PART I

INTRODUCTION
International War Crimes Tribunals and the Politics of State Cooperation

1.1 Prologue: Survivors and Suspects

On the morning of Friday, June 7, 2002, security officers working for the United Nations war crimes tribunal in Rwanda gathered several survivors of the 1994 genocide and brought them quietly to the airport on the outskirts of the capital, Kigali. The group of survivors – mostly poor Tutsi peasants – was set to board a UN plane for the two-hour flight that crosses the vast expanse of Lake Victoria en route to the tribunal’s courtrooms in Arusha, Tanzania. The survivors had been chosen to testify for the prosecution in two trials of Hutu genocide suspects at the international court.

Moving witnesses from the green hills of Rwanda to the windowless courtrooms in Arusha some 400 miles to the east had become routine in the six and a half years since trials first began at the UN war crimes tribunal. But as the events of that day and the next few months would illustrate, the tribunal’s existence depended on carrying out the seldom-noticed task of taking witnesses out of the country and, most importantly, on the willingness of the Rwandan government to permit it to do so.

When the tribunal’s security officers escorted the survivors to the airport, the officers were stunned to learn that the Tutsi-led Rwandan government had just instituted travel restrictions that blocked the Tutsi prosecution witnesses from traveling to Arusha to testify against Hutu suspects on trial for genocide. Without witnesses to take the stand, tribunal judges were forced to adjourn two scheduled trials. The wheels of international justice ground to an abrupt halt until August, when the Rwandan government finally allowed witnesses to travel to the tribunal. The ease with which the government could jeopardize this new experiment in international law underscored the tribunal’s lack of enforcement powers and the court’s dependence on state cooperation for the functioning of its legal process.

While state cooperation with the ad hoc International Criminal Tribunal for Rwanda (ICTR) worsened during 2002, prospects for state cooperation steadily
improved for its sister tribunal in The Hague, the International Criminal Tribunal for the Former Yugoslavia (ICTY). After years of showing no inclination to cooperate with an institution that targeted its political and military leaders as well as those of its Bosnian Serb allies, the Serbian government changed course and turned over some high-level suspects to the tribunal. The Croatian government, which had provided only limited assistance to the tribunal during the 1990s, also began to ease its resistance to the ICTY.

The start of the Slobodan Milošević trial in February 2002 was dramatic proof that the ICTY could induce cooperation from the once obstinate states of the Balkans. Milošević’s refusal to recognize the tribunal’s legitimacy notwithstanding, the former Serbian president was actually in the dock facing charges of war crimes, crimes against humanity, and genocide during the Balkan wars of the 1990s. Back home in Belgrade, top Milošević allies indicted by the court found it increasingly difficult to escape the widening reach of The Hague tribunal. Just a year before, indicted war crimes suspects went about their political or military business as usual, flaunting their visibility in Belgrade’s finest restaurants. But by 2002, many of these suspects had gone underground, afraid that the once protective Serbian regime would arrest them. One top indicted war criminal, former minister of internal affairs Vlajko Stojiljković, made a defiant last stand against The Hague, preferring martyrdom to surrender. In April 2002, Stojiljković shot himself on the steps of the Federal parliament building in downtown Belgrade to protest the parliament’s decision to pass a law designed to speed the arrest and transfer of Serbian war crimes suspects to the ICTY. Such suicidal protest was one more indication that the tribunal was gradually gaining the upper hand in its battle for state cooperation.

1.2 Key Questions and Central Issues

The rise of state cooperation in the Balkans and its decline in Rwanda indicate a surprising reversal of fortune for the two tribunals. What explains these shifts in state cooperation with the international courts? What accounts for the Rwandan government’s initial support of the ICTR, and the Serbian and Croatian governments’ previous opposition to the ICTY? The principal objective of this book is to address these questions by determining the conditions under which Rwanda and the states of the former Yugoslavia cooperate with the international war crimes tribunals. Specifically, this book examines the issue of state cooperation with the tribunals in its most difficult circumstance – when war crimes suspects belong to a government’s own ethnic, national, or political group.

By many accounts, the turn of the twenty-first century ushered in a golden age for international human rights. By the end of the twentieth century, the norm

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of international justice had grown in remarkable ways, as seen in the establishment over the previous five decades of numerous international conventions and treaties outlawing human rights abuses. In the 1990s, the creation of the UN International Criminal Tribunals for the Former Yugoslavia and Rwanda, the passage of the Rome Statute that led to the creation of the International Criminal Court (ICC), and the use of universal jurisdiction to attempt to prosecute former Chilean dictator Augusto Pinochet and former Chadian dictator Hissène Habré signaled a sea change in the global expansion of the principle of accountability. More than codifying new elements of international humanitarian law, legal institutions have actually been created to hold suspects criminally accountable for their involvement in atrocities. To tribunal advocates, these new institutions represent the zenith of the international human rights movement. With such institutions in place, getting away with mass murder would no longer be the norm but the exception.

Whether these new judicial institutions will actually be effective depends ultimately on whether they can obtain and sustain the state cooperation needed to carry out investigations, locate witnesses, and bring suspects to trial. The striking scene on the airport tarmac in Kigali shows how much tribunals must look to the targeted states because it is these states that often control the most vital aspects of cooperation.

The framers of the ICTY and ICTR were well aware of the need for state cooperation and for safeguarding the courts against being manipulated to serve states’ political agendas. Indeed, independence and insulation from external pressure lie at the core of the tribunals’ mission to deliver justice fairly and impartially. It was believed that the tribunals’ international makeup, their legal professionalism, and location far from the scene of conflict (The Hague for the ICTY and Arusha, Tanzania, for the ICTR) ensured their neutrality and protection from the lures of political expediency. Nationals from the countries in which war crimes took place have so far been excluded from serving as judges, and usually also as prosecutors and administrators, at the ICTY and ICTR.

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4 Nevertheless, as will be discussed, the tribunals have come under heavy fire in Rwanda and in the Balkans for being too remote and unaccountable to local communities. Such criticism has been a major factor in the ICTY and ICTR’s decision to launch “outreach programs” designed to close the geographical gap between the tribunals and Rwanda and the former Yugoslavia as well as the decision to locate the Sierra Leone tribunal in the capital of that West African country.

5 This stands in contrast to the more recently created “hybrid” tribunals in Sierra Leone, East Timor, and Cambodia that provide for domestic judges and prosecutors to work alongside their international counterparts.
Introduction

By acting outside the cauldron of domestic politics, the tribunals' international judges and prosecutors would uphold the law and not fall victim to the political forces that have characteristically undermined the legitimacy of domestic war crimes trials in deeply divided societies. Independence was also essential to realize other elements of the tribunals' mission, such as creating an accurate historical record of wartime atrocities and contributing to reconciliation and societal healing. Tribunals controlled by one or more states could not be counted on to deliver credible truth and lasting justice. To achieve these goals and protect the tribunals' autonomy, the UN Security Council granted the ICTY and ICTR legal primacy to trump state sovereignty and demand full and immediate cooperation from all UN member states, particularly targeted states.

