

SHORTCOMINGS OF ICTY OUTREACH IN BOSNIA- HERZEGOVINA: A CASE STUDY

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Created in 1993 by the United Nations, with international criminal law still in its infant stages, the ICTY has been widely considered an experiment in international justice (Clark 2009a, 105). As the first ad-hoc tribunal, the ICTY was destined to a certain level of imperfection. That is not to say that the ICTY has not had its successes. It has been able to bring justice to major war criminals, established sexual violence as a war crime, and aided in the development of Bosnia's national justice system (Tolbert 2002, 7). However, its inefficient Outreach program has tempered the ability for these successes to be appreciated by the local population. While the Tribunal may have indicted, convicted, and provided a basis of truth through justice – it means nothing if the local population does not accept the rulings reached by the tribunal.

Resistance to the development of an Outreach program had several roots. One claim is based on the fact that many of the tribunal officers came from a background where the results of the trials were supposed to speak for themselves. In fact, the court's interaction with the population traditionally appeared unprofessional (Wu 2013, 60). Even today, the lack of emphasis on outreach can be noted through its continued lack of funds in all ongoing international tribunals. The current definition of outreach used by the ICC is a "process of establishing sustainable two-way communication between the Court and communities affected by situations that are the subject of investigations or proceedings" (International Federation for Human Rights 2010). The problem with this definition is that it remains sufficiently vague that it leaves it up to the court to decide how involved or uninvolved it should be with each community. In a sense, this leaves it free to detach itself from any serious responsibilities towards interacting with the affected communities. Even when the ICTY was created through Security Council Resolution 827, there was no language in the resolution suggesting the court would have any further responsibilities beyond prosecuting individuals who had

committed “serious violations of international humanitarian law” (United Nations, 1993). There is also a case to be made for the absence of precedent in creating an outreach program. Before the ICTY, the only models for an international tribunal were based on the Nuremburg and Tokyo Trials, neither of which had any Outreach program (Clark 2009a, 105).

However, with the ICTY being far from its area of responsibility and operating in a language that was not Bosnia, Serbian, or Croatian, it became easy for local government officials to manipulate the image of the ICTY (Darehshori 2007, 301). This was particularly tempting for national leaders who would possibly be accused of crimes by the ICTY in the future and had been left in their positions of power through the Dayton Accords (Wald 2001, 116). It was only after the ICTY’s image had been so severely tarnished that Judge McDonald created the Outreach program at the end of 1998 as a way to combat the spew of misinformation that was undercutting the effectiveness of the ICTY’s work (Darehshori 2007, 301). One of the greater signs of the ICTY’s ineffectiveness that spurred change at the tribunal was the continued denial by Serbs in Prijedor that Duško Tadić had committed any serious crimes even though the court sentenced him to 20 years in prison because of his actions in several of the detention camps in the Prijedor region (Clark 2009b, 371; *Negative to Positive Peace*). The fact that this worried the tribunal suggest that even though prosecution was their only specified responsibility, an international tribunal’s work should, in fact, foster a sense of national reconciliation by the acceptance of a common historical narrative (Pentelovitch 2008, 449). The importance of developing a common narrative goes hand-in-hand with creating a sense of national ownership over the history and the transitional process. In Bosnia, it can be said that the importance of this idea has taken root, especially with the development of the Outreach program for the War Crimes Chamber (Garbett 2011, 67).

Overall, it is important to recognize that there has not been much literature devoted to the international tribunal’s Outreach programs (Wu 2013, 79). However, the research that has been conducted has consisted of comparative studies that look into the outreach efforts of both ad-hoc and hybrid tribunals. Particularly, research has focused on the International Criminal Tribunal for Rwanda (ICTR), the ICTY, the International Criminal Court (ICC), and the Special Court of Sierra Leon (SCSL).

Conclusions regarding the ICTY’s outreach efforts are fairly consistent throughout academia; claiming it began its program too late to be able to

have a lasting effect, especially since it was also severely underfunded and understaffed. Other relevant criticisms included the style of the ICTY outreach program, particularly the construction of its outreach events. Scholars have agreed that they have targeted only a small elite, providing for low turnout at events and thus allowing for only a small percentage of the population to be adequately informed (Clark 2009a, 103).

