The Politics of Punishment and the Siege of Sarajevo: Toward a Conflict Theory of Perceived International (In)Justice

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Liberal legalism noncontroversially advocates procedural fairness and due process in institutions such as the International Criminal Tribunal for the Former Yugoslavia (ICTY). The visible conflicts come with the ebb and flow of international jurisdictional claims, suspicions of racial/ethnic and cultural biases in deliberations and decisions, prioritization of purposes in sentencing decisions, and the intrusion of institutional and international political debates into the liberal legal agenda. These conflicts threaten to create a legitimacy deficit in diffuse support for the ICTY. We examine these conflicts within the context of two surveys about the ICTY conducted in Sarajevo in 2000 and 2003. The results indicate that the citizens of Sarajevo increasingly believe that the ICTY is politically influenced by internationally appointed judges, peaking with the sentencing of Stanislav Galic for the siege of Sarajevo. This conflict focuses on issues of substantive rather than procedural justice and is increasingly articulated as a rejection of international political intervention that subverts the need for a local sense of justice. This may be a sequence of political conflict and disillusionment that is as inevitable as it is unavoidable.

The Cold War that followed the post–World War II legal experiment at the Nuremberg International Military Tribunal made both the Soviet Union and the United States wary of international criminal law (Robertson 1999). The establishment of the International Criminal Tribunal for the Former Yugoslavia (ICTY) was a first step in a renewal of international criminal justice following the breakup of the Soviet Union in the early 1990s. The demise of the Soviet Union and the war in the former Yugoslavia (Silber & Little 1995; Judah 1997)—including the drive to establish a Greater Serbia, the resulting siege of Sarajevo, and the massacre in Srebrenica—revived the perceived need for international institutions of criminal justice (Bass 2000). Further tribunals and special

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courts were advocated for Rwanda, Sierra Leone, East Timor, and Cambodia, as well as the new International Criminal Court (ICC).

When it was established by the United Nations Security Council in 1993, the ICTY was described in the European press as a fig leaf for military inaction (see Penrose 2000; Parenti 2000). Over the past decade, especially during periods of support from the Clinton Administration and the United States, the ICTY became a flagship United Nations (UN) institution, with more than a thousand employees from 84 countries, a hundred-million-dollar-a-year budget, more than 40 detainees awaiting or on trial, and a former sitting head of state—Slobodan Milosevic—on trial for crimes against humanity and genocide (Hagan 2003; Hagan & Levi 2005; ICTY 2005). With recent encouragement from the Bush administration and the United States (Prosper 2002), the ICTY has developed a plan that will lead to its eventual closure. The United States has pressured the ICTY to develop a "completion strategy," which ended investigations in 2004 and promises to finish trials by the end of 2008, then transferring the remaining cases to the jurisdiction of courts established in the newly independent states of the former Yugoslavia (see Klarin 2002).

Little is known about the impact on citizen perceptions of this historic institution of international law in the war crime settings—such as Bosnia and its besieged city of Sarajevo—where the ICTY seeks to restore a sense of justice for citizens. The first three prosecutors of the ICTY—Richard Goldstone, Louise Arbour, and Carla Del Ponte—have been strong advocates for the primary jurisdiction of the ICTY over war crimes in the Balkans and for subsequent international criminal courts, arguing that such courts are often the only means of assuring the security and independence needed to achieve international criminal justice. The ICTY prosecutors have argued that, as supranational institutions, international criminal courts should assume powers of extraterritorial if not universal jurisdiction, exercising a primary jurisdiction that overtakes the sovereignty of nation-states. The Bush administration now treats such arguments for primary jurisdiction as dubious, insisting whenever and wherever possible that national courts, as in Iraq, retain jurisdiction. Yet little is known about the attitudes of citizens toward the involvement of the ICTY in trying cases deriving from the war in the former Yugoslavia.

The principle of complementary jurisdiction cedes control over cases to domestic courts unless there is a clear failure or inability of national courts to prosecute their own cases. The new ICC, whose terms were negotiated in the 1998 Rome Treaty, is premised on the principle of complementary rather than primary jurisdiction. This treaty is deferential in its concessions to sovereign powers of self-determination, and Slaughter (2004: Ch. 4) argues that this conflict

avoidance and reduction strategy provides an important foundation for a more consensually framed "new world order."

Slaughter sees the principle of complementary jurisdiction as better expressing shared international values through which, she argues, "transjudicial deliberation" and "harmonization networks" can lead to a "global jurisprudence." Slaughter further reasons that "the ICC will become a stronger and more effective supranational institution due to its relationship with national courts" and that "the evolution of international criminal law will be greatly strengthened by the interaction of a supranational tribunal with national courts in a give and take over many years: defining jurisdictional boundaries, exchanging opinions on substantive law, and mixing national and international legal traditions" (Slaughter 2004:150).

The actual practice of international criminal law at the ICTY has demonstrated the challenges to this negotiated consensus, as this institution has dealt with the weak and recalcitrant states of the former Yugoslavia and the hopes and expectations of the victims of war crimes and concerned citizens in the new configuration of independent states. It is easier to theorize a consensual foundation to international criminal justice when the focus is on negotiations between the elite officials of legal institutions than when attention is given to the views of the civilian constituencies that these institutions and their elites are expected to serve. The specific account that follows of the ICTY and its increasingly contested efforts to bring international criminal justice to Sarajevo reveals a picture that is more consistent with a conflict than a consensus theory of legal institutions —although the international experience requires elaboration of the conflict perspective as well. This article addresses this issue by focusing on the perceptions of the ICTY among citizens of Sarajevo.

While early conflict theories emphasized class cleavages as determinants of crime and punishment within the United States (e.g., Quinney 1973), there was also an important comparative cross-national focus to some of this early work (e.g., Chambliss & Seidman 1982). Racial and ethnic conflicts were further acknowledged as underestimated but essential elements of this perspective (Hawkins 1987; Mitchell & Sidanius 1995; Walker et al. 2000; Chambliss 1999; Hagan et al. 2005b), and recently the international dimensions of conflicts about crime and punishment have received renewed attention (Hagan et al. 2005a). The conflict theorist Austin Turk was prescient in his anticipation of contemporary efforts to define and control multinational conflicts through international institutions of criminal justice:

> Specifically, the needs to secure capital investments, open up new investment and trade opportunities, protect or improve military positions, and respond to the pressures of internal and external politics have led not only to international cooperation and conflict

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> but also to "interference" by some authorities in the "internal affairs" of others. As such pressures increase, so will interference. . . . political policing will be organized more and more on a multinational if not international basis (1982:207).

What Turk refers to as "political policing" can be recognized today in the work of multinational courts such as the ICTY. Our focus in this article is on how the politics of punishing war crimes impacts on Sarajevan citizens' evaluations of the ICTY. Before moving to our analysis of survey data on these citizen evaluations, however, we first review the literature on punishing war crimes and the events surrounding the siege of Sarajevo.

The Politics of Punishing War Crimes

The school of thought and the legal movement that supports the creation of international institutions of criminal law is known by political historians as liberal legalism (Bass 2000). The hallmarks of liberal legalism are procedural fairness and due process, which are in themselves, of course, noncontroversial. The conflicts come with the ebb and flow of international jurisdictional claims, the responses of nation-states and their leaders and citizens to these claims, suspicions of racial/ethnic and cultural biases in deliberations and decisions, prioritization of purposes for sentencing decisions, and the intrusion of institutional and international political debates into the liberal legal agenda.

The above sources of conflict threaten to potentially undermine what the comparative politics of law literature calls "diffuse support" for courts. This literature has long seen (Casey 1974) the diffuse support for the U.S. Supreme Court by citizens as a finding to be explained and compared with responses to other national and transnational courts. This support is understood as conferring legitimacy and as rationally calculated in the sense that it can be diminished by decisions that conflict with majority opinion (Caldeira 1986), especially in transitional settings where new courts lack a cushion of historical embeddedness and are susceptible to legitimacy shortfalls (Gibson & Caldeira 1995, 1998). Of course, in addition to the difference of historical longevity, there is also in the international context the pull of national sovereignty. Gibson and Caldeira find in the context of the European Court of Justice that

> [I]ndeed, on many issues, a citizen might well see a resort to national institutions, or perhaps even to other European institutions, as a sensible and potentially profitable course of action. Put simply, which disputes end where is perhaps not so clear in the European context as it is in the United States (1995:486).

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They note that longitudinal data can most effectively be used to explore how such transnational courses of action unfold and how such institutions may therefore acquire, sustain, and lose legitimacy (Gibson et al. 1998).

International legal liberalism is most provocative when it calls for extraterritorial or universal jurisdiction, referred to above as primary jurisdiction, in the protection of human rights and against war crimes (most notably, crimes against humanity and genocide). Enforcement of this expansive jurisdiction often places international criminal law in conflict with norms and claims of sovereign immunity. Slobodan Milosevic regularly asserts this violation of immunity when he disputes his prosecution by the ICTY, which he calls a "false tribunal." Moreover, the victims of human rights crimes may also assert rights of sovereignty as they demand to try in their own national courts those who have perpetrated war crimes against them (Kutnjak Ivković 2001).

Because war crime perpetration and victimization are so often ignited by ethnic and national hatred, there is also persistent suspicion of prejudice and discrimination in attempts to legally address these disputes. The ICTY is seen by some as an Anglo American– and European-inspired legal justification for the North Atlantic Treaty Organisation (NATO)'s intervention in the former Yugoslavia, and therefore as inherently biased against the Serbs (Parenti 2000). Others argue that neither the former Yugoslavia nor the ICTY should be prejudged in this way. A prominent contemporary historian argues that the war in the 1990s "represented the extreme force required by nationalists to break apart a society which was otherwise capable of ignoring the mundane fractures of class and ethnicity" (Mazower 2000:128–9). Sarajevo in particular was widely regarded before the breakup of the former Yugoslavia as a successful urban experiment in multiethnic tolerance and governance (Silber & Little 1995; Lampe 1996; Ramet 1996). It is unclear what role, if any, that contemporary ethno-national tensions play in the ICTY and in the response of the citizens and victims of Sarajevo and other involved settings.

An associated source of conflict arising from practices of international liberal legalism involves the purposes invoked in imposing sentences on convicted offenders. International criminal law usually is advanced with the intent of denouncing and deterring current and future human rights crimes. Indeed, the ICTY's Trial Chamber has often emphasized deterrence—both special and general—as the most important factor taken into account in determining the length of sentences.

Yet the victims of these crimes may be more concerned, especially retrospectively, with punishing the offenders. In particular, the citizens of recently victorious nation-states characteristically

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seek retribution as much as or more than deterrence. Justice Robert Jackson, the appointed U.S. prosecutor at Nuremberg, is well-known for having foresworn premature retribution by the Allies. "That four great nations," Jackson proudly declared "flushed with victory and stung with injury, stay the hand of vengeance and voluntarily submit their captive enemies to the judgment of the law is one of the most significant tributes that Power has ever paid to Reason" (Bass 2000:2). Yet this did not prevent others from declaring Nuremberg a barely constrained and thinly disguised form of "victims' vengeance" and "victor's justice" for the United States, Great Britain, the Soviet Union, and France.

