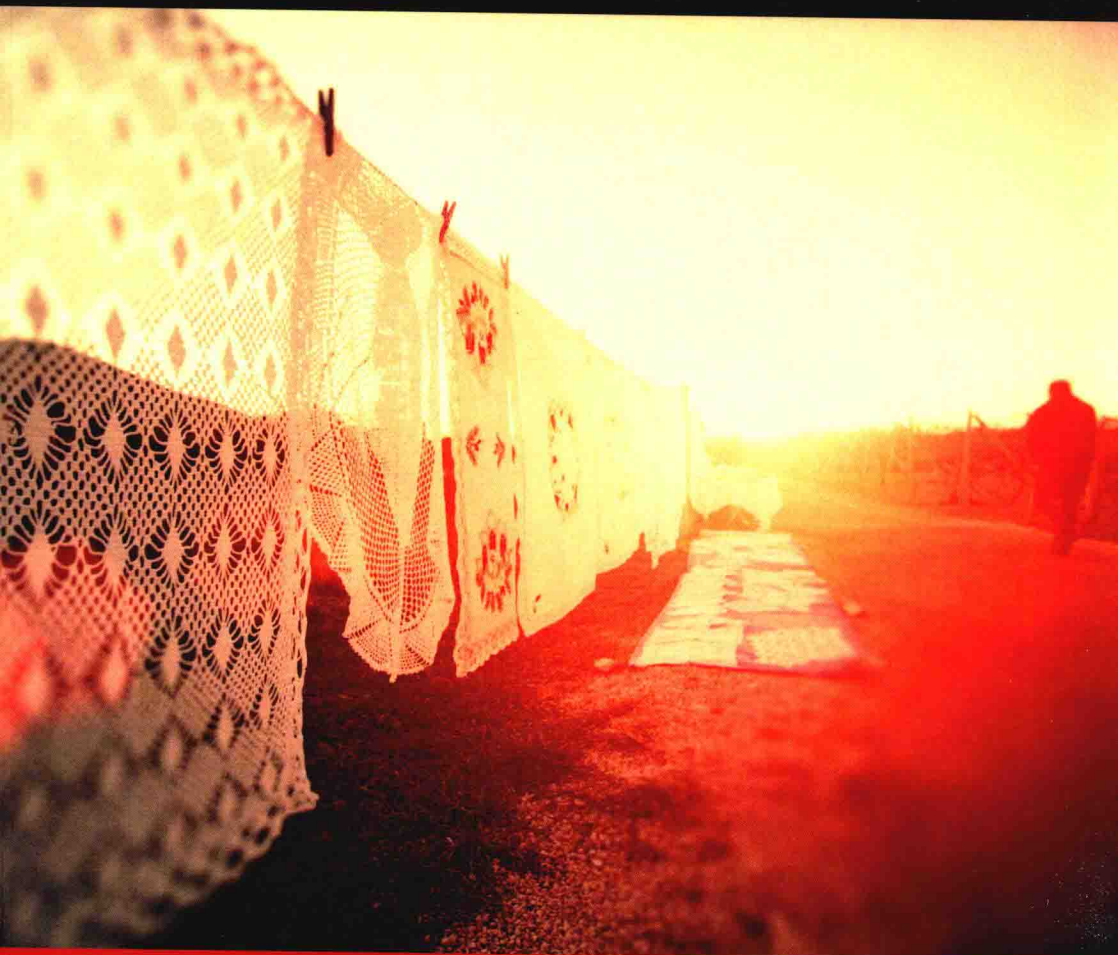


# INTERNATIONAL TRIALS AND RECONCILIATION

ASSESSING THE IMPACT OF THE INTERNATIONAL  
CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA

**JANINE NATALYA CLARK**

a GlassHouse book



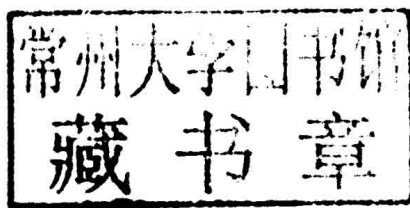
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# International Trials and Reconciliation

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Assessing the Impact of the  
International Criminal Tribunal for  
the Former Yugoslavia

Janine Natalya Clark



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# International Trials and Reconciliation

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Transitional justice is a burgeoning field of scholarly inquiry. Yet while the transitional justice literature is replete with claims about the benefits of criminal trials, too often these claims lack an empirical basis and hence remain unproven. While there has been much discussion about whether criminal trials can aid reconciliation, the extent to which they actually do so in practice remains under-explored. This book investigates the relationship between criminal trials and reconciliation, through a particular focus on the International Criminal Tribunal for the former Yugoslavia (ICTY).

