DEVELOPING LOCAL CAPACITY FOR WAR CRIMES TRIALS: INSIGHTS FROM BiH, SIERRA LEONE, AND COLOMBIA

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Generally, in post-conflict situations the domestic justice system is in a state of collapse. Doubts exist as to whether alleged perpetrators of international crimes will be prosecuted effectively, or as to whether they will receive a fair trial. International penal interventions are therefore envisaged as a way to assure individual accountability. Yet it has become increasingly clear that these tribunals themselves lack the capacity to deal with the vast majority of cases. If the tribunals' impact is to be enhanced, they will need to rely on national courts. The way out of this circle is for them to develop the capacity of local legal systems. This Article examines the impact of international tribunals on municipal legal systems by providing an in-depth, comparative analysis of four different international or internationalized tribunals—the International Criminal Court, the International Criminal Tribunal for the Former Yugoslavia, the Special Court for Sierra Leone, and the Court of Bosnia and Herzegovina—and their impact on the respective domestic legal systems. This Article critically examines the main direct and indirect ways in which the international community has sought to develop local capacity for war crimes trials, such as training initiatives, "on the job" knowledge transfer, and the provision of information and access to evidence. Yet, it argues that the focus in this area should be more on the structural or institutional aspects, such as the institutional position of the international or

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internationalized tribunal vis-à-vis the local judiciary, the law applicable before each tribunal, and the main features of each exit strategy. Ultimately, this Article submits that effective capacity development is to a significant extent the result of adequate predisposition by the relevant stakeholders, which is largely a matter of the types of incentives they have for improving practice. Interestingly, these incentives are significantly shaped by the prevailing institutional dynamics between the domestic and the international system, namely, whether they establish relationships of collaboration, competition, resentment, or mere indifference. Such dynamics are themselves determined to a large extent by the prevalent division of labor between the international and the domestic tribunals. The analysis provides critical insights into this important area of international criminal justice.

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I. INTRODUCTION

In post-conflict situations the domestic justice system is generally in a state of collapse. International penal interventions are envisaged as the way to assure individual accountability for international crimes. Through the experience of the ad hoc Tribunals, it has become increasingly clear that international or internationalized tribunals themselves lack the capacity to deal with the vast majority of alleged perpetrators of international crimes. If their impact is to be enhanced, it seems, they would need to rely on support from the national legal systems. Yet doubts often exist as to whether alleged perpetrators of international crimes would be prosecuted effectively before domestic courts, or if they would receive a fair trial. The international community, through international and internationalized courts, must rebuild, enhance or develop the national capacity.

This Article examines the impact of international and internationalized courts on municipal legal systems by looking in-depth into Bosnia and Herzegovina (BiH), Sierra Leone, and Colombia. Building on previous research on BiH, this Article provides a comparative perspective into different international and

internationalized tribunals in very different contexts.[1] In my previous research, I advocated three main claims. First, I argued that there are crucial difficulties in coherence, coordination, and sequencing of capacity development initiatives, and that this is the result of structural and not merely contingent features of the dynamics in this area. Second, I argued that existing efforts in BiH had been too focused on individuals and their capacities without looking enough at the institutional and cultural context in which they are immersed. Third, I submitted that there are specific considerations of the institutional design of international and internationalized courts, such as their institutional position vis-à-vis the local judiciary, their jurisdictional regime and applicable law, that account for the main successes and shortcomings in terms of their impact on municipal legal systems.

The main purpose in this Article is to further expand the analytical framework developed in my previous work and to assess and contrast the performance of a wider range of international and internationalized tribunals and other participating agencies in developing local capacity to conduct war crimes trials. This Article discusses both formal and informal initiatives developed in the context of the completion strategies in both the International Criminal Tribunal for the former Yugoslavia (ICTY) and the Special Court for Sierra Leone (SCSL), the policy of "positive" complementarity of the International Criminal Court (ICC), and the experience at the Court of BiH. Furthermore, it situates these tribunals in the broader narrative of international criminal justice by incorporating considerations stemming from other relevant institutions, such as the International Criminal Tribunal for Rwanda (ICTR), the Extraordinary Chambers in the Courts of Cambodia (ECCC), or the involvement of the ICC in other situations. This Article confirms the central findings of my previous research, though it provides a more complete and nuanced picture of this area. It identifies some of the key weaknesses or needs of local legal systems, and isolates and assesses direct and indirect means of capacity development, how they have fared in different contexts, and the particular challenges they raise. Ultimately, it shows that the key consideration in developing the capacity of national legal systems is dependent on an adequate predisposition by the relevant stakeholders. This is largely a matter of the kinds of incentives stakeholders have for improving practice and enhancing collaboration between them. Critically, it is submitted that the existence of these incentives ultimately depends on the prevailing institutional dynamics between the domestic and the international system, namely, whether they establish relationships of collaboration, competition, resentment, or mere indifference. Such dynamics are, in turn, shaped to a large extent by the prevalent division of labor between the international and the domestic tribunals. The analysis provided has a forward-looking focus: Although it addresses existing or past processes, dynamics, and synergies, it provides a critical approach to the issue of capacity development in international criminal justice aimed at improving future practice.

Before proceeding, two methodological caveats are in order. First, this research is based on a number of interviews conducted in BiH, The Hague, Freetown, Bogotá, Buenos Aires, and London between the end of 2008 and the end

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[1] *See* Alejandro Chehtman, *Developing Bosnia and Herzegovina's Capacity to Process War Crimes Cases: Critical Notes on a 'Success Story'*, 9 J. INT'L CRIM. JUST. 547 (2011) (providing an assessment of the initiatives aimed at developing the capacity of national courts in BiH to conduct war crime cases).

of 2010. The selection of interviewees was aimed at getting as balanced of a picture as possible, although, for confidentiality reasons, no statements are explicitly attributed to any interviewee.[2] Second, both for practical and methodological reasons, this Article does not consider in detail other important elements that arguably contribute to the willingness (and hence, the capacity) of local authorities to conduct war crimes trials in post-conflict situations. The first of these issues is the existing general security situation. The importance of physical security for judges, prosecutors and, most sensitively perhaps, witnesses for effective war crimes prosecutions simply cannot be exaggerated.[3] Second, political considerations are also of the essence. There are, for instance, many allegations that BiH's commitment to the prosecution of war crimes was closely connected to its interest in entering the EU.[4] Similarly, it has also been argued that one of Colombia's main incentives to initiate the transitional justice framework of Justice and Peace was that it was required to do so by the main donors of the Plan Colombia.[5] In some cases, these two elements can work together. Although the Article does not address these issues in detail, relevant considerations or caveats are hinted at throughout the Article when pertinent.

Accordingly, Part II identifies some of the key weaknesses or needs of local legal systems to process this kind of case. Parts III and IV examine direct and indirect means of capacity development, respectively. Part V, by contrast, concentrates on what are arguably the key enabling and constraining factors that ultimately account for the extent of the impact of an international or internationalized tribunal on the capacity of the local legal system. Finally, Part VI concludes briefly.

II. WEAKNESSES, NEEDS OR DEFICITS OF NATIONAL LEGAL SYSTEMS IN POST-CONFLICT SITUATIONS

Post-conflict judicial systems usually face serious deficits or weaknesses when conducting investigations and trials for international crimes perpetrated on their territory or by their military or security forces.[6] These weaknesses are various and of different orders, ranging from lack of an independent judiciary to lack of

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[2] For a list of interviewees, see the Annex at the end of this Article.

[3] *See* Héctor Olásolo Alonso, *El Principio de Complementariedad y las Estrategias de Actuación de la Corte Penal Internacional en la Fase de Examen Preliminar*, 7 VIA INVENIENDI ET IUDICANDI 2, 47 (2012). Further, in a hearing before the ICC in June 2009, the Democratic Republic of the Congo (DRC) Justice Minister stressed that the central authorities in Kinshasa, which are geographically removed from the current hostilities, find it difficult to investigate crimes in the war-torn eastern parts of the country. Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui, Case No. ICC-01/04-01/07, Hearing (Open Session), 78–79 (June 1, 2009), http://www.icc-cpi.int/iccdocs/doc/doc722400.pdf. The issue of physical security is also connected with general unavailability of witness protection in most situations.

[4] Chehtman, *supra* note 1, at 549.

[5] Interview with C-14.

[6] *See* AVOCATS SANS FRONTIÈRES, CASE STUDY: THE APPLICATION OF THE ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT BY THE COURTS OF THE DEMOCRATIC REPUBLIC OF CONGO 95 (2009), *available at* http://www.asf.be/wp-content/publications/ASF_CaseStudy_RomeStatute_Light_PagePerPage.pdf (discussing Congolese judges and prosecutors not having the necessary training to play a prominent role in the prosecution of international crimes committed in the DRC).

political will to conduct effective prosecutions. Some of these weaknesses have to do with insufficient training or knowledge of international criminal law, some with the existing infrastructure, and still some with the domestic legal framework. This Part highlights some of these deficits, with specific references to Sierra Leone, BiH, and Colombia. It is organized, however, around five main topics: inadequate substantive and procedural legal provisions, deficits in infrastructure, the need to develop specific skills required to investigate extremely complex and sometimes old cases, the existence of powerful disincentives for relevant officials, and lack of adequate support and protection for victims. At the same time, this Part advocates for the need to tailor concrete efforts to address specific country's situations rather than to assume that a common cluster of weaknesses apply across the board.[7]

Perhaps the most obvious deficit is the lack of appropriate legal norms applicable to mass atrocity cases, both as a matter of substantive and procedural law. In some situations, such as Rwanda or the Democratic Republic of the Congo (DRC), this also includes inappropriate rules regarding available penalties, which go against basic human rights standards.[8] Sierra Leone, for instance, lacks substantive provisions for international offences, such as crimes against humanity, war crimes, or genocide. Thus, irrespective of the existence of the Lomé Agreement amnesty, no trials for international crimes could be conducted before its local courts.[9] Colombia, in turn, lacks domestic provisions concerning crimes against humanity, although this has not been a significant obstacle to conducting trials at home.[10] Furthermore, often countries in post-conflict situations lack provisions that would guarantee fair trials to defendants. Several European courts, for instance, have refused to extradite defendants to Rwanda on the grounds that Rwanda could not guarantee a fair trial to the defendant.[11] Similarly, several interviewees have described domestic trials in Sierra Leone as trials "by ambush," and complained about the difficulties to ensure fair proceedings in domestic courts.[12] This is not always the case, as the situation in Colombia and BiH illustrates, but it can be seen in many relevant countries.[13] To ensure a minimum level of capacity to conduct trials for international crimes in a fair and effective manner, often certain amendments to local procedural rules need to be introduced.

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[7] *See generally* CECILE APTEL, INT'L CTR. FOR TRANSITIONAL JUSTICE, DOMESTIC JUSTICE SYSTEMS AND THE IMPACT OF THE ROME STATUTE: DISCUSSION PAPER (2009), *available at* http://www.internationalcriminaljustice.net/experience/papers/session7.pdf (discussing four case studies that look at the domestic legal challenges of implementing the Rome Statute).

[8] Examples include the death penalty or life imprisonment in solitary confinement. *See infra* Part V.B.

[9] *See, e.g*, Interviews with B-12, B-14, B-16, B-17.

[10] *See infra* Part V.A.

[11] See the references to cases in France, Germany, Finland, the United Kingdom, Switzerland, and Norway in Ahorugeze v. Sweden, ECtHR 37075/09, ¶¶ 62–74 (Oct. 27, 2011) (European Court of Human Rights) (deciding that an extradition to Rwanda would not involve a violation to the provisions of Article 3 and Article 6 of the European Convention on Human Rights because of amendments made by Rwanda to its legal system).

[12] *E.g.*, Interviews with B-1, B-9, B-14.

[13] On Colombia, see ALEJANDRO CHEHTMAN, THE IMPACT OF THE ICC ON COLOMBIA: POSITIVE COMPLEMENTARITY ON TRIAL 51 (2011), *available at* http://www.domac.is/media/domac-skjol/Domac-17-AC.pdf. On BiH, see INT'L CRISIS GROUP, BOSNIA'S INCOMPLETE TRANSITION: BETWEEN DAYTON AND EUROPE, REP. NO. 198, at 25 (2009), *available at* http://www.crisisgroup.org/~/media/Files/europe/198_bosnias_incomplete_transition___between_dayton_and_europe.pdf.

Namely, countries typically need legal provisions that would facilitate handling complex cases, allow for the use of evidence collected by foreign authorities, norms that guarantee effective witness protection or support, and so on.

