



Adding fuel to the fire': Unconditional early release of perpetrators convicted by the ICTY, Views from Bosnia and Herzegovina

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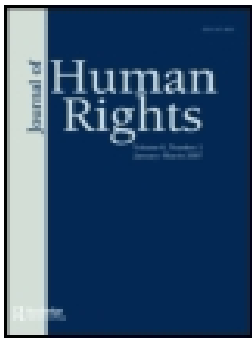
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“Adding fuel to the fire”: Unconditional early release of perpetrators convicted by the ICTY, views from Bosnia and Herzegovina

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ABSTRACT

Despite being found guilty of atrocity crimes, 54 of the 90 perpetrators sentenced by the International Criminal Tribunal for the former Yugoslavia (ICTY) were granted unconditional early release (UER) between 1998 and 2018. As such, they were free to return, often to be greeted as heroes by welcoming crowds. Some high-profile figures rejected the ICTY’s verdict, such as Biljana Plavšić, asserting that she had done “nothing wrong.” This article sets out how the Tribunal thwarted an expressive value it had purported to achieve through trying and sentencing some of the most egregious crimes known to humankind when they granted UER. This expressive value was an authoritative stigmatization of the perpetrators and their crimes. This perceived destigmatization had, in turn, the capacity to be manipulated by political elites, in an ethnically divided, postconflict society, to challenge the historical record of the atrocities in the former Yugoslavia between 1991 and 2001. This article analyzes the societal ramifications of UER, as it examines local reactions to UER that emerged from 51 interviews conducted in BiH. In January 2019, this practice changed and conditions were attached to early release. Nevertheless, the negative repercussions caused by UER over 18 years provide an important lesson for other ICTs.

Introduction

As of October 2019, when perpetrators of atrocity crimes convicted by the International Criminal Tribunal for the former Yugoslavia (ICTY) were released from imprisonment without serving their full sentences, they signed an agreement with the UN International Residual Mechanism for Criminal Tribunals (IRMCT),¹ the body responsible for enforcing the sentences. This body now retains a level of control over early released prisoners. If they breach any of the conditions imposed, they may be returned to serve their remaining sentence. These conditions include, *inter alia*:

not [to] make any statement denying the crimes ... that were committed during the conflict in the former Yugoslavia; not [to] discuss [their] case, including any aspect of the events in the former Yugoslavia that were the subject of [the] case, with the media, through social media, or with anyone other than [their] legal counsel. (Ćorić, Early Release, January 16, 2019, para. 78(c)).

Three perpetrators were granted conditional early release on this basis. Subsequently, after the current IRMCT president took over, an additional condition was attached: “under no circumstances directly or indirectly [to] express publicly any agreement with, or otherwise contribute in any way to, the

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glorification of persons convicted by the ICTY or the Mechanism” (Sreten Lukić, Conditional Release Agreement, October 7, 2021, para. 3(J); and Petković, Conditional Release Agreement, December 16, 2021, para. 3(J)). The latest two of the three released agreed to this condition.

These conditional early releases signify that decision makers in international criminal justice can recognize their mistakes and act to remedy them. The introduction of conditions upon early release reversed a long-standing practice: Between 1998 and 2018, the vast majority—54 of the 90 persons the ICTY had found guilty of atrocity crimes committed during the violent breakup of Yugoslavia in the 1990s—were granted release usually after they had served two-thirds of their sentence, with no conditions attached, described in this article as unconditional early release (UER). Speaking in January 2017, when this practice did not look likely to change, one ICTY judge noted that, “the granting of early release is a very delicate issue and should engage, not just us, but all international courts and international criminal tribunals, because it is very, very important” (ICTY interviewee, January 2017).²

Although the practice has been amended by the IRMCT, it remains important to discuss its impact on the region for at least two reasons. First, for the historical record; it is a unique assessment of one element of the ICTY’s legacy: its premature ending of the declared sentences. The article discusses first-hand views of UER from the region, fulfilling the predictions of several observers who warned the ICTY that their actions in The Hague would have ramifications in the region. With the perpetrators’ premature return to the region, unintended messages were received. In particular, the focus of this article is the perceived destigmatization of perpetrators, which, in a politically and ethnically divided society, was perceived to add fuel to the flames of denialism, enabling the historical records of the atrocities to be challenged. In doing so the article contextualizes and demonstrates why conditions upon early release are important. This leads to the second reason why this article remains relevant to international criminal justice today: because it is still happening. Currently, the International Criminal Court imposes no conditions upon perpetrators it releases early.

The article is structured as follows: First, the context of the ICTY’s UER practice is set out. Second, the conceptual framework of critical expressivism, through which the empirical findings are analyzed, is discussed. The “critical expressivist” (Sander, 2019, p. 853) approach is used to analyze what UER signified to identified members of society; that is, it examines the “message understood rather than the message intended” (Amann, 2003, p. 238). Several observers of the ICTY had frequently warned the ICTY to be cognizant of the messages it projected, that different audiences might receive different messages as the ICTY went about its work, which this article demonstrates. Third, the methodology is described and rationalized. Fourth, the findings related to this unintended message received as a result of the granting of UER are discussed.

