

Identity crisis in post-conflict societies: ICTY's role in defensive nationalism among the Serbs

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‘Kimdim ben? Katil ve kurban’.
(‘Who was I? The killer and the killed’.)
Elif Şafak, *Mirrors of the City*¹

In broad terms, this article examines change in collective identities during times of transitional justice, when group narratives are continuously shifting. The dynamism of the field makes analysis extremely difficult, often requiring bold risks on the part of scholars and practitioners which often lead to highly uncertain results. Yet, being attentive to initial patterns of post-conflict reconstruction of identities can be extremely useful because, since robust group images are absent, there still remains time and space for intervention and shifts in policies. Essentially, my article addresses the following question: In the aftermath of extreme violence, war crimes and crimes against humanity, how can new forms of ethnic, national and political identities be forged that will enable groups to live together in relative security?

In tackling this question, I make two hypotheses. First, on a theoretical level, I hypothesize that social psychology offers answers that other approaches leave out. A focus on social psychology and group narratives can enrich our understanding of certain factors, such as the relationship between groups, individuals and groups and, more particularly, between elites and masses. An in-depth analysis of why and how the individual relates to the elite and the ethnic group he or she belongs to can illustrate the rational link between these parties, debunking overstated attitudes which treat elites as malicious individuals entirely indifferent to public opinion and lacking public support, and masses as mindless followers. I thus hypothesize that a socio-psychological approach can highlight at a practical and psychological level the valid complexities of the everyday lives of people. I seek out socio-psychological mechanisms that prove significant in addressing the main question, keeping in mind that the literature in this area is quite limited and in serious need of further research.

Second, with regard to the substance of this article, I hypothesize that the International Criminal Court (ICC) has the ability to reshape ethnic groups' collective sense of self and place on the global scene. In particular, this article argues that the proceedings of the International Criminal Tribunal for the former Yugoslavia (ICTY) have contributed to an identity crisis among the Serbs. The tribunal and its destabilization of previously existing Serb self-narratives have

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¹ Elif Şafak, *Şehrin Aynaları* (İstanbul: İletişim Yayınları, 1999), back cover.

proven counterproductive by instigating new, and furthering old, forms of defensiveness within this ethnic group. I concede that a tendency towards defensiveness existed among the Serbs long before ICTY was created, therefore facilitating the possibility of an identity crisis arising independent of ICTY influence. Nevertheless, I identify the ICTY as an imperative variable, one that provided the opportunity for further construction of the ‘Serb-self’ in opposition to the ‘Croat-other,’ ‘Bosniak-other’ as well as ‘international-other’ – a consequence of the institution’s formation, proceedings and international legitimacy.

The article begins its investigation with a theoretical section pointing out why social psychology and group narratives matter in the study of ethnic conflict and ethnic violence, and in the post-conflict, peace-building and reconciliation fields. In the second section, I introduce the case study of this paper and argue that a number of socio-psychological responses have appeared in post-conflict Serb narratives. The remaining, and main, section of the paper is devoted to what has so far proven to be the prevailing trend among the Serbs – ‘defensive nationalism’. Two major factors contributing to this group image of the Serbs are identified and examined – the issue of ‘individual versus collective’ guilt and the issue of ‘legal versus political’ trials in the tribunal. Finally, I analyze the phenomenon of ‘defensive nationalism’ itself, both its current characteristics and possible consequences.

Social psychology and group narratives

Important causes of ethnic conflict and ethnic violence are located in social psychology within and between groups. There is an individualist bias among socio-psychological ideas in the literature on ethnic conflict and nationalism. Donald L. Horowitz notes that ‘we know much about the psychology of the prejudiced individual but little about the psychology of the prejudiced group’.² The difference between group psychology and individual psychology should not, however, be exaggerated; these are not autonomous spheres. Sigmund Freud recognized this vital link between the collective and the individual. Characteristically, Freud boldly asks in *Civilization and Its Discontents*:

If the development of civilization has such a far-reaching similarity to the development of the individual and if it employs the same methods, may we not be justified in reaching the diagnosis that, under the influence of cultural urges, some civilizations, or some epochs of civilization – possibly the whole of mankind – have become ‘neurotic’?³

In effect, individual self-image is tightly bound to group affiliation. Alan O. Ross argues that a ‘sense of identity is the feeling of being a worthy person because he fits into a coherent and valued order of things’.⁴ Kristen R. Monroe, a scholar specializing in the political psychology of perpetrators, victims and bystanders in the Holocaust, also argues that the critical

² Donald L. Horowitz, *Ethnic Groups in Conflict* (Berkeley: University of California Press, 1985), 183.

³ Sigmund Freud, *Civilization and Its Discontents*, trans. and ed. James Strachey (New York: Norton, 1961), 183.

⁴ Allan O. Ross, ‘Ego Identity and the Social Order: A Psychological Analysis of six Indonesians’, *American Psychological Association: Psychological Monographs* 54 (1962): 27.

aspect of self-identity is relational.⁵ Horowitz endorses the view that self-esteem is largely determined by the esteem held by the group that one is a member of. He explains the grave implications of group psychology in ethnic relations: ‘To lose out in competition and comparison to others who are differentiated on a birth basis is to be afflicted with an apparently permanent disability’.⁶

Therefore, in processes of group competition, the performance of an ethnic group is inextricably bound to its sense of intrinsic worth. Questioning or threatening groups to which individuals belong, as well as leaders representing such groups, activities that the ICTY is guilty of in the opinion of some, can be interpreted as hostility towards the person herself. Simply put, positive social identity seems to be a human need and, as the following sections of this article will argue, by pointing fingers at Serb elites, the ICTY threatened this human need in case of the Serbs.

The case of the Serbs: three emerging patterns

I identify three major socio-psychological trends and, for heuristic purposes, refer to them as ‘amnesia and chronic passivity’, ‘rejection/projection of self’ and ‘defensive nationalism’. Each of the trends has serious consequences for Serbian society and international security and, as highlighted throughout the article, each trend overlaps in important respects with the others. The first trend of Serbian self-image emerging in post-war crimes and crimes against humanity times is deeply entangled in issues of moral psychology and is exemplified through an automatic emotional block or ‘amnesia’ in a group’s attempt to deal with past events.⁷ This ‘chronic passivity’ is characterized by psychologically and emotionally protective mechanisms since they diminish responsibility for atrocities and consequently diminish feelings of guilt and shame. The second trend is most recent, with academic work conducted in this field being minimal, necessitating reliance on media sources. I term this trend ‘rejection/projection of self’ because it is characterized by disinterest in and dismissal of one’s ethnic history and leadership as well as a projection of the self onto the outsider.⁸ The third trend of ‘defensive nationalism’ is characterized by the denial syndrome, victimhood nationalism and the glorification of war criminals. This response is a result of humiliation and blame at the inter-group level, feelings of guilt and shame and a desire in post-conflict group redefinition to soothe the bruised collective

⁵ Kristen R. Monroe, ‘Cracking the Code of Genocide: The Moral Psychology of Rescuers, Bystanders, and Nazis during the Holocaust’, *Political Psychology* 29, no. 5 (2008): 699. See also Michael Billig and Henri Tajfel, ‘Social Categorization and Similarity in Intergroup Behavior’, *European Journal of Social Psychology* 3 (1973): 27-52, and Henri Tajfel, ‘Intergroup Behavior, Social Comparison and Social Change’ (Katz-Newcomb Lectures, University of Michigan, 1974).