Needs and deficits in terms of existing infrastructure of domestic judiciaries is also a sensitive point of focus. Conflicts often affect the local infrastructure in ways that are difficult to overcome. This includes not only destruction of facilities and court buildings, including adequate prison facilities, but also lack of appropriate vehicles, information technology tools, and communication services. Furthermore, in some contexts deficits predate the conflict, as the extremely poor court infrastructure in Sierra Leone, particularly outside Freetown, aptly illustrates. Mobile courts in the DRC meet in community centres or town halls, and reportedly even below trees.[14] Certain pressing deficits in this context apply across the board. They include, inter alia, the lack of technical knowledge and capacity to collect and process certain evidence, such as DNA samples, or to process large amounts of documentary evidence.

A further weakness often encountered in post-conflict societies is the lack of both legal and technical knowledge to conduct investigations and trials for international crimes.[15] This is a matter of degree, where situations in countries with a sophisticated legal system and experienced and generally well-trained legal professionals and investigators differ from countries in which these capacities are overwhelmingly absent. Put more concretely, research suggests that there is hardly the same need to develop general legal skills in countries like Colombia, Serbia, and BiH than there is in East Timor, Kosovo, or Sierra Leone.[16] And yet, there is specific knowledge applicable to war crimes cases that is required both in quite sophisticated legal systems as well as in less developed ones. This has to do with the concrete knowledge of the relevant rules of international criminal law and international humanitarian law, but also more practical areas essential for international criminal trials, including court management, case handling, and investigation of complex institutional structures and chains of events.

This deficit in expertise is often combined with a lack of real incentives for local officials to actually perform this type of investigation. Lack of political will from the acting government is often cited as the most common disincentive, and

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[14] *See* Lisa Clifford, *Open Air Justice in DR Congo*, 124 INT'L JUST. TRIB 3, 3 (2011); Tessa Khan & Jim Wormington, Mobile Courts in the DRC: Lessons from Development for International Criminal Justice 19 (May 18, 2013) (Oxford Transitional Jus. Res. Working Papers Series), *available at* http://otjr.csls.ox.ac.uk/materials/papers/178/mobile%20courts%20DRC.pdf.

[15] Avocats Sans Frontières, for example, reports that few Congolese judges, prosecutors, inspectors and judicial policemen have the level of training required to handle atrocity related proceedings. AVOCATS SANS FRONTIÈRES, *supra* note 6, at 94–95.

[16] In several countries, like Sierra Leone, there are no law reports. Interviews with B-14, B-2. In other countries, such as Kosovo or East Timor, there is almost an absolute lack of trained lawyers who can fill relevant positions in the judiciary, as prosecutors or as legal counsel. *See* TOM PERRIELLO & MARIEKE WIERDA, INT'L CTR. FOR TRANSITIONAL JUSTICE, LESSONS FROM THE DEPLOYMENT OF INTERNATIONAL JUDGES AND PROSECUTORS IN KOSOVO 9 (2006), *available at* http://ictj.org/sites/default/files/ICTJ-FormerYugoslavia-Courts-Study-2006-English_0.pdf; CAITLIN REIGER & MARIEKE WIERDA, INT'L CTR. FOR TRANSITIONAL JUSTICE, THE SERIOUS CRIMES PROCESS IN TIMOR-LESTE: RETROSPECT 11 (2006), *available at* http://www.ictj.org/sites/default/files/ICTJ-TimorLeste-Criminal-Process-2006-English.pdf. In Maniema (DRC), a 2007 fact-finding mission identified only 27 magistrates, 35 lawyers and 38 policemen for the entire province. Khan & Wormington, *supra* note 14, at 18 (citing the *ABA Rule of Law Initiative* AMERICAN BAR ASSOCIATION, http://www.americanbar.org/advocacy/rule_of_law.html (last visited May 18, 2013); HEAL AFRICA 2008 (internal policy document)).

also perhaps the most crucial determinant.[17] The political will of the Kirchner administration in Argentina has arguably been decisive in the current wave of criminal investigations for mass atrocities perpetrated during the 1970s.[18] But relevant incentives also include the security conditions in certain areas of Colombia, the level of salaries in Sierra Leone, and other arrangements such as the quota system introduced in BiH to assess the performance of prosecutors and judges at the entity courts.[19] In short, assessing performance of prosecutors or judges merely on the basis of the number of cases they process, paying them poor salaries, and, critically, not being able to guarantee their safety, constitute powerful disincentives for prosecutors and judges to take on the investigation and trial of extremely complex, time-consuming, and sometimes dangerous cases. Relatedly, there are often claims of lack of independence, bias, and sometimes corruption among local judiciaries.[20] This can be partly explained in terms of the recent history of tensions and overwhelming conflict, but it also has components related to the institutional culture, and the existing power relations in a specific country. These are clearly among the most resilient deficits present in local legal systems that are allegedly willing to conduct genuine investigations and trials for international crimes.

A further sensitive area is the general unavailability, or at least unreliability, of witness support and protection mechanisms. This is an overriding concern in conducting effective investigations and prosecutions for international crimes that applies, though admittedly to different degrees, in all three jurisdictions under examination. Typically, countries coming out of military conflict or organized political violence tend to have severe difficulties in providing this kind support or protection for a number of reasons. Sometimes part of the problem is that effective witness protection can only be carried out outside their territorial borders. Yet quite often these countries lack the necessary institutional framework, the relevant legal or procedural norms, the know-how, and the resources to conduct this type of task effectively.[21]

The most important consideration to bear in mind is that despite the existence of common deficits and needs, the level and type of needs that each legal system faces in post-conflict situations varies to a significant degree. Thus one of the critical aspects in effective capacity development is addressing the specifics of the situation at hand, and tailoring programmes to address concrete needs. It is essential to conduct needs assessments before programmes are put in place, involve local institutions and professionals, and be sensitive to the local legal culture as well as the requirements of international law. More precisely, it is crucial to get the balance right between accommodating inputs from local professionals as to what the perceived needs are, and insisting on basic conditions such as adequate procedural safeguards, institutional incentives for local professionals (avoiding

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[17] *E.g.*, Interviews with A-36, B-14, D-7.

[18] Interview with D-7.

[19] Interviews with A-25, B-9, B-12, B-15, B-17.

[20] *See, e.g.*, U.N. MISSION IN BOSN. & HERZ. JUDICIAL SYS. ASSESSMENT PROGRAMME, THEMATIC REPORT IX POLITICAL INFLUENCE: THE INDEPENDENCE OF THE JUDICIARY IN BOSNIA AND HERZEGOVINA 4 (2000), *available at* http://www.hjpc.ba/docs/jasp/pdf/TR%20IX%20Political%20influence.pdf.

[21] Interviews with B-7, D-2.

corruption and political influence), appropriate legal training, and adequate assistance and protection to victims and witnesses.

III. DIRECT CAPACITY DEVELOPMENT INITIATIVES

Training or knowledge transfer initiatives have generally been considered the main tool to develop local capacity for war crimes trials.[22] Admittedly, they have been provided unevenly across post-conflict jurisdictions—the number and significance of initiatives organized in Sierra Leone has been negligible compared with those organized in BiH, with Colombia, for instance, standing roughly between the two.[23] Nonetheless, the overall analysis indicates that they have been far from successful and largely for similar reasons.[24] Interestingly, it is in those jurisdictions where most resources and efforts have been put in training programmes, such as BiH, which best illustrate the main shortcomings in this area. This Part critically presents some of the salient features of these training programmes and suggests some of the reasons why their impact does not meet the expectations. It focuses on the content and the methodology of training sessions, the importance of detailed information about existing needs in each jurisdiction, and the coherence, coordination, and sequencing difficulties providers face as a structural and resilient feature of this area.[25]

An important explanation for relevant shortcomings in this area is the content of seminars and related activities. In all three jurisdictions examined, sessions have been described as overwhelmingly focussed on specific substantive issues such as the elements of war crimes, genocide, and crimes against humanity while other more practical aspects of the job, such as case and evidence management, formulation of indictments for complex crimes, and so on, have been largely neglected.[26] A further common complaint among participants in these initiatives is that there is too much overlap; many actors have received similar training on the same issues by different organizations.[27] Together with the large number of trainings offered and the lack of a consistent long-term program, this has contributed in some jurisdictions such as BiH, to creating some 'training fatigue' among receivers.[28] Finally, participants complain that trainings often take no notice of the specificities of the local legal regime in place: "[l]ecturers are flown in [by different organizations,] they would give a training of how they do things 'back

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[22] *See* KEVIN HELLER, LEUVEN CTR. FOR GLOBAL GOVERNANCE STUDIES, COMPLETION STRATEGIES 37 (2009), *available at* http://www.ipp.ghum.kuleuven.be/publications/heller.pdf. I do not include contributions to physical infrastructure and other equipment for reasons of space.

[23] *E.g.*, Interviews with A-6, A-10, A-21, B-1, B-14, B-18, B-20, C-6, C-8.

[24] *See* ORG. FOR ECON. COOPERATION AND DEV., OECD DAC HANDBOOK ON SECURITY SYSTEM REFORM: SUPPORTING SECURITY AND JUSTICE 13–14 (2007), *available at* http://www.oecd.org/development/incaf/38406485.pdf; *see also* Suzannah Linton, *Putting Cambodia's Extraordinary Chambers into Context*, 11 SING. Y. B. INT'L LAW 195, 205–07 (2007). Some institutions, whose training programmes are usually run by locals, seem to have had better results overall. *See* Interviews with A-1, A-26, C-9, C-11.

[25] Chehtman, *supra* note 1, at 548.

[26] Interviews with A-18, A-34, B-15, C-6, C-9, C-11.

[27] This problem is arguably connected to the lack of coherence and unification between training providers in the region. Chehtman, *supra* note 1, at 548.

[28] Interviews with A-32, A-33; *see* Chehtman, *supra* note 1, at 550.

home', and they would fly out."[29] There is no attempt to explain how the ideas being introduced could be applied in the local legal system.[30]

In terms of methodology, training sessions have often been planned as *ex cathedra* lectures with virtually no space for discussion or active participation by the relevant officials. This creates little opportunity for real exchange. Both participants and former lecturers, particularly in BiH, have heavily criticized this approach.[31] Often activities were not sufficiently tailored; namely there was no distinction between legal professionals with very different backgrounds and experiences.[32] This was sometimes aggravated by the fact that these initiatives do not pay enough attention to local culture or other institutional factors that may impinge on effective knowledge transfer. For instance, local judges in BiH were reluctant to accept training on legal or practical matters from a legal professional who was not herself a judge. The people from the international organizations involved in providing these trainings did not see the problem in sending mid-level officers to train local judges.[33]

There have been, however, certain improvements in this respect. In BiH, for instance, trainings now involve many more hands-on activities and practical exercises, and they provide participants with written materials regarding the issues discussed.[34] Academics have often been replaced by, or at least complemented with, practitioners; some organizers also include facilitators with relevant training and experience in adult education at a high level.[35] The number of participants in each specific event has been lowered to provide a better experience.[36] An interesting development in the context of technical assistance is the program funded by the European Union in Colombia allowing for two international experts with practical experience in mass atrocity cases to work on a permanent basis with Colombian magistrates.[37] This plan resulted in the selection of two individuals with relevant training, language abilities, and an understanding of the political and legal culture. Perhaps most importantly, they remained attached to the program for more

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[29] Interview with A-16.

[30] For instance, U.S. trainers gave a full seminar including both plea and charge bargaining for BiH officials, but charge bargaining was not a possibility in the BiH legal system. Interview with A-15; *see* Sulakshana Gupta, *The Not-So-Special Court of Sierra Leone*, NEW INTERNATIONALIST, Nov. 1, 2009, at 34, *available at* http://newint.org/columns/essays/2009/11/01/special-court-sierra-leone (discussing a similar claim in Sierra Leone).

[31] Chehtman, *supra* note 1, at 552.

[32] Interview with A-18.

[33] Interviews with A-32, A-33.

[34] *See, e.g.*, ORG. FOR SEC. & CO-OPERATION IN EUR. (OSCE) ET AL., SUPPORTING THE TRANSITION PROCESS: LESSONS LEARNED AND BEST PRACTICES IN KNOWLEDGE TRANSFER 51–54 (2009), *available at* http://www.icty.org/x/file/About/Reports%20and%20Publications/report_supporting_transition_en.pdf.

[35] Interviews with A-6, anonymous interviewee.

[36] Interviews with A-6, A-10, A-16.