The article argues that the ICTY practice was interpreted in a way that undermined a key expressive function the Tribunal claimed to achieve: namely, the “stigmatization of the perpetrators for their criminal behavior” (International Criminal Tribunal for the Former Yugoslavia [ICTY], 1996, ICTY Sentencing Judgment, para. 64). This perceived destigmatization enabled hostile audiences to counter the ICTY’s contribution to an “indisputable historical record” (see ICTY website)³ of the atrocities committed.

Finally, the article concludes on a positive note, that conditions have been attached to early release, conditions that align with what many interviewees in BiH proposed. It calls on the ICC and any other institution punishing atrocity crimes to impose conditions upon early release so as to not repeat the same mistakes spelled out here.

The context of unconditional early release by the ICTY

The ICTY was established in 1993 by the United Nations in response to mass atrocities in Croatia and Bosnia and Herzegovina as the Socialist Federal Republic of Yugoslavia (SFRY) was violently breaking apart. The atrocities continued and spread to Kosovo, and the ICTY issued

indictments for crimes committed from 1991 to 2001. Those convicted were found guilty of atrocity crimes, such as forced deportation, mass expulsion, murder, rape, and persecution, and for the arbitrary imprisonment, systematic torture, and cruel and inhumane treatment of detainees.

The term “atrocity crimes” is used because their framing and motive is distinct, often based on hatred of others, such as political, racial, and religious groups (Risk Factor 9: Intergroup tensions or patterns of discrimination against protected groups, UN Framework for Analysis of Atrocity Crimes: A Tool for Prevention, 2014). This was the context in which these crimes were committed in the former Yugoslavia. The perpetrators’ typology ranged from a local thug turned prison camp guard who sexually abused and tortured victims and school teachers turned *ad hoc* camp commanders who turned a blind eye to the torture rampant under their watch, to political leaders who instigated ethnic hatred and advocated violence from a distance. Those granted UER from imprisonment (as of October through December 2017, when interviews in Bosnia and Herzegovina were held) had received sentences ranging from two years (Kubura) to 25 years (Kordić and Žigić).

The sentences handed down by the ICTY had frequently been decried by scholars and lay observers as unduly lenient on the grounds that they belittled human suffering (Szoke-Burke, 2012). Yet, far less scrutiny occurred when these sentences were effectively cut short, allowing perpetrators to “escape” (Drumbl, 2018, p. 440) one-third of their punishment. With no conditions upon early release, they were free to return to the crime scene, free to be greeted as heroes by public figures, such as politicians and bishops, and welcoming crowds of supporters (Trbovc, 2018, pp. 406–422). Although such celebratory returns are just as likely to happen after a full term is served, early release exacerbated the sense of frustration for many people in the region.

For example, high profile figures being granted early release—such as Biljana Plavšić, a member of the Republika Srpska’s tri-presidency—angered elements in society, exemplified by a member of the Bosnian presidency canceling a trip to Sweden (the country where she had been imprisoned and which had requested her early release) and a group of inmates in a Bosnian jail sewing their lips shut in protest at her early release (Choi, 2014, p. 1788). The scholarship on the perpetrators’ heroes’ return is referenced but not analyzed here (Drumbl, 2018). This article complements this literature as we hear first-hand from some of the stakeholders who witnessed it. It discusses the symbolism of unrepentant perpetrators returning triumphantly to BiH, an ethnically divided, postconflict country. Leading figures rejected the Tribunal’s judgment, asserting that they had done “nothing wrong” (Plavšić, cited in Subotić, 2012, p. 48) or that they would “do everything the same” (Šljivančanin, cited in Kelder et al., 2014, p. 1200).

Early release of prisoners is commonplace in justice systems globally. Normally this is dependent on a judgment regarding the behavior of the prisoner while incarcerated. In this respect, the practice of the ICTY fits the global pattern. Article 28 of the Statute specified that the “President shall decide, in consultation with the judges, the matter [pardon or commutation] in the interests of justice and general principles of law.” Under Rule 125 of the ICTY’s Rules and Procedure of Evidence, the president was required to consider four specific elements when deciding whether or not to grant an early release: the gravity of the crime, similarly-situated prisoners, substantial cooperation with the prosecutor, and evidence of a demonstration of rehabilitation. In practice, despite a relatively clear framework to consider early release, these factors were not necessarily rigid preconditions, as the wording of Article 28 gave the ICTY presidents wide discretion to interpret them and potentially override them. They were bestowed the decision-making power under rather “nebulous” (Danner, 2003, p. 543) phrases such as “the interests of justice” and “general principles of law.” The decision-making process of the president is not discussed in this article—in particular, several presidents’ questionable determination of perpetrators’ “demonstration of rehabilitation”; scholars such as Choi (2014), Kelder et al., (2014), Petrović (2018), and Holá (2019) have discussed this eloquently elsewhere. What is examined here is the how the practice of early release without conditions was interpreted by stakeholders in the region.