⁶ Horowitz, *Ethnic Groups*, 147.

⁷ Neil J. Smelser, ‘Psychological and Cultural Trauma’, in *Cultural Trauma and Collective Identity*, eds. Jeffrey C. Alexander, Ron Eyerman, Bernhard Giesen, Neil J. Smelser and Piotr Sztompka (Berkeley: University of California Press, 2004), 45; Monroe, ‘Cracking the Code’; Ervin Staub, ‘Reconciliation after Genocide, Mass Killing, or Intractable Conflict: Understanding the Roots of Violence, Psychological Recovery, and Steps toward a General Theory’, *Political Psychology* 27, no. 6 (2006): 867-94. See also Smelser, ‘Psychological and Cultural’, 45 on ‘depersonalization’.

⁸ James Adams, ‘Can Rocky Balboa save this downtrodden Serbian town?’, review of *Amerika Idol: A True Story*, *The Globe and Mail*, April 29, 2009; Dan Bilefsky, ‘“Balkans” Idolatry Delights Movie Fans and Pigeons’, *The New York Times*, November 11, 2007; ‘Bob Marley statue to be erected in Serbia’, *Agence France Presse*, July 17, 2008. See also Horowitz, *Ethnic Groups*, 169–72 on ‘emulation’ and ‘catching up’.

ego. The phenomenon involves what Jeffrey C. Alexander explains as the process of ‘constructing cultural trauma’ or the identification of a group’s social crisis as a cultural crisis, in the form of collective consciousness regarding the group’s suffering and stability in terms of meaning, rather than action.⁹ The focus in this article is on this third response because it has been most prevalent in recent times and there is the most evidence of it. This is also the most extreme and dangerous narrative to emerge, and one that can most severely inhibit inter-group reconciliation.

Before discussing factors of the ICTY process which have proven vital for defensive nationalist attitudes, it is imperative to acknowledge that the ICTY is not responsible for the birth of such attitudes. The movement towards defensiveness emerged long before the establishment of the tribunal. Signs of defensive nationalism among the Serbs were evident during the Yugoslav wars in opposition to the media and some of their coverage of the conflict, as well as in opposition to countries first to recognize the independence demands of Slovenia and Croatia. Defensive nationalism came to the forefront with the Security Council’s decision to impose an arms embargo on Serbia and Montenegro in September of 1991, and economic sanctions in May of 1992, which led to spiraling inflation rates and other serious harms to Serbia’s economy. Glen Bowman explains the activation of collective identity at the time of the break-up of Yugoslavia through discursive constructions of ‘enemies of the nation’, which ‘function to evoke – through their negativity – a national positivity which people can fantasize would suddenly and paradisiacally emerge if the enemy were to be destroyed’.¹⁰ Following Sigmund Freud and Jacques Lacan, Bowman speaks to the psychological connection between the individual and the collective egos and the need for a positive identity, pointing to the rise of defensive nationalist attitudes in the early 1990s. It is thus undeniable that an underlying framework of defensive reactions was set up in the context of Serbian society prior to the tribunal’s proceedings. Consequently, it is arguable that the possibility of a crisis in Serbian identity existed independent of the tribunal and might have taken place anyway.

Nevertheless, the establishment of the ICTY and the proceedings that followed were critical for the defensive nationalist movement. The tribunal is the most official and internationally-widespread means of projecting guilt, blame and shame on the Serbs since the embargo and the sanctions imposed by the Security Council. After all, as a project of the United Nations General Assembly, the ICTY is a widely recognized international institution. The ICTY does not simply reflect the opinion of one media source or a single country; its actions and accusations carry international weight. It is thus not surprising that the tribunal would trigger the unfortunate underlying dynamic of Serb defensiveness in new and more powerful ways. The ICTY trials gave force to attitudes of defensive nationalism by providing an opportunity to further construct the ‘Serb-self’ in opposition to a variety of ‘others’. The ICTY’s new role as the ‘international-other’ can be interpreted as a replacement of the previous coercive supra-national structure – the Yugoslav state, which, as Bowman argues, was increasingly seen as an externally-

⁹ Jeffrey C. Alexander, ‘Toward a Theory of Cultural Trauma’, in *Cultural Trauma and Collective Identity*, eds. Jeffrey C. Alexander, Ron Eyerman, Bernhard Giesen, Neil J. Smelser and Piotr Sztompka (Berkeley: University of California Press, 2004), 9–11, 22–3. See also Smelser, ‘Psychological and Cultural’, 49–50.

¹⁰ Glen Bowman, ‘Xenophobia, Fantasy and the Nation: The Logic of Ethnic Violence in Former Yugoslavia’, in *The Anthropology of Europe: Identities and Boundaries in Conflict*, eds. Victoria A. Goddard, Josep R. Llobera and Cris Shore (Oxford: Berg Publishers, 1994), 160, 167.

imposed socialist superego denying nationalist aspirations in the late 1980s.¹¹ By pointing fingers at Serb leaders and (through individual-group association explained by socio-psychological analysis) at Serb communities, the ICTY unintentionally facilitated the renaissance of defensive nationalism. The following section addresses in detail the elements of the tribunal which made this process possible.

Individual or collective guilt?

A major factor in the continued strength of defensive nationalist ideas among Serbs is the issue of individual versus collective guilt manifested in the proceedings of the ICTY. The establishment of the principle of individual criminal responsibility in international law has been identified as one of the principal legacies of the Nuremberg trials. Rejecting the previous standard of international law as only governing the actions of sovereign states, Nuremberg instituted the practice of punishment for individuals for violations of international humanitarian law. Two important extensions were included in this new development. First, superior orders provide no exemption from culpability. Second, and on the other side of the coin, is command responsibility – officials are not freed from the responsibility for the acts committed by subordinates under their watch (even if the officials did not order such acts to be committed). Therefore, heads of states and governments can be tried for genocide, crimes against humanity and war crimes executed while they were in office; their status as agents of the state does not absolve them from the personal responsibility to uphold international humanitarian law.¹² Both of these Nuremberg legacies proved useful during ICTY proceedings. While international law's emphasis on individual responsibility to separate those guilty of crimes from the rest of the society is understandable, the principles of 'no exemption based on superior orders' and 'command responsibility' ironically link ordinary people to their ethnic leaders. Since the responsibility goes both ways, the 'little guy' and the 'big guy' can be found guilty; the distinction is therefore blurred and no one is safe from prosecution.