This paper will be a detailed case study of the ICTY's Outreach program in Bosnia-Herzegovina. While the ICTY has carried out fairly uniform outreach initiatives in most of the former Yugoslav territories, Bosnia provides the most relevant area to study for multiple reasons. First, having the three major ethnic groups living within its borders means that there are more competing narratives regarding what occurred during the war, and with them a greater variety of perceptions about whether or not the ICTY has successfully and fairly pursued its goals. Second, the ethnically based division of the state provided by the Dayton Agreement makes it more difficult for the ICTY to provide an even Outreach effort on a national level. Finally, the added brutality of the war in Bosnia means there is a greater urgency, and difficulty, in fostering national reconciliation (Rangelov & Theros 2007, 3). Overall, these factors make Bosnia the region that is perhaps in the greatest need of efficient outreach, but also the one with the most obstacles to achieving a positive peace based on national reconciliation (Clark 2009b, 361). As Bosnia stands today, it can only be seen as having achieved a negative peace; or simply an absence of conflict (Clark 2009b, 377).

In an effort to expand on the research that has already been done on outreach, this paper will be looking at factors that have not been previously considered in great detail: form of outreach, the use of the engagement model of outreach versus the transparency model, and unequal ethnic engagement.

Victor Peskin first developed the models of outreach in 2005 in his article discussing the outreach efforts of the ad hoc tribunal in Rwanda, the ICTR. The transparency model is characterized as being outreach that focuses "on demystifying the Tribunal's work and making it more comprehensible," and it includes efforts to expand media coverage or publishing summaries of the Tribunal's judgments (Peskin 2005, 954). On the other hand, the engagement model is defined as going "beyond informing the public by offering a more comprehensive and multifaceted approach to the outreach challenge... by means of frequent Tribunal interaction and dialogue" (Peskin 2004, 954). Peskin argues that engagement is probably the most efficient

way of conducting outreach as it provides a human face for the tribunal and helps bridge the distance between the tribunal and the local people (Peskin 2004, 954).

While these models have made appearances in other works on outreach, such as in Pentelovitch's article discussing the importance of prioritizing outreach (2008), it has not been developed further due to the lack of research that has gone into international tribunals' outreach programs. However, while there has been much agreement that engagement strategies provide for the best outreach efforts, the significance of transparency efforts cannot be ignored. For example, one of the most successful efforts of the SCSL followed the transparency model with its publication of a small booklet titled; *The Special Court Made Simple* (Wu 2013, 71). This booklet provided a simplified explanation of the court's goals and methods in a form similar to a comic book with the purpose of demystifying the work of the court to the local people (Special Court of Sierra Leon, 2011). Human Rights Watch also expressed strong praise for the SCSL's outreach efforts in disseminating information about the court through video, radio, and written material; all methods within the category of transparency. Human Rights Watch further claimed that it was these efforts that contributed to the people's understanding of the court and the belief that justice could and should be carried out by the court (Human Rights Watch 2005, 3).

Outreach In Bosnia

Form of Outreach

The ICTY in Bosnia has conducted several outreach measures over the years. Among the more memorable are Bridging the Gap and its most recent Youth Education efforts. However, there have been a wide variety of efforts conducted since its first event in 1999.

Outreach Event Categories	Number of Events in Category
E (Education, lecture)	46
T (Training)	21
V (ICTY figure visit or speech at event)	23
D (Debate, discussion, round table, conference)	63
K (Networking with NGOs or other local organizations)	6
RB (radio or television broadcast)	16
C (clarifications with local organizations, other communication efforts)	34
BG (Bridge the Gap event)	5
O (Overseas visitors, discussions, debates, education initiatives – no local Bosnians involved)	6
M (donations)	6
TR (Transition meetings, transition training, court document distribution to local courts)	3
P (book promotion, film promotion)	3
N (other)	3

Bridging the Gap is probably one of the most famous of the ICTY outreach events in Bosnia. It consisted of a series of conferences in the five areas where the most serious acts of violence occurred: Konjic, Foca, Brcko, Prijedor, and Srebrenica. The ICTY described this event as one where it was able to take the opportunity to present a detailed account of its activities directly to the affected communities. While it may have only targeted five communities, it would be safe to say this was one of its most successful events. Overall, the ICTY has had difficulty achieving a high turnout for many of their outreach events, yet there were consistently over 100 people in attendance at every Bridging the Gap event. (International Criminal Tribunal for the Former Yugoslavia. Outreach Activities Archive).