[37] *See* Int'l Criminal Court [ICC], Review Conference of the Rome Statute of the ICC, May 31–June 11, 2010, *Focal Points' Compilation of Examples of Projects Aimed at Strengthening Domestic Jurisdiction to Deal with Rome Statute Crimes*, at 21–23, ICC Doc. RC/ST/CM/INF.2 (May 31, 2010), *available at* http://www.icc-cpi.int/iccdocs/asp_docs/RC2010/RC-ST-CM-INF.2-ENG.pdf. In Argentina, an international expert was hired to contribute to the work of one specific prosecutor's unit to deal more effectively with mass criminality, and arguably, its greatest impact was enhancing case and evidence management techniques. Interview with D-2.

than two years, allowing them to build relations of trust and respect with local professionals.[38]

A significant part of the overall problems in this area stems from the fact that there are usually no needs assessments or updated information about what to prioritize or what actually works in different institutional or cultural contexts.[39] Again, this applies equally to BiH, Colombia, and Sierra Leone.[40] This is something on which training providers have arguably been working, by slowly involving locals in the decision making process of planning and organizing trainings.[41] Yet obtaining an accurate picture of the real needs or, at least, effectively utilizing the information gathered to plan future trainings has faced further obstacles. As the area is largely donor-driven, providers normally make proposals before funding is allocated, and the relevant organizations usually lack resources to engage in extensive consultation.[42] Also, when local legal professionals were consulted they were often unable to contribute meaningfully by providing detailed feedback to organizers due to time constraints related to their own professional lives. The issue, to put it shortly, is that they were usually "consulted" rather than actually involved in the decision-making process.[43] Moreover, even when they did provide relevant input, training providers were not always in a position to make room for their requests. Often the planning for that year had already been budgeted and approved, and the proposed session would have to take place the following year. By then it might simply be too late, as some other concerns and more pressing needs would have appeared.[44]

Perhaps the most influential feature of the way this area works is connected to the fact that a large number of organizations with their own sets of characteristics and needs have organized and provided training sessions. In BiH, for instance, the most relevant ones have been the United Nations Development Programme (UNDP), the International Committee for the Red Cross (ICRC), the United Nations Interregional Crime and Justice Research Institute (UNICRI), the American Bar Association (ABA), the Organization for Security and Co-operation in Europe

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[38] The German Agency for Technical Cooperation, GTZ, created a program called ProFis to support the work of the Prosecutor's Office in Colombia (and other offices in the judiciary) with the application of the JPL. *See* PROFIS, http://www.profis.com.co/modulos/contenido/default.asp?idmodulo=160 (last visited Feb. 19, 2013); *see also* DAVID A. KAYE, COUNCIL ON FOREIGN RELATIONS, JUSTICE BEYOND THE HAGUE: SUPPORTING THE PROSECUTION OF INTERNATIONAL CRIMES IN NATIONAL COURTS 13 (2011) (discussing how the U.S. Department of Justice has provided support in a "handful of cases against paramilitary actors, but the prosecutions have focused on individual crimes rather than systematic criminal activity"). Kaye described this program as a major failure. *Id.*

[39] Wide-ranging needs assessments research projects were conducted in BiH only in 2006–07. *See* RICHARD S. GEBELEIN, UNITED NATIONS DEV. PROGRAMME, SOLVING WAR CRIME CASES IN BOSNIA AND HERZEGOVINA: REPORT ON THE CAPACITIES OF COURTS AND PROSECUTOR OFFICES' WITHIN BOSNIA AND HERZEGOVINA TO INVESTIGATE, PROSECUTE AND TRY WAR CRIMES CASES 10 (2009), *available at* http://wcjp.unicri.it/proceedings/docs/UNDPBiH_Solving%20war%20crimes%20in%20BiH_2008_eng.PDF.

[40] This is also true in other jurisdictions, including the DRC. Khan & Wormington, *supra* note 14, at 21.

[41] *See* OSCE ET AL., *supra* note 34, at 41.

[42] Khan & Wormington, *supra* note 14, at 21.

[43] *See* Int'l Ctr. for Transitional Justice, Making Complementarity Work: The Way Forward 4 (Dec. 9, 2010) (ICTJ Side Event During ICC ASP Ninth Session), *available at* http://www.icc-cpi.int/iccdocs/asp_docs/Events/2010/DiscussionPaper-Complementarity-9Dec2010-ENG.PDF.

[44] Interview with A-18, D-1, anonymous interviewee.

(OSCE), and the Council of Europe; but the ICTY and the Court of BiH have also been involved in the organization and provision of this kind of formalized knowledge transfer. Some local institutions such as the Court's Criminal Defense Section (OKO) and the more recently created Judicial and Prosecutorial Training Centres (JPTCs) have also been active in this area.[45] Similarly, in Colombia the main international actors in this area have been the International Center for Transitional Justice (ICTJ), the *Deutsche Gesellschaft für Internationale Zusammenarbeit* (GTZ), and USAID. Judges and prosecutors are generally trained in the Rodrigo Lara Bonilla Judicial School and the National Prosecutor's Office, respectively.[46] Unlike the ICTY, the ICC has been largely inactive in this area.[47]

The large number of key players and their institutional or political affiliations provides for a variety of approaches and illustrates the popularity of training as a chosen path to developing local capacity. Yet this also creates difficulties. For one, this area shows a persistent lack of coordination among international organizations and a general neglect of local entities. Lord Ashdown summarized the situation in BiH well when he suggested that in his position as High Representative, he "never managed to get the individual international community players, who were involved in penny-packet programmes aimed at tackling some elements of civil service reform, to combine together into a single nationwide programme."[48] Similarly, in Colombia, despite the longstanding existence of official training centres for judges and prosecutors, international actors conducted their trainings on IHL or other relevant issues separately.[49] In BiH, different governments and institutions competed for power and influence.[50] Similarly, in Colombia it has been forcefully argued that U.S. and German institutions "have their own agendas and their own understanding of how the Colombian legal system should work, and they both struggle to get their way of doing things established."[51] This approach has often been perceived as a form of "legal imperialism."[52]

This general lack of coordination is not merely a contingent factor. It is the product of certain bureaucratic elements such as funding flows and application deadlines. It is also the product of each agency's vested interest in maintaining control over its own activities, securing funds to guarantee survival, and showing "clear success stories to tout to their legislative constituencies."[53] This has become part of the political economy of this sector and it cannot be altered simply by

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[45] *See, e.g.*, Chehtman, *supra* note 1, at Section 2.

[46] *See, e.g.*, CAMPUS VIRTUAL: ESCUELA JUDICIAL "RODRIGO LARA BONILLA", http://www.ejrlb.net/index.php (last visited Feb. 18, 2013).

[47] Training seminars held by the ICC Registry have more of an outreach function, focusing on ICC norms and procedures rather than on issues relevant for national investigations. Interview with D-8. In Sierra Leone, trainings have been scant, although usually the SCSL was involved in the few sessions organized for local legal practitioners and officials. Interview with B-18.

[48] PADDY ASHDOWN, SWORDS AND PLOUGHSHARES: BRINGING PEACE TO THE 21ST CENTURY 109 (2007).

[49] Interviews with C-6, C-8.

[50] Interviews with A-7, A-15, A-25.

[51] Interview with C-8.

[52] Interviews with A-7, anonymous interviewee; *see also* ERIC A. WITTE, OPEN SOC'Y FOUNDS., PUTTING COMPLEMENTARITY INTO PRACTICE: DOMESTIC JUSTICE FOR INTERNATIONAL CRIMES IN DRC, UGANDA, AND KENYA 26 (2011) (referencing the DRC).

[53] Interviews with A-31, A-40, D-1; *see also* KAYE, *supra* note 38, at 20.

changing policy. A possible solution to this problem may be to rely more on a local institution to centralize and coordinate existing initiatives.[54] This could meaningfully enhance local ownership of the process as a whole. It has been suggested, however, that most of the alleged advantages would usually be offset by other elements. Namely, local institutions in BiH tended to resort to old approaches like *ex cathedra* lectures; they also lacked specialization on war crimes cases and were unremittingly understaffed and underfunded—that is, they lacked the resources, experience, and know-how that some international groups could have provided.[55] The international community, however, tends to be reluctant to support local institutions taking over this process.[56] In the DRC, attempts to institutionalize cooperation ended up, according to some, rendering the newly created body "a forum for discussion rather than true coordination," with meetings being held at irregular time intervals.[57] This may have been partly driven by scepticism towards local institutions generally—internationals do not feel that things will get done, in the way they think they should get done, and at the time they think they should get done.[58] There is also a measure of self-interest and strategic thinking involved in this approach towards training activities.

On balance, one may easily conclude that formalized knowledge transfer has been over-relied upon as a mechanism for developing local capacity. Trainings are often chosen as a mechanism for knowledge transfer mainly because of their tangibility or visibility. The relevant actors usually prefer providing a large number of training sessions, rather than fewer, better organized ones. The reason for this may well be connected to the capacity to raise funds; but it has to do, also, with resorting to specific activities as a way to spend remnants of money before a given deadline.[59] Preparation time and sensible means of assessment are not usually factored in.[60] This general context has often led to an approach where the relevant organizations are concerned with "get[ting] their programme installed, their box checked, whether they produce any results or not; [a]nd the national side sometimes is very weak in telling strong international organizations [that they do not] need to be told about the elements of crimes against humanity over and over again."[61] This "tick-in-the-box approach" simply overrides the fact that effective knowledge transfer "takes time and [that it should be] best viewed as a process rather than a 'one-off' event."[62]

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[54] In Sierra Leone, the most sustainable institution that would be able to provide this kind of training is allegedly the Institute for International Law. Interviews with B-17, B-20.

[55] Interviews with A-3, A-16. The situation of OKO in BiH was slightly different in terms of its initial approach to capacity development and its current position.

[56] Chehtman, *supra* note 1, at 554.

[57] WITTE, *supra* note 52, at 46–47.

[58] Interview with A-16.

[59] Interviews with A-32, A-33.

[60] *See* Linton, *supra* note 24, at 207 (containing a similar claim about Cambodia).

[61] Interview with A-18.

[62] OSCE ET AL., *supra* note 34, at 40–41; *see also* Khan & Wormington, *supra* note 14, at 26 (referencing "cut and paste" trainings).

IV. "INDIRECT" CAPACITY DEVELOPMENT

Training initiatives have not been the only mechanism favored by the international community to enhance domestic capacity to conduct war crimes trials. There are other types of initiatives that I will call, for lack of a better name, indirect. The fact that they are indirect should not be construed as meaning they have any less expected impact than 'direct' efforts. By contrast, although these initiatives are generally not conceived strictly as 'capacity-development,' their overall significance and potential impact suggest the need to rethink the key conceptual and policy considerations in this area. I will concentrate here on two specific types of initiatives, namely, "on the job" knowledge transfer, and the transfer of files and information to the local legal system.[63] This Part argues that capacity development under this framework takes place more effectively through horizontal, collaborative working relations between domestic and foreign professionals within the same tribunal or at different levels, rather than by simple mentoring or "shoulder-rubbing." Furthermore, local capacity is enhanced by the development of institutional mechanisms and tools that are sensitive both to the local way of doing things and developed international practices. Finally, making relevant evidence and information easily available to local prosecutors or courts can critically bolster the work of local authorities. At the same time, there are a number of outstanding obstacles. Most notably, I shall argue, these include the selection of international personnel working in internationalized or hybrid institutions, the resistance of local professionals to change, the resilience of certain local practices, and, in certain circumstances the unreliability of domestic institutions to be entrusted with sensitive information and access to witnesses.

A. On the Job Knowledge Transfer

A common approach to transferring knowledge to local legal professionals is by having them work side-by-side with experienced international colleagues. This conception, however, is overly optimistic. There are a number of difficulties that need to be carefully considered, including inadequate selection of international professionals, resistance of local colleagues, and a general lack of concern in developing processes and supporting institutional reform. This Part first examines the practice at the ICTY and the ICC, in which this form of knowledge transfer would seem simply not part of their underlying rationale, and then concentrates on the experience in internationalized or hybrid courts, such as the Court of BiH and the SCSL, where this kind of capacity development may be considered an important part of their main task.