Moreover, the collective dimension in the performance of acts of genocide, ethnic cleansing and mass rape is undeniable. These are harms committed against groups and require groups to carry them out. As Tracy Isaacs explains, 'An individual agent cannot, except in extraordinary circumstances, perpetrate a genocide single-handedly'.¹³ What we have, then, are collective perpetrators and collective victims. This makes assigning responsibility extremely difficult, since the international community is placing individuals on trial knowing that their individual acts could not, at least not on their own, result in such crimes.

The distinction is made more problematic by the fact that crimes against humanity often include a degree of intention. The individual intention is usually derived from a joint objective of

¹¹ Ibid., 166.

¹² Catherine Lu, 'The International Criminal Court as an Institution of Moral Regeneration: Problems and Prospects', in *Bringing power to justice?: the prospects of the International Criminal Court*, eds. Joanna Harrington, Michael Milde and Richard Vernon (Montreal: McGill-Queen's University Press, 2006), 199; Kingsley Chiedu Moghalu, *Global Justice: the politics of war crimes trials* (Westport: Praeger Security International, 2006), 32–3.

¹³ Tracy Isaacs, 'Individual Responsibility for Collective Wrongs', in *Bringing power to justice?: The prospects of the International Criminal Court*, eds. Joanna Harrington, Michael Milde and Richard Vernon (Montreal: McGill-Queen's University Press, 2006), 167.

the group, illustrating collective solidarity, which, as discussed in the previous sections of this article, is an intrinsic element of social psychology of groups. Since a crime with significant moral dimension was thus committed, the ICTY is looking to assign moral responsibility. The dilemma ICTY faces in this objective is best explained in the words of Larry May. May argues that while ‘crimes against humanity are crimes perpetrated by a state or a state-like entity against a population or other group of people’; these state and state-like entities ‘have neither pants to kick nor a soul to damn’.¹⁴

The argument for individual responsibility given by supporters of the ICTY is that if particular individuals are found guilty and punished, the rest of the members of their group can be distanced from the moral responsibility for the atrocity committed. Trials are supposed to free the group of collective guilt and allow for inter-group reconciliation, since each side has had the ‘bad apples’ removed from it. At the beginning of Milošević's trial on February 12, 2002, the chief prosecutor, Carla Del Ponte, emphasized:

The accused in this case, as in all cases before the Tribunal, is charged as an individual. He is prosecuted on the basis of his individual criminal responsibility. No state or organization is on trial here today. The indictments do not accuse an entire people of being collectively guilty of the crimes, even the crime of genocide ... Collective guilt forms no part of the Prosecution case.¹⁵

While this logic seems viable in its legal sense, in reality, when it comes to matters of individual and collective accountability lines are blurred and borders are messy. Catherine Lu explains that while trials establish moral accountability of individuals within certain groups, they cannot establish an accounting of political, economic and social ideologies, institutions and structures that made these acts possible.¹⁶ The hope is that perhaps by setting some of the factual record straight, trials will provide more ‘truthful’ group histories since the atrocious events that took place are bound to communal narratives and identities in important and complex ways. However, in reality, the process is more complex. Trials often exacerbate inter-communal tensions, especially because dichotomized language of victim/perpetrator is employed.¹⁷ Trials can thus have a completely reverse effect, criminalizing entire populations instead of paving the path for reconciliation. Rony Brauman et al. argue that the International Criminal Tribunal for Rwanda (ICTR) has led to ‘the global criminalization of the Hutu community’ where ‘every Hutu is suspect since his community bears the onus of guilt for the genocide’.¹⁸

Ordinary individuals belonging to the accused groups find it difficult to distance themselves from such ideas of ‘global criminalization’ of their community. Some individuals emphasize the need for distinction between criminals and ordinary citizens belonging to the same ethnic group. One Bosnian Serb explains that ‘it is important for the Serbs to know who is a war

¹⁴ Larry May, *Crimes Against Humanity: A Normative Account* (Cambridge: Cambridge University Press, 2005), 236.

¹⁵ Carla Del Ponte, ‘Prosecutor v. Slobodan Milošević’, University of Toronto Library, <http://www.un.org.myaccess.library.utoronto.ca/icty/transe54/020212IT.htm> (accessed May 3, 2004), 4.

¹⁶ Catherine Lu, ‘The International Criminal,’ 201.

¹⁷ *Ibid.*, 199.

¹⁸ Rony Brauman et al., ‘Rwanda : politique de terreur, privilège d’impunité’, *Esprit*, August-September, 2000, 155.

criminal and who isn't ... Otherwise, this world will think it is all of us'.¹⁹ Most, however, do not see a clear distinction between combatants and civilians in their group. Many individuals believe that they were acting for the collective interest of their group – and, consistent with their account, socio-psychological analysis tells us that self-image is inherently bound with group-interest. The International Committee of the Red Cross (ICRC) conducted a survey in Bosnia which suggests that most Bosnians perceived the conflict in total war terms and believed that their survival, the survival of their families and friends and the survival of their ethnic group, were threatened. As a result, whole communities were mobilized, bringing 'civilians and soldiers together in defense of their community' which did not 'permit a clear distinction' between civilians and soldiers.²⁰ The complexity of the situation provides us with some understanding of the Serb hesitancy in distinguishing civilians from combatants and the difficulty of drawing the line between the guilty and the innocent in Serb communities. Moreover, it explains the outrage at the proceedings of the ICTY felt by those who believed that they were defending their livelihood and the livelihood of their ethnic group. It is not surprising, then, that the ICTY has been interpreted as a tool for demonizing large parts of populations, fulfilling the fears of the man quoted above who dreads that the world will view his entire ethnic group as guilty of genocide.

Even if ordinary Serbs do not necessarily associate themselves with the combatants and leaders prosecuted by ICTY, they can question the tribunal's stated intentions to prosecute individual guilt. If the work of the ICTY is interpreted as symbolic, as Gary J. Bass does by arguing that 'Tribunal justice is inevitably symbolic: a few war criminals stand for a much larger group of guilty individuals', then 'what is billed as individual justice actually becomes a *de facto* way of exonerating many of the guilty'.²¹ Bass further argues that when only a small number of people are prosecuted, and many of the guilty go unpunished, the extent of guilt that remains in any given society is unknown. This process thus collectivizes, rather than individualizes, guilt because on this basis entire groups could be viewed as collectively guilty. For example, a large section of the Serbian population believes that the true purpose of the ICTY was to demonstrate the collective guilt of the Serbs. Referring to the leaders placed on trial by ICTY, Carrie Gustafson argues that 'those who would occupy the dock *are inevitably and widely seen as symbolic representatives of their group*'.²² Serbs are not the only ones to accuse the ICTY of attempting to establish collective guilt and to shame entire nations. In Croatia, after ICTY's indicting of Rahim Ademi and Ante Gotovina in July 2001, 'various right-wing groups mounted rhetorical attacks that portrayed the ICTY indictments as an attempt to ... cast blame on all Croatians'.²³ This outcome thus entirely contradicts ICTY's stated objective to prosecute individual guilt. Moreover, if the implication is that entire societies, rather than just a few individuals, need to be re-educated before inter-group reconciliation can be pursued, the consequences for forging peace in the region are much graver.