As opposed to the success of the Bridging the Gap events, the ICTY's Youth Education project that began in 2011 has not been met with the same success. According to the ICTY's survey a total of 428 students in BiH have participated in each event. After each presentation, there is a survey conducted, and it appears as though there are positive results. In Bosnia almost 60% found the presentation to be excellent. Even more impressive,

the results show that near 80% learned something new about the ICTY. But what really does provide more insight into the effects of this program are the last two sets of data provided by the ICTY. (International Criminal Tribunal for the Former Yugoslavia. Outreach Education Project 2011-2012)

First, the students are asked if they believe it is possible to achieve reconciliation, to which only a slight majority says yes. Then slightly over 40% say no while well under 20% state they don't know. This demonstrates one important fact, that most of the youth have already made up their minds about reconciliation, an indicator that they have also already formulated their narrative about what occurred in Bosnia between 1991 and 1995. Furthermore, when combined with the last question where students are asked if perpetrators should be punished regardless of their position and ethnicity the answer is surprising. Nearly 100% agreed that they should, a figure that is somewhat misleading. (International Criminal Tribunal for the Former Yugoslavia. Outreach Education Project 2011-2012.).

Data from the International Committee of the Red Cross shows that the three major ethnic groups saw themselves as fighting a defensive war (Ford 2012, 414). The result of these ideas is that while the court may successfully convict an individual of a crime, their ethnic group will not readily accept such a judgment. For example, in a 2004 survey only 8% of ethnic Serbs interviewed agreed that Serbians had committed the largest number of crimes (Ford 2012, 413). When the ICTY's results are then put into context, one can see that their efforts may have educated their target high school audience but have not swayed them.

A much larger portion of outreach was devoted to debates, round table discussions and conferences. For the most part attendance was low, except for a few major events such as the Conference on Genocide against Bosniaks where there were over 200 individuals in attendance (International Criminal Court for the Former Yugoslavia. Outreach Activities Archive, 2003). But even in this case, the individuals who attended were all scholars, many of whom were not from Bosnia (International Criminal Court for the Former Yugoslavia. Outreach Activities Archive, 2003). The 2003 event in Srebrenica also had high attendance despite all the invitees from the government of the Republica Srpska failing to attend (International Criminal Court for the Former Yugoslavia. Outreach Activities Archive, 2003). Overall, the events planned out by the ICTY targeted political and academic elites, failing to reach out to the general population (Wu 2013, 70). Even with all these attempts at promoting discussion the senior information assistant to the

ICTY, Peter Finici, admitted in a 2011 interview with Kristin Wu that “there is no political or social space for an objective analysis of the Tribunal, as the rhetoric of the war is still very much present” (Wu 2013, 62).

When more concrete attempts were made to reach a larger audience through radio or television broadcast, there was still little involvement by the population. For example, in one of the ICTY’s largest broadcast efforts in Bosnia only 41% of the general public was found to tune into some of or the entire broadcast. That less than half the population tuned in, and even less stayed tuned for the entire broadcast, demonstrates a clear lack of interest by the population in the ICTY.

There have been many outreach efforts by the ICTY that focus on training individuals who will make up the new judiciary system of Bosnia. Because the new Bosnian judiciary will be the ICTY’s most lasting legacy, their outreach efforts in this area are crucial. These efforts remain detached from the general population and so do not create a sense of ownership over the process. Bosnian-Serbs in particular perceive the ICTY to be a political body manipulated by the West as opposed to being an independent and fair institution (Wald 2001, 116). With this in mind, how can a sense of national ownership be created for the developing national Bosnian courts, particularly the War Crimes Chamber, when a large portion of the population will inevitably see it as a product of foreign design? In other words, while the outreach efforts focusing on developing the courts are by no means unimportant, their potential effects will be severely undermined by the fact that the ICTY has been unable to develop a positive image with the overall Bosnian people. An even more startling fact is that once outreach was established, public perceptions of the ICTY began to drop even among the Bosnian Muslim population, partially due to the long times of the trials (Wu 2013, 63).