In the former Yugoslavia, there are no declared "victors." Instead, the war in Bosnia and Herzegovina was ended by the Dayton Peace Agreement of 1995. This may make the ICTY a substitute for military conflict, with court outcomes symbolically calibrating who are considered the "victors" and "vanquished" through the sentencing of defendants representing former warring parties (see also Chambliss & Seidman 1982:236). This may also make the respective parties especially sensitive in their perceptions of the justness of these court outcomes.

Beyond this, the liberal legalism of international criminal law is well-known for the conflicts associated with its institutional politics. The creation of the ICTY was itself criticized for its origin in the narrow membership of the UN Security Council rather than its more diverse and representative General Assembly (Robertson 1999). The UN was also criticized for perpetuating a policy of "moral equivalency" that failed to sufficiently respond militarily to Serbian aggression while delaying action in creating and sustaining the ICTY (Guest 1995; see also Power 2002). Selecting the first ICTY prosecutor, Richard Goldstone, was a highly politicized and conflicted process that took more than a year (Scharf 1997; Goldstone 2000); this involved rejecting an Arab American candidate, Cherif Bassiouni, whose intent, as we note further below, was to make command responsibility for the siege of Sarajevo an early prosecutorial priority. The selection of judges for the ICTY, "no two of whom may be nationals of the same State" (Statute of the Tribunal 1993: Article 12), is also a highly politicized process that requires balancing a wide range of international interests and demands for representation (Neier 1998). This selection process often has little to do with the settings in which war crimes occur—which may or may not be a good thing—but which in either event is a source of conflict in relation to the parties involved, who will usually want their own nations represented.

Arendt (1965) provided an insightful record of the conflicts involved in Israel's resistance to international liberal legalism with its decision to try Adolf Eichmann in an Israeli court in Jerusalem.

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This decision was defended by Prime Minister David Ben-Gurion's dismissal of a more universal jurisdiction and by his assertion that "Israel does not need the protection of an International Court" (cited in Arendt 1965:272). Arendt's 1965 work included her own defense against the charge of the retributive purpose that the trial's death sentence for Eichmann produced: "Hence, to the question most commonly asked about the Eichmann trial: what good does it do?, there is but one possible answer: It will do justice" (1965:254). Yet the political conflict and uncertainty that this trial left in its wake greatly troubled Arendt, and she in the end endorsed the institutions of international liberal legalism, at least to the extent that she observed that the Jerusalem court "should have either sought to establish an international tribunal or tried to reformulate the territorial principle in such a way that it applied to Israel" (1965:262). These sources of conflict in Jerusalem may be no less prominent today in Sarajevo, with its own recent history of atrocities, and where a new War Crimes Chamber of the State Court is beginning its work. To better understand this, it is important to appreciate the essentials of the siege of Sarajevo and the ICTY's response to it.

The Siege of Sarajevo

The siege of Sarajevo lasted nearly four years, from spring 1992 to late fall 1995, and claimed the lives of thousands of soldiers and civilians, with countless others injured physically and/or psychologically. For much of this time, the UN Security Council had designated Sarajevo a "safe area." This was a cruel misnomer, for, as Silber and Little report, "[t]he military and strategic reality facing Bosnia in the spring and early summer of 1993 was that the country was gradually being wiped off the map of Europe" (1995:297). More specifically, they reported that "a walk down any side street in Sarajevo provides visible evidence that nowhere was safe from the random mortar fire: the city's streets are pockmarked everywhere with the distinctive splatter of the mortar impact point. The local people called these imprints 'Sarajevo rose'- the color of blood . . . you could barely walk more than a few meters without passing one" (Silber & Little 1995:310).

A Bosnian soldier, Akif Mukanovic, reported that "he felt more secure at the frontline than elsewhere in Sarajevo because 'fire was opened less often' at the confrontation lines" (Galic Judgement and Opinion 2003: Para. 216). The prosecution in the Galic case alleged that

> The siege of Sarajevo, as it came to be popularly known, was an episode of such notoriety in the conflict in the former Yugoslavia that one must go back to World War II to find a parallel in

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> European history. Not since then had a professional army conducted a campaign of unrelenting violence against the inhabitants of a European city so as to reduce them to a state of medieval deprivation in which they were in constant fear of death. In the period covered in this Indictment, there was nowhere safe for a Sarajevan, not at home, at school, in a hospital, from deliberate attack (Galic Judgement and Opinion 2003:http://www.un.org/icty/galic/trialc/judgement/foot.htm#1).

People who survived the 44 months of the siege of Sarajevo were victims of a campaign of sniping, artillery, and mortar attacks, all part of a widespread or systematic attack directed against a civilian population. The basics of life—food and water, hygiene, heat, health care, sleep—were all affected by the siege:

> Civilians in a BiH-held areas [*sic*] of Sarajevo [Bosnia and Herzegovina] deferred even basic survival tasks to times of reduced visibility, such as foggy weather [. . .] or night time, because they were targeted otherwise. Civilians would often collect wood at night, in particular, older people, "because they couldn't move as fast and they knew it was risky to travel during the day." [. . .] Schools were closed, and temporary neighbourhood schools were established in cellars, to minimize the distance that children had to travel to their classes, and therefore their exposure to sniping and shelling. [. . .] Many civilians lived for a long period of time in the cellars of their buildings in order to avoid the shells. [. . .] They learned to move around as little as possible, [. . .] rarely leaving their apartments: [. . .] some old people were "literally dying of malnutrition because they were too terrified to come out." [. . .] (Galic Judgement and Opinion 2003:http://www.un.org/icty/galic/trialc/judgement/foot.htm#1, verdict, footnotes omitted).

The ICTY explained in reaching the Galic decision that:

> The Trial Chamber is satisfied beyond reasonable doubt that the crime of attack on civilians within the meaning of Article 3 of the Statute was committed against the civilian population of Sarajevo during the Indictment Period. In relation to the *actus reus* of that crime, the Trial Chamber finds that attacks by sniping and shelling on the civilian population and individual civilians not taking part in hostilities constitute acts of violence. These acts of violence resulted in death or serious injury to civilians. The Trial Chamber further finds that these acts were wilfully [*sic*] directed against civilians, that is, either deliberately against civilians or through recklessness.
>
> The Majority is also satisfied that crime of terror within the meaning of Article 3 of the Statute was committed against the civilian population of Sarejevo [*sic*] during the Indictment Period. In relation to the *actus reus* of the crime of terror as examined above, the Trial Chamber has found that acts of violence were committed against the civilian population of Sarajevo during the

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> Indictment Period. The Majority has also found that a campaign of sniping and shelling was conducted against the civilian population of ABiH-held areas [*sic*] of Sarajevo with the primary purpose of spreading terror (Galic Judgement and Opinion 2003:http://www.un.org/icty/galic/trialc/judgement/foot.htm#1; emphasis in original).

The ICTY also wrote that

> [t]he intention to inflict inhumane acts is satisfied where the offender, at the time of the act or omission, had the intention to inflict serious physical or mental suffering or to commit a serious attack upon the human dignity of the victim, or where he knew that his or her act or omission was likely to cause serious physical or mental suffering or a serious attack upon human dignity (Galic Judgement and Opinion 2003:http://www.un.org/icty/galic/trialc/judgement/foot.htm#1).

The specific crimes causing suffering and indignity were numerously defined (e.g., Statute of the Tribunal 1993: Violations of the Laws or Customs of War, Article 3; Crimes Against Humanity, Article 5), and the survivors of the siege of Sarajevo were judged to have endured inhumane treatment for a period of close to four years.

This verdict arrived 10 years after the 1993 Commission of Experts was appointed by the UN Security Council to collect evidence and make recommendations. This commission sent investigators into the ongoing siege of Sarajevo to assess the possibility of framing war crimes indictments around the law of armed conflict. The commission report concluded that a compelling case could be made that civilians had been systematically targeted (Fenrick 1995). The report reasoned that, once an enumeration of those killed and injured in the siege was completed, it would be possible to specifically establish the relative percentages of military and civilian casualties incurred over time. The report added that it should be possible to establish where the projectiles causing the casualties came from, so that it would be feasible to determine the numbers of casualties caused by a unit located and commanded in a particular area. During this period, UN military observers were operating on both sides of the battle lines and were sending back daily records of shelling, manpower, and military structures that subsequently could be used to establish command responsibility (Guest 1995:67).

The latter work on the law of armed conflict indicated for the first time that it should be possible "to develop a prima facie case against the commander of the Bosnian Serb forces surrounding Sarajevo for deliberately attacking the civilian population" (Fenrick 1995:60). Prior thinking had assumed that, because the perpetrators and documentary evidence were not already in hand (as they had

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been at Nuremberg), it would be necessary to develop legal cases from the bottom up, beginning with the individual perpetrators and working up to the senior military and political figures.

Nonetheless, in March 1994, the Chair of the Commission of Experts, Cherif Bassiouni, made what was then a provocative proposal to the U.S. State Department. The proposal would have involved immediately beginning work with the ICTY to prepare a case for the indictment of three Bosnian Serb generals for the siege of Sarajevo. Bassiouni recalls,

> I could tell you who the commanding general was over the three generals who were in command of the Sarajevo Romanija First Corps who surrounded Sarajevo. . . .. I could document that in the three years of the siege, on a daily basis, how many rounds of artillery and mortar fell, how many sniper shots were fired, how many people were injured or wounded. If I can also show you the targeting of civilians, the recurrence of the targets, and even the timing of it, then I have made a case of command responsibility for that general. . . . was a member of what would be the equivalent to their Joint Chiefs of Staff, under Mladic, . . . and that the supplies and artillery shells came directly from Serbia, and so on and so forth, you've got a dammed good case of command responsibility (Personal interview, 26 Sept. 2000).

Bassiouni reports that he never received a response to this proposal. As noted above, Bassiouni's further struggle to be appointed as the first ICTY chief prosecutor was rejected by the UN Security Council. He speculates that this defeat and his proposals to extend the work of the commission by developing a major Sarajevo case were scuttled because he had aimed too soon and too high at this early tentative stage of the politics of the ICTY. Bassiouni explains,

> From the beginning I said I was not interested in going after the little soldier who commits the individual crime. I was after building a case against the leaders who make the decisions. So I was going to establish that there was ethnic cleansing as a policy, that there was systematic rape as a policy, that there was destruction of cultural property as a policy, that the destruction of Sarajevo was a systematic process. What I didn't realize was that this was precisely what the British, and to some extent the French and the Russians, did not want. . . . that was not the political reality (quoted in Sula 1999:26).

The *London Times* agreed with Bassiouni's assessment, noting that, while the official reason given for rejecting Bassiouni was lack of administrative experience as a prosecutor, "diplomatic sources said the real reason is that the European countries are afraid Dr. Bassiouni will move too quickly to charge Serb and possibly Croatian leaders with war crimes" (Bone 1993: n.p.).