¹⁹ Quoted in Elisabeth Neuffer, 'Elusive Justice: It Will Take an International Court to Deter War Criminals', *Boston Globe*, December 26, 1996, D, 1–2.

²⁰ International Committee of the Red Cross, *ICRC Country Report on Bosnia-Herzegovina*, [http://www.icrc.org/web/eng/siteeng.nsf/htmlall/onwar_reports/\\$file/bosnia.pdf](http://www.icrc.org/web/eng/siteeng.nsf/htmlall/onwar_reports/$file/bosnia.pdf) (accessed September 2006), 18.

²¹ Gary J. Bass, *Stay the hand of vengeance: The politics of war crimes tribunals* (Princeton: Princeton University Press, 2000), 300.

²² Carri Gustafson, 'International criminal courts: Some dissident views on the continuation of war by penal means', *Houston Journal of International Law* 21 (1998): 68.

²³ Victor Peskin and Mieczyslaw P. Boduszynski, 'International justice and domestic politics: Post-Tudjman Croatia and the International Criminal Tribunal for the Former Yugoslavia', *Europe-Asia Studies* 55 (2003): 1129.

It seems unreasonable to place the blame for these damaging outcomes on international courts – after all, the courts are simply respecting principles of international law and following legal procedures to the best of their abilities. It is unfortunate that despite the numerous measures ICTY officials have taken to insist that the crimes are individual and should not be collectivized, the process itself seems to be galvanizing the dangerous dynamics whose roots are within Serb societies. While the courts can assure that the legal process is carried out as correctly and as cautiously as possible – and it is arguable that the ICTY has done a respectable job of its legal functions – they have little control over the interpretation of this process. The distinction between individual and collective culpability is especially difficult within a societal context where, as previously noted, the difference between the interests of the individual and those of the group, or leaders and combatants on one hand, and the public on the other hand, is blurred. The mere nature of the underlying conflict is thus an indisputable factor in the mobilization of defensive nationalism; but the ICTY seems to be serving as an activator and an amplifier of this social dynamic by highlighting the crimes of the leaders of Serb communities.

Legal or political trials?

The second major factor that has led to considerable criticism of the ICTY by local and international scholars and significantly influenced the response of Serbian populations in Bosnia and Serbia is the perception of the trials as mainly political, rather than legal, tools. Two distinct critiques emerge in this section. The first is the realist view that international law cannot be taken seriously since it is simply the tool of the mighty and the powerful. There is a second underlying critique which goes further by being less concerned with simply categorizing the trials as legal or political and more concerned with the origin of the message being delivered. This critique emphasizes that moral lessons need to organically develop from the inside of societies rather than be imposed on them through international law. The ICTY cannot compete with grassroots reconciliation movements, and in fact, any attempt to influence them is likely to have the reverse effect. As the following section illustrates, the evidence unfortunately suggests that the new Serb identities are not being shaped by how well the tribunal can carry out its legal function; for Serbs, the ICTY is evaluated less for the soundness of its legal performance, and more on the basis of the nationalist issues that its trials trigger in the process.

Numerous authors make the point that international law is not a dominant force in world politics but mostly a reflection of the hierarchies of power on the global scene, despite the official sovereign equality of states in the United Nations. International law is said by those authors to be dominated by the interests of ‘hypermultiples’ and ‘hegemons’ who construct institutions of international law, such as the ICTY, for the purpose of ‘norm entrepreneurship’.²⁴ The implication for them is that the ICTY is simply a tool employed by the powerful states to enforce certain types of norms and behaviour upon the ‘disobedient’ members of the international society. Yet, even if the groups whose members are being persecuted welcome ideas of ‘tolerance’ and ‘multi-ethnicity’ – moral lessons that are supposed to be derived from ICTY’s proceedings – these ideas are still viewed as imposed from ‘above’ and ‘outside’, which somehow diminishes the genuine intentions and objectives of the tribunal. Such logic leads

²⁴ Michael J. Glennon, *Limits of Law, Prerogatives of Power: Interventionism After Kosovo* (New York: Palgrave, 2001); Moghalu, *Global Justice*; Gerry Simpson, *Great Powers and Outlaw States* (Cambridge: Cambridge University Press, 2004).

certain authors, such as John Laughland, to conclude that the only justice the ICTY can produce is ‘Potemkin justice’, a justice with a ‘bogus façade’.²⁵ What follows from this view is the suggestion that the international community is making a political example out of former Yugoslavia. Nora Beloff points out that since Nuremberg there were 34 civil wars, many of which resulted in more deaths than the Balkan wars, but ‘Washington has never felt it necessary to show why “justice” was required only in the case of Yugoslavia’.²⁶ Similarly, Andrew Rigby asks, ‘Why were Bosnia and Rwanda deemed sufficiently significant to justify international criminal tribunals and not Russia’s genocidal action in Chechnya or the horrors of Algeria’s civil war?’²⁷ Such realist critiques of ICTY are not only endorsed by academic factions but are also present among some in the local public, as examples in the following paragraphs illustrate.

In addition to the broader critique of international law, a number of specific points have been raised against the United States and Western Europe within the realist critique of the tribunal. A common skeptical claim is that the ICTY is a more politically viable alternative to military action on the part of Western states during times of ethnic conflict and war.²⁸ A particularly cynical view regarding the proceedings of the ICTY, found among some Serbs, is the claim that the tribunal is unfair and completely biased against the Serb community. In a 2002 survey, 80% of 1300 Serbs polled said that they believe that ICTY prosecuted Serbs more vigorously, and 57% said that they believe that ICTY is unjust.²⁹ In March 2003, only 12% of Serbs agreed that their government should continue to extradite Serbs suspected of war crimes to Hague.³⁰

An additional factor that only furthers cynicism among the Serbs is the issue of NATO crimes during the 1999 bombing of Serbia. This criticism is best summarized in the words of a female Kosovo Serb interviewee in Gračanica: ‘The Hague Tribunal is not even-handed. It should be prosecuting NATO generals for so-called “collateral damage”, but it doesn’t because it is a political court’.³¹ Various Western commentators uphold this claim. In fact, it was a Canadian law professor – Michael Mandel, along with Russian legislators, who filed a complaint with The Hague against the alleged crimes committed by NATO forces during the 78-day bombing campaign. These complaints were thrown out on the basis of inability to assign

²⁵ John Laughland, *Travesty: The Trial of Slobodan Milošević and the Corruption of International Justice* (London: Pluto Press, 2007), 86–7.