The principle of neutrality stands in sharp contrast to the form of justice meted out by the victorious Allied powers in the Nuremberg and Tokyo military tribunals. Despite their jurisprudential precedents, the Nuremberg and Tokyo tribunals continue to be plagued by the criticism of "victor's justice" since only the vanquished Axis powers were punished for their atrocities. In contrast to these World War II-era tribunals, the ICTY and ICTR were given a mandate by the Security Council to prosecute serious violations of international humanitarian law regardless of whether the suspects came from the winning side or the losing side of an armed conflict. But withholding cooperation can give states power to turn the tribunals into vehicles for the political interests of the targeted state. These ad hoc tribunals can effectively become victor's courts insofar as the winners of a conflict may be able to control a tribunal's prosecutorial agenda. By the same token, the losers of a conflict may be able to control the courts by blocking investigations and prosecution of their nationals.

Rwanda and the states of the former Yugoslavia are not the only actors that seek to exert political control over these courts. In many circumstances, powerful international actors such as the United States, the European Union (EU), and NATO may effectively direct the tribunals. It is precisely this charge that was strategically leveled against the ICTY, most notably by Slobodan Milošević in his courtroom tirades. Under the broad cover of UN principles that created the tribunals—especially territorial and temporal jurisdiction and the type of human rights abuses to be prosecuted—international actors may take it as their prerogative to influence who is eligible for indictment and prosecution. Not unlike the targeted states, international actors may also hamper investigations and block indictments by withholding valuable evidence in their possession.

The courtroom has taken center stage in many scholarly analyses of international war crimes tribunals. But beyond the courtroom are political dramas largely hidden from both public view and scholarship that are crucial in determining the level of state cooperation and in shaping the dynamics and outcomes of the trials taking place in The Hague and in Arusha. This book focuses on two levels of such political activity beyond the courtroom: first, the political struggles and negotiations between tribunal, state, and powerful international community actors that occur prior to as well as during the courtroom trials; second, the political struggles and negotiations within states.
Embedded in these two levels of analysis is the crucial but understudied question of the power of international tribunals to influence targeted states to cooperate with war crimes prosecutions. Although the tribunals are often constrained, indeed even undermined, by the greater power of the international community and targeted states, at key junctures the tribunals have successfully developed and utilized a range of strategies in their struggle for cooperation with these actors. The tribunals have no enforcement power of their own. But they do have “soft power”—the capacity to affect change in the behavior of external actors by a multiplicity of strategies that do not depend on actual enforcement. Joseph S. Nye, Jr., who coined the term, defines “soft power” as the capacity for a state or institution to get what it wants “through attraction rather than coercion or payments.” Tribunals do not have the luxury of choosing coercion and payment over attraction. They have only the soft power of attraction. This type of power takes its force from legitimacy and moral authority. At least in theory, the UN tribunals possess a great deal of soft power because of their moral claim to being the ultimate judicial guardians of universal standards of human rights.

In reality, tribunals cannot afford to take their moral authority for granted because the actual practice of international justice often falls short of its idealistic goals. The real and perceived failings of the tribunals leave them vulnerable to attack from targeted states seeking to thwart prosecutions. Thus the soft power of the tribunals is not unalterable, but fluctuates with their standing among different international and domestic actors. To a significant degree, a tribunal shapes its reputation and in turn its soft power by the efficacy of its policies and practices as well as by the skill with which it markets itself.

A core argument of this book is that the ICTY has been able to exercise its soft power more effectively than the ICTR because of the ICTY’s greater success in completing trials, maintaining professionalism in court operations, and obtaining frequent and favorable international press coverage. By contrast, the ICTR has been beleaguered by a series of administrative scandals, the slow pace of trials, and negative media coverage that have undermined its reputation as well as its capacity to persuade international actors to intervene on its behalf when the Rwandan government withholds cooperation. However, just because the ICTY has wielded more soft power than the ICTR does not guarantee that the former’s power will not deteriorate or that the latter’s power will not grow. Failure to produce results in the crucial dimension of completed trials can deal a

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6 Joseph S. Nye, Jr., Soft Power: The Means to Success in World Politics (New York: Public Affairs, 2004), p. x. In his book, Nye focuses on the need for U.S. leaders in the post-September 11 era to develop soft power strategies as a complement to traditional hard power strategies such as the use of military force. Although Nye does not consider the potential of international war crimes tribunals to develop and wield soft power, he briefly discusses the ways in which the UN can cultivate this resource. According to Nye, the UN has a reservoir of soft power because of its “universalism” and “legal framework” (p. 14).

7 This point about the role of marketing is drawn from Clifford Bob, The Marketing of Rebellion: Insurgents, Media, and International Activism (Cambridge: Cambridge University Press, 2005).
blow to a tribunal’s legitimacy and its diplomatic leverage. This may be particularly true when a tribunal fails to reach closure in the prosecution of its most important suspects. A case in point is the death of Slobodan Milošević in March 2006, just weeks away from the end of his more-than-four-year-long trial and amid revelations of lax tribunal procedures regarding his medical treatment while in custody.

This book’s attention to the strategic actions of tribunals poses a challenge to realists who contend that international law and international legal institutions have no independent power to influence events, being merely creatures of their international creators. But by virtue of their capacity to craft strategies aimed at prodding targeted states to cooperate and international actors to intervene on the tribunals’ behalf, tribunals matter more than realists have recognized. Still, that the tribunals can act in this way does not necessarily mean they will be free to do so or that each tribunal will do so in the same way or to the same extent. The comparative nature of this book highlights the variation in each tribunal’s approach to the cooperation problem. The case-study chapters will demonstrate how and why the ICTY has been much more successful than the ICTR in developing effective strategies for state cooperation.

Just as it challenges realists, this book also challenges human rights champions of the tribunals. Their understanding of the tribunals as strategic actors is often skewed by an idealistic outlook that views the tribunals as engaged in a virtuous battle to save international justice and expand its global reach. This perspective is particularly evident in the Western media’s portraits of the tribunal chief prosecutor as a dogged and courageous crime fighter who brooks no compromise in the pursuit of justice. A major weakness of this analysis lies in its narrow conception of what it means for tribunals to struggle with targeted states and the international community for cooperation. To be sure, human rights advocates do not inhabit a dream world where law alone governs international affairs and where international tribunals easily overcome the resistance of defiant states. But they often contend that the tribunals’ capacity to alter the behavior of such states stems from the moral force of the tribunal’s mission and legal authority. Left unacknowledged, perhaps out of a reasonable fear that such acknowledgment will undermine the tribunals’ moral authority, is the fact that the tribunals’ fight for cooperation is frequently driven by a legal and political calculus that involves bargaining with and concessions to recalcitrant states. Largely absent in the human rights literature is a recognition that the tribunals’ lack of enforcement powers often compels them to act politically by negotiating with states to secure promises of cooperation or to forestall threats to disrupt cooperation altogether.