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Five years after Bassiouni initially proposed an indictment of Bosnian Serb generals for the siege of Sarajevo, Major General Stanislav Galic was indicted in March 1999 for "having conducted . . . a campaign of sniping and shelling attacks on the civilian population of Sarajevo, causing death and injury to civilians, with the primary purpose of spreading terror among the civilian population" (ICTY 2003: http://www.un.org/icty/latest-e/index.htm). Nine months later, Galic was arrested in his car by British commandos and taken to The Hague to be placed on trial. Four years later, in December 2003, nearly a decade after Bassiouni pushed for the beginning of the process, Galic finally was convicted of spreading terror and crimes against humanity and sentenced to 20 years' imprisonment. In the verdict, "the Trial Chamber finds beyond reasonable doubt that many hundreds of civilians were killed and thousands were injured in ABiH-controlled areas [*sic*] [of Sarajevo] during the Indictment Period" (Galic Judgement and Opinion 2003: paragraph 581).

The presiding judge echoed Bassiouni's early reasoning that

> the gravity of the crime for which General Galic is responsible is determined by the scale, pattern, and reiteration of the attacks, on an almost daily basis, over many months. The civilian population of Sarajevo- men and women of all ages, including children- were killed in their hundreds and wounded in their thousands, with the intent to terrorize the entirety of the population (Galic Judgement and Opinion 2003: paragraph 581).

The majority further concluded that "General Galic was not simply kept abreast of the crimes of his subordinates. He actually controlled the pace and scale of those crimes" (ICTY 2003: http://www.un.org/icty/latest-e/index.htm). The results of our survey show that many Sarajevans agreed with the majority's view on the gravity of Galic's actions and therefore questioned the leniency of the 20-year ICTY sentence given to Galic. While the tribunal emphasizes that its decisions reflect judgments about individual responsibility, it is also the case that these decisions are intended to carry a larger symbolic meaning to the community of victims and potential perpetrators beyond the immediate case, and in these ways they have important collective implications.

Studying the Perception of International (In)justice

In addition to the comparative politics research on support for courts reviewed above, there is also a growing literature on the perception of criminal injustice. Yet such work is concentrated almost entirely within the United States and focused on the American criminal justice system and the perception of it by African

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Americans compared to whites. That research provides unequivocal evidence that African Americans disproportionately perceive actions of the American police and courts as unjust (Hagan & Albonetti 1982; Weitzer 1999; Brooks 2000; Brooks & Jeon-Slaughter 2001; see also Wortley et al. 1997). However, even within the United States, this research literature has failed to keep pace with demographic shifts, for example, providing few studies of Latino perceptions of the justice system (see Brooks & Jeon-Slaughter 2001:2; Hagan et al. 2005b). Sampson and Bartusch (1998) suggest the concept of "legal cynicism" to capture the apparent skepticism of American minority group members for the criminal justice system, and they add the concept of "cognitive landscapes" to make the point that these perceptions vary across the contours formed by individuals, groups, and places. Because perceptions are broadly understood as grounding law-related behaviors (Tyler 1990; Mann 1993; Russell 1998; LaFree 1998), it is of further importance that this research literature be expanded to include the cognitive landscape of international as well as domestic settings.

Two Sarajevo Surveys

Two surveys were conducted in early summer 2000 and in December 2003 to assess the perception of the ICTY and its decisions in Sarajevo. The surveys were timed strategically to follow significant events. The 2000 survey occurred soon after the arrest and transfer of Galic to the ICTY, and Galic was sentenced just before the 2003 survey.

Neither telephone nor household sources of information were sufficiently developed to establish unbiased sampling frames. In such limiting circumstances, the respondents were sampled from the streets, coffee shops, and department stores of the central business district of Sarajevo. Potential respondents were approached and asked whether they would like to participate in the study of the ICTY. Two purposive samples were collected by the same interviewer, with 299 respondents in 2000 and 473 respondents in 2003. Although exact rates of response could not be determined, the interviewer perceived a decline in cooperativeness between the surveys and estimated that the refusal rate for the second sample was probably as much as one-third higher than it was for the first sample.

Systematic bias in our sampling may have influenced reported support for the ICTY. However, our suspicion is that people who did not want to participate in this study were actually less supportive of the ICTY and were reluctant to publicly express this negative sentiment. Our interviewer concurred with this view,

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based on comments from those who declined to participate. Yet as we discuss below, reported ICTY support nonetheless declined substantially between surveys. In sum, we do not believe that sampling bias contributed to an underestimate of ICTY support.

Males formed more than one-half of the respondents in both surveys. Respondents were spread fairly evenly across three age groupings, with the younger age grouping decreasing and the older age groupings increasing slightly by 2003. The percentage of respondents with at least some college was about the same in the two surveys, with a decline in college graduates in 2003 offset by the proportion reporting "some college." However, the percentage was relatively high of the respondents who graduated from college or had "some college" education (slightly less than 50% in both samples) relative to the educational distribution of the population in the Canton of Sarajevo (the percentage with a college degree or some college was 18.6 and 7.2%, respectively; see Canton Sarajevo 2004). One plausible explanation is that the respondents' education was related to their willingness to participate in the survey. For example, more-educated participants may have been more likely to follow and understand the political and legal developments related to the ICTY. Furthermore, the more-educated participants may have been more accustomed to expressing opinions about legal issues. Finally, the more-educated respondents could feel more comfortable filling out the questionnaire and thus agreeing to participate in the study. Another group of explanations is related to the interviewer himself: the interviewer, a man in his fifties, presented an image of a professional and was thus probably more successful in recruiting more-educated respondents. Nevertheless, the results of our multivariate models show no effect of the respondents' education on the opinions about the ICTY and its decisions (see "Multivariate Sources of Perceived International Criminal [In]Justice" below).

Refugees and displaced persons were still returning to Sarajevo during the surveys, and our samples summarized in Table 1 reflect limited changes in some background characteristics across time. The data provided by the International Crisis Group (1998) located in Sarajevo indicate that the Muslim population of the city peaked in the late 1990s, and, as indicated in Table 1, the representation of Muslims has since declined, with some Serbs and Croats returning to Sarajevo (see also Canton Sarajevo 2004). The non-Muslim population slowly began to return to the city in 1997 (5% of all internally displaced persons and refugees were Croat, 2% were Serb), and the ratio of non-Muslims who had returned to the city in 1998 therefore increased. Croats constituted 13 and Serbs 18% of all registered returns of internally displaced persons and refugees in the first six months of 1998 (International Crisis Group

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Table 1. Sarajevan Respondents' Demographic Characteristics and Victimization Status

	2000 Survey (N = 299)	Sarajevo Canton 12/97[A]	2003 Survey (N = 473)	Sarajevo Canton 2002[B]	χ^2	*Phi*
Gender					0.576	0.027
Women	47%		44%			
Age					8.49*	0.107
18–35	37%		27%			
36–50	34%		38%			
Above 50	29%		36%			
Education					9.10*	0.109
Below high school	2%		3%			
High school	46%		47%			
Some college	29%		33%			
College	23%		16%			
Nationality					19.64***	0.160
Muslims	79%	87%	66%	80%		
Croats	14%	5%	19%	7%		
Serbs	5%	5%	11%	11%		
Others	2%	3%	4%	2%		
Victimization Status						
Personally victimized[1]	70%		82%		16.63***	−0.147
Witnessed[2]	65%		74%		6.44*	−0.092
Family victimized[3]	85%		89%		3.84*	−0.071
Neighbors victimized[4]	95%		95%		0.09	0.011

*$p < 0.05$; **$p < 0.01$; ***$p < 0.001$

[A] *Source:* International Crisis Group 1998: p. 5.

[B] *Source:* Canton Sarajevo 2004.

[1] The question was worded as follows: "Do you consider yourself a victim of war crimes or crimes against humanity?" The possible answers were yes and no.

[2] The question was worded as follows: "Have you witnessed a war crime or a crime against humanity?" The possible answers were yes and no.

[3] The question was worded as follows: "Has a member of your family or a close friend been a victim of war crimes or crimes against humanity?" The possible answers were yes and no.

[4] The question was worded as follows: "Has an acquaintance or a fellow citizen been a victim of a war crime or a crime against humanity?" The possible answers were yes and no.

1998:5). At the end of 2002, Muslims constituted three-quarters of the population in the city (80% in the Canton Sarajevo and 77% in the City of Sarajevo; see Canton Sarajevo 2004). Our 2000 and 2003 samples were predominantly Muslim, with Croats somewhat overrepresented and Serbs proportionate to their population.[1] While not intentional, the increased sampling of minorities is fortuitous for subsequent analyses of potential differences among groups.[2]

[1] The ethnicity of the interviewer is very unlikely to have had an effect on the ethnic mix of the respondents in our sample. In particular, the interviewer is of mixed ethnicity (Croat and Muslim), has been living in the city of Sarajevo for more than four decades, and speaks with the typical Sarajevan accent.

[2] In the subsequent logistic regression analyses we use the 2003 sample, which has a larger number of non-Muslims (i.e., 89 Croats and 54 Serbs).

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Although we did not have the opportunity to measure in detail how seriously the war affected each of our respondents, we were able to measure perceptions of their war-related victimization. We wanted to know if they viewed themselves as victims of war crimes or crimes against humanity, and whether respondents who perceived themselves as victims were more critical of the ICTY.

More than seven of every 10 respondents reported themselves to be victims of war crimes and crimes against humanity.[3] Similarly, about seven of 10 respondents indicated that they had witnessed such crimes, while about nine of 10 respondents reported the victimization of a family member or close friend. In addition, almost all respondents (95% in both surveys) reported the victimization of acquaintances or neighbors.

We also probed more specifically the respondent's own victimization by asking, "Have you been victimized in this war?" and "Please describe this." Whereas more than 80% of the respondents (82% in 2000 and 86% in 2003) answered positively, only about one-quarter (27% in 2000 and 21% in 2003) described their victimization experience. Victimization was described in ways similar to the following in the 2000 sample:

> Everyday shelling for four years shook the concrete and the walls, all about the human body.
> During this war we suffered not only from material losses, but also from psychological stress. To live for four years in the largest concentration camp–how is that?
> I resided in Sarajevo during the entire war. [I experienced] an indescribable fear and inexpressible hunger, all the way to shooting pain. All cannot be described in five lines, but it fit into my war diary.
> I lived in the besieged city of Sarajevo during the war. Hunger, fear of grenades, snipers . . . Suffering was all around me.
> Hungry, thirsty, frozen, and no freedom; I had only courage (Kutnjak Ivković 2001:300).

Further physical suffering and emotional trauma emerged in the following abbreviated accounts from the 2003 sample:

> I witnessed all the horrors that happened in the besieged city of Sarajevo. Many of my friends and neighbors were killed or wounded. We picked our fellow citizens' body parts from the streets. Horrific!
> Murders of immediate and extended family . . . devastated the city and state . . . Spent all the time in Sarajevo with my family—hunger, thirst, poverty, sickness.

[3] The wording of this question was: "Do you consider yourself a victim of war crimes or crimes against humanity?" Possible answers were yes and no. This question was used in subsequent logistic regression analyses to measure victimization status.