This was because in one important respect early release by the ICTY deviated from international best practice. The release was not conditional on the *future* behavior of the perpetrator. Most domestic justice systems involve conditional early release. In effect, the prisoner is released on license, or on probation, with his or her continuing freedom dependent on not returning to offending. Recidivism may be unlikely when a conflict is over, but issues such as victims' protection and well-being can also be accounted for. The released prisoner might be prohibited from residing close to his or her victims (as in France, Herzog-Evans, 2014, p. 485), from contacting the victims (as in Belgium, Scheirs et al., in Herzog-Evans 2014, p. 160), from contacting certain groups (Criminal Justice (Sentencing) (License Conditions) Order 2015, United Kingdom), or from visiting certain places (as in Denmark, Storgaard, and in Poland, Stando-Kawaiecka, in Drenkhahnet al., 2014, pp. 133 and 221). The ICTY system had no such conditionality involved. It was a case of UER.

UER by the ICTY and, from 2012, the IRMCT (hereinafter, both are referred to as "the Tribunal") stands as a case study of what *not* to do in international criminal justice. It was a mistake that the Special Court for Sierra Leone (SCSL) was careful not to repeat. Despite the SCSL's statute containing a similar provision in relation to the possibility of UER to that of the ICTY (SCSL, Statute 2000, Article 23), its 2013 Practice Direction specified that release should be conditional—advice that has been strictly enforced (Prosecutor v. Fofana, 2016). In 2019 the ICTY changed its policy and introduced conditions upon release. The change did not represent an organic realization by the Tribunal of the problems of UER but, rather, was prompted by a direction from the UN Security Council. Rwanda's abhorrence of UER for ICTR convicts, supported by permanent member France, led to the Security Council instructing the ICTR to end the practice. As both the ICTR and ICTY sentences were enforced by the same Residual Mechanism, the U-turn was applied to ICTY offenders also. Although late in the day, it is argued here this change is a positive step. I will turn to this point shortly. Before doing so, the theory of critical expressivism will be outlined.

Challenges to international criminal law's expressive capacity

The basic tenet of expressivist theory is that all "actions are expressive, they carry meaning" (Sunstein, 1996, p. 2028). This applies to legal institutions, with the understanding that each element of the law "sends a message" (Glasius, 2015, p. 419). Implicit in this theory is that law's adjudication does not occur in a vacuum; actions are observed. Further, there is not one single audience that observes the law's adjudication, and not all audiences will be equally receptive to the intended messages (Glasius, 2015, pp. 423–424)—if, indeed, there is an intended message.

This multiplicity of audiences with different views of international criminal justice is a distinguishing feature of international criminal tribunals (ICTs), and this creates a challenge to their expressive capacity. Prior to the ICTY's establishment, this challenge was flagged by the UN-commissioned Bassiouni Report, a fact-finding mission that examined the conflict in the region and recommended the establishment of the Tribunal. The report warned, "Each side sees only its own victimization, and not what their side has done to others" (Final Report of the Commission of Experts, United Nations Security Council [UNSC], 1992, para. 319). This mentality, described by Nielsen as "collective and competitive victimhood," is rife in the former Yugoslavia (Nielsen, 2018).

Bassiouni's observation of the mindset in the region can be applied to international criminal trials more broadly; as Meijers and Glasius (2016) stated, audiences are not *tabula rasa* (p. 443). Rather, people view an institution's actions from the vantage point of their own lived experiences. This means from the outset that different audiences can perceive ICTs as having different objectives. Additionally, different audiences receive messages of the institution from different sources, some of which may be hostile to the institution. Hence Damaška (2011, p. 379) recommended that special emphasis be placed on communicating with hostile audiences, to win them over. He

urged ICTs to focus on “communities sympathetic to the defendant ... [that] they be the target of moral messages.”

From the outset, ICTY judges recognized and championed law’s expressive capacity. In the Tribunal’s first sentencing judgment, the judges made explicit that a key purpose in punishment was to send a message. They stated that “one of the essential functions of a prison sentence for a crime against humanity” was “public reprobation and stigmatization by the international community” as a means to “express its indignation over heinous crimes and denounce the perpetrators” (ICTY, 1996, para. 64). Broadly, therefore, punishment was conceived of as a tangible denunciation of the crime as a whole, the criminal act itself (*actus rea*) and its motivation, the perpetrator’s mindset (*mens rea*).

At the same time the Tribunal appeared cognizant that an openness to its messages and decisions would not be equally shared by all audiences. As Cotič (1996, pp. 10–12) noted, “the regional bias as well as the early framing of the Tribunal in the international media in terms of ‘Serb crimes’ undoubtedly rallied Serbian public opinion against the proposed court.”