Tribunal officials and advocates also argue that international war crimes tribunals can ameliorate the political climate in countries recovering from mass

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atrocities by reconciling former enemies, deterring new rounds of violence, and contributing to the development of a legal culture in which courts, not guns or machetes, resolve disputes. Faith in the transformative power of international law has cast the ICTY and ICTR (and ad hoc tribunals in Sierra Leone and East Timor and the International Criminal Court) not only as instruments of justice and morality but as indispensable tools for conflict resolution and prevention as well as nation-building. The long-term effects of the contemporary war crimes tribunals are, of course, not yet known. But the tribunals' short-term effects on targeted states—particularly in the Balkans—are not as benign as the human rights camp claims. This book challenges the inspiring Kantian vision of international law associated with human rights advocacy by highlighting the ways in which international tribunals may generate domestic crisis and threaten political stability. The domestic crises following tribunal indictments of top-level Serbian and Croatian military and political leaders have bitterly split governing coalitions, and during certain periods undermined the democratic transitions in Belgrade and Zagreb. While the ICTY has scored increasing success in compelling states to cooperate, these have at times been Pyrrhic victories that have undercut the tribunal's objective of contributing to domestic stability.

Finally, the book also disputes the claim that a state's decision to cooperate by handing over suspects to an international war crimes tribunal is proof of the growing legitimacy of tribunals and the universal acceptance of human rights norms. Behind such apparent state cooperation are layers of conflict and compromise. Even when state cooperation is forthcoming, stalwarts at home in the targeted states are unlikely to be swayed either by the value of international justice or by the state's responsibility for war crimes. In fact, state cooperation is all too frequently castigated at home as a violation of state sovereignty and a betrayal of the nation's honor.

1.3 Conceptual Framework

A. Between Tribunal, State, and International Community

The political interactions between tribunal, state, and international community are virtual trials of their own that determine a state's response to tribunal demands for cooperation. These interactions proceed over such matters as whether and how many nationals or members of a particular ethnic group will be indicted; how far up the political and military hierarchy will such indictments reach; and how many nationals of enemy nations or opposing ethnic or political groups will face indictment and prosecution. These virtual trials, which will also be called "trials of cooperation," are essential in establishing the level of cooperation the tribunals will ultimately receive from states and, consequently, the nature and outcome of the actual courtroom trials of individuals.

The idea of a trial of cooperation offers a conceptual framework that helps illuminate the features of the power struggles that occur between the ad hoc tribunals, the states of the former Yugoslavia and Rwanda, and influential international actors. Whereas the actual courtroom trials pit the prosecution
against the individual defendant over war crimes charges, the trials of cooperation pit the tribunals against the state and state leaders over charges of obstruction of the tribunals’ legal process. And whereas international jurists sit in judgment of indicted war criminals in the actual courtroom trial, powerful international players – such as the European Union, the United States, and the Security Council – sit in unofficial but influential judgment of states in the virtual trial. Through these trials of cooperation, the tribunals’ original mandate to focus solely on determining individual guilt for the commission of war crimes broadens, in effect, into determining state guilt for obstruction of the legal process.

In their official statements and speeches, tribunal officials are often reluctant to acknowledge that such virtual trials exist, primarily to discourage the perception that the tribunals have moved away from their original focus on the guilt of individuals to casting blame on states. The raison d’être of the tribunals is to determine individual guilt and thereby prevent the imposition of collective blame that often demonizes groups and nations and fuels new cycles of violence. While insisting on the tribunals’ legal right to obtain full state cooperation, tribunal officials often mute their adversarial rhetoric in the hope that state assistance to the tribunals will become a matter of voluntary cooperation rather than imposed compliance. The tribunals’ strong preference for the word “cooperation” over the word “compliance” speaks to their abiding hope of winning universal acceptance and legitimacy. Still, states can become so openly intransigent that the tribunals will make public – to international forums such as the Security Council and the international media – these virtual trials in which states stand accused of obstructing justice by sheltering war criminals, hiding evidence, or blocking witness testimony.

These trials of cooperation, if “prosecuted” effectively by the tribunals, may increase the prospects of state compliance by subjecting the state’s violation of international law to public exposure and condemnation. Without enforcement powers of their own, tribunals will often resort to techniques of persuasion – namely, shaming a recalcitrant state in the court of international public opinion. In lacking enforcement powers, tribunals are comparable to human rights organizations that even more so must rely on adversarial strategies that brandish shaming. The Yugoslavia and Rwanda tribunals are different from human rights organizations because, at least formally, these tribunals are arms of the Security Council and have the legal right – granted under Chapter VII of the UN Charter – to call on the Council for enforcement of a state’s obligation to cooperate with the tribunals.\footnote{For a discussion of the role of shaming by non-governmental organizations and transnational advocacy networks, see Thomas Risse, Stephen C. Ropp, and Kathryn Sikkink, The Power of Human Rights: International Norms and Domestic Change (Cambridge: Cambridge University Press, 1999).}

\footnote{Key judicial actors such as the chief prosecutor have employed strategies used by non-governmental organizations. This borrowing has been facilitated in part by the close collaboration between the tribunals and prominent NGOs such as Human Rights Watch. These...}
A non-cooperative state does not usually remain passive in the face of the tribunal’s attempt to “prosecute” it by shaming. If the tribunal’s aim is to put the non-compliant state on virtual trial, the state’s aim is to wage a strong defense directed at instilling reasonable doubt as to whether it has actually failed to cooperate or whether its non-cooperation is justified by extenuating circumstances. Bold defiance of the tribunal is not necessarily in a state’s best interest. Governments frequently seek to obstruct the tribunals by cloaking their actions in the language of compliance. States attempt this strategic obstruction in a number of ways. First, states can seek to justify their non-compliance on the basis of “good-faith” reasons, such as the specter of domestic backlash and instability if top-level suspects hailed as national heroes are turned over to the tribunal. Second, states can claim that they will take responsibility for prosecuting war crimes suspects in domestic courts rather than sending them to an international tribunal. This becomes a way to present a cooperative posture despite the fact that refusal to hand over suspects indicted by the ICTY and ICTR is a clear violation of international law because these UN tribunals enjoy legal primacy over domestic jurisdictions. Third, states can claim that they are willing to arrest fugitives but they lack the capacity (for example, adequate intelligence and police) to locate fugitives on their territories. In these situations, states react defensively against tribunal accusations of non-compliance. But states can also go on the offensive and change the terms of the debate. States will often attempt to fight back by employing “counter-shaming,” a process in which states try to delegitimize the tribunal by magnifying its shortcomings and mistakes.