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> Interruption of normal life. Hunger, thirst, fear for own life and lives of family members, cousins, and fellow citizens.
> We had no water, electricity, food, or luck to die at the beginning [of the siege of] Sarajevo.
> I was wounded by a sniper bullet from the aggressors' posts (Serb). I am a civil victim of the war. I became a paraplegic [after being] wounded in the spine.

The respondents were asked a series of questions about the ICTY and its processes and decisions. These questions ranged in terms of their specificity from the general, asking, for example, about the fairness of the ICTY's decisions in abstract, to the very specific, asking, for example, about the fairness about the ICTY's decision in a specific case. The more specific questions focused on the following indictees/defendants whose profiles are provided in the Appendix and whose cases are more briefly described below:

- Tihomir Blaskic
- Stanislav Galic
- Radovan Karadzic
- Esad Landzo
- Slobodan Milosevic
- Ratko Mladic
- Dusko Tadic

There was also an open-ended question at the end of the 2003 questionnaire encouraging respondents to write additional comments about the ICTY, the trials, or war crimes. Seventy respondents (15% of the 2003 sample) wrote additional comments. Of these, 77 comments of 59 respondents (13% of the overall 2003 sample) were useable. With few exceptions (3% of the comments), these respondents were critical of the ICTY. We use these comments below to elaborate reasons for dissatisfaction with the ICTY along with the quantitative findings from the survey.

The Perception of International (In)Justice in Sarajevo

The surveys included a variety of questions aimed at eliciting perceptions of the ICTY and about the prospect of trying cases in this international setting or in the local courts of Bosnia and Herzegovina (BiH) and Croatia (CRO). The prospect of a shift in court settings was less immediate in 2000 than by 2003, when the Bush administration had insisted on an exit strategy for the ICTY involving the transfer of cases to courts of the newly independent states of the former Yugoslavia. International criminal law, as reflected in the Treaty of Rome and now at the ICTY, also encourages original and ultimately national sovereignty of jurisdiction,

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when and as circumstances allow. By 2003, planning had begun for the construction of a new War Crimes Chamber of the State Court of Bosnia and Herzegovina to be located in Sarajevo, and the ICTY was beginning to arrange the transfer of cases. The responses to the questions in our surveys about where these prosecutions and sentencing decisions should take place indicate a rapid change and sharp conflict in the perceived justness of local and international jurisdiction for these crimes, rather than the evolutionary consensus that Slaughter (2004) foresees.

The 2000 survey included one nonspecific question about the appropriate jurisdiction for people accused of war crimes committed in the former Yugoslavia, and three more specific questions about jurisdiction for Radovan Karadzic (the former president of the Serbian part of Bosnia, Republika Srpska), Ratko Mladic (the former commander of the Bosnian Serb Army [VRS]), Tihomir Blaskic (the former commander of the regional headquarters of the Bosnian Croat army in central Bosnia), and Esad Landzo (a former guard at the Celebici concentration camp). The 2003 survey added Slobodan Milosevic and Stanislav Galic to this list. Table 2 summarizes responses to these items.[4]

More than three-quarters of the Sarajevo respondents in 2000 selected the ICTY as the appropriate jurisdiction—both in general and for the three specific cases involving Karadzic, Mladic, Blaskic, and Landzo—with less than one-fifth favoring the local courts. Three years later, the support for the ICTY was markedly and statistically significantly reduced, with less than one-half (40.9–44.5%) of the respondents in 2003 selecting the ICTY as the appropriate jurisdiction, both in general and in the five specific cases. Respondents were nearly as likely to select the local courts as the appropriate jurisdiction, and even though this left the ICTY still slightly more likely to be judged appropriate, the trend was overwhelmingly in the direction of the local courts. Thus in 2003, the Sarajevo respondents were about evenly split between choosing the ICTY and the local courts as the appropriate jurisdiction, with about 40% choosing each and the rest undecided in choosing between local courts in the country of the offender's nationality and families of the victims as the appropriate decision makers.

We considered the possibility that our results were the consequence of the reduction in the Muslim composition of the samples

[4] The wordings of the general question about jurisdiction and the more specific questions for Karadzic and Mladic were identical in both surveys, while the two questions for Blaskic and Landzo were somewhat expanded (to include a short description of the case). The results seem not to have been affected by the addition of short descriptions for the latter cases; that is, the size and the magnitude of difference between the answers provided by the 2000 and 2003 surveys were quite similar for the questions with and without the expanded wording.

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Table 2. Respondent Designations of Appropriate Jurisdiction

	2000 Survey				2003 Survey			
	All Respondents (N = 299)	Muslims (N = 232)	Croats (N = 42)	Serbs (N = 13)	All Respondents (N = 473)	Muslims (N = 309)	Croats (N = 89)	Serbs (N = 54)
Jurisdiction in general[1]								
ICTY	78%	77%	78%	92%	45%	46%	39%	37%
Local courts (BiH & CRO)	18%	18%	22%	8%	45%	43%	54%	54%
Other	4%	5%	0%	0%	10%	11%	7%	9%
For Milosevic[2]								
ICTY	N/A	N/A	N/A	N/A	43%	45%	36%	38%
Local courts (BiH & CRO)	N/A	N/A	N/A	N/A	43%	41%	52%	49%
Other	N/A	N/A	N/A	N/A	14%	14%	12%	13%
For Karadzic & Mladic[3]								
ICTY	76%	79%	79%	100%	41%	43%	35%	36%
Local courts (BiH)	20%	21%	21%	0%	45%	44%	53%	49%
Other	4%				14%	13%	12%	15%
For Blaskic[4]								
ICTY	79%	80%	80%	100%	45%	46%	40%	35%
Local courts (BiH)	18%	20%	20%	0%	40%	41%	41%	48%
Other	3%				15%	13%	19%	17%
For Landzo[5]								
ICTY	78%	84%	85%	92%	43%	46%	35%	32%
Local courts (BiH)	14%	16%	15%	8%	33%	33%	35%	32%
Other	8%				24%	21%	30%	36%
For Galic[6]								
ICTY	N/A	N/A	N/A	N/A	42%	43%	38%	32%
Local courts (BiH)	N/A	N/A	N/A	N/A	45%	43%	51%	55%
Other	N/A	N/A	N/A	N/A	13%	14%	11%	13%

[1]The question was worded as follows: "Who should try the persons accused of war crimes committed in the territory of the former Yugoslavia?" The possible answers were: (a) the courts in the territory of Croatia and Bosnia and Herzegovina where the crimes have been committed; (b) the courts of the offender's country or country whose army force he was a member of; (c) the International Tribunal in The Hague; (d) the families of the victims; and (e) other _____.

[2]The question was worded as follows: "In your opinion, who should try Slobodan Milosevic?" The possible answers were: (a) courts in Bosnia and Herzegovina/Croatia; (b) courts in Serbia/the Serb Republic; (c) the International Tribunal in The Hague; (d) the families of the victims; and (e) other _____.

[3]The question was worded as follows: "In your opinion, who should try Radovan Karadzic and Ratko Mladic?" The possible answers were (a) courts in Bosnia and Herzegovina; (b) courts in Serbia/the Serb Republic; (c) the International Tribunal in The Hague; (d) the families of the victims; and (e) other _____. Because only a few respondents selected the answers "families of victims" and "courts in Serbia/the Serb Republic," they were omitted from the 2000 cross-ethnicity analysis.

[4]The question was worded as follows: "In your opinion, who should have tried Tihomir Blaskic?" In the 2003 version we added this explanation: "In your opinion, who should have tried Tihomir Blaskic (the Commander of the Regional Headquarters of the HVO Armed Forces in central Bosnia as of June 1992)?" The possible answers were the same: (a) courts in Croatia; (b) courts in Bosnia and Herzegovina; (c) the International Tribunal in The Hague; (d) the families of the victims; and (e) other _____. Because only a few respondents selected the answers "families of victims" and "courts in Croatia," they were omitted from the 2000 cross-ethnicity analysis.

[5]The question was worded as follows: "In your opinion, who should have tried Esad Landzo?" In the 2003 version we added this explanation: "In your opinion, who should have tried Esad Landzo (a guard at the Celebici concentration camp)?" The possible answers were the same: (a) courts in Croatia; (b) courts in Bosnia and Herzegovina; (c) the International Tribunal in The Hague; (d) the families of the victims; and (e) other _____. Because only a few respondents selected the answers "families of victims" and "courts in Croatia," they were omitted from the 2000 cross-ethnicity analysis.

[6]The question was worded as follows: "In your opinion, who should have tried Stanislav Galic (the major general who lead the Romanija Corps and maintained the siege of Sarajevo from 1992 to 1994)?" The possible answers were (a) courts in Bosnia and Herzegovina/Croatia; (b) courts in Serbia/the Serb Republic; (c) the International Tribunal in The Hague; (d) the families of the victims; and (e) other _____.

Table 3. Reasons for Dissatisfaction With the ICTY[a]

	2003 Survey Frequency*	(N = 59) Percentage
ICTY slowness	6	7%
Plea bargains	16	20%
Lenient sentences	26	37%
Not catching all the offenders	18	23%
Political influence on the ICTY	2	2%
Other	9	11%
Total	77	100%

*The respondents could have written more than one reason.

[a]The respondents wrote comments in response to the following instructions at the end of the questionnaire: "Please write additional comments about the International Tribunal, about the trials to war criminals, or about the war crimes."

between 2000 and 2003, from about 80% to two-thirds (see Table 1). While there are some apparent, though statistically insignificant, trends along ethnic lines in Table 2, by far the dominant trend across ethnic groups was decline in support for the ICTY and in favor of local courts. While the smaller numbers of Croats and Serbs in the sample reduced the likelihood of finding statistically significant differences, it is still notable that with only one exception (out of numerous comparisons), Muslims, Croats, and Serbs did not significantly differ in their jurisdictional choices (Table 2). We further examined the possibility that the increase in reported war crimes victimization was associated with the shift from international to local jurisdictional preference. Again, however, perceived victimization was unrelated to jurisdictional preference. While it is possible that the concentration of our sampling in the central business district of Sarajevo may have been a further source of bias, the differences were very striking across the time points of the two surveys compared to other potential sources.

The respondents' comments about the ICTY, solicited by an open-ended item at the very end of the questionnaire, expressed the prevalent view that is summarized in Table 3: with few exceptions (3%), the respondents were critical of the ICTY. The respondents' criticisms are grouped into six categories: perceptions that the ICTY's process is too slow, disapproval of plea bargaining, perceived leniency of the decisions, the ICTY's perceived inability to arrest all the offenders, its politically biased decisions, and "other" comments.

Political Perceptions of the ICTY Judges

There is further reason to believe that the changing perception of the ICTY relative to local courts was more specifically linked to

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the perceived capacity of these respective courts for judicial independence and fair outcomes. For example, while the vast majority of respondents (83%) believed in 2000 that the ICTY judges were independent, less than one-half (47%) believed this in 2003 ($\chi^2 = 98.6$, $d.f. = 1$, $p < 0.001$). When asked about the ability of the ICTY judges to resist political pressures, the decline was nearly identical (from 80% in 2000 to 48% in 2003; $\chi^2 = 76.7$, $d.f. = 1$, $p < 0.001$).