The Tribunal’s first president, Judge Cassese, seemed to recognize, and simultaneously deprioritize, this challenge. He argued that the legitimacy of ICTs was “based on consistency of the body politic or institution with values that, whether or not shared by the body politic or institution’s constituency, are based on the values common to the whole community within which the institution lives and operates” (Cassese, 2012, p. 492). In short, Cassese asserted that any local concerns or values would take second place to the universal principles the ICTY espoused. This prioritization is exemplified in the Tribunal’s first annual report. It contained 22 paragraphs outlining the “Tribunal and World Public Opinion” in contrast to one and a half paragraphs on “Public Relations” in the region (ICTY Annual Report 1995, paras. 161–184). This is a prime instance where Drumbl’s (2007, p. 175) caution to ICTs to “be careful not to overlook the audience that matters more than any other—directly afflicted populations” is particularly apt.

It was five years after the creation of the ICTY before an outreach program was established under President Cassese’s successor, Judge Kirk McDonald. But in terms of encouraging antagonistic audiences to accept the Tribunal’s messages, it was too little, too late (Clark, 2009, p. 422). As Douglas (2012, p. 282) reflected, “the unwillingness ... to use political tools [such as disseminating ... records and judgments] to support the juridical lessons of an atrocity trial will certainly doom its reception, especially given the opposition that such proceedings inevitably arouse.” Douglas concluded, “this is a lesson the ICTY, with its underfinanced outreach program, failed to master” (2012, p. 282).

Most studies researching perceptions of the Tribunal agree with Douglas’s assessment that the Tribunal largely failed to win over the “hearts and minds” of people in the immediate postconflict society (Klarin, 2004, p. 552). This failure has been attributed to several factors, *inter alia*: the Tribunal’s dependence on states to provide resources, the infancy of international criminal law (ICL) and practice, and the Tribunal’s primary focus on its international influential stakeholders (UN Security Council members) rather than regional ones. Although some scholars have queried whether the Tribunal could have combated the former Yugoslav states’ massive propaganda machines (including state-sponsored media) intent on distributing malicious rumors and fostering negative perceptions (Kerr, 2007, p. 379), many observers argued that the Tribunal should and could have done more to tackle negative perceptions.

Hodžić, critiquing the Tribunal judges for prioritizing the development of ICL and overlooking its regional audiences, argued, “everything the court does is outreach” (Hodžić, 2013, Balkans Transitional Justice commentary). Others have gone further and criticized the Tribunal for refusing to recognize this broader societal role, including politics. Klarin (2009, p. 96),⁴ like Hodžić, attributed this neglect to a judicial legalist tendency to “concentrate on the technical elements of the crimes and the procedure ... concerned only with claims that some legal rules may be violated in the procedure.” This meant the Tribunal cast aside other matters as political, perceived to be an area into which

judges should not stray (McEvoy & Schwartz, 2015). This stance, Klarin argued, was an error, as the reality was that regional stakeholders viewed *all* judgments as political rather than legal.

The Tribunal might have avoided such criticism if it had insisted from the outset that its sole role was to focus on the accused's guilt or innocence. Yet this was not the case. The establishment of Outreach Offices in the countries of the former Yugoslavia indicated that the Tribunal wished to have direct communication with the affected communities. Moreover, some of the judges themselves espoused broader, nonlegal goals for their work, such as peace in the region. The initial ICTY judgments asserted that the judgments would have positive societal benefits, often citing reconciliation (ICTY, 1996, para. 58; 1998a, para. 288; 1998b, para. 1203; 2001, para. 91; 2002, 2003, paras. 66–70)—goals that are “far removed from the normal concerns of national criminal justice” (Damaška, 2008, p. 331). Thus, Subotić concluded that “the ICTY has in no small part brought this unrealistic expectation [of being the ‘principal instrument of both retributive and restorative justice’] onto itself by legitimizing its work to hostile domestic publics as a path to reconciliation and creation of a historical transcript” (Subotić, 2014, p. 172).

This article does not dispute that a historical record has been established for at least some of the crimes committed in the conflict. As Vukušić has argued, “we know what we know about the war ... mostly because of the trials ... a historical record now exists, of hundreds and hundreds of statements detailing purposefully-inflicted human suffering and the structures behind it” (Vukušić, 2021, pp. 18 and 20). However, the record being authoritatively established does not necessarily mean it is widely accepted as authoritative in the region; it is continually “threatened” often “owing to the distance and mistrust evident between such communities and international criminal tribunals” (Drumbl, 2007, p. 177), as well as by widespread denialism in the region. Nevertheless, these archives are a means by which denialism can be combatted (Vukušić, 2013, p. 625). Yet, Nielsen noted, the, “Serbian state has insisted upon formulations [of its involvement in the war in Bosnia and Herzegovina] all of [which] are belied by repeated judgments of the ICTY” (Nielsen, 2013, p. 187.) The archives remain distant from the countries of the region. Although the information is in the public domain, freely available on the internet, it is acknowledged that “it is not easy to navigate” and that it is mostly being used by international researchers rather than audiences in the region (Vukušić, 2013, p. 633).