All non-cooperative states try such counter-shaming campaigns and, as will be shown, some succeed more than others. The extent to which a non-cooperative state can effectively put the tribunal on the defensive by counter-shaming depends on the substance and presentation of the state’s criticism of the tribunal’s shortcomings and on the state’s international standing. Belgrade’s counter-shaming campaign against the ICTY, while resonating loudly in Serbia, often falls on deaf ears internationally. Since Serbia was the major culprit in the Balkan wars, the international community has usually dismissed or simply ignored Serbia’s complaints about being the victim of tribunal prosecution and persecution. Furthermore, the ICTY’s international reputation as a credible institution making significant progress toward its goals has grown considerably in the West since its establishment.

The Rwanda case offers a very different story about what occurs when a state tries to counter-shame a war crimes tribunal. The Tutsi-led Rwandan organizations also play a vital role in supporting the tribunals’ efforts to expose state non-compliance and to pressure states to provide cooperation. While I document the role of such organizations at certain points in the case-study chapters, it is not the focus of this book.

Under the principle of concurrent jurisdiction, the ICTY and ICTR permit domestic courts in the former Yugoslavia and Rwanda to conduct war crimes trials. However, these states must defer to the ICTY and ICTR if the tribunals request the handover of suspects.
government consistently has had the upper hand in the shame game, winning international sympathy for its self-portrayals as a victim state abandoned by the world during the genocide, and exposing the institutional shortcomings of the ICTR. The Rwandan government has proved especially adept at shifting international focus away from its non-cooperation by leveling trenchant criticisms of the slow pace of the genocide trials at the ICTR and by drawing attention to the tribunal’s alleged malfeasance.

Much of the state–tribunal relationship is indeed adversarial and trial-like. But by no means is this the whole story. The state and the tribunal often resolve their differences through negotiations conducted out of the international and domestic media spotlight. The tribunals have crafted a repertoire of conciliatory strategies aimed at persuading these states to cooperate through offering concessions and compromises, including publicly crediting a state for its improved cooperation record, allowing states to prosecute some war crimes cases in domestic courts, and postponing or even quashing controversial indictments.

Still, negotiation runs the risk of placing the tribunals on a slippery slope where the boundaries of law and politics become blurred. The enduring quandary for the tribunals is how to influence states to cooperate without losing the moral and legal compass that is the source of their legitimacy. The uphill struggle for state cooperation has at times led tribunal officials – particularly the chief prosecutor who is in the forefront of the state cooperation battles, to cross the line into questionable dealmaking – into compromises that indeed compromise the tribunal’s probity.

The state–tribunal struggle over cooperation cannot be understood without reference to the actions of powerful international community players. As “judges” or arbiters, these international actors play a decisive role in influencing the outcome of the trials of cooperation either by siding with the tribunal’s claim of state obstruction of justice or by favoring the state’s claim of not having violated its legal obligation to cooperate.

In the absence of police powers, the tribunals count on influential members of the international community to act as surrogate enforcers of a state’s obligation to cooperate. In the UN, the Security Council can formally act once it receives an official tribunal grievance concerning state non-compliance. But the Security Council has usually been reluctant to take a decisive stand when the tribunals lodge such complaints. In the absence of Security Council action, other powerful international actors have at times filled the vacuum by using political and economic leverage to pressure states to cooperate. But by the same token, these international actors have also enabled states to violate their obligation to cooperate with impunity by remaining silent or otherwise passive when the question of a state’s non-compliance arises. This point leads to a central argument of the book: influential international actors play a critical role in the trials of cooperation by significantly limiting or expanding the political space in which a targeted state acts to undermine a tribunal. Ultimately, the final “verdict” in these trials of cooperation lies not with the separate actions of the
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tribunals, the targeted states, or the international community, but is determined by their interaction, particularly the changing balance of power between these three different sets of actors.

B. Within States and Governments
Political battles over cooperation are waged not only on the stage of international politics, but also within the arena of domestic politics in targeted states. A state is not always of one mind on the question of cooperation with the tribunal. Regardless of regime type – be it authoritarian, established democracy, or transitional democracy – governments may be divided within themselves over their cooperation policies with war crimes tribunals. But such divisions are usually much less visible under an authoritarian regime, given the extent of state control over society. Internal Rwandan government discord over state policy toward the ICTR has occurred. But because of the particularly closed nature of the government, such splits are less evident. Discord within an authoritarian government may surface, especially in regimes such as that of Croatia’s Franjo Tudman, that allow a relative degree of press freedom. This book’s treatment of domestic politics will focus mainly on the Balkans, where such divisions have been more transparent. In the cases under study, the most salient domestic divisions over state cooperation policy have surfaced in the transitional democracies of Serbia and Croatia, even while their transitions have coincided with increased cooperation with the ICTY. In contrast to the leaders of the authoritarian era, the leaders of the democratic coalition governments appeared to have greater incentive to cooperate with the ICTY. These leaders, unlike Milošević and Tudman, had no reason to personally fear tribunal prosecution because they played no role in wartime atrocities. Yet this did not suddenly mean that these leaders or their constituencies were eager to embrace a court widely despised as an affront to national dignity.

Domestic crises over the state’s cooperation policy have repeatedly threatened governing coalitions, and at times have imperiled stability. The decisions of the Serbian and Croatian governments to increase cooperation with the ICTY during the democratic era have been met with intense resistance from nationalists, military officers, and others opposed to seeing their prominent citizens and war heroes stand trial in The Hague. State cooperation has become “the issue of all issues” for the democratic coalitions that took power in 2000 in Belgrade and Zagreb. The March 2003 assassination of Serbian Prime Minister Zoran Đinđić underscores the dangers to governments from domestic forces opposed to arresting and sending indicted war crimes suspects to The Hague. Đinđić’s murder was motivated in large part by Serbian war crime suspects determined to stop the Belgrade government from sending them to the ICTY.

Serbian and Croatian leaders have been ever mindful of not alienating supporters or provoking a backlash among the still powerful right-wing groups. Although the nationalist parties lost power in the 2000 elections, they retained

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12 ICTY Press Conference by Chief Prosecutor Carla Del Ponte, July 19, 2004
a strong hold over matters relating to the recently concluded wars and over issues of justice and the construction of national memory. For the nationalists, opposing state cooperation has become an effective way to mobilize supporters and increase the chances of winning power in the next elections. Nationalist groups have raised the political costs of cooperation by designing a rhetorical strategy that equates the tribunal’s indictments against national war heroes with attacks on the country itself. In response to this threat, the fragile governing coalitions in Serbia and Croatia have stepped carefully when it comes to how fast and how much to cooperate with the ICTY.

In this book, I am also mindful that internal conflict exists within the international community concerning state cooperation in the former Yugoslavia and Rwanda. What is perhaps less obvious is that conflict even exists within tribunals themselves. In particular, the tribunals’ three main divisions—the judicial chambers, the Office of the Prosecutor, and the Registry (the court’s administrative division)—often differ over how to address the issue of state non-compliance. Discussion of the splits within the international community and the tribunals themselves will be included in the case study chapters when they help to clarify key events in the politics of state cooperation.