There were further questions about the impact of politics on the ICTY in the respondents' comments written on the questionnaires:

> Too much politics in the sentences of war criminals.
> Verdicts [are] under the influence of daily politics and interests.
> There should be more law and less politics.
> The court should be independent of politics.

Several respondents commented on what is sometimes called moral equivalency in the politics of international institutions and the ICTY. For example:

> The ICTY is trying to balance the defendants according to their nationality and prove that all three parties are responsible for the war, which, of course, is not correct. There was an aggression, and it was done by Serbia, Montenegro, and Croatia.
> [The problem is] emphasizing parties in the war [i.e., shared responsibility] and not that it was an aggression.
> [The ICTY] should be just and judges should not take into account the party/side that the criminal is affiliated with. They should make just decisions.

We have already noted the political pressure that directs the UN to select judges from many countries, and the ICTY Statute actually specifies that with regard to judges "no two . . . may be nationals of the same state" (Statute of the Tribunal 1993: Article 12). Table 4 summarizes the respondents' evaluations of legal decisions in terms of the perceived impact of nationality. The belief that nationality influenced ICTY judges' decisions decreased from 92% to about two-thirds (68%) between 2000 and 2003. Meanwhile, the percentage of respondents who did not believe nationality influenced local court judges increased from about one-third (33%) to nearly one-half (50%). Again, the perception of local court judges was improving and the perception of ICTY judges was declining. The trade-off between these perceptions complicates Slaughter's (2004) anticipation of harmonization.

Table 5 summarizes the 2000 and 2003 respondents' evaluations of ICTY judges along six dimensions. ICTY judges were ranked as significantly less fair and objective in 2003 than 2000, with a slight but also significant shift toward being seen more like politicians than like lawyers. Yet there was no significant shift in

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Table 4. Impact of the Judges' Nationality on Case Decisions

	2000 Survey (N = 299)	2003 Survey (N = 473)	χ^2	*Phi*
ICTY judges[1]			58.2***	− 0.277
No Impact	92%	68%		
Local court judges[2]			21.4***	0.167
No Impact	33%	50%		

***$p < 0.001$

[1]The question was worded as follows: "Do you think that the nationality of a judge from the International Tribunal will influence the decision the judge will vote for?" The possible answers ranged on a four-point Likert scale from "definitely yes" to "definitely no." The answers "definitely yes" and "yes" were merged, as were the answers "no" and "definitely no."

[2]The question was worded as follows: "Do you think that, if the trial is held in the country where the crimes were committed, the nationality of the judge will influence the decision he/she will vote for?" The possible answers ranged on a four-point Likert scale from "definitely yes" to "definitely no." The answers "definitely yes" and "yes" were merged, as were the answers "no" and "definitely no."

assessments of these judges' honesty, decisiveness, and adjustability over this period. The change in Sarajevan views of ICTY judges seemed to focus more narrowly on dimensions of political subjectivity and unfairness. At the same time, some further clues suggested that attitudes toward goals and purposes to be pursued in sentencing were driving these concerns about judicial independence and fairness.

An evolving ICTY emphasis on fairness, and more specifically on deterrence in determining dispositions, was articulated by a panel of ICTY judges as it drew on two prior cases in sentencing the Croat commander Tihomir Blaskic.

> The determination of a "fair" sentence, that is to say a sentence consonant with the interests of justice, depends on the objectives sought. The Trial Chamber hearing the Celebici case noted four parameters to be taken into account in fixing the length of the sentence: retribution, protection of society, rehabilitation and deterrence. According to the Trial Chamber, deterrence:

Table 5. Mean Perceived Characteristics of ICTY Judges[1]

	2000 Survey (N = 299)	2003 Survey (N = 473)	t-test
Fair/Unfair	4.92	5.78	4.52***
Objective/Subjective	4.88	6.11	6.57***
Dishonest/Honest	6.82	7.09	1.41
Politicians/Lawyers	7.32	6.94	− 2.11*
Indecisive/Decisive	5.97	5.72	− 1.27
Formalists/Adjustable	5.35	5.45	0.50

*$p < 0.05$; **$p < 0.01$; ***$p < 0.001$

[1]The question was worded as follows: "What is your opinion about the judges sitting in the International Tribunal? You think that they are (please circle one number from 1 to 10)." Each item was accompanied by a 10-item scale from 1 (e.g., fair) to 10 (e.g., unfair).

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> is probably the most important factor in the assessment of appropriate sentences for violations of international humanitarian law. Apart from the fact that the accused should be sufficiently deterred by appropriate sentence from ever contemplating taking part in such crimes again, persons in similar situations in the future should similarly be deterred from resorting to such crimes[references omitted]. . . .
> As the Trial chamber hearing the Tadic case recently recalled, pursuant to Security Council resolutions 808 and 827, the Tribunal's mission is to put to an end serious violations of international humanitarian law and to contribute towards the restoration and maintenance of peace in the former Yugoslavia. To achieve these objectives, the Trial Chamber must, in accordance with the case-law of the two ad hoc Tribunals, pass a sentence consonant with the above defined objectives (Blaskic Judgement 2000: paragraphs 761–2; references omitted).

The Sarajevan respondents did not agree, and even less so in the second survey than the first: nearly three-quarters ultimately saw retribution as the major purpose of punishing war criminals (65 and 73% in 2000 and 2003, respectively), while deterrence was subsequently endorsed by only about one-quarter of the respondents (31% and 23%, respectively). Thus, on an order of two or three to one, the respondents favored retribution over deterrence in sentencing. This demand for retribution is a contrast with Slaughter's prescription of negotiation (2004) and complicates her view of harmonization.

This conflict over retributive purpose seems fundamentally and increasingly connected to Sarajevans' responses to the fairness of ICTY case decisions and to what they see as the politics of the tribunal. The results summarized in Table 6 reinforced this growing disillusionment with the ICTY. There was a highly significant drop from overwhelming majority (86%) to minority agreement (42%) that the tribunal is fair. Rankings of the fairness of procedures and decisions of the ICTY in Table 6 make it clear that it was the declining approval of decisions (from 88% to 30%) rather than of procedures (93% to 77%) that was most at issue. The remainder of Table 6 asks about the fairness of decisions in specific cases.[5]

[5] The three general questions about ICTY fairness were virtually identical in the two surveys. Questions asked about the three specific cases in the 2003 survey were somewhat expanded from 2000 (i.e., in one sentence we summarized the specific case for the respondents; please see the table for details). However, we do not think that our findings were markedly affected by the change: the differences between the two samples on both the identical questions (i.e., general questions) and the expanded questions (i.e., questions about specific cases) point in the same direction and are of the comparable magnitude. With the exception of the Blaskic case (which, as discussed below, received distinct and continuing press attention) and in the case of procedural fairness (also discussed in the text), about 80% of the respondents in the 2000 survey thought that the ICTY would be fair in both general and specific cases, while about 40% or fewer of the respondents in the 2003 survey thought the same.

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Table 6. Perceived Fairness of ICTY and its Sentencing Decisions

	2000 Survey				2003 Survey			
	All Respondents (N = 299)	Muslims (N = 232)	Croats (N = 42)	Serbs (N = 13)	All Respondents (N = 473)	Muslims (N = 309)	Croats (N = 89)	Serbs (N = 54)
Fairness of ICTY in general[1]								
ICTY Fair in General	86%	86%	83%	92%	42%	42%	38%	37%
Fairness of procedures[2]								
ICTY Procedures Fair	93%	93%	88%	92%	77%	77%	80%	74%
Fairness of decisions[3]								
ICTY Decisions Fair	88%	88%	83%	92%	30%	30%	29%	26%
Dusko Tadic[4]								
Decision Fair	86%	85%	91%	85%	22%	22%	25%	17%
Esad Landzo[5]								
Decision Fair	85%	84%	83%	100%	42%	40%	46%	37%
Tihomir Blaskic[6]								
Decision Fair	32%	35%	17%	15%	23%	24%	15%	19%
Stanislav Galic[7]								
Decision Fair	N/A	N/A	N/A	N/A	7%	6%	9%	6%

[1]The question was worded as follows: "Do you think that the International Tribunal conducts the trials correctly and justly and makes fair decisions?" The answers ranged on a four-point scale from "definitely yes" to "definitely no."

[2]The question (italics in original) was worded as follows: "Do you think that the *procedure* by the International Tribunal is fair?" The answers ranged on a four-point scale from "very fair" to "very unfair."

[3]The question (italics in original) was worded as follows: "Do you think that the *decisions/verdicts* by the International Tribunal are fair?" The answers ranged on a four-point scale from "very fair" to "very unfair."

[4]The question was worded as follows: "Do you think that the decision by the International Tribunal to sentence Dusko Tadic to 20 years of imprisonment is fair?" The 2003 version was worded as: "Do you think that the decision by the International Tribunal to sentence Dusko Tadic (a guard at the Omarska concentration camp) to 20 years of imprisonment is fair?" The answers ranged on a four-point scale from "very fair" to "very unfair."

[5]The question was worded as follows: "Do you think that the decision by the International Tribunal to sentence Esad Landzo to 15 years of imprisonment is fair?" The 2003 version was worded as: "Do you think that the decision by the International Tribunal to sentence Esad Landzo (a guard at the Celebici concentration camp) to 15 years of imprisonment is fair?" The answers ranged on a four-point scale from "very fair" to "very unfair."

[6]The question was worded as follows: "Do you think that the decision by the International Tribunal to sentence Tihomir Blaskic to 45 years of imprisonment is fair?" The 2003 version was worded as: "Do you think that the decision by the International Tribunal to sentence Tihomir Blaskic (the Commander of the Regional Headquarters of the HVO Armed Forces in central Bosnia as of June 1992) to 45 years of imprisonment is fair?" The answers ranged on a four-point scale from "very fair" to "very unfair."

[7]The question was worded as follows: "Do you think that the decision by the International Tribunal to sentence Stanislav Galic (the major general who lead the Romanija Corps and maintained the siege of Sarajevo from 1992 to 1994) to 20 years of imprisonment is fair?" The answers ranged on a four-point scale from "very fair" to "very unfair."

Although the wars in the former Yugoslavia were fought along ethnic lines, the shared experience was seemingly of greater bearing for those who remained in Sarajevo during the 44 months of the siege, regardless of ethnicity. Thus perceptions of the ICTY's fairness were little influenced by the respondents' ethnicity (Table 6). Like the majority of Muslims, the Croats and Serbs in the 2000 sample saw the ICTY's decisions as fair (an exception being the Blaskic case discussed below), while the majority of Muslims, Croats, and Serbs in the 2003 sample evaluated the ICTY's decisions (but again, not procedures) as unfair.

Although each case described in the questionnaire has distinct features, Sarajevans became more disillusioned in all four cases. The Tadic and Landzo cases are similar in one further important way: neither involves an offender who exercised much authority or command responsibility. Both received sentences in the 15- to 20-year range, and both of these sentences were widely seen as fair (86 and 85%, respectively) in 2000, but much less so in 2003 (22 and 42%, respectively). This is likely because by 2003 the tribunal was more focused on cases with higher-ranking offenders who exercised command responsibility and who Sarajevans were by then especially anxious to see punished.