Using detailed empirical data – in the form of qualitative interviews and observations from five years of fieldwork – to assess and analyze the ICTY's impact on reconciliation in Bosnia-Herzegovina, Croatia and Kosovo, *International Trials and Reconciliation: Assessing the Impact of the International Criminal Tribunal for the Former Yugoslavia* argues that reconciliation is not a realistic aim for a criminal court. They are, Janine Natalya Clark argues, only one part of a rich tapestry of justice, which must also include non-retributive transitional justice processes and mechanisms.

Challenging many of the common yet untested assumptions about the benefits of criminal trials, this innovative and extremely timely monograph will be invaluable for those with interests in the theory and practice of transitional justice.

**Janine Natalya Clark** is based in the Politics Department, University of Sheffield.

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## Transitional Justice

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‘Janine Natalya Clark dispels the myth that international criminal courts can serve as a beacon for reconciliation in countries ripped apart by ethnic cleansing and genocide. Clark’s findings remind us that the pursuit of justice, as important as it may be, should never be viewed as some kind of panacea for righting past wrongs or as a magic bullet for healing victims and war-torn societies. To do so, Clark rightly argues, belittles the suffering of victims and distorts the enormity of the task of rebuilding shattering communities. This is an important book that diplomats, court staff and justice activists should take seriously.’

**Eric Stover**, Faculty Director, Human Rights Center,  
University of California, Berkeley School of Law and author of  
*The Witnesses: War Crimes and the Pursuit of Justice in The Hague*

‘This book, based on extensive research, is an important reminder to all involved in international and criminal courts, that justice done with fear or with favour, or to further some political compromise, will never conduce to peace because victims see through it. Courts must do the justice job for which they are qualified, namely to convict mass murderers as quickly and fairly as possible and punish them as retribution for their atrocities as a deterrent to future perpetrators. Judges should forget about writing history – they are not qualified – or producing reconciliation, which criminal justice cannot do, other than as a precondition. The evidence shows the importance of more honest outreach programmes: people must understand not only the work of global justice, but also its human limits.’

**Geoffrey Robertson QC**, author of *Crimes Against Humanity*

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In memory of all of the victims of the wars  
in the former Yugoslavia

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# Acknowledgements

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This book is the product of a long journey, based on fieldwork which I first began in 2008. It would not have been possible without the hundreds of people who have helped me along the way by giving up their time to speak to me and to share their personal stories. Their kindness and generosity was deeply humbling, their courage and strength inspiring. While it is impossible to mention all of them by name, their voices and experiences run through this book, which is dedicated to all of the victims of the wars in the former Yugoslavia. In Bosnia-Herzegovina (BiH), I would particularly like to thank the following people: Edin Ramulić, Sejda Karabašić, Sudbin Musić, Mirsad Duratović, Nusreta Sivac, Emsuda Mujagić, Mehmed Begić, Hiba Ramić, Sakib Mehmetović, Zahid Ahmić, Zikret Ahmić, Hajrudin Pezar, Hatidža Mehmedović, Munira Subašić, Kada Hotić, Hajra Ćatić, Hasan Nuhanović, Nefisa Medošević, Lilit Umroyan, Bosa Miletić, Slavko Klisura, Fadila Memišević, Adam Boys, Derek Chappell, Matias Hellman, Bakira Hasečić, Goran Bubalo and Nerin Dizdar.

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# Abbreviations

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ABiH	Bosnian Army
AFRC	Armed Forces Revolutionary Council
AU	African Union
BiH	Bosnia-Hercegovina
CDF	Civil Defence Forces
CDRSSE	Centre for Democracy and Reconciliation in Southeast Europe
CWWPP	Coalition for Work with Psychotrauma and Peace
DPA	Dayton Peace Accords
DRC	Democratic Republic of Congo
EC	European Commission
ECCC	Extraordinary Chambers in the Courts of Cambodia
EEC	European Economic Community
EU	European Union
EULEX	European Union Rule of Law Mission in Kosovo
HDLSKL	Croatian Association of Camp Inmates of Serbian Concentration Camps
HDZ	Croatian Democratic Union
HLC	Humanitarian Law Centre
HRHB	Croatian Republic of Herceg-Bosna
HV	Croatian Army
HVO	Bosnian Croat Army
HZHB	Croatian Community of Herceg-Bosna
ICC	International Criminal Court
ICG	International Crisis Group
ICJ	International criminal justice
ICMP	International Commission for Missing Persons
ICRC	International Committee of the Red Cross
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
IDP	Internally displaced person
IJR	Institute for Justice and Reconciliation