Unequal Ethnic Engagement

Both Bridging the Gap and the ICTY’s Youth Education project have been the most looked at outreach efforts of the ICTY. However, it is interesting to take a step back and look at the overall outreach work of the ICTY in Bosnia.

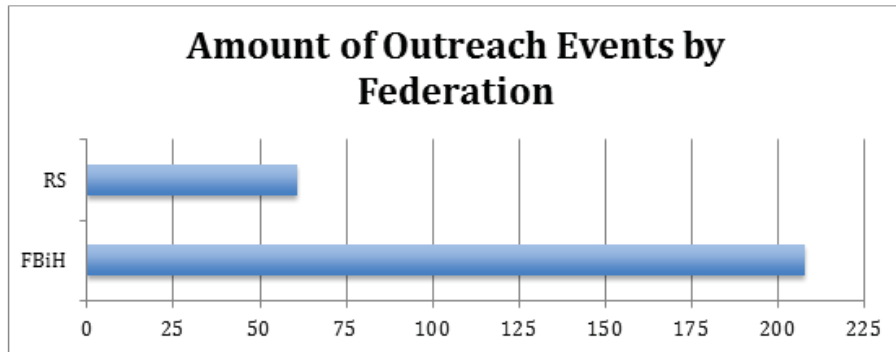


Figure 2: Source: : Author's calculations based on data from ICTY website outreach archives. International Criminal Tribunal for the Former Yugoslavia. Outreach Activities Archive. <http://www.icty.org/sections/Outreach/OutreachActivitiesArchive>

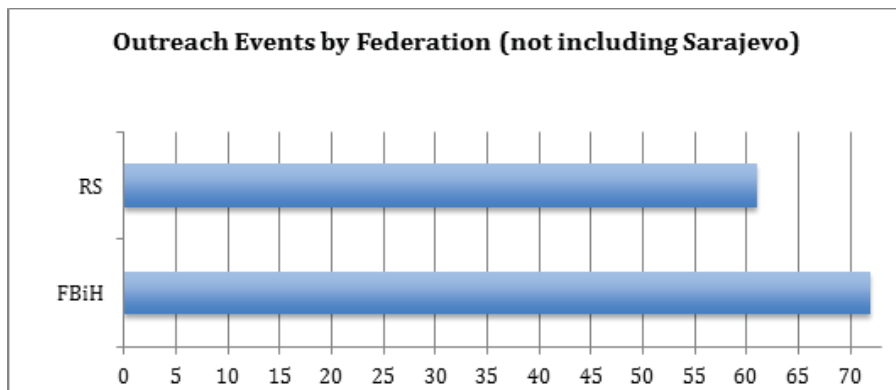


Figure 3: Source: : Author's calculations based on data from ICTY website outreach archives. International Criminal Tribunal for the Former Yugoslavia. Outreach Activities Archive. <http://www.icty.org/sections/Outreach/OutreachActivitiesArchive>

Figure 2 shows the total amount of outreach events held around Bosnia, categorized by federation. At first glance, it appears as though the vast majority of the outreach efforts occurred in the Federation of Bosnia-Herzegovina. However, when Sarajevo is taken out of the data (as seen in Figure 3), it would seem that outreach efforts have been fairly even between the two entities.

Overall, 46% of outreach events were held in Sarajevo between 1999 and 2012. In fact, Sarajevo is also where the outreach regional office for the ICTY is located (Clark 2009a, 105). This set up echoes an issue brought up by Peskin regarding outreach in the ICTR. Having the center located in the capital means that knowledge of the tribunal becomes concentrated in that

one area and fails to reach the rest of the population (Peskin 2005, 956). This fact becomes increasingly relevant in Bosnia where the nation itself is already so deeply divided by the political structure imposed through Dayton and fueled by post-Dayton policies such as two-schools under one roof (Clark 2009b, 366). In this context, the SCSL outreach efforts were far more successful. Even with their office in Freetown, they still had an outreach representative for each of Sierra Leon's 12 districts (Clark 2009a, 107).