Tihomir Blaskic was a high-ranking commander, but there was doubt throughout his case that the evidence adequately confirmed his responsibility for his alleged war crimes, and new evidence was revealed on appeal of a secret (from him as well as others) command structure that further undermined the decision in this case (Simons 2001). Even in 2000, only about a third of Sarajevans (32%) regarded the 45-year sentence Blaskic received as fair, and this decreased significantly to less than one-quarter of Sarajevans (23%) in 2003.

The 2003 survey further asked respondents to prescribe a sentence for Blaskic. Less than one-sixth (15%) responded that Blaskic should have received a sentence in the range that he did, between 21 and 50 years' imprisonment. Fifteen percent selected life imprisonment as more appropriate. Because Blaskic is middle-aged, it is not clear that life imprisonment would have been a more punitive sentence. Meanwhile, among those respondents who indicated that they thought the Blaskic outcome was unfair, only 13.4% thought his sentence was too lenient, and only one-half of these selected life imprisonment. In contrast, 44% chose less than 15 years and 40% chose 15 to 20 years as the appropriate sentence for Blaskic. Thus, in this unusual case, 84% of those who thought Blaskic was treated unfairly believed Blaskic should have received a sentence of less than one-half of what he had originally received. Interestingly, recent developments at the ICTY have now moved the case in the same direction. In 2000, Blaskic filed a notice of

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appeal and then submitted previously suppressed evidence in his defense. On July 29, 2004, the ICTY's Appeals Chamber reduced his sentence to nine years, followed by his almost immediate release.

As we will discuss in more detail later, the issue of perceived leniency in ICTY sentencing was frequently mentioned in the respondents' written comments. The nature of these comments ranged from relatively simple observations ("the sentences are too lenient") to more complex and elaborate explanations (involving the purposes of punishment, the relationship to plea bargaining, or in connection with a specific case). A few respondents associated the issue of leniency with the perceived need for punishment as well as general deterrence, for example, urging ICTY judges to "please go ahead and not feel sorry for the criminals, especially because of the example it sets for many nationalists in the former Yugoslavia and across the world. Be harsher in sentencing!"

For other respondents, the ICTY was deemed to deliver unjust verdicts because it cannot impose the death penalty. Some respondents went a step further and argued that even the death penalty is inadequate:

> Any punishment meted out, including the death penalty, is too lenient for what they have done to this nation.
> Even the most severe penalties are insufficient to punish the ones responsible for all this.

Further evidence is summarized in Table 7 that Sarajevans' sense of fairness in the judgment of war crimes includes a concern for defendants: a series of items asked respondents to rank the importance of protections for defendants' rights. Eight different rights of defendants, which are central to notions of liberal legalism, were all scored above five on a scale from one to 10, while the following were all scored in the second survey as being of significantly

Table 7. Respondents' Rankings of Defendants' Rights[1]

	2000 Survey (N = 299)	2003 Survey (N = 473)	t-test
To have an attorney	5.06	9.29	21.76***
Not to be in custody	3.00	2.68	– 1.68
To be silent	3.98	5.54	6.23***
To present a defense	4.82	8.49	17.09***
To propose witnesses	5.22	8.21	14.58***
To an impartial judge	4.31	9.29	22.91***
To a jury trial	5.39	5.62	0.93
To an appeal	5.75	6.04	– 1.18

***$p < 0.001$

[1]The question was worded as follows: "Which of the rights below should be guaranteed to the defendants tried by the International Tribunal (please circle a number from 1 to 10)." Each item was accompanied by a 10-item scale from 1, "definitely no," to 10, "definitely yes."

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greater importance than in the first survey: to have an attorney, be silent, present a defense, propose witnesses, and have an impartial judge. Of these, only having an attorney was ranked more important than having an impartial judge.

The only protection that was ranked of less importance in the second survey than in the first (and not significantly so) was the right not to be kept in custody. This was likely a reflection of the difficulty the ICTY had initially, and still has, in getting NATO troops to make arrests for the tribunal (Hagan 2003: Chs. 3, 4). Indeed, the complaint that the international community and/or the ICTY did not, could not, or will not arrest all the persons indicted with war crimes was frequently mentioned in the respondents' qualitative comments (22%, see Table 3) as well. In the emphatic words of one of the respondents: "[They] should be caught!"

The need to arrest indicted war criminals still at large was linked directly to the ICTY's assessed inability to provide justice, and therefore its lack of credibility in the victims' eyes:

> Continue with your work. Catch all war criminals. Then you will have fulfilled our expectations regarding your existence.
> I am grateful for the fact that the Tribunal in The Hague has begun its work in trying and sentencing war criminals in the first place, but I would suggest to the Tribunal that if all the indictees are not captured and justly tried and sentenced, the objectivity of the Tribunal will be challenged. I think that the Tribunal is powerful enough to catch them all.
> It [the perception of the ICTY] is fine for now, but catching all war criminals quickly, which is indeed possible, would be excellent.

A more specific source of disillusionment for many respondents was failing to arrest Radovan Karadzic and Ratko Mladic, who are viewed by many as the two key culprits in the war in Bosnia and Herzgovina:

> If Karadzic and Mladic were caught, that would mean something. The arrests of all indictees and their sentencing can neither bring the dead back nor alleviate the pain, but it is important to provide justice. I think that they [the international community] can, if they want to, arrest Karadzic and Mladic. I would then trust the Tribunal in The Hague more.
> I think that the Tribunal in The Hague is quite objective and just, but I do not support the use of plea bargaining. If they arrest Karadzic and Mladic, I think that a substantial proportion of the people will get at least some satisfaction. The authorities should be ashamed that they are still at large.
> I think that they should mete out harsher punishments and arrest the remaining war criminals still at large. Catch Karadzic and Mladic to improve the situation in BIH and to let people live in peace.

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Respondents also commented about the slowness of ICTY cases, saying, "they should work faster" and "I believe that the trials against the indictees for war crimes are too long."

Plea bargaining is allowed by the ICTY's Rules of Procedure and Evidence (ICTY 1994). Specifically, Rule 101 allows consideration in sentencing of "the substantial cooperation with the Prosecutor by the convicted person before or after conviction." Yet only 6% of the respondents approved of this use of plea bargaining. This disapproval was further expressed in written comments. Some of the respondents apparently presumed that Galic received a plea bargain that resulted in his 20-year sentence, although no plea bargain was actually involved in the case. Several respondents commented,

> The ICTY is fairly objective, but there should be no plea bargaining between the offenders and the prosecutors because everyone should be responsible for the crimes they are found to be guilty of.
> When the verdict in the Stanislav Galic case was meted out, the opinion about the ICTY became negative. Unfortunately, the ICTY is becoming a street market in which [people] bargain about the punishment severity.
> The trials in The Hague are becoming a farce! They are bargaining like [they are] in the market! Should we bargain with such criminals? According to the old . . . proverb, "eye for eye, tooth for tooth," there should be no mercy for such people!

The defendants' positions in the military hierarchy strongly influenced the degree of opposition to plea bargaining. For example, one respondent wrote that "the higher the war criminal was in the hierarchy, the more limited the opportunity to plea bargain should be. Therefore, there should be no plea bargaining with Milosevic." Plea bargaining was criticized in connection with several specific cases as well:

> Upon learning that if they cooperate with the prosecutor, the severity of penalty is plea-bargained, I realized that everything is just a farce. Can you imagine that Biljana Plavsic [the Bosnian Serb political leader] was sentenced to only 11 years of imprisonment [to be served in] the conditions of a high standard of living that an average Bosnian cannot afford even outside of prison and with a lot of hard work?
> In certain cases there was plea bargaining between the prosecutor and the defendants, which I completely understand and approve of. However, I can neither understand nor approve that, for example, Drazen Erdemovic, guilty of the deaths of 60 people, be sentenced to 8 years, then 4 years [on appeal], and today be a free man who, with changed identity, enjoys all the privileges.

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Criticisms of plea bargaining frequently linked it with a potential consequence— lenient punishment—that clearly disappointed the respondents:

> [The ICTY] metes out relatively lenient punishments based on the plea bargaining agreements.
> Too much plea bargaining with the people who committed genocide is not suitable for such a highly ranked institution. With such an approach the Tribunal has lost a lot . . . it is impossible to say that the appropriate punishment for mass killings, rapes, displacement, lies, etc. is 10 years of imprisonment.
> The ICTY should eliminate plea bargaining. Even if it continues to be practiced, the punishments should not be ridiculously lenient. A crime is a crime and it should be punished regardless of its geographic origin. Of course, I do not think only about the territory of the former Yugoslavia, but the whole world.
> These are not cases of individual murders; rather, it is the case of genocide and hatred deeply seeded in them . . . this hatred lives and will never die and tomorrow they will turn against their neighbors, friends, and family. Because of that, I disapprove of any plea bargaining. The harshest punishment that they deserve [should be imposed].

The respondents' answers overwhelmingly indicated that they regarded the recent treatment of Galic as too lenient. Because the sentencing in this case took place in late 2003, we focused on this outcome only in the second survey. Only 6.6% of the respondents regarded the 20-year sentence in this case as appropriate. In the words of one of the respondents, "How can a person responsible for the deaths of 12,000 people be sentenced to only 20 years of imprisonment?" Unlike the Blaskic case, with Galic the concern was clearly with the sentence. Only 1% of the respondents, regardless of whether they evaluated the decision as fair or unfair, said that the imprisonment of 15 to 20 years—corresponding to the actual punishment of 20 years—was adequate. No respondent thought that a less serious punishment would have been appropriate and, even among those who evaluated the actual sentence as fair, 86.7% preferred a more severe punishment. Among the respondents who evaluated the decision as unfair, virtually all opted for the harsher sentence, with 58.6% selecting life imprisonment and 32.3% advocating the death penalty (which both liberal legalism and the Tribunal disavow). The specific demands for more punitive sentencing in the symbolically important Galic case again complicates the prospect of harmonization envisioned in Slaughter's consensus perspective (2004).

The general impression of the ICTY emerging from Sarajevans in the 2000 and 2003 samples is consistent with some predictions of conflict theory, but inconsistent with others. As conflict theory

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would predict, Sarajevans are increasingly skeptical of the appropriateness and fairness of the jurisdiction of the ICTY over war crimes cases involving Bosnians as victims. Yet the failure of ethnicity and victimization to account for this growing skepticism is inconsistent with conflict theory predictions. It is perhaps also surprising from the perspective of conflict theory that Sarajevans are so supportive of defendants' rights. Meanwhile, the conflict of Sarajevans with the ICTY is focused around the sentences imposed by the tribunal's judges. The recent 20-year sentence in the Galic case appears to be a particular source of disillusionment that is grounded in a sense that the judges of the tribunal are too highly politicized in their sensibilities. However, a better understanding of the relative role of the various factors driving Sarajevans' assessments of the ICTY requires a multivariate analysis of the process involved.