1.4 State Interests and the Battle for Victim Status

The armed conflicts between adversaries do not simply disappear overnight with cease-fires and peace treaties. The struggle between enemies often shifts from the use of the sword on the battlefield to the use of words in the post-war forums of war crimes tribunals. After internal or interstate conflict, indictments and prosecutions become new markers of victory and defeat between enemies. While the armed conflicts may have produced winners and losers on the battlefield, the subsequent rhetorical combat between tribunal and state is fought over which state or ethnic group will earn the mantle of victim and which side will be castigated as a perpetrator or aggressor.

As the struggle over obtaining international acknowledgment of victim status was a central feature of both the Balkan and Rwandan armed conflicts, the struggle for victimhood continues in the aftermath of war. In the Balkans, the Bosnian Muslims and the Kosovar Albanians stand out as the most aggrieved victims and Serb forces as the most obvious perpetrators of atrocities and ethnic cleansing campaigns. Yet all the major parties to the conflict—the Serbs no less than the Croats and the Muslims—have ardentely claimed that they are the victims of genocide and that their involvement in the war was motivated by a need to defend themselves from destruction. In the Balkans, the belief in one’s victimization has become, according to David Bruce MacDonald, “a central pillar of national identity” and a source of continuing legitimacy in states’ post-conflict, nation-building projects. The same may be said of the Rwandan

13 David Bruce MacDonald, Balkan Holocausts? Serbian and Croatian Victim-Centered Propa-
ganda and the War in Yugoslavia [Manchester: Manchester University Press, 2002], p. 5.
conflict. Members of the Tutsi minority obviously stand out as the main victims since their elimination was the aim of Hutu extremists, who planned and carried out the genocide. Nevertheless, Hutu extremists spin a revisionist history of the 1994 conflict by claiming that they have been the victims of genocide at the hands of the then Tutsi-led rebel army.

In the aftermath of armed conflicts, being designated as a victim is a source of political strength for governments. Victim status can confer global recognition of a nation’s suffering and legitimacy to the government in power. This in turn may lead to increased international aid and support for the new regime. As MacDonald writes in his study of victim-centered propaganda in Serbia and Croatia in the 1990s, “We live in a world where victims are now the subject of pity and financial assistance, not scorn.”

In adversarial legal systems, prosecutors and defense lawyers contest each other’s versions of a crime to persuade the jury of the defendant’s guilt or innocence. Judgments cast one party as a winner and the other as a loser, while the scale of guilt determines the magnitude of punishment. The same zero-sum logic holds for international and domestic war crimes trials. But the stakes are often much greater in international and domestic war crimes trials than in domestic criminal trials since the former often have far-reaching political consequences. The moral opprobrium of being charged with and then possibly convicted of such offenses as crimes against humanity and genocide is unparalleled in domestic court systems. When it comes to international war crimes trials, the stakes are great not only for individual defendants in the literal dock, but for states and societies in the virtual or figurative dock.

From the perspective of governments involved in an ongoing or recently concluded conflict, the tribunal process can endanger state interests by undermining the government’s official history of the armed conflict and the state’s role in this conflict. For governments, the writing of this narrative plays a key role in maintaining their domestic and international legitimacy and in turn solidifying their grip on power. In Rwanda, the Tutsi-led Rwandan Patriotic Front (RPF) government has earned much of its international credibility by portraying itself as the force that ended the genocide and now pursues reconciliation between Hutu and Tutsi. This benevolent narrative invites favorable treatment from the international community for the government’s authoritarian conduct at home and its military intervention in Congo. For the Rwandan government, the ICTR has been an invaluable tool in constructing this official narrative and in developing an international image of Rwanda as a victim country. But just as the tribunal helps validate the government’s official history of the 1994 conflict by focusing on Hutu crimes, it also has the power to raise doubts about the government’s actual role in the conflict by exposing Tutsi atrocities committed against Hutu civilians. The tribunal’s attempts to investigate these atrocities sparked strong resistance from the government that led to its decision during the Summer of 2002 to suspend cooperation, as seen in its keeping the Rwandan witnesses at

14 Ibid., p. 5.
the Kigali airport from reaching the courtroom in Arusha. The prospect of even a few indictments of RPF suspects was perceived as undermining the Tutsi-led government’s claim to sole possession of victim status by uncovering its own complicity in crimes against humanity.

A government’s official narrative may be further challenged by tribunal evidence that contradicts self-serving myths leaders use to justify going to battle and the human and economic toll of war. A government’s claim that the country had to go to war or quicken the march to war may be contradicted by evidence showing that the government manufactured an internal or foreign threat. Such revelations may particularly stir the anger of veterans and families of loved ones that wars were needlessly fought and lives needlessly lost. Moreover, tribunal prosecutions of individual defendants can render an aggressor state vulnerable to a civil suit at the International Court of Justice (ICJ). Incriminating evidence uncovered during tribunal trials, if obtained by the ICJ, may implicate an aggressor state in genocide, perhaps leading to an order to pay reparations to the victim state. Tribunals can also threaten state interests by indicting top political and military leaders and directly threatening their hold on power. An indictment of a head of state does not necessarily or immediately lead to his fall from power and incarceration. Yet, even short of causing him to lose power, such an indictment can irreparably damage a leader and diminish his international stature. As this book will show, the power of the tribunal’s “soft power” can therefore be formidable indeed.

1.5 Overlooked Issues in the Tribunal Literature

There has not yet been a study of state cooperation that focuses at once on the battles among the tribunals, key international actors, and the states of the former Yugoslavia and Rwanda. The neglect of the cooperation issue is especially...
evident when it comes to the story of the Rwandan government’s relationship with the ICTR. Most examinations of the cooperation issue have focused on the ICTY’s relationship with the West, and more specifically on NATO’s early resistance to arrest fugitive war crimes suspects in Bosnia as well as the tribunal’s subsequent success in prodding NATO to make arrests. But there has been much less attention paid to what is arguably a more difficult challenge for the tribunals – obtaining cooperation from targeted states when there are no international peacekeepers on that state’s territory to arrest fugitives. In these situations, a tribunal has much less leverage to apprehend indicted war crimes suspects. This critical but overlooked aspect of the cooperation problem poses an enduring problem for war crimes tribunals.

The reluctance to rigorously examine the cooperation issue is reflected in the literature’s court-centered perspective, which has focused on analyzing and critiquing the tribunals’ jurisprudential developments and rules of procedure and evidence. The tribunal literature has also been strongly shaped by an activist mindset that emphasizes the political and normative virtues of international justice. Books, articles, and policy reports have often extolled the revolutionary promise of the tribunals to provide justice to victims, reconcile former...
enemies, and deter new rounds of violence. The writings of prominent human rights activists such as Aryeh Neier and Kenneth Roth and leading tribunal practitioners such as Richard J. Goldstone provide notable examples of this trend. These authors have nourished a faith in the tribunals' capacity to withstand external pressure to capture the legal process for political ends. Moreover, human rights activists have envisioned that international war crimes tribunals, by virtue of the global rise of human rights, would take on a life of their own and inevitably realize their mission. In so doing, tribunals would surely become a force to be reckoned with in international affairs. Geoffrey Robertson in *Crimes Against Humanity: The Struggle for Global Justice* states, “The optimistic fact is that enterprises of this sort have a tendency to develop a momentum of their own, independent of the concerns of those who create them.” In this sense, the ad hoc tribunals have been lauded as precursors to the International Criminal Court (ICC) and part of a continuing campaign to broaden human rights protections worldwide.