When looking specifically at the cities within the entities where outreach events occurred, it also appears as though each ethnic group would have had an equal opportunity at engagement with the tribunal as seen in Figure 4. However, out of the 13 cities in the Republica Srpska where ICTY outreach events were held, over 60% had a Muslim majority before the war or maintained a Muslim majority after the war. In many cases, events held in these areas targeted the Muslim victims of ethnic cleansing or war crimes. So while it may appear that outreach events were evenly spread out between ethnic groups, most of the events in the Republica Srpska actually failed to target the Bosnian-Serb population. This fact is particularly surprising since resistance from Bosnian-Serbs to ICTY trial decisions created the sense of urgency to develop the outreach program (Clark 2009, 371; Negative to Positive Peace).

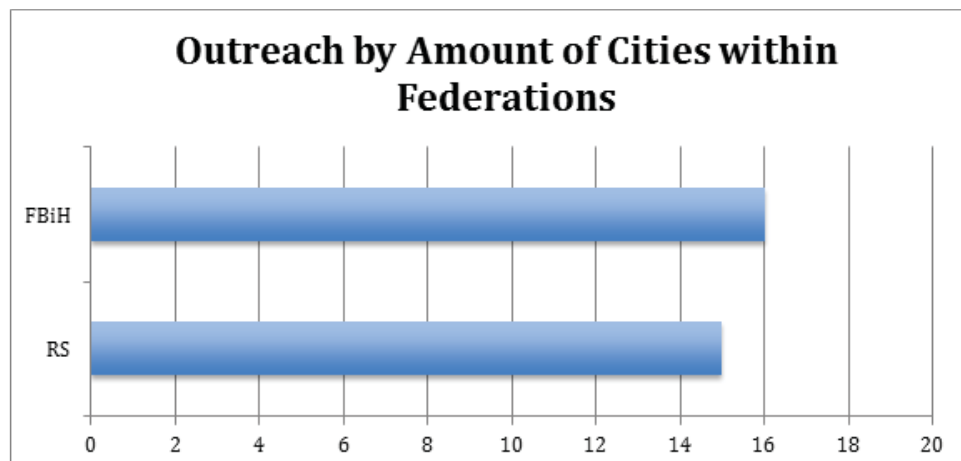


Figure 4. Data collected by author. Based on ICTY website; outreach archives.

However, blame cannot be completely placed on the ICTY. The results of the data should not be divorced from the fact that the ICTY has many political obstacles to overcome when preparing to stage an outreach event. For example, in its Youth Education project, the ICTY must always get approval

from the local Ministry of Education before it can conduct a presentation (Wu 2013, 65). Requirements such as these have the potential to stall events, or even prevent them.

Transparency versus the engagement model

The engagement model of outreach has been seen as the most effective to combat misperceptions of international tribunals, as previously mentioned. Having conducted outreach projects that follow the engagement model, one would expect that the ICTY has gained some success in reaching out to the local populations. Yet, data shows that since the outreach program began in 1999, positive perceptions about the ICTY have actually deteriorated in Bosnia, even among the Muslim population (Wu 2013, 63). Among the reasons that have been provided to explain the drops in approval are that outreach began too late and that there was growing frustration about the lengthy trials (Wald 2001, 116).

Another argument, support for which can be found in the pattern of specific outreach events, are that groups of people often are not supportive of certain rulings made by the tribunal. An example of such an event would be one held in Vares in 2003 regarding the guilty plea of Ivica Rajic. He had been the commander of the Bosnian Croat forces near the beginning of the war that detained about 250 Bosnian men and sexually assaulted women in the area of Vares. Once Ivica Rajic pled guilty to these crimes during his trial, there was a growth of misperceptions and negative media surrounding the significance of his plea, and it was only after all the negative media that the ICTY went to Vares to try and communicate with the local population (ICTY 2005, outreach archives). This is only one of multiple events that follow the engagement model of outreach that failed because the population did not already have a clear understanding of how the tribunal functioned.