Multivariate Sources of Perceived International Criminal [In]Justice

Did the Galic case in its own right diminish the overall perception of the ICTY decisions? Was a growing desire for severe punishment the salient source of the perceived injustice? Are the political biases increasingly attributed to the ICTY by Sarajevans a fundamental and independent source of conflict in perceptions of the tribunal? We further explored these likely sources of conflict with a logistic regression analysis in which perception of the ICTY's overall fairness is the dependent variable.[6]

A key prior step to this analysis involved creating a measure of perceived political bias of the ICTY that in positive terms we refer to as political neutrality. Four items composing the ICTY political neutrality scale asked about judges' ability to resist political pressure, judicial independence, national bias, and the role played by political factors in judicial decisions. The alpha reliability coefficient for this scale was 0.74.

We also included an important measure of the respondents' assignment of purpose to punishment in sentencing. The respondents were asked to select between descriptions of specific and general deterrence and retributive punishment as the primary purpose in sentencing war criminals. Those who selected retributive

[6] The question was worded as follows: "Do you think that the International Tribunal conducts the trials correctly and fairly and makes just decisions?" Possible answers ranged from "definitely yes" (i.e., very fair) to "definitely no" (i.e., very unfair). Because our primary interest lies in comparing the views held by the respondents who evaluated the ICTY as fair with the views held by the respondents who evaluated the ICTY as unfair, we condensed the four-point Likert scale into a dichotomized scale of "fair" and "unfair."

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punishment were coded as favoring this goal of sentencing in contrast with deterrence (either specific or general).

Procedural fairness was clearly important in responses to the ICTY, so we included the assessment of this general source of fairness in our logistic regression analysis. We further included a specific measure of the fairness of the Galic decision to assess its driving force in responses to the ICTY. We also included scaled versions of the defendants' rights measures introduced earlier (alpha = 0.79) and a parallel scale of victims' rights measures (including testifying in closed sessions, expunging victims' names from official records, and giving testimony in ways that further conceal identity; alpha = 0.96). We further included a measure of personal victimization to examine its impact on the perceptions of the ICTY. Finally, we included demographic characteristics: ethnicity, education, gender, and age.

The results of the logistic regression are summarized in Table 8. Perceived fairness of the procedures that are the hallmarks of liberal legalism was one of the strongest predictors of the overall perceived fairness of ICTY decisions. The odds that the respondents who evaluated the ICTY procedures as unfair would regard

Table 8. Logistic Coefficients From the Regression of Perceived Fairness of ICTY's Decisions/Galic Decision on Respondents' Attitudes and Background Characteristics

	ICTY's Decisions[a]		Galic Decision[b]	
	B	s.e.	B	s.e.
Fairness for Galic	0.891**	0.330		
Fairness of procedures	2.918**	1.054	1.109**	0.416
Political scale	0.458***	0.090	0.177**	0.064
Punishment purpose	−1.014*	0.391	−0.363	0.314
Defendants' rights	−0.005	0.013	0.009	0.010
Victims' rights	0.074	0.066	0.129*	0.050
Nationality				
Croats	0.000	0.572	−0.185	0.441
Muslims	−0.177	0.498	0.177	0.396
Victim status	−0.216	0.401	−0.159	0.327
Education	0.440	0.331	−0.013	0.255
Gender	0.572	0.329	−0.230	0.254
Age	0.023	0.013	0.005	0.010
Constant	−5.774***	1.308	2.491**	0.972
Model χ^2 (*d.f.*)	141.97*** (12)		52.02*** (11)	

*$p < 0.05$; **$p < 0.01$; ***$p < 0.001$

[a]The question was worded as follows: "Do you think that the International Tribunal conducts the trials correctly and fairly and makes just decisions?" The answers ranged on a four-point scale from "definitely yes" (i.e., very fair) to "definitely no" (i.e., very unfair). The dependent variable was coded as follows: 1. . . very unfair or unfair; 0 . . . fair or very fair.

[b]The question was worded as follows: "Do you think that the decision by the International Tribunal to sentence Stanislav Galic (the general who led the Romanija Corps and maintained the siege of Sarajevo from 1992 to 1994) to 20 years of imprisonment is just?" The answers ranged on a four-point scale from "definitely fair" to "definitely unfair." The dependent variable was coded as follows: 1 . . . very unfair; 0 . . . unfair, fair, or very fair.

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ICTY decisions as unfair as well were estimated to be 18.5 times as high as those of the respondents who evaluated the ICTY procedures as fair, all other covariates being equal.[7] However, controlling for this important assessment, the respondents' reactions to the recent Galic sentencing, the judges' assessed political neutrality, and the primacy attached to retributive punishment as a purpose of sentencing all additionally played significant roles in determining the fairness of the ICTY's case outcomes. Specifically, the odds that the respondents who evaluated the Galic decision as very unfair regarded ICTY decisions in general as unfair as well were estimated to be 2.5 times as high as those of the respondents who did not evaluate the Galic decision as unfair. Furthermore, a one-unit increase on the scale of perceived political influence increased the odds that the respondents would evaluate the ICTY decisions as unfair by 1.6 times. Finally, the odds that the respondents who advocated retributive punishment would regard the ICTY decisions as unfair were estimated to be 2.75 times as high as those of the respondents who advocated other punishment purposes. Thus, Sarajevans' perceptions of injustice at the ICTY were fueled by feelings that the sentencing of Galic was too lenient, that ICTY judges were politically biased, and that insufficient importance was attached to retribution in sentencing. None of the remaining variables—including, most notably, ethnicity and victimization or concerns for victims' rights—were statistically significant in their influence at the 0.05 level.[8]

To further pinpoint the driving forces in Sarajevans' reactions to the ICTY, we undertook a logistic regression analysis of the perceived fairness of the Galic case itself (perceptions about the fairness of the Galic decision were the dependent variable in the analysis).[9] The same independent variables from the previous logistic regression were included in this specification. These results largely confirmed the previous analysis, with some notable differences. Again, procedural fairness was salient, and the role of

[7] We obtained the odds effects by exponentiation of the logistic coefficients.

[8] When we ran the logistic regression using the other measure of victimization (see the section "Two Sarajevo Surveys"), the results were very similar. In particular, perceived fairness of the ICTY procedures, perceived injustice of the Galic sentence, assessments of the judges' political neutrality, and primacy of punishment were all predictors of the overall perceived fairness of ICTY decisions. Other variables were insignificant. Victimization was marginally significant ($p = 0.06$).

[9] The question was worded as follows: "Do you think that the decision by the International Tribunal to sentence Stanislav Galic (the general who led the Romanija Corps and maintained the siege of Sarajevo from 1992 to 1994) to 20 years of imprisonment is just?" Possible answers ranged from "definitely fair" to "definitely unfair." Because our primary interest lies in comparing the views held by the respondents who evaluated the ICTY as fair with the views held by the respondents who evaluated the ICTY as unfair, we condensed the four-point Likert scale into a dichotomized scale of "very unfair" and "fair."

Table 9. Reasons for Selecting a Particular Decision Maker

	Local courts (N = 190)	ICTY (N = 175)
Most familiar with local conditions	50%	1%
Best understand reasons for the war	19%	6%
Survived or witnessed war crimes	10%	2%
Removed from the local politics	n/a	16%
Least influenced by the politics	n/a	22%
Certainty of punishment	21%	53%

political neutrality was also important. The odds that the respondents who evaluated the ICTY procedures as unfair would regard ICTY decisions as unfair as well were estimated to be 3.0 times as high as those of the respondents who evaluated the ICTY procedures as fair, other covariates being equal. Surprisingly, retributive punishment was not a significant variable in this equation, while a concern for victims' rights was significant. In particular, a one-unit increase on the scale of victims' rights (on which higher scores indicated lesser willingness to protect victims' rights) increased the odds 1.1 times that the respondents would evaluate the Galic decision as unfair. This suggests that in the Galic case, with its specific focus on Sarajevo, there was an appreciation of the ICTY's record of protecting victims from recriminations as a result of testifying for the prosecution. At the same time, doubts about the politics of the judges at the ICTY were a repeated concern. Specifically, a one-unit increase on the scale of political influence increased the odds by 1.2 times that the respondents would evaluate the Galic decision as unfair. Again, ethnicity, victimization, and other variables were insignificant.[10]

The persistent concern of Sarajevans about the politics of the ICTY and its judges was a consistent theme in the above results. Further insight into the role of politics in the perceptions of international justice by Sarajevans is summarized in Table 9 in the form of the reasons the respondents gave when asked in 2003 about the choice between the ICTY and local courts as the appropriate venue for war crimes cases involving Bosnia. Within the groups that chose each setting, politics and punishment were prominent. Among those who chose the ICTY, the top three reasons given were certainty of punishment (54%), unlikeliness of being influenced by politics (22%), and the likeliness of being

[10] When we ran the logistic regression using the other measure of victimization (see the section "Two Sarajevo Surveys"), the results were very similar. In particular, perceived fairness of the ICTY procedures, assessments of the judges' political neutrality, and concern for victims' rights were all significant predictors of the overall perceived fairness of the sentence in the Galic case. Other variables, including victimization, remained insignificant.

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removed from politics (16%). Among those who chose local courts, the top three reasons given were being most familiar with conditions (50%), understanding reasons for the war (19%), and again certainty of punishment (21%). While those who chose the ICTY saw an advantage in being removed from local political influence, those who selected the local courts saw an advantage in understanding the local context. Regardless of the court setting chosen, there was a desire to be certain that the war crimes in Bosnia would be punished.

Conclusion

Tip O'Neill (1994), the venerable American congressman and Speaker of the House, famously observed in the title of his memoir that "All Politics Is Local." Over the time period considered in this research, from 2000 to 2003, Sarajevans became increasingly convinced that the ICTY is politically influenced in its decisionmaking by internationally appointed judges. During this same period, Sarajevans became less concerned that their local judges might be politically biased. Slaughter's aspiration (2004) for a "new world order"—based on negotiation, harmonization, and consensus—is complicated by these differing perceptions. There is, among other uneasily resolved issues, a fundamental conflict about what is regarded as political in the polarized perceptions of these alternative judicial settings.

The virtues Sarajevans increasingly foresee in domestic Bosnian courts for war crimes involve an understanding and familiarity with the local setting. This familiarity and understanding involves political preferences. Sarajevans increasingly resent what they perceive as international understandings imposed on locally experienced problems. This is the sense in which all politics is locally defined. In Sarajevo, this new conflict with the priorities of international liberal legalism supersedes older conflict theory expectations of cleavages along lines of age, gender, or even ethnicity. Among Sarajevans, shared experience, close proximity to the violence and physical destruction of the community, and the same local sources of information about international justice significantly reduce the importance of ethnicity in perceptions of the ICTY. While this might seem intuitively surprising—bearing in mind that the war was fought across ethnic lines—our results show that, within Sarajevo, there appears to be relative ethnic consensus.

The 1999 Berkeley Human Rights Clinic study of BiH judges and prosecutors reports that, compared to their counterparts in Banja Luka (Serbs) and Mostar (Croats), respondents from Sarajevo, *regardless of their ethnicity,* expressed attitudes that were

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distinctive in several ways: a desire for a recreation of a unified and diverse Bosnia and the perception of the ICTY as a fair and neutral institution (Human Rights Center 2000). As we have noted, this relative ethnic consensus may be a unique feature of the Sarajevan situation, and it is uncertain if not doubtful that this consensus extends beyond Sarajevo. Meanwhile, a consensually shared faith among Sarajevans in the fairness and neutrality of the ICTY has proven short-lived.