International tribunals have been generally reluctant to hire or involve local lawyers or investigators from the relevant national jurisdiction, thereby precluding any kind of collaboration. This "detachment" was part of the institutional culture of the ICTY: "[T]o be impartial it helped to be ignorant, to be remote, to be removed,

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[63] The development of the local laws is also an often-used path to local capacity development. For critical views on how this is often performed in this type of situation, see Chehtman, *supra* note 1, at Section 4; *see also* ALEJANDRO CHEHTMAN & RUTH MACKENZIE, CAPACITY DEVELOPMENT IN INTERNATIONAL CRIMINAL JUSTICE: A MAPPING EXERCISE OF EXISTING PRACTICE 31–34 (2009), *available at* http://www.domac.is/media/domac-skjol/DOMAC2-2009.pdf.

not to have dialogue."[64] Irrespective of the obvious practical advantages of including local participants, international tribunals often considered it inappropriate to include people from the targeted countries, particularly in judicial chambers, as this would allegedly make it difficult to be sufficiently impartial.[65] There probably were good reasons for this, stemming mainly from the delicate sensitivities that persisted after or during the conflict. There were also serious security concerns, which functioned as a powerful disincentive regarding hiring of nationals from the region.[66] As a result of these considerations, no professionals from the region were employed at the ICTY for the first part of its existence.[67]

This general policy was only revised as a result of the ICTY's Completion Strategy. Yet, this revision was hardly connected with it becoming actively involved in developing local capacities.[68] The shift in perspective stemmed from the need to speed up the process. People with knowledge of the conflict, the background, and the relevant languages were considered crucial by the new ICTY Prosecutor.[69] Further steps were taken later on "triggered by the idea that most of the work w[ould] have to be done by the region anyway."[70] But what mainly explains these developments was that the people from the region who went to work at the ICTY proved to be good professionals. They proved capable of putting aside their personal feelings, and they had the necessary language skills and understanding of the conflict, the culture, etc.[71] The success of the first few determined that it was acceptable and indeed useful to bring more. The ICTR since 2003 successfully adopted a policy of hiring Rwandans at the OTP and in the Registry[72], as members of defense teams, but kept a stricter policy in Chambers.[73] Admittedly, there is a very delicate balance to be achieved among security concerns, political, ethnic, or religious sensitivities, and the effective accomplishment of the tribunal's aims. But these positive experiences do not seem to have yet transpired in any form at the ICC.

Hybrid or internationalized tribunals are, at least on paper, in a much better position than internationals in terms of their potential to contribute to developing local capacity through mentoring. Yet at the SCSL, this mixed composition has been largely underused for most of the Tribunal's life. Sierra Leoneans were involved on a widespread basis only at lower level and court administration

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[64] Interviews with A-37, D-5; *see also* Special Representative of the U.N. Comm'n on Human Rights, *Report on the Situation of Human Rights in Rwanda* ¶ 16, U.N. Doc. E/CN.4/2000/41 (Feb. 25, 2000). *But see generally* CARLA DEL PONTE & CHUCK SUDETIC, MADAME PROSECUTOR: CONFRONTATIONS WITH HUMANITY'S WORST CRIMINALS AND THE CULTURE OF IMPUNITY 125, 132 (2009) (criticizing this view).

[65] Interviews with A-32, A-33.

[66] *E.g.*, Interviews with A-32, A-33, A-36.

[67] Chehtman, *supra* note 1, at 561.

[68] *Id*.

[69] DEL PONTE & SUDETIC, *supra* note 64, at 132.

[70] Interviews with A-32, A-33.

[71] Chehtman, *supra* note 1, at 560 (with reference to Interview with A-33).

[72] The Registry is responsible for the overall administration and management of the Tribunal. *See The Registry*, INT'L CRIMINAL TRIBUNAL FOR RWANDA, http://www.unictr.org/tabid/105/default.aspx (last visited May 16, 2013).

[73] SIGALL HOROVITZ, RWANDA: INTERNATIONAL AND NATIONAL RESPONSES TO THE MASS ATROCITIES AND THEIR INTERACTION 78–79 (2010), *available at* http://www.domac.is/media/veldu-flokk/DOMAC6---Rwanda.pdf.

functions.[74] At the decision-making level, the government of Sierra Leone chose not to appoint Sierra Leoneans in several of the relevant positions it was entitled to fill. This was a way for the government to keep a certain distance from the court.[75] The first Deputy Prosecutor elected by the Sierra Leonean government was a British lawyer, and two Sierra Leonean judges appointed by the government were neither living in Sierra Leone nor likely to work in its judiciary once the Tribunal closed. Although defense teams have been generally composed both of national and international members, this "arrangement . . . has caused considerable problems in some cases."[76] This general policy triggered serious complaints from the local legal profession, and it ended up being reversed. Yet the feeling of most of those who came on board was that the court was still "purely a foreign affair."[77] Quite revealing is what happened at the SCSL with interns, the vast majority of them Sierra Leoneans or coming from the surrounding region. As no funding was provided for them, many Sierra Leoneans who managed to get a position at the court ended up usually not turning up to work because they had to keep their other jobs.[78]

The Court of BiH fared somewhat better in these respects.[79] National and international judges shared participation in panels and, crucially, local judges were appointed into what would become a purely national institution. Moreover, several national judges considered that the influence of their international counterparts has been overall positive and that it has worked at different levels.[80] At the Prosecutor's Office of the Court of BiH (POBiH), by contrast, this "hands-off" approach to peer-to-peer knowledge transfer did not work, partly due to its different structure as prosecutors work alone with their teams. Initially, it was expected that by "rubbing shoulders" with international prosecutors and by "watching how they worked . . . local prosecutors would learn how to prosecute war crimes cases; this unsurprisingly didn't work."[81] It was only after the POBiH appointed new management and adopted certain concrete policies to enhance interaction between nationals and internationals that some form of knowledge transfer started to take place.[82]

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[74] *See* Marieke Wierda, *Comparison of the Legacy of the Special Court for Sierra Leone and the ICC Intervention in Uganda from a Practical Perspective*, 103 PROCEEDINGS OF THE ANNUAL MEETING (AM. SOC'Y OF INT'L LAW) 218, 220 (2009). Serry Kamal, former Attorney General and Minister of Justice of Sierra Leone, often referred to the SCSL as "a foreign country." *See* SIGALL HOROVITZ, SIERRA LEONE: INTERACTION BETWEEN INTERNATIONAL AND NATIONAL RESPONSES TO MASS ATROCITIES 46 (2009), *available at* http://www.domac.is/media/domac/DOMAC3-SH-corr..pdf.

[75] Interview with B-20.

[76] David Cohen, *"Hybrid" Justice in East Timor, Sierra Leone, and Cambodia: "Lessons Learned" and Prospects for the Future*, 43 STAN. J. INT'L L. 1, 12 (2007).

[77] Interviews with B-14, B-17.

[78] Interview with B-13.

[79] *See* Fidelma Donlon, *Rule of Law: From the International Criminal Tribunal for the Former Yugoslavia to the War Crimes Chamber of Bosnia and Herzegovina*, *in* DECONSTRUCTING THE RECONSTRUCTION: HUMAN RIGHTS AND RULE OF LAW IN POSTWAR BOSNIA AND HERZEGOVINA 281–83 (Dina Francesca Haynes ed., 2008) (noting that the Court of BiH employed predominantly Bosnian nationals in every section of the Court and that this was envisaged as a means to develop local capacity).

[80] Interview with A-3.

[81] Interviews with A-18, A-23.

[82] Interestingly, both in BiH and in Sierra Leone, informal relationships between the internationals at the Court of BiH or the SCSL and their local colleagues—either working at the entity

The experience at the POBiH further shows that "cohabitation" or "mentoring" is not all that this type of informal knowledge transfer is or should be about. Under international management, a mechanism for reviewing indictments was developed, in which every indictment that was filed had to go through a "quality control" process by the person in charge of the office and another prosecutor. This process was not conducted on an ad hoc basis; all prosecutors needed to present and defend all their indictments. This had an obvious impact on the way in which prosecutors developed their understanding and experience with the legal and evidentiary elements of complex cases. It also involved internationals having "to adapt to the way in which indictments are drafted in BiH, even if they found it counterintuitive from the point of view of their own legal tradition."[83]

One thing seems clear, though. Getting experienced national judges and prosecutors to work with internationals on the same cases and under a common institutional and legal framework may provide the former with useful tools, but it hardly suffices to ensure that their capacities are enhanced. There are several obstacles that interfere with this process. First, there are admittedly a number of doubts raised in relation to the experience of some of the international judges appointed in hybrid or internationalized courts.[84] Reportedly, not all of them have the relevant skills required for the specific type of work or the necessary commitment.[85] Second, experienced local professionals are not always willing to take "lessons" from their foreign colleagues.[86] The mere suggestion that capacity development should be taking place in this context undermines their position and triggers resistance to any form of incorporation of new skills or tools. Third, not all locals hired by the ad hoc Tribunals, the SCSL, or the ICC would go back to work in the local judiciary. People from the relevant jurisdictions who went and worked at these tribunals do not normally want to go back (at least not immediately).[87] The situation is particularly serious in Sierra Leone, where the low salaries and poor working conditions work as a great disincentive for locals to work as prosecutors or judges.[88] Finally, arguably the most serious obstacle is the legal and institutional context to which individuals employed in these tribunals return. Many

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or cantonal courts in BiH or at the local courts in Sierra Leone—have been negligible. The adoption of the War Crimes Strategy at the end of 2008 possibly exercised a positive, albeit still limited, influence in this respect. Interview with A-3.

[83] *See* Chehtman, *supra* note 1, at 567; Interview with A-18. *But see* DAVID TOLBERT & ALEKSANDAR KONTIC, FINAL REPORT OF THE INTERNATIONAL CRIMINAL LAW SERVICES (ICLS) EXPERTS ON THE SUSTAINABLE TRANSITION OF THE REGISTRY AND INTERNATIONAL DONOR SUPPORT TO THE COURT OF BOSNIA AND HERZEGOVINA AND THE PROSECUTOR'S OFFICE OF BOSNIA AND HERZEGOVINA IN 2009, at 29 (2008) (reporting that some judges criticized international prosecutors for "not following the national laws in drafting indictments").

[84] Interviews with A-3, A-15, A-25, B-16, D-1. To this, some locals would add "their unfamiliarity with the domestic system, with the historical context, with the constitutional structure of BiH, and with its political context." Interview with A-11.

[85] Interestingly, this has improved with the transfer of the selection process from the judge's own country to the High Judicial and Prosecutorial Councils. TOLBERT & KONTIC, *supra* note 83, at 31.

[86] Interview with A-36.

[87] Interview with A-28; *see also* Chandra Lekha Sriram, *Wrong-sizing International Justice? The Hybrid Tribunal in Sierra Leone*, 29 FORDHAM INT'L L.J. 472, 503 (2005). In this respect, the Court of BiH, which is already part of the judiciary in BiH and which has outlived international involvement, seems to be an interesting development. *See* Chehtman, *supra* note 1, at 569. On the relevance of the institutional position of the Court of BiH vis-à-vis the SCSL, see *infra* Part V.

[88] Interviews with A-26, B-14, B-15.

professionals who have worked at an international, hybrid, or internationalized tribunal have found that none of the relevant knowledge they may have acquired while working there is easily transposable to the local environment in which they now work.[89]

B. Transfer of Files and Information

A further element that works as an indirect way to develop local capacity is the transfer of information and evidence, sometimes through the transfer of files to the national legal system. The ICTY is a paradigmatic case in hand.[90] The triggering mechanism for this transfer was its Completion Strategy. Under this policy, the ICTY transferred a significant number of cases to local courts, including cases that had reached an indictment before the ICTY (Rule 11 *bis* cases), others that had been investigated by the ICTY but had not reached that stage (Category Two cases),[91] and those that had originally been investigated before local courts but had been sent to the ICTY for revision under the Rules of the Road Agreement.[92] These cases created an immediate backlog domestically, but they ultimately enhanced the possibilities of effectively conducting trials locally by virtue of the information and evidence contained in those files and the working relationships they created with the ICTY.[93] In December 2008, for instance, the ICTY launched its new content-enhanced website, which enabled local legal practitioners in BiH, *inter alia*, to access all public court records from the Tribunal since 1994 and which has since developed mechanisms together with the local jurisdictions to enhance collaboration.[94] BiH, for its part, enacted relevant legislation to be able to better use these materials.[95]

The impact of these materials on BiH's capacity to process war crimes cases was enormous. The general background of the crimes was obviously the same, and often there were overlaps of facts and evidence among cases before both tribunals.[96] Furthermore, a significant part of the evidence required for these cases

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[89] Interviews with B-1, B-2, B-14.

[90] *See* Chehtman, *supra* note 1, at Section 3 (offering a more detailed analysis).

[91] The OTP transferred to BiH fourteen cases involving approximately forty suspects. *Id.* at 557.

[92] For information on the Rules of the Road Agreement, see *infra* Part V.

[93] *See, e.g.*, Daryl A. Mundis, *The Judicial Effects of the "Completion Strategies" on the Ad Hoc International Criminal Tribunals*, 99 AM. J. INT'L L. 142, 146 (2005).

[94] President of the International Tribunal for the Former Yugoslavia, Letter dated May 14, 2009 from the President of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, addressed to the President of the Security Council, ¶ 49, U.N. Doc. S/2009/252 (May 18, 2009). Before this, the Registry had already given remote access to the internal judicial database so that local legal practitioners could search from BiH. Interview with A-34.