Outreach was meant to combat misperceptions about the functions of the tribunal, and by doing so provide the local people with a sense of confidence in its work. Instead it appears that the ICTY outreach program, by having so many events that followed the engagement model, failed to educate the public on how it actually functioned. To quote Kristen Wu, “if the Serbs could have understood the mandate and timeframe of the ICTY, they would be far less vulnerable to their politicians’ manipulation; fewer would have believed that the ICTY uses Serbs as scapegoats” (Wu 2013, 72). And even in this case the ICTY did not have the option, early on, to provide such information to the public, as it was not prepared to answer such questions

(Wu 2013, 71).

Since the first outreach program in 1999, only 16% of outreach efforts have followed the transparency model. Because the transparency model is intended to demystify the tribunal's work, it could have repaired some of the damage done to the ICTY's image during the information vacuum it left between 1993 and 1999 when its outreach efforts began. A social psychology study demonstrated that the ICTY's perceived legitimacy was greatly hindered by the pre-existing ethnic tensions in the country, and was later exacerbated by the vast amount of Serb indictees (Ford 2012, 417). Bosnian-Serb's trust in the ICTY has only declined, with a study from 2002 showing that only 2% believed it to be a trustworthy institution (Ford 2012, 416).

By pursuing the engagement model of outreach, the ICTY only created a greater opportunity for cognitive dissonance among the Bosnian-Serb population. Had the less intrusive transparency model been utilized, the ICTY would have at least been able to take control of its image without tackling different ethnic groups' perceptions about the war. Once the ICTY had clarified its plan of action, its prosecutorial plan, it would have been able to build a sense of legitimacy among the population. Instead, the ICTY's outreach program focused too much on constructing history (Wu 2013, 72), when the population was not yet ready to even accept the legitimacy of the tribunal.

Conclusion

To sum up, the ICTY has had several problems with its outreach program. Most scholars have found that its late start was to blame because it allowed for politicians, and media loyal to the governments, to manipulate the image of the ICTY. By the time the outreach program was created in 1999, it was considered to be too little too late. These claims tackle the general issues with outreach, but failed to take into account how outreach should be created to build bridges of communication befitting the community it is trying to reach. As an international tribunal presiding over crimes that occurred in the newly formed countries that made up the former Yugoslavia, its outreach efforts should have been strategically developed to fit each community's needs. This leads to the other argument brought up by scholars that outreach could not have been successful because it was understaffed and underfunded. Although, seeing as the SCSL was still able to have successful programs with much less funding, the claim itself is put into question.

By looking at outreach efforts in Bosnia and keeping in mind the

strategy utilized in the country was similar to the efforts used in the rest of the countries; one can get a better idea of where outreach truly did fail. In this case, data showed that the largest problem with ICTY outreach was its inability to communicate with the greater population. First, the form of its outreach targeted local elites, such as lawyers or academics. Second, it failed to equally engage all ethnic minorities within the country. Finally, its dependence on the engagement model of outreach disregarded the social and political climate within Bosnia at the time, making its effort futile. Had there been a stronger effort at tackling outreach through the transparency model the ICTY could have gained a legitimacy, which would have allowed for it to conduct successful outreach following the design of the engagement model.

Knowledge about the failures of outreach in Bosnia will be informative for future international tribunals. The results of this paper elaborate and expand into a new set of issues, which will apply to tribunals that must interact with communities devastated by civil war. In these cases, community divisions, whether they are ethnic or religious, will function in much the same way. There will be multiple narratives, a lack of trust in the international tribunal that is passing judgment, and a reluctance to accept tribunal decisions that the public does not favor.

However, a study on outreach in Bosnia would not be complete without further research into the effects of the governments in hindering or promoting outreach efforts. In particular, there has been evidence that the Republica Srpska has not always been welcome to the ICTY outreach efforts and as such could have stood in the way of its development. More information should be unearthed regarding this subject because it could provide further evidence as to why the ICTY outreach efforts in the Republica Srpska were so scarce and ineffective.

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