From the start, the Tribunal was urged to do more to “improve its image and get its message across to the region” (Clark, 2011, p. 76; Klarin, 2011, p. 111). Despite these recommendations, empirical surveys⁵ indicate that the ICTY's indictments, judicial findings, and sentences were widely viewed from a position of ethnic-political allegiances (Kerr, 2007; Subotić, 2011,) due to “Bosnia-Herzegovina [being] a deeply divided society” (Bieber, 2006, p. 1) in which “each of the three national communities, Serbs, Croats, and Muslims, views itself as a victim and not as a perpetrator of aggression and the atrocities against the other parties” (Saxon, 2005, p. 562). Ethnic allegiances remain a dominant factor in determining whether sentencing decisions are considered too lenient or too severe (Glasius & Colona, 2014).

Despite these generalizations, there are exceptions, as demonstrated in this article by a number of interviewees and, more broadly in the region, of persons within each ethnicity who reject and are active in challenging ethnic-political divisions (Petrović, 2015, p. 379). Nevertheless, in the Serb-dominated Republika Srpska (RS) in particular, there remains a widespread lack of acknowledgment of the crimes (Milanović, 2016b). The ongoing high level of denialism has been partially blamed by a number of scholars on delayed and underfunded outreach programs (Glasius & Colona, 2014). Furthermore, the Tribunal's overall “lack of a coherent and effective strategy for outreach” (Kerr, 2007, p. 376) when it did engage with the region has compounded this.

Yet, behind this broad picture, a more nuanced one emerges as statistics are disaggregated. Clark (2014, p. 59) noted that some victims, although critical of the Tribunal's sentencing and acquittals, were nevertheless “glad” that the ICTY “existed.” Orentlicher (2010, p. 34) concluded that the fact that “some justice was done” was better than none, and more recently affirmed that

“the Tribunal has rendered a measure of justice ... [which] however flawed, is infinitely preferable to no justice at all” (Orentlicher, 2018, p. 128). Similarly, this research found that, despite the majority of interviewees having been dismayed by the grant of UER, with the exception of one victims’ association (VA), none had withdrawn their overall support for the ICTY.

Methodology

The research on which this article is based sought to understand two issues. First, why the “automatized practice” (Petrović, 2018, p. 344) of UER had developed at the ICTY—as the *travaux préparatoires* indicated that early release was envisaged to be an exception rather than a routine matter of practice (Choi, 2014, p. 1799). Further, UER, *prima facie*, seemed incongruous; those convicted of some of the most egregious crimes were granted UER—that is, treated more liberally than serious criminal offenders in national settings, including those sentenced for conflict-related crimes,⁶ who are released with strict conditions attached. Second, I sought to understand what others—in particular, people in the region, whom the ICTY proclaimed it wished to feel “satisfied that justice has been achieved” (Annual Report, 2000, para. 195)—thought about this practice. One element of the research, which informed the interview questions, was an analysis of the 56 Presidential Decisions that had considered a request for early release.

Over the course of three months, September to December 2017, 51 interviews were conducted with stakeholders in BiH, a total of 57 individuals. Seven months earlier I spent two weeks in The Hague and conducted 17 interviews with stakeholders at the ICTY and the IRMCT (seven judges, two staff of the President’s Office, seven Registry staff, one staff member of the Prosecutor’s Office, and one defense lawyer). With the exception of the judge quoted earlier in this article, these interviews are not discussed in this article, which focuses on the stakeholders in BiH. Prior to fieldwork ethical approval was obtained from my university’s filter ethics committee.

Open-ended questions were posed, beginning with my asking respondents if they could recall when they first heard of a perpetrator being granted early release and what their immediate reaction was. I also asked their opinion of the four factors the President was required to consider in determining whether or not to grant early release: severity of the crime, substantial cooperation with the prosecutor, similarly-situated prisoners, and a demonstration of rehabilitation. Most interviewees were not aware of the four factors, which had then to be explained to them before they could give their opinion. They were also asked their reflections on other factors the president had considered on an *ad hoc* basis (such as *inter alia*, ill-health, age, job prospects, and reintegration in society). They were asked their own personal opinion of UER, what they believed the opinion of victims would be, whether or not victims should be consulted, and what they believed was the purpose of punishing atrocity crimes. No interviewees were asked about their ethnicity or ethnic divisions in BiH—although this was frequently raised by interviewees themselves.

Purposeful sampling was undertaken to obtain a broad a range of opinion from across BiH. NGOs, civil society organizations, and victims’ associations (VAs) were identified through ICTY Outreach reports, Balkan Investigative Reporting Network, Radio Free Europe, and via an NGO staff member’s contact made during a 10-day workshop at the International University of Sarajevo (June 2016). Snowballing also was employed, as interviewees recommended other organizations and individuals. A fieldwork coordinator was recruited, and she identified the judges, prosecutors, and defense lawyers. The range of stakeholders interviewed in BiH included 10 judges (all but one were deciding war crimes cases); 10 prosecutors (one of whom was also a member of a parole board) and four defenses lawyers working on war crimes cases; 20 NGOs, Civil Society Organizations (CSOs), and VAs working on victim and conflict-related matters; five staff from IGOs; and five independent experts with experience of war crimes cases.