[95] *See generally* Law on Transfer of Cases from the ICTY to the Prosecutor's Office of BiH and the Use of Evidence Collected by ICTY in Proceedings Before the Courts in BiH, OFFICIAL GAZETTE OF BOSNIA AND HERZEGOVINA NO. 61/04, 46/06, 53/06, 76/06 (2004) (Bosn. & Herz.) (regulating the transfer of cases and the use of evidence collected by the ICTY, including issues such as the acceptance of facts established by binding ICTY decisions, the use of transcripts of testimony and records of depositions of witnesses given before the ICTY, the use of statements by expert witnesses, and the use of documents and forensic evidence collected by the ICTY).

[96] *See* Tarik Abdulhak, *Building Sustainable Capacities—From an International Tribunal to a Domestic War Crimes Chamber for Bosnia and Herzegovina*, 9 INT'L CRIM. L. REV. 333, 350 (2009)

was out of the reach of local courts, either in Croatia (HVO) or in Serbia (VRS). The ICTY was the only way to access them, since neither Croatia nor Serbia would grant BiH access.[97] Similarly, the ICTY provided local courts with access to witnesses who were under its protection and who otherwise would have been entirely out of reach.[98] The relevance that local judges give to adjudicated facts at the ICTY is a clear illustration of the importance of this kind of collaboration.[99] And yet, this kind of collaboration with the local judicial authorities needs to be internalized by the relevant international court—that is, this kind of information sharing requires sensitivity to the local context and a significant degree of consideration for local legal systems on the part of international institutions. The ICTY, for example, never considered that the evidence it was collecting would eventually be needed for processes before local courts, so absolutely no attention was paid to existing local laws.[100] This made some of the evidence more difficult to use effectively before local courts.[101] For this type of contribution to actually enhance the capacity of local legal systems, then, not only must local courts be able to provide the international or internationalized tribunal with certain assurances; the international or internationalized tribunal would also somewhat have to take into consideration the local perspective in terms of the collection and preservation of evidence.

Obtaining evidence for processes was not the only way in which this transfer of information enhanced the capacity of the Court of BiH. A significant aspect of this transference process, and of the concrete interest that the ICTY had in these cases being handled effectively, was the establishment of institutional links and working relationships between the relevant personnel at the ICTY and at the Court of BiH.[102] Local prosecutors or judges started travelling to The Hague not only for "protocol" or "study" visits; they went with concrete questions about concrete files or problems, which went from basic certification issues of evidence and organizing video links with protected witnesses to more complex issues.[103] For example, it took significant time for both tribunals to create a procedure and find a "common language" to deal with requests for assistance, and only this type of contact enabled them to speed up the turnaround time for a response.[104] In June

(citing Prosecutor v. Kunarac, Case No. IT-96-23-T & IT-96-23/1-T, Judgment (Int'l Crim. Trib. for the Former Yugoslavia Feb. 22, 2001) (to illustrate this overlap, as co-perpetrators were tried before the Court of BiH).

97 Interview with A-20.

98 Interview with A-36.

99 Interviews with A-15, A-34; *see also* Law on the Transfer of Cases from the ICTY *supra* note 95, art. 3.

100 Chehtman, *supra* note 1, at 558.

101 David Schwendiman, *Primacy and the Accountability Gap: A View from Bosnia and Herzegovina*, *in* 103 PROCEEDINGS OF THE ANNUAL MEETING (AM. SOC'Y OF INT'L L.), *supra* note 74, at 207, 209.

102 The ICTY added Rule 75 (H) to its Rules of Procedure and Evidence, which allowed local courts, prosecutors, and defense counsel to obtain confidential ICTY material. Interview with A-41. It also gave electronic access to nonconfidential OTP investigative material to a number of domestic war crimes prosecution offices on the basis of a MoU. *Id.*

103 Interviews with A-32, A-33, A-34.

104 This collaboration meant also, for instance, that the local courts would be able to voice their needs in a useful way. A judge from the BiH Court, for instance, suggested that the Registry create a website with instructions on how to file a request for assistance, a suggestion that The Hague ultimately took on board. Interview with anonymous interviewee.

2009, a new project allowed for liaison prosecutors from BiH to be assigned at the ICTY on a permanent basis to assist investigations before the local courts.[105] These developments also contributed to a greater sense of collaboration by creating the feeling that everyone had embarked on a common task, thereby enhancing horizontality in the relationships between the international and the domestic courts.[106]

Although this process was particularly useful in the context of BiH or the other former Yugoslav republics, the work performed by other international or internationalized tribunals can significantly enhance the capacity of local courts by sharing relevant evidence, establishing certain facts, and identifying key sources that would allow them to sustain complex charges against political or military leaders. The ICC would also normally be in a position to facilitate relevant evidence to the local courts after launching an investigation into a situation should a country require so in order to pursue its own investigations. There are, admittedly, certain important limitations to sharing this kind of material and developing this kind of relationship between international and local courts. Most significantly, perhaps, disclosure of evidence can work only if there are national systems in place for the effective protection of witnesses and preservation of evidence as well as guarantees that evidence will not be used to shield individuals from investigation by the international tribunal. Joint investigations with local authorities, such as those being timidly explored by the ICC in the DRC, may be a positive development in this respect.[107]

V. INSTITUTIONAL INCENTIVES AND CONSTRAINTS

Developing local capacities is a complex task. It is argued here that effective capacity development is not merely the result of successful (or less successful) initiatives. It is, by contrast, determined to a large extent by structural factors and institutional dynamics. This Part identifies some critical elements that need to be taken into consideration and elaborates on how they have played out in different situations. In particular, it argues that there are certain structural features, such as the institutional position of the international or internationalized tribunal, the law it is mandated to apply, and their exit or transition strategy, that are not usually considered as related to capacity development but which have a far greater importance than more evident direct and indirect means. Yet, critically perhaps, it is suggested that the particular incentives resulting from the division of labor between domestic and international or internationalized courts is what ultimately accounts for the success or failure of the international community's efforts in

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[105] This development also provided for prosecutors from Serbia and Croatia to come to the ICTY on a permanent basis. *See, e.g.*, 16th Annual Rep. of the Int'l Tribunal for the Prosecution of Perss. Responsible for Serious Violations of Int'l Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, Report of the International Tribunal for the Former Yugoslavia, transmitted by letter dated July 31, 2009 from the President of the International Tribunal for the Former Yugoslavia, ¶¶ 76–77, U.N. Doc. A/64/205-S/2009/394 (July 31, 2009).

[106] Chehtman, *supra* note 1, at 559.

[107] Interview with D-3. And yet, a military official complained that cooperation with the OTP "was only working in one direction"—that is, "while the DRC military . . . always provided immediate assistance to the ICC-OTP, the latter . . . never responded to requests for information regarding domestic cases." WITTE, *supra* note 52, at 26.

different contexts. For clarity of exposition, I shall first concentrate on certain institutional features of the relevant tribunals, and then move on to examine the balance and source of incentives that influence the conduct of the relevant actors.

A. Institutional Position, Applicable Law and Exit Strategy

The geographical location of a particular international or internationalized tribunal would normally be expected to make a difference in terms of facilitating its relationships with the local judiciary and its potential influence over domestic courts. However, of more significance is arguably its *institutional* position vis-à-vis local courts. Namely, the fact that the SCSL was situated in Freetown hardly entailed a significant impact on local courts given the entire lack of institutional relationships between them. This point may be further illustrated by reference to the Court of BiH.[108] With the exception of a few scattered cases, cantonal and district courts in BiH were not conducting genuine investigations for war crimes cases even long after the establishment of the Court of BiH. The fact that it was keeping the vast majority of cases sent back from the ICTY was very significant in freezing cases before district and cantonal courts. When the POBiH reviewed these files and a decision was made that the cantonal and district courts would handle a great proportion of them, this created both political momentum and a significant transfer of information for these cases to be pursued at the entity level.[109]

The issue of the law applicable by the relevant international or internationalized court may also contribute to enhancing local capacity. Through their jurisprudence, these tribunals can help clarify and develop the local understanding of certain important legal concepts that would be used in the context of prosecutions for international crimes cases. In this respect, the ad hoc Tribunals were in the weakest position to contribute to developing the jurisprudence of local courts, at least outside determinations of the content of customary norms. They could only rely on their prestige and on creating the right kind of incentives if they were to exercise any influence over local courts. The ICC may provide a more promising model in this context. By creating the obligation on its parties to implement the Rome Statute and criminalize domestically the conducts contained in it, it can revert the influence model provided for by the ad hoc Tribunals.[110] That is, despite the fact that local authorities can go beyond the content of the Rome Statute while implementing it, the ICC parties have created conditions under which local judiciaries can more easily follow the ICC rulings, at least with respect to the applicable substantive law.[111]

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[108] For a more detailed analysis, see Chehtman, *supra* note 1, at 563.

[109] Interview with A-18.

[110] *See, e.g.*, Harmen van der Wilt, *Equal Standards? On the Dialectics Between National Jurisdictions and the International Criminal Court*, 8 INT'L CRIM. L. REV. 229, 256 (2008) (stating that ad hoc tribunals are less convincing as authoritative sources from a legal point of view rather than a moral point of view, stemming from their limited jurisdiction and their application of their own statutes).

[111] Int'l Criminal Court [ICC], Review Conference of the Rome Statute of the ICC, May 31–June 11, 2010, *Taking Stock of the Principle of Complementarity: Bridging the Impunity Gap*, at 5, ICC Doc. RC/ST/CM/INF.2 (May 31, 2010), *available at* http://www.icc-cpi.int/iccdocs/asp_docs/ASP9/OR/RC-11-ENG.pdf.

This can be aptly illustrated by reference to Colombia. In a relatively short period of time the Colombian legal system drastically changed its approach to crimes against humanity from rejection to wide acceptance. Colombia lacks domestic provisions for crimes against humanity. In fact, a proposal to domesticate this area of international criminal law was rejected not long ago, and part of the reason for this was the inherent indeterminacy of such crimes under international law and its continuous reliance on international customary law.[112] And yet, the Colombian judiciary ended up applying the international law on crimes against humanity in domestic proceedings. To conceptualize them, the Supreme Court of Justice of Colombia went into particular detail to consider the content of Article 7 of the ICC Statute, which "codified international criminal categories scattered in various pacts [sic] and international treaties" and the relevant parts of the Elements of the Crimes.[113] Similarly, the Colombian Constitutional Court argued that given that crimes against humanity are not defined in any domestic statute, "judicial operators should refer to the Rome Statute of the International Criminal Court, in particular, to Article 7, and to the Elements of Crimes adopted by the Assembly of the States Parties."[114]

The situation is not necessarily better in the context of internationalized or hybrid courts. The Statute of the SCSL, for instance, provides that court with jurisdiction over certain domestic offences in accordance with Sierra Leonean law. These provisions, however, were never applied by the SCSL.[115] It is far from clear that the jurisprudence of the court would have been positively received by local courts. But this lack of interest in the use of Sierra Leonean law was perceived negatively by local legal professionals who are acquainted with the work of the court.[116] The situation at the Court of BiH might seem different. Being inserted in the local judiciary, its jurisprudence, in theory at least, could influence decisions at the level of entity and cantonal courts on important points of law.[117] However, the Court of BiH and the entity courts apply different procedural and substantive codes

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[112] This would have created possible frictions with the principle of strict legality under Colombian domestic law. ALEJANDRO APONTE CARDONA, EL DESPLAZAMIENTO FORZADO COMO CRIMEN INTERNACIONAL EN COLOMBIA 10–11 (2009).

[113] Corte Suprema de Justicia [C.S.J.] [Supreme Court] Sala de Casación Penal, diciembre 3, 2009, Decisión 32672, Salvador Arana Sus (p. 23, 25) (Colom.), *available at* http://www.verdadabierta.com/archivos-para-descargar/category/74-sucre?download=697%3Asentencia-contra-salvador-arana [hereinafter C.S.J. Decisión 32672] (trans. by author). In support, see Interview with C-6. On the Elements of Crimes, see Int 'l Criminal Court [ICC], *Elements of Crimes*, ICC-PIDS-LT-03-002/11_Eng (2011), *available at* http://www.icc-cpi.int/NR/rdonlyres/336923D8-A6AD-40EC-AD7B-45BF9DE73D56/0/ElementsOfCrimesEng.pdf (assisting the ICC, under the authority of Article 9 of the Rome Statute, in the interpretation and application of the Rome Statute to crimes under the ICC's jurisdiction).

[114] Corte Constitucional [C.C.] [Constitutional Court], mayo 10, 2007, Sentencia T-355-07 (p. 23) (Colom.), *available at* http://www.corteconstitucional.gov.co/relatoria/2007/T-355-07.htm (trans. by author).