Not surprisingly, then, tribunal scholarship has shown more interest in the potential of these institutions to transcend politics than in analyzing the ways in which the political actions of the international community or states complicit in atrocities have actually undermined the autonomy and mission of these courts by withholding cooperation. In her study of the ICTY, for example, Rachel Kerr acknowledges that while the tribunal operates in a political context, and the chief prosecutor must engage in diplomacy, the prosecutor and the legal process itself are immune from politicization. As much as her political sensibility is an improvement over other observers, Kerr brings little evidence to show that the ICTY can both be shielded from politicization yet be engaged in politics and diplomacy.

There has been limited scholarly analysis of the strategies that tribunal officials employ to prod recalcitrant states and international actors to provide cooperation. On this question, the most enlightening work is John Hagan's book, *Justice in the Balkans: Prosecuting War Crimes in The Hague Tribunal*. Hagan focuses on the organizational dynamics of the ICTY and the role that key tribunal officials play in turning the tribunal into an increasingly effective institution. Hagan argues that Louise Arbour, the ICTY's second chief prosecutor, became a charismatic leader within the tribunal and significantly developed the institution's diplomatic leverage. Hagan cogently describes how Arbour

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22 For example, see “Preventing Deadly Conflict Final Report,” Carnegie Commission on Preventing Deadly Conflict, Carnegie Corporation of New York, December 1997, pp. 94-98.
23 Neier, *War Crimes*.
28 Kerr, *The International Criminal Tribunal for the Former Yugoslavia*, p. 11.
devised strategies to successfully press NATO to arrest war crimes fugitives in Bosnia.\textsuperscript{29} Crucial to Arbour's success was her resorting to secret indictments to prod NATO peacekeepers to arrest fugitives in Bosnia who might otherwise have been able to evade arrest if the indictments had been made public. Hagan also credits Arbour for her adroit use of the Western media to bolster the tribunal's prominence and political influence.

The strength of Hagan's analysis lies in his in-depth knowledge of the dynamics at play in rendering the chief prosecutor an effective actor. But his analysis is weakened by not examining the instances in which the chief prosecutor failed to act effectively in regard to obtaining cooperation from the Serbian and Croatian governments. Nor does Hagan consider the Rwanda tribunal in his study. An examination of that tribunal would have revealed a fuller and more realistic understanding of the chief prosecutor's efficacy as a strategic actor, both internally at the tribunal and externally in interactions with the Rwandan government and the international community.

The importance of a comprehensive picture of tribunal politics is further illuminated by considering the shortcomings of Gary Bass's prominent study of international tribunals, \textit{Stay The Hand of Vengeance: The Politics of War Crimes Tribunals}. Bass explores the reasons why Western liberal states have historically established and supported international tribunals and skillfully examines several failed and successful efforts to create war crimes tribunals. Bass's case studies include the West's attempts to establish tribunals in the aftermath of the Napoleonic Wars, the Armenian genocide, World War I, and World War II, as well as during the recent Bosnian war.

Bass's book is a scholarly tribute to the West's ardent belief in international justice and the rejection of show trials and retribution. He argues that the West's faith in "legalism" — the idea that there should be trials governed by the principles of fairness and due process — has inspired its leaders to create a number of tribunals. At the same time, Bass qualifies this idealistic argument with a healthy dose of realism. He does so by acknowledging that even when Western liberal states create international tribunals, their logistical and political support is often grudging. This ambivalence is borne of fears that the pursuit of justice will interfere with more important foreign policy goals, such as the pursuit of cease-fires and peace treaties. In this regard, Bass's work is a cautionary tale about the West's reluctance to sustain the very tribunals it brings to life.

The Liberal paradigm in international relations theory,\textsuperscript{30} which posits that a country's domestic political and legal orientation shapes its approach to international affairs, lies at the core of Bass's argument about what motivates Western


states to support international justice. To Bass, it is no coincidence that a democratic country, such as the United States, with a robust and independent court system and "principled legalist beliefs," has historically supported the cause of international justice. "After all," he writes, "a war crimes tribunal is an extension of the rule of law from the domestic sphere to the international sphere." Accordingly, authoritarian states are not expected by Bass to support international justice. Thus, as a democratic country's support of the rule of law at home leads to its support of the rule of law abroad in the form of international war crimes tribunals, an authoritarian country's lack of support of the rule of law will lead it to oppose international tribunals. Bass concludes, "Liberal governments sometimes pursue war crimes trials; illiberal ones never have." This implies that the Serbian, Croatian, and Rwandan governments have been opposed to the tribunals from the start largely because their governments are undemocratic and therefore lacked a principled belief in true justice.

Beyond acknowledging the Serbian and Croatian governments' defiance of the ICTY, Bass leaves largely unexamined the complex interests and actions of illiberal states toward the tribunals. The position and attitude of authoritarian states toward tribunals are not as absolute or static as Bass would have it. Whereas Bass bundles illiberal states together as hostile to international tribunals, the evidence indicates that illiberal states differ significantly in their posture toward tribunals. While Milošević's Serbia opposed the tribunal outright, the authoritarian governments of Franjo Tuđman's Croatia and Paul Kagame's Rwanda were actually in the forefront of calling for the establishment of a bona fide international tribunal – facts that go unmentioned by Bass.

The Tuđman government called for a tribunal in November 1991, at the height of the Serbian-Croatian conflict and a year and a half before the Security Council decided to create one. In the case of Rwanda, the Tutsi-led Rwandan Patriotic Front first called on the UN to establish a tribunal during the 1994 genocide. The RPF reiterated this call after it brought an end to the 100-day genocide and took control of Rwanda. In the face of international passivity during the genocide and the staggering death toll, the RPF's call for a tribunal had a strong influence on the Security Council's decision to create one in November 1994.