Having this range of stakeholders provided perspectives of individuals from diverse backgrounds: those who worked in professional roles such as judges and lawyers, who are meant, in theory, to apply objectivity over emotions throughout their work; those from outside of BiH but with years of experience working inside BiH (four of the five IGO interviewees); representatives of NGOs working on human rights law who, although sensitive to victims' interests, are aware of perpetrators' human rights to rehabilitation; and VAs with direct experience of perpetrators returning to the community.

Further, the interviews were spread throughout the country: in the Federation (predominately Bosniak and Croat population), the Republika Srpska (RS; predominately Serb), and the Brčko district (mixed but considered segregated; see Jones, 2012, pp. 126–148). The geographical spread of interviews across BiH was also valuable, as interviewees testified to the specificities of the different typologies of perpetrators returning and their reception by the different communities within the locality. For example, interviewees in Brčko and Prijedor (RS) spoke of returning low-level direct perpetrators living in close proximity to them. Similarly in Sarajevo and larger towns (Zenica) interviewees believed that direct victims were deeply affected by perpetrators' returns and their ongoing presence. The interviewees' professional background and location are cited to capture this spread of opinion from a diverse range of interviewees.

All BiH correspondence (arranging and following up interviews) used the language from Bosnian/Croat/Serb versions of the ICTY website. All correspondence was sent in English and Bosnian to the interviewees, so the two could be checked against each other and the original language acknowledged. Prior to interviews, interpretation by the research assistant was prepared by going through the translation of the interview questions and foreseen follow-up questions together.

As semistructured interviews are fluid, the interviews were conducted “*with*, rather than *through*, [the] interpreter” (Edwards, 1998, p. 197). Therefore, the interpreter was given an “induction to the research” (Edwards, 1998, p. 200), its aims and objectives, and concepts such as the purposes of punishment, rehabilitation, and remorse. With the exception of the War Crimes Chambers judges, all interviewees were asked if they wished to be recorded or would prefer that notes were taken. Serving judges of the War Crimes Chamber were not asked about recording, as all possessions, save note paper and pens, were held by security staff at the entrance to the court. Of the 51 BiH interviews, 24 were conducted in Bosnian with the interpreter. All recorded interviews were transcribed, and when interviews were not recorded, contemporaneous notes were taken and typed up. Interviewees were asked if they wished to receive a copy. Transcripts were returned to those who did request a copy.

A recognized limitation of the methodology is that interviewees were not everyday people, in the sense that they were working in the sphere of postwar justice, victims' advocacy, and/or criminal justice for war crimes. The fact that the interviews were voluntary and many of those invited to be interviewed did not respond suggests that those interviewed had some prior interest in the topic and a desire to share their opinions. Further, given that a significant number of interviewees, when probed, indicated that they were, in large part, dissatisfied with UER, it may be the case that those people who did not respond to the request for interview did so because they were satisfied (or at least not dissatisfied) with the practice. This lack of dissatisfaction with UER was, indeed, the immediate reaction of some judges. Yet, as the interviews with the judges unfolded and more thought was given to the operationalization of and reasoning for the practice, a more nuanced attitude was revealed.

These findings do not claim to be representative of the population of BiH; nor are the interview data fully representative of each of the stakeholders' groups (judges, lawyers, NGOs, victims etc.). Nevertheless, the interview analysis captures a snapshot of opinions on UER at a time and place with a select group of stakeholders and discusses patterns of shared perceptions. It provides a rich and deep understanding of their perceptions.

In advance, and again before beginning the interview, all interviewees were offered a subject information sheet and consent form to sign or were asked to give oral confirmation that they agreed to be interviewed. Many had not read the information sheet in advance, and a brief introduction was made, ensuring participants gave voluntary informed consent.

Although the research successfully secured these 51 interviews, there was also evidence of research fatigue in BiH that meant not all people contacted agreed to be involved. Twenty-five years after the war, most NGOs had been interviewed numerous times by Western researchers. The sense of fatigue and frustration was eloquently noted by one NGO director as she declined an interview. She stated that her NGO was not looking back anymore, only forward. This example demonstrates the value of sending out the information sheet in advance. Individuals are provided with the opportunity to make informed decisions as to whether or not to participate, and the practice ensures that the principle of “do no harm” was being applied (Burgess, 1982).

Most of the Bosnian interviewees described themselves either as victims of the war or as being fortunate not to have experienced direct loss during the war. No interviewees were asked about their experiences during the war. With the exception of judges and prosecutors, many interviewees noted their ethnic background, especially those in VAs. Often this was to emphasize that they had all three ethnicities in their group, but on one occasion it was to emphasize that the VA was exclusively representing Serbs who, the interviewee asserted, remained the victims of Western propaganda.