JCE	Joint Criminal Enterprise
JHP	Joint History Project
JNA	Yugoslav National Army
KLA	Kosovo Liberation Army
KM	Bosnian Marks
KPA	Kosovo Property Agency
KVM	Kosovo Verification Mission
LRA	Lord's Resistance Army
LTTE	Liberation Tigers of Tamil Eelam
MRGI	Minority Rights Group International
MUP	Ministry of Internal Affairs
NATO	North Atlantic Treaty Organization
NDZ	Independent State of Croatia
NGOs	Non-governmental organizations
OSCE	Organization for Security and Co-operation in Europe
OTP	Office of the Prosecutor
RDC	Research and Documentation Centre
RECOM	Regional Commission for Establishing the Facts about War Crimes and Other Gross Violations of Human Rights Committed on the Territory of the former Yugoslavia
RPF	Rwandan Patriotic Front
RS	Republika Srpska
RSK	Republic of Serbian Krajina
RUF	Revolutionary United Front
SCSL	Special Court for Sierra Leone
SENSE	South East News Service Europe
SOC	Serbian Orthodox Church
SRS	Serbian Radical Party
TJ	Transitional Justice
TO	Territorial Defence
TRC	Truth and Reconciliation Commission
UN	United Nations
UNDP	United Nations Development Programme
UNHCR	United Nations High Commissioner for Refugees
UNMIK	United Nations Mission in Kosovo
UPC	Union of Congolese Patriots
UPDF	United People's Defence Force
US	United States
VJ	Yugoslav Army
VRS	Army of the Republika Srpska
WWII	World War Two

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# Introduction

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Speaking in Kampala in May 2010, the United Nations (UN) Secretary-General declared that, ‘The old era of impunity is over. In its place, slowly but surely, we are witnessing the birth of a new Age of Accountability’ (Ban 2010). While the first of these claims seems premature and overly definitive, the second draws attention to the fact that the cloak of impunity which once protected powerful leaders from criminal prosecution is no longer as thick and fibrous as it once was. In places at least, the fabric has become extremely thin and threadbare. The trial of the former Serbian President Slobodan Milošević, the ongoing trial of the former Bosnian Serb leader Radovan Karadžić, the trial and conviction of Rwanda’s former Prime Minister, Jean Kambanda, and the criminal proceedings and guilty verdict against the former Liberian President, Charles Taylor, are all part of a veritable ‘justice cascade’ (Sikkink and Walling 2007: 433) which began during the early 1990s. Following the creation of the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) in 1993 and 1994 respectively, the number of international courts<sup>1</sup> has steadily increased, culminating in the establishment of the International Criminal Court (ICC) – the first ever permanent international penal court.

These courts are a defining feature of the ‘new Age of Accountability’ and their existence has inevitably spawned a rich and extensive body of literature. Yet, while scholars continue to debate the merits, benefits and costs of international courts, ‘these debates are fuelled largely by normative conceptions of how such mechanisms should work, with very little analysis of whether they actually do work’ (Millar 2010: 477). Fundamentally, extant literature on transitional justice (TJ) in general and on international criminal courts in particular has often neglected the crucial issue of impact. In short, ‘Too often, public debate about the accomplishments of international tribunals has been driven by untested assumptions’ (Orentlicher 2008: 10). What do criminal trials *actually* achieve? What are their *effects* on the ground? A number of scholars have attempted to

1 This research uses the term international courts to include hybrid courts.

answer these key questions, with a particular focus on the ICTY (see, for example, Delpla 2007; Khan 2014; Mannergren Selimović 2010; Meernik 2005; Nettelfield 2010; Obradović-Wochnik 2014; Orentlicher 2008, 2010; Stover and Weinstein 2004a; Subotić 2009).<sup>2</sup> This inter-disciplinary research seeks to build on this body of literature by addressing a crucial dimension of impact that remains critically under-investigated.

