

Preface

This book is the outcome of a marriage of academic research, and intellectual reflection, and is written. That is because the book's interest is not limited to the scholars or practitioners, but is a subject of enduring importance for millions of people. It is about the crimes of Saddam Hussein, Slobodan Milosevic, and the passions that rage for and against them, from the streets of Belgrade to Monrovia. It was surely right when he noted in an essay that "whether we like it or not, war crimes trials are a reality that we are obliged to pay attention."

From 1997 to 2002, for 5 years of my life, I worked in the United Nations system, I was a legal and policy adviser to the International Criminal Tribunal (the Arusha tribunal), one of two international tribunals of the U.N. Security Council in the 1990s. During that time, international justice was essentially a pure fiction.

With the benefit of a more distanced and objective view, and informed by subsequent research in which I explored the intersection of international law and international relations, I have reached a new interpretation of war crimes justice. This book is a hanced appreciation of the phenomenon's

it is necessary to get beyond epiphenomenal causes and currents.

The task is not made easy by the fact that the arguments on this subject offer a crusading, advocacy approach that leads to a conflation of what the law of war is with what it *ought* to be. This is not surprising, for the dominant view of war criminals is one that, as noted earlier, is a moralistic, detached, clear-eyed exposition of the standards that we do to do just that. My hope is that, after you have read this book, you see a “war criminal” on trial, you will not think that these “bad guys” are not the name of the game in their indictment—indeed they often try to make the “good guys” on trial while the “good guys” define what the “bad guys” they get, *what* is or is not a war crime, and who the “bad guys” are—criminals—their own courts or the foreign courts.

This combination of the insight of the law of war and the clarity of the theoretical underpinnings of international politics as a backdrop led, first, to my book *The Politics of Global Justice*. In that book, I developed an “interpretative narrative” of a particular aspect of international politics surrounding international prosecution and the pursuit and trials of the masterminds of war crimes. It is a standpoint of the tension between purism and pragmatism.

This book is an exposition about the tension between the phenomenon. Here I widen the political and legal context of justice by focusing on the clash between the law of war and the arena of international justice for war crimes. This book may be the first to expound on the tension from the specific perspective of a loser into the dominant one of a tightly knit international system. It is a background. But it is not a work of grand theory. It is a conceptual perspective to real trials and the law of war crimes justice. Much like the conflict between domestic national systems, the debate about international justice is a matter of worldviews.

The establishment of the two ad hoc tribunals for former Yugoslavia and Rwanda by the International Criminal Court in the 1990s and of the permanent International Criminal Court shortly afterward led some observers, particularly in the international justice community, to believe that we had

formed mainly by a liberal commitment to the rule of law, and is often distorted by political considerations.

This book seeks to establish that, contrary to these assumptions, these assumptions are wrong. War crimes are not ends determined mainly by states, especially in the international society," and while globalization is not if a somewhat exaggerated one—the end of international justice has failed to materialize. It is cherry-picking convenient sets of facts, and looking at perspectives where they are indeed applicable.

The book is also ambitious in scope, covering the globalization of justice—and how that trend has unfolded over the span of one full century, from the beginning of the twenty-first. It begins with a brief explanation of the framework and the implications of that framework. In Chapter 2, the book undertakes a history of international justice for war crimes stirred up after World War I but was stillborn, only to be revived by the Tokyo trials after World War II even as they were simultaneously on display at both trials.

Chapter 3 discusses how the legacy of international justice was established with the creation of the International Criminal Tribunal for the Former Yugoslavia (The Hague tribunal) and the trial of Slobodan Milosevic. Encouraged by the trials of Balog and Erdemovic at the Hague and Arusha tribunals, advocates have sought to globalize such trials through the control of international law. This doctrine and its limits are discussed in Chapter 4.

The response to the setbacks suffered by international justice with universal jurisdiction, and more generally by international justice as a result of challenges to its authority, is a mixed national-international war crimes approach. This is discussed in Chapter 5, mainly in the context of the eventual trial of former Liberian President Charles Taylor.

Nevertheless, as we shall see in Chapter 6, the momentum pressed on to the establishment of the International Criminal Court (ICC) in 2002, a victory that they sought over sovereignty. The book concludes with these conceptual battles are exhibited when the International Court of Justice (ICJ) ruled against Iraq, the defeated Iraqi leader Saddam Hussein was tried by an international court or even a hybrid tribunal, and the International Criminal Court (ICC) was established.

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