All interviewees from VAs had experienced either direct harm or the murder of a family member or members, had been a camp detainee, or had been the survivor of rape, and many spontaneously raised the harms they had experienced, which were often ongoing. This possibility was recognized in the ethics application, that as perpetrators were being discussed, recollection of past trauma may arise. Listening respectfully and empathetically was the best that could be done. As the direct victims interviewed were active members of VAs, they had knowledge of counseling options, if available.

The method employed for analyzing the interview data drew on Braun and Clarke’s (2006) method of thematic analysis, a form of qualitative research that identifies themes. The computer software NVivo was the relevant tool for undertaking this method rigorously. NVivo provided a means to read through transcribed interviews and code by identified themes, add new themes, and cross-reference them. Before using NVivo, the thematic analysis of the data was commenced in the fieldwork period itself, as audio-recordings of the interviews were transcribed by the researcher as soon as possible after the interview. Possible themes (identified through dominant phrases used or issues raised by interviewees) were noted in the researcher’s journal. One month after the fieldwork, all transcriptions (including the Bosnian-English interviews) were uploaded into NVivo for systematic analysis of the overall interview data, which were clarified, merged, and drilled down into for dominant themes and subthemes, and their relationships. New themes emerged in the course of the analysis, primarily through word frequency, which connected to the literature on the purposes of punishment for atrocity crimes and the impact of UER on this purpose.

Results

Interviewees were asked what they believed was the purpose of punishing atrocity crimes. The theme of expressivism as moral condemnation was prevalent in many of their responses. Of the 57 interviewees, 21 articulated that punishment was about sending the “message” that the crimes were wrong and warranted punishment, using phrases such as “to show,” “to send the message,” and “to say.” This language reflects the expressive value of trial and punishment that has been found frequently in studies in other postconflict societies (Glasius, 2015, p. 11).

Over half the interviewees also emphasized that BiH was divided, and that there was no reconciliation among the three main ethnic groups. Audiences in the divided society received the ICTY's judgments and UERs through lenses of "ethnic-political allegiances rather than the legality of their judgments" (Kerr, 2007, p. 376). In this context, the Tribunal's actions subverted its own stated purpose. As noted by Simić (2011, p. 1406), the Tribunal's practice of UER served to "undermine attempts by the international community to deliver justice and change the values that are divided along ethnic lines."

Arguably, there are two particular messages stakeholders in BiH received as the Tribunal granted UER. The first, that UER subverted the moral denunciation it intended in sentencing perpetrators, is detailed elsewhere (Yarnell, 2021). This article discusses the second unintentional message and its effect: that UER was perceived as a destigmatization of the perpetrator, which could be (mis)interpreted as a correction of previous judicial errors, providing those hostile to the ICTY another means by which to challenge the historical record of the atrocities the Tribunal ruled had been committed beyond all reasonable doubt. The unintended message and its manipulation will be considered in turn.

UER: Correcting errors—Destigmatizing the perpetrator

UER was practiced despite warnings from many commentators that all of the Tribunal's actions (Hodžić, 2013; Klarin, 2004, 2009) could be interpreted differently or counter to what was intended. The Tribunal had been advised to consider and tailor messages to hostile audiences, to convince them "of moral messages" (Damaška, 2011, p. 379). This was something the ICTY failed to take heed of (Douglas, 2012).

The failure to win over hostile audiences was evidenced throughout the fieldwork. The only openly anti-ICTY interviewee acknowledged that his perspective on early release depended on who had been freed from prison. For him, the ICTY's purpose was to stigmatize those it convicted. Therefore, early release was an acknowledgment that they had been wrongly stigmatized. UER was an affirmation that "the Tribunal has corrected the errors that they made throughout the proceedings" (interview, VA, Banja Luka, November 23, 2017). He emphasized that he did not perceive the ICTY as a legitimate institution; it was biased—anti-Serbian and NATO-dominated.

Another interviewee commented on having seen this same opinion being expressed by the president of Serbia, when he had stated on television, "[The] Hague Tribunal is a court that is just adjudicating Serbs" (interview, judge, Bihać, November 21, 2017).

The anti-ICTY interviewee argued that the Tribunal was "a revenge ... not ... a trial, there was selection ... look at the persons." He correctly noted that the majority of those convicted were Serbs. "How many were imprisoned for life do you know, except Serbs?" (interview, VA, Banja Luka, November 23, 2017), he asked rhetorically. For him, the Tribunal concentrated on Serb crimes, punished them too harshly, and was now recognizing this mistake by granting UER.

This belief was reiterated by another interviewee, an international staff member from an IGO who believed that UER was "completely inappropriate." Having worked in divided and minoritized areas such as Foča and Goražde, he believed that early release would be "twisted" by perpetrators' supporters. He said that "early release would not be received as, 'Oh, it's great to see they showed this leniency, despite all he has done.' No, it is not perceived as [this but rather] an admission of guilt from an illegitimate court" (interview, IGO, Sarajevo, December 21, 2017).