²⁶ Nora Beloff, *Yugoslavia: An Avoidable War* (London: New European Publications, 1997), 91.

²⁷ Andrew Rigby, *Justice and Reconciliation: After the Violence* (Boulder: Lynne Rienner Publishers, 2001), 179.

²⁸ Moghalu, *Global Justice*; Sandra Coliver, ‘The Contribution of the International Criminal Tribunal for the Former Yugoslavia to Reconciliation in Bosnia and Herzegovina’, in *International Crimes, Peace, and Human Rights: The Role of the International Criminal Court*, ed. Dinah Shelton (Ardsey: Transnational Publishers, 2000), 20; David Wippman, ‘Exaggerating the ICC’, in *Bringing power to justice?: The Prospects of the International Criminal Court*, eds. Joanna Harrington, Michael Milde and Richard Vernon (Montreal: McGill-Queen’s University Press, 2006), 130.

²⁹ Marc Champion, ‘Court of Opinion: With Hague Case, Defiant Milosevic Wins at Home; As Daily Coverage Keeps Serbs Riveted to TV, Many Feel as If They’re on Trial’, *The Wall Street Journal*, January 10, 2003, A1.

³⁰ Steven Erlander, ‘Murder in Belgrade: Did Serbia’s Leader Do the West’s Bidding Too Well?’, *The New York Times*, March 16, 2003, 4.4. Such views are also common among the Croatian public. See Coliver, ‘The Contribution of the International’, 20, and Anonymous, ‘Developments in the Law: International Criminal Law II. The Promises of International Prosecution’, *Harvard Law Review* 114, no. 7 (2001): 1964.

³¹ Quoted in Janine Natalya Clark, ‘The Three Rs: Retributive justice, Restorative justice, and Reconciliation’, *Contemporary Justice Review* 11, no. 4 (2008): 345.

individual responsibility.³² Related to this double standard in failing to prosecute NATO, the selection of a British judge for the Tribunal – Judge May, a national of a country which participated in the bombing campaign of Serbia – is viewed by many Serbs as unfair.³³ While the conspiratory character of the stated views is excessive, such views retain their significance because of their ability to remain popular among some in the scholarly community as well as the general public.

All of these criticisms are evident in the empirical research conducted among Serb populations. When in August of 2004 the Strategic Marketing and Media Research Institute (SMMRI) in Belgrade asked 1245 respondents what they believed to be the primary objective of war crimes trials in The Hague, 74% saw some sort of conspiracy in the tribunal. Twelve percent of the respondents believed that the primary purpose was to establish a new world order headed by the United States, 30% stated that the main purpose was to judge Serbia and the Serbs and thereby justify the NATO aggression of 1999, and 32% stated that the principal objective was to make Serbs guilty for all atrocities that occurred during the wars in order to place Serbia in a position of dependence on the international community.³⁴ In May 2005, a survey by the Belgrade Centre for Human Rights found that ‘more than two-thirds of the population consistently believe that ICTY trials of Serb inductees are partial, and most cite the greater number of indicted Serbs as the reason why they think so’.³⁵

The fact that the ICTY is a political, in addition to a legal, institution should not be a surprise. As Hedley Bull argues in *The Anarchist Society: A Study of Order in World Politics*, at the international level, justice is always political since ‘there is no formal separation between law and politics in the international society’.³⁶ Judith Shklar further explains the interconnectedness of law and politics. She notes, ‘law is a form of political action ... which occasionally is applicable and effective and often not. It is not an answer to politics, neither is it isolated from political purposes and struggles’.³⁷

This vital political element of international justice is not an inherently bad thing. What matters is not whether law is political, but what kind of politics it can reflect. It follows then that there is no harm in admitting that the ICTY is a political tribunal, which also does not deny its ability to effectively carry out its legal functions. What should concern us is the type of politics the ICTY can engage in and the kind of political objectives it can facilitate. Moreover, since the ICTY addresses ethical and normative concerns – crimes against humanity and war crimes, morality also becomes entangled in the relationship between law and politics. Recognizing this three-way complexity is essential in the assessment of the ICTY’s undertakings. Lu argues that the efficacy of the ICC as an institution of moral regeneration will be evaluated ‘not only, or

³² Moghalu, *Global Justice*, 60; Clark, ‘The Three Rs’.

³³ Moghalu, *Global Justice*, 73.

³⁴ Strategic Marketing and Media Research Institute, ‘Javno Mnenje u Srbiji: Stavovi Prema Domaćim Pravosudnim Organima za Ratne Zločine i Međunarodnom Krivičnom Tribunalu za Bivšu Jugoslaviju u Hagu’, Unpublished data, 2004.

³⁵ Vesna Petrović, ed. *Human rights in Serbia and Montenegro. Legal provisions, practice and awareness in the State Union of Serbia and Montenegro compared to international human rights standards* (Belgrade: Belgrade Centre for Human Rights, 2006), 473.

³⁶ Hedley Bull, *The Anarchist Society: A Study of Order in World Politics* (York: Palgrave, 1977), 76.

³⁷ Judith N. Shklar, *Legalism: Law, Morals and Political Trials* (Cambridge, MA: Harvard University Press, 1964), 146–7.

even primarily, by its contributions to the development of international law but ultimately by the political and moral transformations its operation will be able to foster and support in international and domestic contexts'.³⁸ Phil Clark argues that the most vital political goal of the ICC in general is 'convincing local populations that international justice is in their interest'.³⁹ Ultimately, the ICTY will be judged by the underlying message it delivers and its ability to facilitate conditions for the prevention of future violations, a purpose which was at the basis of the creation of the ICC. Therefore, the expectations for the ICTY are on a much larger scale than defining the ICTY as an inward-looking institution only focusing on effective legal results.

One of the expectations for the ICTY was for it to attempt to deliver through legal investigations and verdicts a more accurate version of the truth of events in the 1990s. The problems this objective faced from the very beginning have been raised within the framework of an underlying critique which emphasizes that 'truths' and moral lessons need to arise organically from within societies, rather than be imposed from the outside. Not surprisingly, then, this ICTY objective has largely been a failure with regard to the Serbs. The 'facts' provided by the ICTY have not been welcomed by many Serbs in the reconstruction of their ethnic history and group image. Janine Clark is highly pessimistic about the likelihood of ICTY's version of history being accepted in the new Serb identity. She cites the Belgrade Centre for Human Rights to support her hypothesis: 'It can be concluded on the basis of surveys of public opinion on the ICTY that not one event, not even the arrests of Hague inductees Ratko Mladić or Radovan Karadžić, will sway the citizens to accept the truths established in the Tribunal courtrooms'.⁴⁰

While the fact that the ICTY's version of history is to a great degree being challenged by the Serbs is undeniably troublesome, this is not the gravest of our concerns. The more somber result is the strengthening of extremist narratives, whose origins are external to the ICTY, but are being galvanized by the proceedings of the tribunal and seem to be in direct opposition to the story told by it. What is interpreted by some as 'the global criminalization' of Serbs has resulted in a dangerous spike of defensive nationalism. This phenomenon is dealt with in significant detail in the subsequent section of this article.