The conflict over jurisdiction between the ICTY and the local courts has been strongly shaped by the case of command responsibility against Galic. Sarajevans overwhelmingly, indeed nearly universally, believe that the 20-year sentence imposed by ICTY judges on Galic was too lenient. Nearly one-third of Sarajevans believe that Galic should be put to death. Yet in the case of Blaskic, Sarajevans actually favor greater leniency in sentencing than the ICTY provided. There is also strong support for defendants' rights and procedural fairness in general among Sarajevans. In these ways, Sarajevans are highly committed to the institutional goals of the liberal legal project.

While it may not be true that all politics are local, the lesson of the Galic case and the siege of Sarajevo seems to be that the local dimension of international justice cannot be ignored and, it is important to note that, as Slaughter emphasizes (2004), international criminal law and a global jurisprudence should not seek to do so. Moreover, the extent and severity of atrocities and the ICTY's limited time and resources ultimately appear to *require* the involvement of the local criminal justice system to address the widespread and systematic scale of violence that occurred during the war in the former Yugoslavia. Yet the local judicial system has been criticized for lack of independence, incompetence, and corruption (see Human Rights Clinic 2000:145).

In the 1999 Berkeley Human Rights Clinic study, local judges and prosecutors reported feeling marginalized by the international community and the ICTY, especially in the process of obtaining the approval from the ICTY Office of the Prosecutor for the arrest and trial of accused war criminals. This study concluded that

> participants' concerns about marginalization lead to the question of whether the original decision regarding the location of the ICTY and the exclusion of Bosnian legal professionals from its judicial ranks should be reconsidered. These tactical decisions, taken at the Tribunal's inception, are examples of choices made in the context of armed conflict that now might be revisited (Human Rights Clinic 2000:145).

It is clear that the Sarajevans in our survey research now increasingly support such a change. The recent transfer of the Stankovic

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case to the new War Crimes Chamber of the State Court of Bosnia and Herzegovina may be a realization of this at the ICTY.

It seems likely that there is a predictable sequence to international efforts to restore a sense of domestic criminal justice, and that ultimately settings and persons who have experienced major crimes against their people will wish to reclaim an indigenous role in the restoration of locally experienced justice. This may be no less true today with regard to Galic in Sarajevo than it was for Eichmann in Jerusalem. The struggle, as Arendt concluded (1965), is to find a liberal legal balance between local, national, and international inclinations. Finding this balance point is as much an empirical as an ideological matter, and it may inevitably involve conflict, as well as the negotiation, consensus, and harmonization envisioned by Slaughter (2004). As Gibson and Caldeira (1995) suggest, transnational courts are likely uniquely challenged in a way that will perpetuate more conflict and yield less diffuse support or legitimacy than national or even other transnational courts can generate.

Turk sees a process of conflict and change as intrinsic to international policing efforts such as the ICTY, just as in any other kind of authority structure of policing and in governance more generally:

> Conflict over authority is intrinsic to politically organized social life. . . . Instead of viewing the simultaneity of decay and construction as merely an irony of life, a contradiction to be resolved, or the dynamic of civilization's collapse, one may pragmatically accept the duality as simply another way in which things vary and covary in the real world, and consequently are predictable and manipulable to a never fully known degree. This makes it possible to consider the viability of an authority structure, a polity, as an empirical issue instead of a philosophical or ideological one (1982:207–8).

For Sarajevans, the Galic case is likely a symbolic turning point in this process of conflict as well as cooperation through which a sense of sovereignty is being reclaimed and restored in the movement toward a renewed Bosnian nationhood that will prominently include a new War Crimes Chamber of the State Court of Bosnia and Herzegovina.

Appendix

Descriptions of Indictees/Defendants

Tihomir Blaskic: In 1995, Blaskic was indicted on the basis of both individual and superior responsibility with charges of grave breaches of the 1949 Geneva Conventions, violations of the laws

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or customs of war, and crimes against humanity. According to the Second Amended Indictment, from May 1992 to January 1994, members of the armed forces of the Croatian Defense Council (HVO) committed serious violations of international humanitarian law against Bosnian Muslims in Bosnia and Herzegovina. Blaskic had a rank of colonel in the HVO and became commander of the HVO in the central Bosnian Operative Zone. The Trial Chamber found him guilty on all counts and sentenced him to 45 years of imprisonment. In 2004, in light of the evidence that surfaced since the trial, the Appeals Chamber reversed the original conviction and sentenced Blaskic to nine years of imprisonment. Blaskic's request for early release was granted on August 2, 2004.

Stanislav Galic: In 1999, the prosecution charged Galic on the basis of individual and superior responsibility with four counts of crimes against humanity and three counts of violations of the laws or customs of war. It alleged that

> Stanislav Galic assumed command of the Sarajevo Romanija Corps on or about 10 September 1992 and remained in that position until about 10 August 1994. During that time, the Sarajevo Romanija Corps implemented a military strategy, which used shelling and sniping to kill, maim, wound and terrorise the Sarajevo civilians. The shelling and sniping killed and wounded thousands of civilians of both sexes and all ages, including the elderly. The Sarajevo Romanija Corps directed shelling and sniping at civilians who were tending vegetable plots, queuing for bread, collecting water, attending funerals, shopping in markets, riding on trams, gathering wood, or simply walking with their children or friends. People were even injured and killed inside their own homes, being hit by bullets that came through the windows. The attacks on Sarajevo civilians were often unrelated to military actions and were designed to keep the inhabitants in a constant state of terror (Galic Case Information Sheet 2004: Case No. IT-98-29, http://www.un.org/icty/cases-e/index-e.htm).

On December 5, 2003, the Trial Chamber found him guilty of one count of violations of the laws or customs of war and four counts of the crimes against humanity. He was sentenced to 20 years of imprisonment. Thirteen days later, the prosecution filed an appeal.

Radovan Karadzic: Karazic was president of the Republika Srpska and head of the Serbian Democratic Party (SDS). In 1995, he was charged on the basis of individual criminal responsibility and superior criminal responsibility with grave breaches of the 1949 Geneva Conventions, violations of the laws or customs of war, crimes against humanity, genocide, and complicity in genocide. The indictment alleged that

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> Radovan Karadzic, acting individually or in concert with others . . . between 1 July 1991 and 31 December 1992, participated in the below-charged crimes in order to secure control of those areas of Bosnia and Herzegovina which had been proclaimed part of the so-called 'Republika Srpska'. In order to achieve this objective, the Bosnian Serb leadership, including Radovan Karadzic . . . initiated and implemented a course of conduct which included the creation of impossible conditions of life, involving persecution and terror tactics, that would have the effect of encouraging non-Serbs to leave those areas. This included the deportation of those who were reluctant to leave; and the liquidation of others (Karadzic and Mladic Case Information Sheet 2004:Case No. IT-95-5/18, http://www.un.org/icty/cases-e/index-e.htm).

Karadzic remains at large.

Esad Landzo: Landzo was indicted in 1996 based on individual criminal responsibility for grave breaches of the 1949 Geneva Conventions and violations of the laws or customs of war. The indictment alleged that Landzo was a guard at the Celebici camp from approximately May to December 1992. In 1998, the Trial Chamber found him guilty and sentenced him to 15 years of imprisonment. After his appeal and the Trial Chamber's sentence adjustment, the Appeals Chamber confirmed his sentence to 15 years of imprisonment. Since 2003, Landzo has been serving his sentence in Finland.

Slobodan Milosevic: Milosevic is a former president of the Federative Republic of Yugoslavia, Supreme Commander of the Yugoslav Army (VJ), and president of the Supreme Defense Council authority. The prosecution has three indictments confirmed by the ICTY: the Kosovo indictment, the Croatia indictment, and the Bosnia and Herzegovina indictment. Under the Bosnia and Herzegovina indictment of 2002, Milosevic is charged on the basis of individual and superior responsibility with two counts of genocide and complicity in genocide; 10 counts of crimes against humanity involving persecution, extermination, murder, imprisonment, torture, deportation, and inhumane acts; eight counts of grave breaches of the Geneva Conventions of 1949 involving willful killing, unlawful confinement, torture, willfully causing great suffering, unlawful deportation, or transfer, and extensive destruction and appropriation of property; and nine counts of violations of the laws or customs of war involving inter alia attacks on civilians, unlawful destruction, plunder of property, and cruel treatment. Among other things, the indictment alleges that he had effective control over and provided financial, logistical, and political support

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to the Yugoslav People's Army (JNA), the VJ, the VRS, and the paramilitary forces that participated in the planning, preparation, facilitation, and execution of the forcible removal of the majority of non-Serbs, principally Bosnian Muslims and Bosnian Croats, from large areas of Bosnia and Herzegovina. His trial commenced on February 12, 2002.

Ratko Mladic: Mladic was commander of the VRS. In 1995, he was charged on the basis of individual and superior criminal responsibility with violations of the laws or customs of war, crimes against humanity, and genocide and complicity in genocide. The indictment alleged that

> from May 1992, Ratko Mladic used shelling and sniping to target civilian areas of the city of Sarajevo and its civilian population and institutions, killing and wounding civilians, and thereby also inflicting terror upon the civilian population. It is further alleged that Bosnian Serb forces under the command and control of General Mladic took control of the municipalities in the Bosanski Krajina and in eastern Bosnia. Thousands of non-Serbs were deported or forcibly transferred from these municipalities and many were killed or held in detention facilities. According to the Indictment, from January to March 1993, Bosnian Serb Forces under the command and control of General Mladic attacked the Cerska area in eastern Bosnia and Herzegovina ('BiH'). Thousands of Muslims fled to BiH government controlled territory including Srebrenica and Zepa. Thereafter, Bosnian Serb forces under the command and control of General Mladic began to focus particular attention on capturing the strategically located Srebrenica enclave and expelling the Bosnian Muslim population that had fled there in the wake of the 1992 and 1993 'ethnic cleansing' campaigns in eastern BiH. ... over 7,000 Bosnian Muslim prisoners captured in the area around Srebrenica were summarily executed from 13 July to 19 July 1995 (Karadzic and Mladic Case Information Sheet 2004: Case No. IT-95-5/18, http://www.un.org/icty/cases-e/index-e.htm)

Mladic remains at large.

Dusko Tadic: The indictment alleged that between late May 1992 and December 31, 1992, Tadic participated in attacks on and the seizure, murder, and maltreatment of Bosnian Muslims and Croats in the Prijedor municipality (Bosnia and Herzegovina), both within and outside the concentration camps. In 1997, following the first trial by the ICTY, the Trial Chamber sentenced Tadic to 20 years of imprisonment for crimes against humanity and violations of the laws or customs of war. Based on the cross-appeal by the prosecution,

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the Appeals Chamber found him guilty on nine additional counts, and the Trial Chamber sentenced him to 25 years of imprisonment to be served concurrently with the original sentence. In 2000, the Appeals Chamber rendered a final sentence of 20 years of imprisonment. Tadic is currently serving his sentence in Germany.

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