In the end, Rwanda voted against the UN resolution establishing the ICTR – a fact that Bass notes parenthetically and attributes to the UN's decision to bar

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32 Bass, Stay the Hand of Vengeance, p. 8.
33 In a review of Stay the Hand of Vengeance, Joseph Nevins provides compelling evidence to counter Bass's assertion that the United States has historically shown strong support for international war crimes trials. "If we examine cases where liberal states are not victors with legitimate post-war grievances, but are perpetrators of atrocities or complicit in them, Bass's general argument is significantly weakened," Nevins writes. Joseph Nevins, "Truth and Justice in the Aftermath of War Crimes and Crimes Against Humanity," Punishment & Society, Vol. 5, No. 2, 2003: p. 210. My analysis of Stay the Hand of Vengeance is informed by Nevins's review.
34 Bass, Stay the Hand of Vengeance, pp. 7–8.
35 Ibid., pp. 8 and 35.
capital punishment for convicted Hutu defendants, a reason one might think befits an authoritarian ethos. Bass omits the several other reasons, not necessarily of an authoritarian mindset, that the Tutsi-led Rwandan government also cited for voting against the UN resolution. These reasons included wanting the UN to locate the ICTR in Rwanda and wanting more resources to be given to the tribunal to guarantee its viability. Most importantly, none of the government’s initial objections contested principles of legalism, such as the level of due process afforded to Hutu defendants. In light of the ICTR’s administrative problems and the slow pace of trials in its early years, the Rwandan government grew sharply critical of the tribunal. But this criticism, also sometimes echoed by Western liberal states such as the United States, should not be taken as proof of the Rwandan government’s rejection of due process at the tribunal or its push for politicized show trials in Arusha. In fact, the government’s vision of what it hoped the ICTR would become may not differ significantly from what a Western liberal government might also want if it had just emerged from a genocide.

The Rwandan government sought international trials because this was the only way to ensure that high-level Hutu suspects who fled the country after the genocide would stand trial. International trials also appealed to the new Tutsi-led government because it wanted prompt and numerous tribunal genocide convictions that could showcase Tutsi suffering. Indeed, the ICTR provided a credible legal forum where the finding of Tutsi victimization and Hutu culpability would be accepted and affirmed globally, and not dismissed as the poisonous fruit of an authoritarian domestic legal process. Although the Tutsi-led RPF had not suddenly embraced the principles of legalism, it quickly came to realize that bona fide international prosecutions could reap significant political benefits by solidifying the government’s victim status on the world stage. As I demonstrate, then, where a country falls on the spectrum of liberal to illiberal states does not necessarily determine whether it will support an international tribunal.

Contrary to Bass’s contention, the pursuit of international justice does not belong to Western liberal states only. A state’s role in an armed conflict—whether it was, is, or may become a victim or perpetrator—may be a better predictor of its level of support for a tribunal than whether the state is liberal or illiberal. Even a democratic state imbued with a robust legal tradition may fear an international court, as demonstrated by the Bush administration’s virulent opposition to the International Criminal Court. Indeed, United States leadership in creating the Nuremberg and Tokyo military tribunals and the contemporary ad hoc tribunals have not led to support for an international court that could indict American military and political leaders for alleged human rights abuses in Iraq and on other fronts in the “global war on terror.”

The political landscape of the cooperation battles between targeted states and tribunals is not a still life, but can shift, at times dramatically, with changes in the domestic landscape of targeted states. Regime change in the Balkans offers a vivid illustration of this point. The demise of authoritarian rule in Serbia and Croatia in 2000 presented an opportunity not previously available to the ICTY.
to apprehend Serbian and Croatian fugitives who had been shielded by the Milošević and Tuđman regimes. In part of the afterword to the 2002 edition of Stay the Hand of Vengeance, Bass turns his attention to Serbia after the fall of Milošević and his handover to the ICTY. But Bass does not modify his theoretical framework to account for Serbian (or Croatian) regime change from an illiberal state to a transitional democracy. His categorization of states as either liberal or illiberal therefore sheds little light on the behavior of states that are neither liberal nor illiberal. Inquiring into the actions and interests of states that fall between these two poles – particularly transitional democracies – is critical to developing an understanding of the conditions in which tribunals will receive cooperation.

A Liberal theorist may argue that transitional democracies such as Serbia and Croatia show a greater inclination than their authoritarian predecessors to cooperate with an international war crimes tribunal. The extent of this increased cooperation would reflect these states’ increased embrace of principles of legalism and the domestic rule of law. As these states’ political and legal systems grow stronger and the democratic transitions become consolidated, it might stand to reason that their support of international justice would grow yet stronger. But domestic antagonism to the ICTY in Serbia and Croatia has had a long half-life even during the democratic era. Even when the post-authoritarian governments have behaved cooperatively, such external factors as the timing and magnitude of international pressure are more consequential than the purported clan of a new democracy.

To better understand the dynamics of state policy toward international tribunals during democratic transitions, it is useful to draw on the transitional justice literature. This literature – initially developed in the 1980s and 1990s by political scientists and legal scholars – examines the choices that newly democratic states make when deciding whether to prosecute or pardon the crimes of their authoritarian predecessors. Although the literature has tended to examine questions of domestic prosecutions and truth commissions, its insights can be used to shed light on the politics of state cooperation with international war crimes prosecutions.

Contemporary democratic transitions often give rise to calls for domestic trials and truth commissions from human rights groups and survivors who lived in silent anguish during the previous authoritarian period. The mobilization of domestic human rights activism, often in conjunction with the support of international non-governmental organizations, puts increased pressure on the state

35 Bass, Stay the Hand of Vengeance, pp. 311–330.
to prosecute war crimes suspects. The case of Argentina in the 1980s demonstrates that a democratic transition can increase state support for prosecutions because of the greater space given to civil society and human rights groups to air their grievances. For domestic proponents of prosecutions, accountability for past crimes is a moral imperative as well as a way to bolster a country’s nascent democracy by removing individuals who may threaten the prospects of political reform. However, the transitional justice literature has also demonstrated the weak position in which human rights advocates find themselves during a democratic transition. Campaigns for domestic prosecutions thus rarely enjoy a consensus in society or government. This is particularly true when, in the immediate aftermath of authoritarian rule, many fear that prosecutions will provoke a rebellion from the barracks that may undermine the nascent liberalization project. With members of the authoritarian regime still in the country and in positions of leadership in the military, many fear that prosecutions will divide society just when unity is most needed.

By the same token, it is not inevitable that a new democratic government will provide an international tribunal with the cooperation it requires to investigate and prosecute state-sponsored atrocities. Indeed, the dilemma over whether to cooperate is particularly acute in transitional democracies. In the eyes of human rights proponents, cooperation with the tribunal is seen as congruent with state interest. In the eyes of nationalists, such cooperation is nothing short of collaborating with the enemy.

International pressure and incentives notwithstanding, the Balkan governments face a particularly difficult challenge when it comes to garnering domestic support for cooperation with the ICTY. First, unlike transitional democracies such as Argentina and Chile, where human rights advocates comprised significant numbers of citizens living within the state’s borders, Serbia and Croatia have not had a significant civil society-base to campaign for prosecutions of the state’s own political and military leaders. Indeed, beside the lone voices of several small human rights organizations and a few bold politicians, no vocal domestic constituency exists in Serbia and Croatia in support of tribunal prosecutions of their ethnic brethren. Second, in Serbia and Croatia, the state’s participation and conduct in the Balkan wars are widely seen as legitimate and therefore above scrutiny from an international court. If Argentina fought a dirty war against internal “subversives,” Croatians have widely come to see their breakaway from Serbia as a cleanly fought war of independence waged against an external occupier. The Serbian government too has seen its involvement in the Balkan wars as fully justified, particularly in protecting ethnic Serbs living in the territory of the former Yugoslavia. Moreover for both states, the domestic backlash against state cooperation with an international tribunal

has been more intense than the prospect of prosecuting its own nationals. The greater violation against these states, it seems, has been the violation of national sovereignty.