Defensive nationalism

A common socio-psychological response to atrocities, which feeds into collective group solidarity, is a form of collective denial. Stanley Cohen has noted that whole societies can slip into collective modes of denial and this need not be a consequence of an elite driven 'thought control' project.⁴¹ Sabrina Ramet refers to this phenomenon as 'the denial syndrome', comprised of selective recollection, perception and interpretation of past events 'in order to block the recognition which the person in question cannot bear'.⁴² After all, denial is widely recognized as

³⁸ Lu, 'The International Criminal', 192.

³⁹ Phil Clark, 'Grappling in the Great Lakes: The Challenges of International Justice in Rwanda, the Democratic Republic of Congo and Uganda', in *The Role of International Law in Rebuilding Societies After Conflict*, ed. Brett Bowden, Hilary Charlesworth and Jeremy Farrall (Cambridge: Cambridge University Press, 2009), 269.

⁴⁰ Quoted in Petrović, *Human rights*, 476.

⁴¹ Stanley Cohen, *States of Denial: Knowing About Atrocities and Suffering* (Cambridge: Polity Press, 2001), 10.

⁴² Sabrina Ramet, 'The Denial Syndrome and its Consequences: Serbian Political Culture since 2000', *Communist and Post-Communist Studies* 40 (2007): 42.

‘a very common, perhaps universal, defense mechanism in combat’ and conflict in general.⁴³ The denial syndrome is a way of dealing with the guilt and shame at the unconscious level; in terms of social psychology, it is a method of coping with the bruised collective ego, through a simultaneous attempt to reassert an ethnicity’s ‘worth’ and/or superiority. Psychological evidence suggests that shame is not only connected to denial but also to anger, since a person might display angry and violent tendencies to deal with shame. The relationship between shame and anger is a vicious cycle because one can be ashamed for feeling ashamed and be ashamed for being angry – this individual-level analysis can be extended to the collective-level.⁴⁴

A degree of anger is certainly present in radical forms of Serb nationalism. When combined with this extreme type of nationalism, the denial syndrome can lead to the portrayal of the nation as simultaneously ‘victimized’ and ‘heroic’ and the identification of ‘victimized heroes’ as its representatives. This form of defensive nationalism can become quite radical in its collective psychological nature and include assigning to other groups sinister intentions, and exaggerated conspiracy theories and hyper-vigilance in information processing and analysis. Just how far these ideas are taken depends on how threatened and unstable a group feels; insecurity in collective identity unquestionably paves the way for serious elite manipulation. Ramet argues that one can recognize in Serbian society ‘patterns of thought, speaking, and behaviour with marked neurotic and/or psychotic characteristics’.⁴⁵

The emergence of a nationalist backlash in the period of international humiliation of an ethnic group or a nation should not be a surprise for analysts and scholars, this consequence is a historical trend. While extreme, discursive articulations of nationalist claims are a common way of dealing with past atrocities among ethnic groups around the world and throughout history – this is not in any way a uniquely Serbian phenomenon.⁴⁶ Moghalu speaks of the ‘martyrdom effect’ of international justice, drawing parallels between post-Versailles Germans and Serbs.⁴⁷ The humiliation and guilt inflicted by the Treaty of Versailles triggered an excessive amount of resentment and bitterness among the German population, arguably clearing the path for political radicalization. Adolf Hitler met Hermann Wilhelm Göring, who would later become his top lieutenant, at a protest against French calls for the prosecution of German leaders accused of war crime. Similarly, the nationalist backlash against ICTY’s indictment of Slobodan Milošević and Vojislav Šešelj resulted in the rise of popular support for the extreme nationalist Radical Party. A Serbian politician noted an awful irony: ‘My genuine belief is that Mrs. Del Ponte [Chief Prosecutor of the Hague Tribunal] was the best head of an electoral campaign that the Radical Party ever had’.⁴⁸

I stress that such conclusions do not imply that war crimes and crimes against humanity trials should never be carried out. It is important to reemphasize that ideas of defensive

⁴³ John H. Shale, et al., ‘Denial Often Key in Psychological Adaptation to Combat Situations’, *Psychiatric Annals* 33 (2003): 729.

⁴⁴ Helen Lewis, *Shame and Guilt in Neurosis* (New York: International Universities Press, 1971).

⁴⁵ Ramet, ‘The Denial Syndrome’, 43.

⁴⁶ Denial syndrome and defensive nationalism are characteristics which have been present in Germany, Austria, and France after the Second World War, the United States after the atrocities against the Amerindian societies and Turkey after Armenian massacres. See Ramet, 54, and Bowman, ‘Xenophobia, Fantasy’, 169.

⁴⁷ Moghalu, *Global Justice*, 20–21.

⁴⁸ Quoted in *ibid.*, 21.

nationalism among the Serbs were part of the social psychology framework in Serbian communities before the tribunal was established. Nonetheless, in addition to the reasons given in the earlier sections of this article, as an institution, the ICTY represents an interesting example of the general attitude of the international community towards Serbian actions in the 1990s. Moreover, for those who held suspicions about the international community even before the ICTY was set up, the tribunal became a clear marker of that community's intention to target Serbia. The early decisions of the tribunal to mostly indict Serbs reinforced the Serb prejudice 'that the whole world was against them'.⁴⁹ Once the roots of this narrative were established, and 'confirmed' through the creation of and the initial decisions of the ICTY, the tribunal's efforts to achieve ethnic group proportionality in its indictments did not weaken the defensive nationalism of many Serbs. The common stance among Serbian politicians and citizens in Serbia and the Bosnian Serb Republic (Republika Srpska) is that Serbs, Croats and Bosniaks were equally guilty and equally responsible for atrocities and that the ICTY distorted these facts.⁵⁰

The objective here is thus not to simply place the blame for the presence of defensive attitudes in the new image of the Serbs on the tribunal, but to point out that ICTY's formation and proceedings have spurred and fuelled certain interpretations over others and highlight that political costs and benefits should be carefully weighed before putting such institutions in place. The benefit would be, at best, the execution of properly conducted legal trials proving the guilt of certain leaders and reestablishing a sense of law and order. Yet, the significance of such proof in the case of the Serbs is debatable because, as mentioned earlier, it is likely that a majority of the Serbs are aware of the crimes, but excuse the guilt of their leaders on the basis that the crimes were carried out in the interest of the entire community and were executed by all sides in the war. On the other hand, the cost can be grave. The instigation and advancement of antagonistic attitudes between the groups in question can stall reconciliation.