[115] Some people suggest that the reason for this may be that some parts of Sierra Leonean criminal law is "unpalatable" vis-à-vis Western standards. Interview with B-16. However, the main reason for this seems to be that to apply local criminal law in the type of war crimes cases that the Court was dealing with—namely, with the sort of international law on attribution of responsibility—would have been "a terrible mess." Interview with B-19.

[116] Interview with B-1.

[117] These new laws are not in use before the entity courts for war crimes cases. The reason for this is allegedly to avoid retroactive application of the criminal laws. *See* Interviews with A-7, A-22, A-26.

in war crimes cases.[118] Thus, while the Court of BiH has been developing its own jurisprudence on issues such as plea bargaining, crimes against humanity, joint criminal enterprise, command responsibility, and so on, the cantonal and district courts followed altogether different patterns.[119]

Finally, the exit strategy of any given tribunal has been increasingly acknowledged as an opportunity for developing local capacity. The completion strategies of the ad hoc Tribunals have raised a number of questions, many of which relate to their concrete impact on the capacity of local legal systems to deal with cases fully or partially investigated by them. The SCSL also named its own exit strategy a "completion" strategy, but this hardly entailed a serious concern with a systematic effort towards developing domestic capacities. Despite the fact that the ICC is a permanent institution, its involvement with any particular situation would be limited in time. Hence, the finalization of its work in any particular country should also entail a concern for domestic prosecutions being conducted *also* when the ICC has left. Let us examine the different exit strategies implemented so far.

The ICTY, for instance, aims to wrap up its work in the near future.[120] The Tribunal itself will be dismantled. There are a number of initiatives in this context purported to enhance local legal capacities, often termed "Legacy" issues. For instance, UNICRI and the ICTY published a Manual of Developed Practices that covers key areas such as investigation, indictment, case and trial management, judgement drafting, appeals, victims and witness protection, etc.[121] Similarly, UNICRI, OSCE/ODHIR, and the ICTY jointly organized a project on "Supporting the Transition Process: Lessons Learned and Best Practices in Knowledge Transfer" with the "overall goal of identifying best practices in the knowledge- transfer arena so as to improve greatly the delivery of future professional-developmental and capacity-building programmes."[122] As I have argued elsewhere, "[i]t is too early to assess whether these specific initiatives will have an impact on the capacity of professionals in BiH (and elsewhere) to process war crimes cases. But with no real incentives to put them into practice, there is reason to be sceptical about their actual potential to contribute to this goal."[123]

Initially, the SCSL also lacked an exit plan. The awareness of the need to design a "completion strategy" in its case was also partially generated by the experience in the ad hoc Tribunals. There are three significant differences in the SCSL's case. First, as a tribunal established in Freetown, it would have been far easier for it to become part of the Sierra Leonean judiciary. This could have made it a tribunal increasingly administered by Sierra Leoneans, an interesting addition to

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[118] Chehtman, *supra* note 1, Part 3.A.

[119] Interview with A-22.

[120] Mladic's trial is scheduled to finish by end of July 2016. *See About the ICTY: Completion Strategy*, UNITED NATIONS: INT'L CRIM. TRIBUNAL FOR FORMER YUGOSLAVIA, http://www.icty.org/sid/10016 (last visited Feb. 27, 2013).

[121] *See* INT'L CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA & UNITED NATIONS INTERREGIONAL CRIME & JUSTICE RESEARCH, ICTY MANUAL ON DEVELOPED PRACTICES (2009), *available at* http://www.unrol.org/doc.aspx?d=2300 (providing guidance, as a part of the legacy of the ICTY, to those concerned in the prosecution of alleged war criminals). An anonymous interviewee noted that the Manual was such a compromised document that by the time there was agreement on its content, it was hardly useful to anyone with basic experience in the area.

[122] OSCE ET AL., *supra* note 34, at 7.

[123] Chehtman, *supra* note 1, at 561.

the local judiciary in several respects. Yet such an approach would have faced insurmountable legal and political obstacles.[124] The second relevant difference was that the SCSL had no cases or files to transfer to any local courts (with the exception of that of Johnny Paul Koroma).[125] Local courts had no jurisdiction over international crimes perpetrated in Sierra Leone, and there are no international crimes provided for under Sierra Leonean law. As it will be examined at greater length below, this makes the capacity development aspect of its completion strategy far less important both to the Special Court and to local authorities than in the ICTY's case. Finally, the completion phase of the work of the Special Court was also too late for a tribunal situated in Freetown to start becoming concerned with local capacity. The SCSL had not profited from any political capital it could have gained through working with the local judiciary since its creation.[126]

The Court of BiH, finally, provides for a different exit model altogether than the ICTY and the SCSL. Its transition from a mixed institution to an entirely national one was planned around the phasing out of international involvement.[127] The international personnel at the Court of BiH were initially set up to finalize their involvement by the end of 2009, i.e., five years after it started functioning.[128] By 2008, the structure of having two international judges and one local judge on panels of war crimes trials was changed to two national judges and one international judge. The number of internationals working at the POBiH and the Registry had also decreased.[129] The advantages of this phasing out strategy over other forms of termination are numerous. Among them, I will highlight the "development of physical and institutional structures outliving the Court's international involvement (and even war crimes cases) and the likelihood of local professionals staying at the Court."[130] Therefore, it seems a more promising model in terms of enhancing the sense of ownership over the process of criminal accountability and its sustainability.

However, this experience has raised a number of concerns. The ICLS Final Report on the Sustainable Transition of the Registry and the International Donor Support to the Court of BiH and the Prosecutor's Office of BiH in 2009 identified several areas or issues as posing a serious, grave, or substantial risk if internationals were to leave at the end of 2009 as initially planned.[131] First, there was a risk of problems with adherence to international standards in issues of substantive international criminal law, or political pressure over judges and prosecutors and accusations of ethnic bias. Second, there was a risk of problems in securing adequate leadership and support with complex investigations within the POBiH. Last, there was a risk of problems with providing support and protection to victims and witnesses. Most observers took issue with the timeframe initially

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[124] Interviews with B-14, B-16, B-18.

[125] Email exchange with Interviewee A-38. Although Johnny Paul Koroma was assumed dead his body/remains have not yet been found. The Prosecutor is in contact with national authorities on a possible Rule 11 *bis* transfer.

[126] Interviews with B-12, B-20.

[127] Chehtman, *supra* note 1, at 569.

[128] This deadline was later extended. Chehtman, *supra* note 1, at 569.

[129] *See, e.g.*, Interviews with A-9, A-18.

[130] Chehtman, *supra* note 1, at 569.

[131] TOLBERT & KONTIC, *supra* note 83, at 40–47.

provided.[132] One thing that must be noted is that the five-year timeframe should be considered in the context in which it was agreed. At the time, most of the money allegedly came from the desire to shut down the ICTY by transferring 11 *bis* cases; it was not a bid to create local capacity in the long term.[133]

In any event, there are two main problems with this particular strategy. First, the timeframe was clearly too short to deal with the complex task that was put before the Court of BiH. This court was a brand new institution, in a brand new legal framework, receiving an enormous amount of files (some of which had been investigated, some of which had not, many of which overlapped) to prosecute, classify, and in many cases transfer to other courts in the country.[134] Furthermore, the phasing out strategy in this kind of internationalized tribunal probably would have worked better if it attached the end of the international involvement to progress (i.e., meeting certain benchmarks) rather than to a fixed date, and if it incorporated concrete incentives for the relevant actors (often financial) to achieve this progress in a timely fashion.[135] All in all, it still constituted a significant step forward vis-à-vis other models, such as the SCSL.

B. Creating the Right Kind of Incentives

Any comprehensive analysis of the impact of international or internationalized tribunals in developing local capacities in the justice sector should be limited neither to direct or indirect capacity development nor to the institutional features that largely facilitate or impede it. Effective capacity development has been, to a significant extent, the result of adequate predisposition by the relevant stakeholders. This, in turn, is largely a matter of what kind of incentives they have for improving practice. It is submitted here that the existence of these incentives depends largely on the prevailing institutional dynamics between the domestic and the international system, namely, whether they establish relationships of collaboration, competition, resentment, or mere indifference. Furthermore, it is argued that such dynamics are shaped to a large extent by the prevalent division of labor between the international and the domestic tribunals. Let us turn to this issue by comparing the different experiences at the ICTY, the SCSL, and the ICC.

Through the 1990s, the prevailing narrative was one of international criminal law being largely self-sufficient. The ICTY had no concrete interest in courts in the region being capable of dealing with war crimes cases.[136] Developing local capacity was not perceived as part of the ICTY's mandate: They had "a job to do and they were doing it well, and by doing that they were making a substantive contribution."[137] This mindset is consistent with the Rules of the Road Agreement (RoR), concluded in 1996.[138] The RoR accorded the ICTY the power to review case

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[132] *See, e.g.*, Abdulhak, *supra* note 96, at 348 (discussing the consequences of establishing a five-year transition period).

[133] Interview with A-38.

[134] Chehtman, *supra* note 1, at 563.

[135] I am grateful to Judge Shireen Fisher for her insights on this matter.

[136] Chehtman, *supra* note 1, at 554.

[137] Interview with A-37.

[138] The RoR Agreement was not intended to help develop local capacities or to guarantee fair trials. *See* Donlon, *supra* note 79, at 264.

files before the domestic courts of BiH before they could issue an indictment.[139] This procedure was introduced to ensure that national courts met international legal standards in light of growing concerns over the possibility of arbitrary arrests and unfair trials.[140] It is often suggested that it was largely successful, particularly with regards to ensuring freedom of movement in the region.[141]

Yet despite its important benefits, this arrangement also created a backlog at the ICTY and a chilling effect both upon prosecutions by a few willing domestic authorities and upon judicial reform more generally.[142] The RoR mechanism shaped not only the formal relationship between domestic courts and the ICTY, but also contributed to shaping a relationship of distrust, and even resentment, between legal professionals working at the national and the international level.[143] More importantly, the RoR relieved local authorities from the expectation of having to conduct effective prosecutions in war crimes cases. After all, the cases were in fact to be returned to what was presented as "a biased and frequently corrupt judicial system."[144]

The whole structure of incentives changed for the ICTY after the early 2000s. Security Council members started to have serious concerns about the rising costs of the ICTY and the potential infringement of rights due to slow trials.[145] An exit strategy became of the essence. In this context, the OTP started looking for alternative fora in which to try indictees, and the local courts in the region were the obvious candidates.[146] New Rule 11 *bis* of ICTY Rules of Procedure and Evidence provided that the ICTY could transfer cases with a confirmed indictment to the domestic judiciaries of local tribunals.[147] The exit strategy quickly became a "completion" strategy, making the ICTY develop a prompt and strong incentive to enhance the capacity of local legal systems.[148] This change of circumstances is crucial to explaining why the ICTY got involved in pushing for domestic

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[139] Although the RoR also applied to Croatia and Serbia, the driving force behind them was arguably the situation in BiH. *See* Chehtman, *supra* note 1, at 559.

[140] Lillian A. Barria & Steven D. Roper, *Judicial Capacity Building in Bosnia and Herzegovina: Understanding Legal Reform Beyond the Completion Strategy of the ICTY*, 9 HUM. RIGHTS REV. 318, 321–22 (2008); *see also* Ulrich Garms & Katharina Peschke, *War Crimes Prosecution in Bosnia and Herzegovina (1992–2002*), 4 J. INT'L CRIM. JUST. 258, 273 (2006).

[141] Interviews with A-33, A-40.

[142] Chehtman, *supra* note 1, at 556.

[143] HUM. RIGHTS CTR., INT'L HUM. RIGHTS LAW CLINIC, UNIV. OF CAL. BERKELEY & CTR. FOR HUM. RIGHTS, UNIV. OF SARAJEVO, JUSTICE, ACCOUNTABILITY AND SOCIAL RECONSTRUCTION 43 (2000). This study concluded that "these professionals viewed the ICTY as unresponsive and detrimental to the ability of Bosnian courts to conduct national war crimes trials." *Id*. at 36.

[144] Donlon, *supra* note 79, at 264.

[145] Interview with A-36. As this interviewee pointed out, after the 9/11 attacks, the interest in the conflict in the former Yugoslavia (and Rwanda) somewhat faded away. S*ee also* Ralph Zacklin, *The Failings of Ad Hoc International Tribunals*, 2 J. INT'L CRIM. JUST. 541, 545 (2002) (highlighting the costs, the bureaucracy and overall inefficiency of the ad hoc Tribunals).

[146] Chehtman, *supra* note 1, at 558.