## Why this book?

*H lives in Ahmići, a mixed Bosniak (Bosnian Muslim) and Bosnian Croat village in central Bosnia-Herzegovina (BiH). In April 1993, during the Bosnian war, the Bosnian Croat Army (HVO) attacked Ahmići, killing 116 of its Bosniak inhabitants. H's parents, brother and three sisters were among the dead. The remains of his father and brother were found 14 years later, buried under an apple tree on H's land. He suspects that his nearest neighbours, a Bosnian Croat family, always knew where his father and brother were buried and deliberately withheld this information. H returned to Ahmići in 2001 but has minimal contact with Croats in the village. His trust has gone.*

*Kravica is a Serb village in the municipality of Bratunac, in eastern BiH. In January 1993, the Bosnian Army (ABiH) launched an attack on the village and V's only son was one of the victims. Her husband died after the war ended. While she enjoyed good relations with Bosnian Muslims before the war, the loss of her son changed everything. She is sure that Bosnian Muslim women who lost their sons feel exactly the same way.*

*D lived through the three-month siege of Vukovar, a town in eastern Croatia whose name will forever be synonymous with overwhelming destruction. She was raped and both her husband and father were killed. She nevertheless decided to return to Vukovar, which for her will always be home. She greets her Serb neighbours, but she no longer has any Serb friends. Relations have changed since the war in 1991.*

*Gjakovë/Đakovica, in western Kosovo, is one of the areas that bore the brunt of the war between Serbian forces and the Kosovo Liberation Army (KLA) during the late 1990s. Today, M is alone; her husband and four sons were killed. She visits their graves every day. Her home is full of photographs and memories. She has no contact with Serbs and never wants any. All of the Serbs in Gjakovë/Đakovica left when the war ended, with the exception of the five (mainly elderly) Serb women who live in the grounds of the local Serbian Orthodox Church (SOC). The church is surrounded by high walls and an Albanian policeman is on guard 24 hours.*

During my years of fieldwork in the former Yugoslavia, I have heard many powerful stories of loss and suffering, of pain and tragedy. These stories, in turn,

2 There is also a small body of anthropological literature exploring the impact of different TJ processes (see, for example, Kelsall 2005; Shaw 2007; Wilson 2003).



have left me with many questions: how do war victims continue to live alongside those whom they no longer trust; can peaceful coexistence develop into something deeper; and, above all, is reconciliation ever truly possible in communities profoundly affected and scarred by war and bloodshed? In any post-conflict society, reconciliation poses enormous challenges; and the more I have learnt from my own fieldwork experiences regarding the multiplicity of potential obstacles to reconciliation, the more I have become fascinated and intrigued by the claim that international criminal courts can contribute to reconciliation.

In his aforementioned speech in Kampala, Ban Ki-Moon emphasized that, ‘the time has passed when we might speak of peace versus justice, or think of them as somehow opposed to each other’ (Ban 2010). His words both reflect and highlight the fact that since the early 1990s, the relationship between justice and peace has been significantly re-theorized. Contrary to the long-accepted idea that post-conflict societies must choose between justice and peace,<sup>3</sup> the ‘peace through law’ premise essentially holds that there can be no peace without justice (Fara-Andrianarijaona 2013: 16). The UN Security Council, for example, mandated the ICTY and ICTR to, *inter alia*, contribute to ‘the restoration and maintenance of peace’ (UN 1993b, 1994).<sup>4</sup> It is in the context of these developments that certain scholars and commentators have sought to argue that international courts can aid reconciliation (see, for example, Adami 2007; Akhavan 1998; Cassese 1998; Crocker 2002; Jallow 2008; Kerr 2007; Kritz 1996; May 2010; Scharf and Williams 2003). In September 2013, for example, after the Appeals Chamber of the Special Court for Sierra Leone (SCSL) upheld the conviction of the former Liberian President, Charles Taylor, the United States (US) Secretary of State, John Kerry, declared that: ‘In holding Charles Taylor accountable for war crimes and crimes against humanity, the Appeals Chamber... has brought a measure of justice to the people of Sierra Leone, and helped to cement the foundation on which reconciliation can proceed’ (Kerry 2013).

Not only is there a fundamental dearth of empirical evidence to support claims that courts can promote reconciliation, but the very issue of whether they do in fact aid the process remains crucially under-explored. The purpose of this research, therefore, is precisely to address this particular impact gap. Focusing on the ICTY, it seeks to establish whether the Tribunal has contributed to inter-ethnic reconciliation in the former Yugoslavia.<sup>5</sup> While it is important to acknowledge

3 Explaining why post-apartheid South Africa opted for a truth and reconciliation commission (TRC) rather than extensive criminal trials, for example, the TRC’s former chairman, Archbishop Desmond Tutu, has underlined that, ‘We have had to balance the requirements of justice, accountability, stability, peace and reconciliation. We could very well have had retributive justice, and had a South Africa lying in ashes – a truly Pyrrhic victory if ever there was one’ (1999: 27).

4 The ICTR’s mandate also refers to reconciliation.

5 As this research is about international courts, it does not focus on local courts in the former Yugoslavia which are now conducting their own war crimes trials. These trials are significant in their own right and an important topic for future research.