The gravest political cost of the ICTY has proven to be the facilitation and maintenance of the denial syndrome, victimhood claims, the martyrdom effect and defensive nationalism among the general Serb populations. One particular way in which the ICTY has led to this unintended outcome is by offering a stage for nationalist and extremist leaders through international trials. Reportedly, Vojislav Šešelj, an ultra-nationalist, volunteered to surrender to ICTY because he 'relish[ed] the prospect of an international audience for his denunciations of Western policy in the Balkans'.⁵¹ Slobodan Milošević, the first head of state to face trial before an international criminal tribunal, employed a strategy of challenging the legitimacy and impartiality of ICTY during his hearings. The ICTY's decision to allow Milošević to defend himself granted him the opportunity to represent himself as 'a solitary individual pitted against an army of foreign lawyers and investigators'.⁵² Throughout the trial, Milošević emphasized that the Tribunal was a tool of NATO and the United States since it was completely dependent on

⁴⁹ Tim Judah, *The Serbs: History, Myth and the Destruction of Yugoslavia* (New Haven: Yale University Press, 1997), 239.

⁵⁰ Victor Peskin, *International Justice in Rwanda and the Balkans: Virtual Trials and the Struggle for State Cooperation* (New York: Cambridge University Press, 2008), 34.

⁵¹ Daniel Simpson, 'Defendant in Hague to Aim Defense at Serbs of the Future', *The New York Times*, February 20, 2003, A6.

⁵² Michael P. Scharf, 'The Legacy of the Milošević Trial', in *Bringing Power to Justice?: The Prospects of the International Criminal Court*, eds. Joanna Harrington, Michael Milde and Richard Vernon (Montreal: McGill-Queen's University Press, 2006), 27.

their financial and military assistance. The fact that Milošević was handed over to The Hague on St. Vitus Day, the day of the most important battle in Serbian history – the Battle of Kosovo Polje or Black Birds which took place against the Ottomans in 1389 and is the foremost symbol of Serb victimization – only furthered Milošević’s cause. Speaking for himself and the Belgrade audience watching the trial on television, one man noted: ‘We cheer when he outsmarts the prosecutors. When he’s defending himself all alone against the world’.⁵³ Glorification of indicted war criminals as ‘victims’ of the international community, but ‘heroes’ of the nation, is not limited to Milošević but extended to other leaders, such as General Ratko Mladić and Radovan Karadžić.⁵⁴

Believing that the exposure of the tribunal would have an important effect on the Serbian perception of their history, the United States Agency for International Development financed the broadcasting of ICTY’s proceedings throughout Serbia.⁵⁵ The agency was correct in believing that the tribunal would be of interest to the local population, but it did not imagine the paradoxical effect its broadcasting would have. Milošević’s defense was ‘brilliantly cunning, designed to play on Serbia’s psychological vulnerabilities’ and his strategy proved successful.⁵⁶ The agency therefore financed the doubling of Milošević’s approval ratings, which only took him one week to accomplish. By the midpoint of his trial, Milošević managed to convince 39% of the Serb population to rate his trial performance as ‘superior’ and only 33% of the population believed that he was responsible for any war crimes.⁵⁷ Indeed, Milošević’s strategy was not only convincing for Serbs but for international audiences as well; after Milošević’s presentation of the destruction caused by NATO in Serbia, the *New Yorker* concluded that ‘Horror for horror, [Geoffrey Nice, the lead prosecution attorney] was outdone by Milošević’.⁵⁸ Michael P. Scharf argues that the tribunal was responsible for transforming Milošević’s image from ‘the most reviled individual in Serbia’ to the fourth most admired Serbian figure, and helped Milošević win a seat in the Serbian parliament.⁵⁹ The USA therefore inadvertently financed the rise in popularity of a war criminal and the upsurge of defensive nationalism, consequently harming chances of inter-group reconciliation. Milošević’s trial thus resulted in a political fiasco of such an order that he was at the same time branded ‘the Butcher of the Balkans’ and the ‘ultimate martyr’.

⁵³ Champion, ‘Court of Opinion’, A1.

⁵⁴ In a 1995 survey General Ratko Mladić polled as the second most popular figure among Bosnian Serbs, and among the Serb community he was commonly referred to as ‘our savior’. Perhaps we should not place too much importance on these results since they might only reflect the high tensions of the immediate postwar period. However, a poll taken in 2004 confirmed the persistence of such views, suggesting that Radovan Karadžić, whose trial commenced on October 26, 2009, is regarded a ‘hero’ rather than a ‘war criminal’ according to almost two-thirds of Bosnian Serbs. See: Robert Block, ‘The Madness of General Mladić’, *New York Review of Books*, October 5, 1995, 7; Perica Vučinić, ‘Milošević’s New Karadžić’, *Vreme News Digest*, 1995, http://www.scc.rutgers.edu/serbian_digest/221/1221-3.htm (accessed on December 25, 2008); Onasa News Agency, ‘Two Thirds of Bosnian Serbs See Karadžić as Hero – Opinion Poll’, *Access World News*, 2004, <http://www.infoweb.newsbank.com> (accessed on June 9, 2008).

⁵⁵ Champion, ‘Court of Opinion’, A1.

⁵⁶ Dusko Doder, ‘Book Review’ of *Slobodan Milošević and the Destruction of Yugoslavia* by Louis Sell, *The Nation*, May 27, 2002, 25.

⁵⁷ Joseph Lelyveld, ‘The Defendant; Slobodan Milošević’s Trail, and the Debate Surrounding International Courts’, *The New Yorker*, May 27, 2002, 82.

⁵⁸ Ibid.

⁵⁹ Scharf, ‘The Legacy of Milošević’s’, 41.

Perhaps it is not surprising that the attitudes towards these leaders have not changed since their indictment by the tribunal. If the question is approached from the psychological level of the individual, one can hypothesize that a person is unlikely to suddenly change her interpretation of the past simply because an international institution said that she should. Expecting that a society will begin to reflect on its moral wrongs and change its worldviews because the international community has begun waving the disciplinary ‘stick’, especially in the absence of the ‘carrot’, or a promise of adequate returns, is unrealistic. It is understandable that people might not have the incentive to change their opinions of Milošević, Karadžić, and Mladić and their interpretation of the past if nothing has changed for the better in their lives. Instead, the same attitudes, suggesting that gruesome crimes were committed by all sides and necessary for the security of communities, are likely to continue. A real transformation, including important changes in people’s daily lives and their standard of living, is perhaps required to motivate moral transformation.