[147] It was ultimately Rule 11 *bis* cases that catalyzed the ICTY's heavy investment in developing local capacity. The incentive this kind of transfer creates is further illustrated by events in Rwanda. After the completion strategy at the ICTR was launched, Rwanda made several amendments to local laws, including the abolition of the death penalty and solitary confinement, and created a particular procedural law applicable to cases transferred from the ICTR or other states. All of this was essentially in connection with the refusal of the ICTR to transfer cases under Rule 11 *bis*. *See* HOROVITZ, *supra* note 74, at 65–66.

[148] Interviews with A-12, A-36.

prosecutions for war crimes. As a result, the ICTY became heavily involved in creating and securing funding for the war crimes section at the Court of BiH.[149] It also started to conduct training sessions, provide technical support on the institutional framework of the Court of BiH, and help build working relationships by sending files to the court and giving the court access to an enormous amount of information on war crimes that occurred in the region. Furthermore, the transfer of cases also created the relevant incentives for domestic actors to enhance their capacity to process war crimes cases.[150] Until 2002, Bosnia had "invested relatively few resources in judicial reform efforts."[151] It was a matter of pride and self-respect for the BiH judiciary to reclaim the capacity to conduct investigations and trials for this type of case;[152] this policy also favored BiH's broader political interest in ultimately being admitted to the EU.[153]

Moreover, the transfer of cases under Rule 11 *bis* was subject to certain conditions—the referral bench needed to be "satisfied that the accused [would] receive a fair trial and that the death penalty [would] not be imposed or carried out"[154]—and the Tribunal maintained the authority to recall a transferred case if any of these conditions was not met.[155] Even if it was relatively clear that the ICTY would not recall a case already transferred to a local court, this possibility was still perceived as a real threat, as no state wanted to go through the political embarrassment of having a case recalled.[156] In fact, monitoring agencies and relevant organs at the ICTY allegedly "g[a]ve priority to strengthening the capacity of the national justice systems" in this context.[157] Ultimately, the division of labor between the ICTY and (in particular) the Court of BiH under the Completion

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[149] Interviews with A-36, A-38; *see also* Press Release, Judge Claude Jorda, Address by His Excellency, Judge Claude Jorda, President of the ICTY, to the UN Security Council President (Oct. 30, 2002), http://www.icty.org/sid/8057 (demonstrating the President's role in advocating the need for collaboration between the ICTY and the Court of BiH).

[150] It was certainly not the only incentive. Part of the appeal was also the possibility of BiH entering the European Union. *See, e.g.*, Interviews with A-12, A-23, A-35.

[151] WILLIAM W. BURKE-WHITE, THE DOMESTIC INFLUENCE OF INTERNATIONAL CRIMINAL TRIBUNALS: THE INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA AND THE CREATION OF THE STATE COURT OF BOSNIA & HERZEGOVINA 7 (2010), *available at* http://lsr.nellco.org/cgi/viewcontent.cgi?article=1190&context=upenn_wps. For similar claims in Serbia and Croatia, see DIANE F. ORENTLICHER, OPEN JUSTICE SOC'Y INITIATIVE, SHRINKING THE SPACE FOR DENIAL: THE IMPACT OF THE ICTY IN SERBIA 60 (2008), *available at* http://www.opensocietyfoundations.org/sites/default/files/serbia_20080501.pdf; THIERRY CRUVEILLER & MARTA VALIÑAS, INT'L CTR. FOR CRIM. JUSTICE, CROATIA: SELECTED DEVELOPMENTS IN TRANSITIONAL JUSTICE 14 (2006), *available at* http://ictj.org/sites/default/files/ICTJ-FormerYugoslavia-Croatia-Developments-2006-English_0.pdf.

[152] Interviews with A-5, A-11, A-15, A-25.

[153] Interviews with A-8, A-35.

[154] These requirements were later specified. They included several procedural safeguards and a requirement that the trial process complied with international human rights standards. U.N. Secretary-General, *Letter dated 17 June 2002 Addressed to the President of the Security Council*, 18. UN Doc. S/2002/678 (June 19, 2002). *See also* Jens Dieckmann & Christina Kerll, *UN Ad Hoc Tribunals Under Time Pressure: Completion Strategy and Referral Practice of the ICTY and ICTR from the Perspective of the Defence*, 8 INT'L CRIM. L. REV. 87, 100–01 (2008).

[155] Int'l Crim. Trib. for the Former Yugoslavia, R. EVID. AND P. 9 (II), 11 *bis* (F).

[156] Interviews with A-16, A-30.

[157] Pipina Th. Katsaris, *The Domestic Side of the ICTY Completion Strategy: Focus on Bosnia and Herzegovina*, 78 INT'L REV. OF PENAL L. 184, 190 (2007). No case was transferred back to the ICTY—even after Stankovic's escape in May 2007.

Strategy allowed for the creation of a particular balance of incentives which largely favored effective capacity development in BiH.

The SCSL further supports the thesis defended here in quite a different way. The SCSL was located in Freetown but it was entirely disconnected, both institutionally and physically, from the Sierra Leonean political and judicial authorities. Both the SCSL and the Supreme Court of Sierra Leone recognized this explicitly.[158] To illustrate further, although Article 17 of the Special Court Agreement regulated cooperation between the SCSL and the Sierra Leonean government, no arrangements were made regarding cooperation or information sharing between them.[159] Again, the prevailing self-understanding of the SCSL is one of an international tribunal largely concerned with talking directly to the international community, breaking new ground with its case-law. The SCSL is largely absorbed by its own problems and difficulties and considers itself to be completely divorced from the situation in local courts in Sierra Leone.[160] These elements, together with the usual constraints on funds and time, and the need to appear independent from the Sierra Leonean government, explain why extremely few capacity development initiatives have been undertaken by the SCSL in Sierra Leone.

At the same time, the Sierra Leonean government strategically distanced itself from the SCSL as a political statement of it having nothing to do with the trials going on there.[161] While still fighting for its own legitimacy, the government sought not to be viewed as endorsing the prosecution of certain pro-government militia leaders, who were considered by some people in Sierra Leone as national heroes,[162] or connected with proceedings that touched upon extremely sensitive political issues. Furthermore, local courts and legal professionals had generally little interest in the SCSL and in its becoming involved in local capacity development. In fact, there was some mild hostility towards the court that was fuelled by the way it was established, its comparatively privileged material conditions, and its indifference towards local courts.[163] Accordingly, it is often suggested that outside the limited context of Witness and Victim's protection and the training of police officers, the most the SCSL contributed to SL capacity was the creation of a glossary containing most legal terms in local languages.[164]

Most interestingly, this trend hardly changed with the adoption of its "Completion Strategy." There were at least three concrete differences with the

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[158] *See* Prosecutor v. Morris Kallon, Sam Hinga Norman & Brima Bazzy Kamara, SCSL–2004–14–AR72(E), SCSL–2004–15–AR72(E), SCSL–2004–16–AR72(E), Decision on Constitutionality and Lack of Jurisdiction ¶¶ 42, 49–53 (Mar. 13, 2004) (Sierra Leone); Prosecutor v. Sam Hinga Norman, Moinina Fofana & Allieu Kondewa, SCSL-04-14-T-617, Dissenting Opinion of Hon. Justice Bankole Thompson on the Decision on Motions for the Issuance of a Subpoena ad Testificandum ¶¶ 4, 5 n.3 (June 13, 2006) (Sierra Leone), *available at* http://www.sc-sl.org/CASES/ProsecutorvsFofanaandKondewaCDFCase/TrialChamberDecisions/tabid/153/Default.aspx; Issa Hassan Sesay v. President of the Special Court, SC 1/2003, at 10 (Oct. 14, 2005) (Sierra Leone).

[159] HOROVITZ, *supra* note 74, at 48.

[160] Interviews with B-2, B-11, B-15, B-16, B-18.

[161] *See, e.g*., Interviews with B-12, B-17; *see also* TOM PERRIELLO & MARIEKE WIERDA, INT'L CTR. FOR TRANSITIONAL JUSTICE, THE SPECIAL COURT FOR SIERRA LEONE UNDER SCRUTINY 20 (2006), *available at* http://ictj.org/sites/default/files/ICTJ-SierraLeone-Special-Court-2006-English.pdf.

[162] *See* HOROVITZ, *supra* note 74, at 50.

[163] Interviews with A-38, B-1, B-11, B-15.

[164] Interviews with A-38, B-7, B-12, B-15.

situation at the ICTY that largely account for its lack of impact on local capacities. First, there were no cases to be transferred to Sierra Leonean courts; the only possible transfer under Rule 11 *bis* would have been the case of Johnny Paul Koroma. Although assumed dead, his remains were never found and their discovery was perceived as largely implausible.[165] Second, the amnesty in the Lomé Agreement and the Sierra Leonean authorities' lack of political will made it highly unlikely that there would be new domestic prosecutions for the events that had taken place during the conflict. Accordingly, the Sierra Leonean Government has often been characterized as a free-rider on the work of the Special Court.[166] And finally, donors were not prepared to invest heavily in Sierra Leone and its judiciary after the completion of trials.[167] This combined picture resulted in a lack of real incentives both for the SCSL and the international community engaging in capacity development for war crimes trials in Sierra Leone, and a lack of real incentives for the local courts to be receptive to, let alone welcoming of, such an endeavour.

The ICC is the hardest case to assess in this respect. Before an investigation is launched, its position could be perceived as roughly akin to that of the ICTY under its Completion Strategy. Under the complementarity principle, which entails that the ICC may only assert jurisdiction over a case that has not been already investigated or prosecuted by a local court, the ICC's main interest would be for *local* courts to conduct impartial and reliable investigations.[168] This seems particularly true under the policy of "positive complementarity," which requires the ICC to encourage national proceedings wherever possible rather than compete with national jurisdictions.[169] Judging by its impact on the Colombian judiciary, the contribution of the ICC in terms of developing local capacity has had mixed effects. This may be unsurprising since the ICC lacks an explicit mandate to engage in capacity development initiatives.[170] But the ultimate explanation of the overall failure of the ICC, in this respect, seems to lie elsewhere.

This positive approach to complementarity would involve altering the balance of incentives that an unwilling state faces so that it would initiate domestic prosecutions.[171] In Colombia, the ICC's approach has been largely connected with the threat of its opening an investigation. The OTP may well decide to investigate according to the general perception among Colombian authorities (and other observers), if Colombia did not carry out genuine trials for international crimes.[172] This approach is illustrated by the messages conveyed by the ICC prosecutor at

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[165] Email exchange with Interviewee A-38, *supra* note 125 and accompanying text.

[166] Interviews with A-38, B-18. Similarly, it has been argued that in East Timor the rationale for internationalized tribunals under UNTAET was "to externalize the political and diplomatic costs of prosecution vis-à-vis Indonesia from the weak East Timorese authorities onto international actors." CHEHTMAN & MACKENZIE, *supra* note 63, at 31.

[167] Interview with A-38.

[168] *See* Rome Statute of the International Criminal Court (last amended 2010), pmbl., ¶ 10 arts. 1, 17–19, July 17, 1998, U.N. Doc. A/CONF.183/9.

[169] ICC Statement, Luis Moreno Ocampo, Former Prosecutor for the International Criminal Court, Statement to Diplomatic Corps (Feb. 12, 2004), http://www.iccnow.org/documents/OTP StatementDiploBriefing12Feb04.pdf.

[170] Interviews with C-13, D-3.

[171] William W. Burke-White, *Implementing a Policy of Positive Complementarity in the Rome System of Justice*, 19 CRIM. L.F. 59, 70 (2008).

[172] Interviews with C-3, C-12.

critical junctures of the Justice and Peace Law (JPL) process, the transitional justice mechanism established in Colombia to deal mainly with crimes committed by paramilitary forces.[173] The OTPs approach is also implicit in its requests for information concerning ongoing proceedings and in its more recent report on cases under preliminary examination, as well as its Interim Report on Colombia in particular.[174] As a result of this overall strategy, the ICC is commonly referred to as "el Coco" in the local jargon—an ogre in children's fairy tales—indicating a policy perhaps too focused on providing sticks as its preferred way to ensure compliance.[175] At its most explicit, the Supreme Court of Colombia argued that "in the event that any authority seeks impunity for the crimes tried in the present case, copy of those proceedings will be sent to the International Criminal Court so it can proceed to investigate them, as that would show that there are institutions in Colombia which obstruct the effective administration of justice."[176]

This policy has reportedly had some positive effects over Colombia's transitional justice process of accountability. It may have provided the original JPL framework, which contained nominal penalties, with more serious sanctions and a more ambitious framework for developing a historic record of the atrocities.[177] The ICC has promoted progress in the legal treatment of gross human rights violations by encouraging the incorporation of evidentiary standards sensitive to the difficulties that arise in the case of sexual offences and allowing the Supreme Court of Colombia to push for investigations into the systematic forms of criminality, patterns of violence, and enhanced procedural rights for victims.[178] Finally, the threat of ICC prosecution may have helped widen the groups that are under domestic investigation by fostering prosecutions of state officials.[179]

But there are also negative effects connected with this particular "sticks-only" approach. This threat, it has been argued, "may end up undermining the whole process by directing it towards unrealistic goals."[180] The Supreme Court of Colombia, for instance, changed its previous jurisprudence allowing partial attribution of facts, thereby forcing prosecutors to conduct investigations into the

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[173] Interview with C-4.

