included an analysis of the Croatian government's cooperation record with the ICTY concerning its military involvement in the Bosnian conflict.
19. Slovenia is also a clear victor of the Balkan conflict given that its brief 1991 war against Milosevic's Yugoslav People's Army led to independence for the former Yugoslav republic. In some respects, the Kosovo Liberation Army (KLA) can be considered a winner of the 1999 war given the expulsion of Serb forces from Kosovo and the return of hundreds of thousands of Kosovo Albanian refugees. However, unlike Croatia, the KLA has not yet achieved its goal of becoming formally independent from Serbia.
20. I would like to thank Joseph Nevins for bringing this idea to my attention and persuading me of its importance.

REFERENCES

- AGENCE FRANCE PRESSE (2003) Rwanda pressing UN to drop Del Ponte as prosecutor. *Agence France Presse*, 24 July.
- BARRINGER, F. (2003) Annan seeks separate war prosecutors. *New York Times*, 30 July.
- DEL PONTE, C. (2003) Hiding in Plain Sight. *New York Times*, 28 June.
- DES FORGES, A. (1999) *Leave None to Tell The Story: Genocide in Rwanda*. (New York: Human Rights Watch).
- DOWER, J. (2002) "An aptitude for being unloved": War and memory in Japan. In O. Bartov et al. (eds.) *Crimes of War: Guilt and Denial in the Twentieth Century* (New York: The New Press), pp. 217–241.
- ERÖZDEN, O. "Croatia and the ICTY: A Difficult Year of Co-Operation." Available online at www.ceu.hu/cps/bluebird/pap/erozden1.pdf, 2002.
- FOUNDATION HIRONDELLE (2002) UN Prosecutor Rallies UK Support to Investigate Rwandan Army. 29 November.
- GOLDSTEIN, I. (1999) *Croatia: A History*. (London: Hurst & Co.)
- GOVERNMENT OF REPUBLIC OF CROATIA, Ministry of Justice & Council for Cooperation with the International Court of Justice and International Court. (1999) The White Paper on Cooperation with the International Criminal Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia Since 1991.
- HERMAN, E. (2002) The Milosevic Trial, Part 1: The tribunal and its record. *Z Magazine*.
- HUMAN RIGHTS WATCH (2002) Rwanda Annual Report. Available online at: <http://www.hrw.org>
- HUMAN RIGHTS WATCH PRESS RELEASE (2003) Leading Rights Groups Urge Security Council to Ensure Management Reforms do not Undermine Rwanda Tribunal, 7 August.
- INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA (2002) Indictment Against Janko Bobetko. Available online at: <http://www.un.org/icty/indictment/english/bob-ii020826-e.htm>
- INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA (2001a) Indictment Against Rahim Ademi. Available online at: <http://www.un.org/icty/indictment/english/ade-2ai020201e.htm>
- INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA (2001b) Indictment Against Ante Gotovina. Available online at: <http://www.un.org/icty/indictment/english/got-ii010608e.htm>
- MUNDIS, D. (2001) Reporting Non-Compliance: Rule 7bis. In R. May et al. (eds.), *Essays on ICTY Procedure and Evidence in Honour of Gabrielle Kirk MacDonal*d (The Hague Kluwer Law International), pp. 421–438.
- OFF, C. (2000) *The Lion, the Fox & The Eagle: A Story of Generals and Justice in Yugoslavia and Rwanda* (Random House Canada).
- PARENTI, M. (2002) *To Kill A Nation: The Attack on Yugoslavia* (London: Verso Books).
- PESKIN, V. AND BODUSZYNSKI, M. (2003) *Croatia's Moments of Truth: The Domestic Politics of State Cooperation with the International Criminal Tribunal for the Former Yugoslavia*. Berkeley Program in Soviet and Post-Soviet Studies Working Paper Series.
- PESKIN, V. (2002) Rwandan ghosts. *Legal Affairs*, September/October, pp. 21–25.
- Peskin, V. (2000) Conflicts of Justice: An Analysis of the Role of the International Criminal Tribunal for Rwanda. *International Peacekeeping*, 6 July–December, 128–137.
- PRUNIER, G. (1997) *The Rwanda Crisis: History of A Genocide* (New York: Columbia University Press).
- ROBERTSON, G. (1999) *Crimes Against Humanity: The Struggle for Global Justice* (New York: The New Press).
- SCHARF, M. (1997) *Balkan Justice: The Story Behind the First International War Crimes Tribunal Since Nuremberg* (Durham, NC: Carolina Academic Press).
- SEBALD, W.G. (2002) *On the Natural History of Destruction* (New York: Random House).
- SILBER L. AND LITTLE A. (1997) *Yugoslavia: Death of a Nation* (New York and London: Penguin Books).
- SIMONS, M. (2003) Rwanda is Said to Seek New Prosecutor for War Crimes Court. *New York Times*, 28 July, 2.
- TAYLOR, T. (1992) *The Anatomy of the Nuremberg Trials: A Personal Memoir* (New York: Alfred A. Knopf).
- UNITED NATIONS COMMISSION OF EXPERTS (1994). Final Report. 9 December. S/1994/1405.