1.6 Case Selection and Field Research

Transcripts of the legal proceedings in The Hague and Arusha are readily available to researchers interested in understanding these courtroom trials. “Trials of cooperation,” of course, have no literal transcript. It is the aim of this book to develop a virtual transcript and to draw on it to generate theory about the potential and limits of these experiments in international justice. I have attempted to make such a contribution by conducting extensive field research both at the tribunals and in the countries for which these tribunals have been created. It is from such primary source material that the trials of cooperation unfold.

This book focuses on case studies that examine the political interaction between the tribunals, Serbia, Croatia, and Rwanda, and the international community. In the Conclusion, I examine the politics of state cooperation in the context of the next generation of tribunals, specifically the International Criminal Court and the hybrid Sierra Leone tribunal. The changing dynamics of the state–tribunal relationship and the domestic politics of targeted states underscore the importance of conducting over-time and cross-regional field research. This has led me to conduct a total of fourteen months of field research over a span of eight years, from June 1999 through June 2007, and at numerous sites: The ICTY in The Hague, and Serbia, Croatia, and Bosnia; the ICTR in Arusha, Tanzania, and Rwanda; the ICC in The Hague; the Special Court for Sierra Leone in Freetown, Sierra Leone; the European Union in Brussels; Washington, D.C.; and New York. 38

The case studies of Serbia, Croatia, and Rwanda provide a cross-regional comparison of the state–tribunal dynamic. A within-region comparison is provided by the two cases from the former Yugoslavia. The Serbian and Croatian cases allow us to see how the same tribunal pursues state cooperation differently and, in turn, how different states approach the same tribunal differently. Finally, the over-time study of these different states allows a within-state comparison. In the cases of Serbia and Croatia, this over-time study permits an examination of changing patterns of state cooperation with changing regimes—from authoritarian to transitional democracy.

In the former Yugoslavia, there are as many as five states and one province that could be selected for study. Serbia, Croatia, Bosnia, Montenegro, Macedonia, and the province of Kosovo all played a role in the Balkan wars and therefore have a subsequent relationship with the ICTY. The aim of this study, however, is to understand the challenges tribunals face in obtaining cooperation

38 I also conducted interviews in Antwerp, Belgium; Harlaam, The Netherlands; Berkeley and Pasadena, California; and Sun City West, Arizona.
from fully sovereign states, since these states have a greater capacity to defy the tribunals. Thus, I have selected the Serbia and Croatia cases. Kosovo was not chosen because as a territory controlled by the UN it does not enjoy the status of an independent state. I have not selected Bosnia because its sovereignty has been significantly constrained by the presence of an international peacekeeping force and by the High Representative, who acts as the de facto ruler of that divided country. The Macedonia case has not been selected since its armed conflict in 2001 was relatively brief, and the tribunal has conducted only a limited number of investigations there. The Montenegro case is implicitly included in the Serbian case because of its former membership in the rump Yugoslavia and its subsequent membership in the political union of Serbia and Montenegro.

I conducted field research in Africa and Europe in 1999, 2000, 2001, 2002, 2003, 2005, 2006, and 2007. I also carried out extensive analyses of international, Balkan, and Rwandan media reports as well as tribunal and United Nations documents. My study is based in large part on in-depth, open-ended interviews with approximately 300 informants. I interviewed a wide range of officials and staff members at the Yugoslavia, Rwanda, and Sierra Leone tribunals. In addition, I interviewed government officials in Serbia, Croatia, Bosnia, Rwanda, and Sierra Leone as well as domestic legal professionals, Western diplomats, journalists, and human rights activists. My informants have included ICTY and ICTR Chief Prosecutors Richard J. Goldstone and Carla Del Ponte; International Criminal Court Chief Prosecutor Luis Moreno-Ocampo; Special Court for Sierra Leone Chief Prosecutor David Crane; Serbian Prime Minister Zoran Živković; Rwandan Attorney General Gerald Gahima; and David J. Scheffer, the former United States Ambassador-at-Large for War Crimes Issues. Wherever possible in the book, I identify and name my informants whom I quote or paraphrase. However, many people I interviewed requested anonymity as a condition for using their comments for publication because of the sensitive nature of the topics under discussion in my interviews or because certain informants were not authorized to speak publicly.

These interviews ranged in duration from one to three hours. I re-interviewed a select sample of the 300 informants over the course of my eight fieldwork

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39 It should be noted that the ICTY has faced some resistance to cooperation from the United Nations administration in Kosovo, which at times has been at odds with the tribunal over its prosecution of Kosovo Albanian suspects. This has been particularly the case with Ramush Haradinaj, the former prime minister of Kosovo with whom UN officials were politically aligned. The ICTY indicted Haradinaj in March 2003 for atrocities against Kosovo Serbs and Kosovo Albanians. He resigned shortly afterward as prime minister. The trial of Haradinaj and two co-indictees began in the Hague in March 2007.

40 There is significant variation in the levels of compliance in Bosnia. Although the Bosnian Muslim-dominated government in Sarajevo has provided much cooperation, the Bosnian Serb Republic has tended to provide little. However, beginning in 2004, Bosnian Serb cooperation began to increase notably because of pressure exerted by Bosnia's High Representative, Paddy Ashdown.
visits. Particularly in the Rwandan context, my interviews elicited material not in the public domain from tribunal and state insiders. The book has also been informed and enhanced by my observation of court proceedings at the Yugoslavia, Rwanda, and Sierra Leone tribunals, and by countless conversations with sources at the tribunals and in the former Yugoslavia, Rwanda, and Sierra Leone.41

Introduction

This study of state cooperation in the international prosecution of war crimes seeks to illuminate a political process whose actors are often poised to avoid or downplay its public acknowledgment. The posture by both tribunal and state of non-negotiable rectitude has obscured the important issue of how international law actually operates in the context of political negotiations between tribunals and states. In the following chapters, understanding of this complex process is embodied in case studies that seek to reveal the dynamics of the state–tribunal relationship, especially by drawing on the testimony of some of the major actors who, when engaged by in-depth interviews, become witnesses to the politics of cooperation underlying this great experiment in international justice.

41 In 1999, I conducted two months of participant observation as a tribunal intern at the ICTR headquarters in Arusha, Tanzania, and at its branch office in Kigali, Rwanda. During this internship, I participated in investigative and witness protection missions and other aspects of tribunal operations.