[174] In December 2011, the ICC Office of the Prosecutor (OTP) issued a Report on Preliminary Examination Activities addressing the situation in Colombia and focusing on the number and actual progress of investigations. OFFICE OF THE PROSECUTOR OF THE INT'L CRIMINAL COURT, REPORT ON PRELIMINARY EXAMINATION ACTIVITIES (2011), *available at* http://www.icc-cpi.int/NR/rdonlyres/63682F4E-49C8-445D-8C13-F310A4F3AEC2/284116/OTPReportonPreliminary Examinations13December2011.pdf. In November 2012, the OTP issued an Interim Report on Colombia indicating that Colombia was generally fulfilling its duties under the complementarity principle, though it needed to improve its policy concerning the prioritization of cases and avoid shielding potential suspects if it wanted to avoid the opening of an investigation. OFFICE OF THE PROSECUTOR OF THE INT'L CRIMINAL COURT, SITUATION IN COLOMBIA: INTERIM REPORT ¶ 198–99 (2012), *available at* http://www.icc-cpi.int/NR/rdonlyres/3D3055BD-16E2-4C83-BA85-35BCFD2A7922/285102/OTPCOLOMBIAPublicInterimReportNovember2012.pdf [hereinafter SITUATION IN COLOMBIA].

[175] Interviews with C-2, C-4, C-12.

[176] C.S.J. Decisión 322672, *supra* note 113, at ¶ 11.3.

[177] Corte Constitutional [C.C.] [Constitutional Court], Decisión C-370/2006 (¶¶ 6.2.1.4.7, 6.2.3.1.5) (Colom.), *available at* http://www.corteconstitucional.gov.co/RELATORIA/2006/C-370-06.htm. For a more detailed analysis, see Lisa J. Laplante & Kimberly Theidon, *Transitional Justice in Times of Conflict: Colombia's Ley de Justicia y Paz*, 28 MICH. J. INT'L L. 49, 86–101 (2006).

[178] Interview with C-2.

[179] SITUATION IN COLUMBIA, *supra* note 174, at §§ II.A.2, II.B.2.

[180] Interview with C-9.

full facts disclosed by defendants in their confession hearings.[181] This entailed, critics argue, that in a case such as that against *El Iguano*, who has reputedly been implicated for around 4,000 crimes, the Prosecutor's Office would have to fully document each of them in order to bring him to trial under the JPL framework.[182] But the most serious implication of this take on the "positive" approach to complementarity is arguably the antagonizing effect it has had over the relationship between domestic authorities and the ICC. As it has been put by an interviewee, "this 'observation' phase is an obnoxious term; . . . [i]t is perceived as the kind of strategy the IMF follows, and which is often strongly resisted domestically."[183] The shared sense in Colombia's judiciary seems to be one of hostility towards the ICC, rather than collaboration. In fact, it has been suggested that the only thing the Colombian administration, the Constitutional Court, and the Supreme Court have had in common with regards to the JPL and the other "parapolitics" issues on which they have had strongly conflicting positions, is their shared view regarding the need to avoid an intervention by the ICC.[184]

Furthermore, relying on this kind of incentive puts the ICC in a difficult position. The situation in Colombia has been under preliminary investigation for almost nine years now, and one may wonder how much longer it would continue to have the desired effect on the local authorities. Now, if the OTP were to take Colombia off the list of situations under observation, thereby taking this stick away, it may have a powerful detrimental effect on the ongoing domestic process of accountability.[185] But if the ICC were to open an investigation on Colombia, this would also lift much of the political incentive pushing for domestic trials.[186] Intervention would be perceived by the local judiciary as a statement of inability and would create the temptation to free-ride on the work of the court (à la SCSL). It would thereby weaken the domestic legal system in terms of its capacity to conduct investigations locally by having a deep destabilizing effect. Ultimately, Colombia presents certain significant advantages over other jurisdictions under preliminary examination: It has an effective and largely independent judiciary and is under close scrutiny by the influential Inter-American human rights bodies. It is critical that more positive incentives are inserted into the policy of positive

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[181] Corte Suprema de Justicia [C.S.J.] [Supreme Court], Sala de Casación Penal julio 31, 2009, Augusto Ibáñez Guzmán, Decisión 31539 (¶¶ 1.4–1.6) (Colom.).

[182] Admittedly, among other deficits, the Justice and Peace jurisdiction decision under review by the Supreme Court lacked any analysis of the systematic criminality under investigation, thereby undermining the correct legal conceptualization of the offences as crimes under international law. Yet, some object that the Supreme Court decision ended up going too far while trying to correct this. Interview with C-6.

[183] Interview with C-3.

[184] *E.g.*, Interviews with C-2, C-3, C-14.

[185] Interview with anonymous interviewee. The situation in Kenya seems to confirm this claim. *See* Héctor Olásolo Alonso & Enrique Carnero Rojo, *Aplicación Práctica del Análisis de Admisibilidad de Situaciones: la Situación en la República de Kenia*, *in* HÉCTOR OLÁSOLO ALONSO, ENSAYOS DE DERECHO PENAL Y PROCESAL INTERNACIONAL 105–08 (2011) (suggesting that the initial agreement between the OTP and the Kenyan authorities concerning the prosecution before domestic courts of crimes perpetrated during the post-electoral violence ended up with only a few scattered cases concerning very minor incidents, and no cases against those bearing the greatest responsibility).

[186] *E.g.*, Interviews with C-3, C-4, C-6.

complementarity to improve its performance in terms of enhancing the capacity of local systems to process these cases themselves.[187]

VI. CONCLUSION

This Article advocates a holistic approach to capacity development in international criminal justice. It provides a critical account of existing efforts by examining in detail and contrasting the impact of the ICC, the ICTY, the SCSL and the Court of BiH on their relevant domestic legal systems. It employs and further refines an analytic framework which distinguishes direct and indirect capacity development initiatives, from other structural features of these tribunals, such as their institutional position vis-à-vis the local judiciary, the law applicable before them, and the main features of their exit or completion strategy. It argues that, although the latter have not been factored in to capacity development efforts nor in the relevant academic literature, they are far more determinative of the success of different policies and initiatives. Ultimately, though, the Article contends that effective capacity development is to a significant extent the result of adequate predisposition by the relevant stakeholders which, in turn, is largely a matter of what kind of incentives they have for engaging with their national or international counterparts and for improving practice. Critically, it is submitted that the existence of these incentives largely depends on the prevailing institutional dynamics shaped by the prevalent division of labor between the international and the domestic tribunals. Namely, whether the division of labor establishes relationships of collaboration, competition, resentment, or mere indifference.

[187] It has been argued that the recently adopted Legal Framework for Peace ("Marco Jurídico para la Paz"), with its authorization to the Head of State to exclude individuals from criminal prosecutions, and the extension of the military jurisdiction may significantly undermine the still fragile achievements in the accountability process. *See* Olásolo Alonso, *supra* note 3, at 48.

ANNEX A:
LIST OF INTERVIEWEES*

Ms Evelyn Anoya, *Court Management and Support Section – ICTY*
Mr Gabriel Arias, *ICTJ Colombia*;
Mr Mohamed A. Bangura, *Trial Attorney, SCSL*
Ms Stephanie Barbour, *OSCE*
Judge Snezhana Botsusharova-Doicheva, *Court of BiH*
Judge Nicholas Browne-Marke, *Sierra Leone's High Court*
Mr Leonardo Augusto Cabanas Fonseca, *JPL Prosecutor*
Mr Toby Cadman, *POBiH*
Ms Montserrat Carboni, *OTP – ICC*
MsClaire Carlton-Hanciles, *Defense Attorney – SCSL*
Mr Amir Cengic, *Chambers – ICTY*
Prof. Manuel José Cepeda, *former Judge of the Colombian Constitutional Court*
Prof. Andrés Cifuentes, *University of Los Andes*
Mr Tunde Cole, *Solicitor-General – Sierra Leone*
Ms Clare Da Silva, *Defense team – SCSL*
Mr Francesco De Sanctis, *OSCE*
Ms Carla del Ponte, *Prosecutor of the ICTY and ICTR*
Ms Ana Díaz, *Researcher Comisión Colombiana de Juristas*
Ms Lucia Dighiero, *Registry & Witness Support Section at Court of BiH*
Ms Bozidarka Dodik, *Prosecutor at the POBiH;*
Judge Teresa Doherty, *SCSL*
Ms Fidelma Donlon, *OHR and Deputy Registrar at the Court of BiH and SCSL Advisor for Residual Issues*
Ms Neda Dojcinovic, *ICRC-BiH*
Mr Lansana Dumbuya, *Sierra Leonean Barrister*
Judge Shireen Fisher, *Court of BiH , SCSL*
Judge Lester M. González, *JPL – Colombia*
Mr Carlos González, *OAS – Colombia*
Mr Raffi Gregorian, *OSCE*
Dr Fabricio Guariglia, *OTP – ICC*
Ms Diana Guzman, *Researcher at Dejusticia*
Mr Matias Hellman, *Office of the President – ICTY*
Mr Refik Hodzic, *ICTY Office in Sarajevo*
Mr Kevin Hughes, *Legal Officer at Court of BiH*
Dr Manuel Iturralde, *University of Los Andes, Colombia*
Ms Nerma Jelacic, *Media Outreach – ICTY*
Judge Uldi T. Jiménez López, *JPL – Colombia*
Ms Hilda Juracic, *Victims and Witness Section – ICTY*
Mr Abdul Serry-Kamal, *former Minister of Justice and Attorney General – Sierra Leone*

* This list does not include individuals who have requested to remain anonymous.

Judge Jon Kamanda, *SCSL*
Ambassador Allieu Ibrahim Kanu, *former Sierra Leone's Ambassador to the UN*
Ms Musu Kamara, *Registrar of Court of Appeals – Sierra Leone*
Ms Pipina Katsaris, *OSCE*
Judge George Gelaga King, *SCSL*
Mr Zdravko Knezevic, *Chief Federal Prosecutor of BiH*
Mr Stephen Kostas, *Legal Officer – SCSL*
Judge Minka Kreho, *Court of BiH*
Mr Aleksandar Kontic, *OTP - ICTY*
Ms Marta López, *OAS – Colombia*
Ms Haylen Maldonado, *Defensoría del Pueblo, Colombia*
Ms Catherine Marchi-Uhel, *Chambers – ICTY*
Mr Liam McDowal, *Registry – ICTY*
Ms Gabrielle McIntyre, *President's Office – ICTY*
Mr Easmon Ngukai, *Deputy President of the Bar Association, Sierra Leone*
Mr Gabriel Oosthuizen, *Consultant ICLS*
Mr Zoren Pajic, *Legal Advisor – Professor of Law*
Judge Branko Peric, *Court of BiH*
Ms Jasmina Pjanic, *OKO*
Judge Fausto Pocar, *ICTY*
Ms Biljana Potparic, *Registrar – Court of BiH*
Ms Elma Prcic-Bilic, *UNDP - BiH*
Ms Margriet Prins, *OHR*
Mr Rod Rastan, *OTP - ICC*
Judge David Re, *Court of BiH*
Ms Edina Residovic, *Defense Lawyer – BiH*
Mr Kenneth Roberts, *Chambers – ICTY*
Ms Camilla Sudgen, *DfID*
Mr Mirsad Tokaca, *President of the Research and Documentation Centre – BiH*
Mr Pascal Turlan, *OTP – ICC*
Ms Julia Sarkodie-Mensah, *High Court Registrar – Sierra Leone*
Mr David Schwendimann, *POBiH*
Ms Alison Smith, *No Peace Without Justice*
Mr Mohamed Suma, *Sierra Leone Court Monitoring Programme*
Mr Victor Ullom, *OSCE – UNICRI – ICTY Consultant*
Mr Saleem Vahidy, *VW Unit – SCSL*
Ms Vasvja Vidovic, *Defense Lawyer – BiH*
Judge Patricia Whalen, *Court of BiH*
Ms Maria Warren, *OTP – SCSL*
Mr Yada Williams, *Sierra Leonean Barrister*
Judge Renate Winter, *SCSL*