This point on the importance of socio-economic conditions is relevant to the idea that an ideology of victimization is not only used in support of nationalist propaganda but can also be related to the more pragmatic objectives of national politics and economics. In effect, signs of a strong group desire for economic progress have been emerging among Serbs.⁶⁰ This is especially evident among the youth disillusioned with the political state of their country, which suggests the possibility of an alternative narrative coming to prevail in post-conflict Serb identity. This self-image is rooted in a desire for a collective affiliation with ‘Europe’ – a second attempt at inclusion in ‘Europe’. Moghalu believes that the political and economic reconstruction of the Balkans through war crimes trials will continue because of the ‘strong psychological desire of the Serbs and other ethnic nationalities in the Balkans to become part of the mainstream Europe’.⁶¹ The regional and inter-group nature of this goal is a promising prospect for possible reconciliation among Balkan ethnicities. However, there are numerous obstacles to political and economic development in the region, starting with the most recent global financial crisis and its influence on foreign aid.

The issue of economic reconstruction in post-war crimes and crimes against humanity settings brings up another related point – the case of Germany after the Holocaust. With the Nuremberg trials in mind, some authors have claimed in defense of the ICTY that it will take a few decades before the benefits of the tribunal are seen. They claim that the Nuremberg proceedings, which were also considered by some to be show trials of victor’s justice, according to the polls conducted in Germany in the immediate years after they were held, are today spoken of with respect by Germans who are also firm supporters of the ICC.⁶² However, one wonders whether or not and how the immediate reconciliation needs of ethnic groups in the Balkans may be different from those of post–World War II Germany. Moreover, we have no way of knowing whether the reason why Germans were eventually able to face and accept some of the guilt highlighted by Nuremberg is a simple matter of time and generational change, or more based on a socio-psychological reason – namely, the fact that Germans were able to find an alternative positive self-image to rely on. According to Bernhard Giesen, postwar Germany turned to timeless German virtues of ‘honesty’, ‘reliability’ and ‘industriousness’, which were suited for

⁶⁰ David Bruce MacDonald, *Balkan Holocausts? Serbian and Croatian Victim-Centered Propaganda and the War in Yugoslavia* (Manchester: Manchester University Press, 2002), 5.

⁶¹ Moghalu, *Global Justice*, 74.

⁶² Scharf, ‘The Legacy of Milošević’s’, 41–2.

modern organizations but ‘exempted from the changing tides of history, the decay of the German nation-state, and the shame of Nazism’.⁶³ Taking pride in their economic success, the importance of which was highlighted in the previous paragraph, as innovative and industrious citizens – the economic miracle culture (*Wirtschaftswunder*)⁶⁴ – might have allowed Germans to accept group faults and ‘missteps’ in other areas. This would imply that if Serbs are unable to find a more positive image to focus on, especially considering the obstacles pointed out in this article, the defensive attitude might persist, only assuring that nationalist factions maintain a political stronghold in Serbia and Republika Srpska.

To return to Elif Şafak’s piercing assessment with which I began this article, there is no question that, in terms of events that took place during the Yugoslav wars, the Serbs were ‘the killers’ and ‘the killed’: they committed and suffered numerous atrocities. No war is clear-cut when it comes to identifying ‘the victim’ and ‘the criminal’, but the case of the Balkans is especially messy – a consequence of history, geography, demography and many other factors. In terms of ethnic identity, what it meant to identify as a Serb before the Yugoslav wars and the ICTY is no longer a viable option; the Serb identity is thus also experiencing a ‘killing’ of sorts and is in the process of serious transformation. The case of the Germans is an example of how an identity can reach a point of no return; the Holocaust and the Nuremberg trials were critical junctures in German history, which have forever reshaped German identity and remain an important aspect of the new national identity. Analogous to the German case, is the fact that the Serbs themselves are mainly responsible for this ‘loss’ of their old identity, thus metaphorically living up to Şafak’s role of ‘the killer’. In a manner similar to the German case, it is thus reasonable to hypothesize that the atrocities of the 1990s, the break-up of the former Yugoslavia (a matter only complicated by the separation of the province of Kosovo, which historically represents the birthplace of the Serbian kingdom) and the ICTY will fundamentally alter Serb identity.

In addition to recognizing the suffering of the victims, the tribunal was supposed to decollectivize guilt and shame, individualize responsibility and morally re-educate. Even the marginalization of extremists would have been an accomplishment. It would have provided an opportunity for, in Hannah Arendt’s words, political ‘natality’ in the reconstruction of collective identity.⁶⁵ Unfortunately, as this article has argued, the evidence so far points to the opposite effect: the ethnic group ‘on trial’, its elites as well as ordinary folks, have a significant degree of agency in how they interpret their story. A socio-psychological analysis suggests that if people feel humiliation, blame, shame and international bias they are more likely to dismiss prosecutions against their leaders, ignore verdicts and support contradictory and conspiratorial accounts. Recognizing and accepting the power of group agency in the emergence and locking in of ethnic self-images emphasizes the importance of the international community and policy-makers being cautious about any moral lessons they might try to teach through international war crimes trials.

⁶³ Bernhard Giesen, ‘The Trauma of Perpetrators: The Holocaust as the Traumatic Reference of German National Identity’, in *Cultural Trauma and Collective Identity*, eds. Jeffrey C. Alexander, Ron Eyerman, Bernhard Giesen, Neil J. Smelser and Piotr Sztompka (Berkeley: University of California Press, 2004), 125–6.

⁶⁴ *Ibid.*

⁶⁵ Hannah Arendt, *The Human Condition* (Chicago: University of Chicago Press, 1958), 8-9, 247.

It is unfortunate that the tribunal has inadvertently spurred negative consequences in its early years. More fieldwork on the subject is required and, with the passing of time, alternative effects might be revealed. There are undeniable difficulties international actors face when deciding whether to engage in international trials and how to go about this process. Moreover, to re-emphasize, this paper has not criticized the ICTY for being too political. In fact, the paper suggests that the ICTY has failed to be sufficiently political in the most appropriate way. After all, ‘To defeat evil and to promote goodness are related but distinct tasks’.⁶⁶ Conducting fair and effective investigations and prosecutions will get us nowhere if it diminishes the most necessary political effect – inter-ethnic reconciliation. This claim is the main point I have sought to make in this article. What is currently needed most in the Balkans are opportunities for reconciliation. The way ethnic identities are reconstructed in the post-conflict era will significantly shape and constrain how societies in the region make their choices regarding reconciliation matters in the future. The main lesson to be learned from the case of the Serbs, then, is that if an in-depth understanding of the specific context, and of the underlying dynamics at play in the society in question, is bypassed (and if a cautious analysis of the costs and benefits of international action is not undertaken) this can lead to such negative consequences that even inaction might be preferable to badly flawed international war crimes trials.

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⁶⁶ Lu, ‘The International Criminal’, 204.