The perpetrators' communities' view derived from their belief that the biased court was attempting to make amends for its mistreatment of Serb veterans: "90% of the Serbs will never accept the trials as valid ones; they perceive it as punishment because they are not pro-western [nor do they belong to the] NATO pact" (interview VA, Banja Luka, November 23, 2017). For them, UER was not a measure of mercy but an illegitimate court recognizing its errors. The wrongly stigmatized convicts were now being absolved.

The same interviewee's belief replicated an attitude noted by a Bosniak interviewee, who said, "the perception of the local community here [is that early release is] a revision of the judgment" (interview, VA and detention camp survivor, RS, November 22, 2017). This echoes Douglas's (2012, p. 289) argument that "blanket commutation ... suggests ... the original process was so flawed that none of those convicted deserve punishment."

Each audience perceived the UER of each perpetrator through a particular ethnic lens, which shaped the message they received. As one prosecutor put it, where early release was not "evaluated with criticism" (i.e., a thorough process), it ran the risk of "twisting the whole idea of justice as well as the sentence and the verdict given by the court" (interview, prosecutor, Bihać, November 21, 2017).

These comments were echoed in Petrović's consideration of an iconic photograph from the conflict. An apparently powerful and irrefutable image was negated by those desirous of having their dominant narrative affirmed and thereby lost its power. Petrović recalled that the reality of this photo—a dead Bosniak woman about to be kicked in the head by a paramilitary member—was denied by the Serb paramilitary commander Arkan, whose version was that the soldier was going to "push ... them to see if they are alive." The fact that Arkan's interpretation "attested to the authenticity of the photos but obscured their meaning highlighted the erosion of critical thinking in large segments of Serbian public opinion" (Petrović, 2015, p. 376).

This "power(lessness)" of hard evidence in the face of a hostile audience was spoken to by some interviewees in BiH, who described the strength of political propaganda to challenge the documentary evidence of the historic record established by the Tribunal. That is, UER for that specific perpetrator, in that particular case, had the capacity when manipulated by politicians to distort the bigger picture of the crimes. It was a continuation of Nielsen's description of "the problem [of] willful misinterpretation of the ICTY judgments to confirm or reject dominant narrative" (Nielsen, 2018, p. 186).

UER: Fueling denialism—Challenging the historical record

The idea that there were wider ripples caused by UER was reflected by one NGO director who argued that UER "is not a good message ... [it's] very dangerous, very dangerous for the peace process, and generally for this country" (interview, NGO director, Sarajevo, November 7, 2017).

This was further articulated by another interviewee who asked whether UER ran counter to the ICTY's larger purpose of contributing to peace. He was against early release altogether and asserted that judges considering it should reflect on the extent to which their "decision is influencing society—is it really concentrating on peace and reconciliation or actually putting fuel on the fire?" (interview, IGO, Sarajevo, December 1, 2017).

The ICTY's core mandate was to punish perpetrators. Yet the Tribunal frequently extended its role to truth-finding and ultimately reconciliation: "Prosecution ... removes persons from their communities ... [and] [i]n addition the Tribunal establishes a historical record which provides the basis for the long-term reconciliation" (Annual Report 1998, para. 201). It had tried and punished but had then not simply failed to fulfill the sentence but deliberately freed prisoners from serving the full sentence. UER added unnecessarily to ongoing antagonisms in the region. For this interviewee, UER had an impact on the immediate ethnic divisions in the context of revisionism. His sense of frustration reflected Simić and Holá's (2020, p. 276) concerns about unrepentant perpetrators' UER: "Denying one's crimes or justifying past behavior may ... create or further reinforce instability in the region and go against any possible healing and reconciliation."

Eight interviewees spoke of high levels of denialism of the war atrocities. Two suggested that this denialism was directly linked to the UER of high-level perpetrators, compounded by their rhetoric and their reception upon release. One asserted that UER "serves as a confirmation of their claims of not being guilty" (interview, NGO director, Sarajevo, afternoon November 6,

2017). This Sarajevo-based interviewee believed that many perpetrators *and their communities* still denied the crimes for which they had been convicted (Moll, 2013).

This belief was affirmed by two interviewees in the Republika Srpska (RS). The first reflected, “the ambience here is quite different; the denial is supported by the political and intellectual elite. There are very few people who are willing to openly acknowledge the crimes committed. A few of them openly speak about atrocities; these are brave people” (interview, witness before the ICTY and detention camp survivor, RS, November 22, 2017). She herself is one of those brave people; as we entered a café together for the interview, two groups of men stood up, downed their coffee, and left the café. She is an outspoken camp and rape survivor, a Bosniak, in a now Serb-dominated town.

Another interviewee, a prominent Bosnian Serb human rights activist, was an outspoken advocate (interview, NGO, Banja Luka, November 24, 2017). He spoke at length about the current state of denialism, especially under the RS Premiership of Dodik (first elected in 2006), who had sent ICTY convict Plavšić his private jet to bring her to Belgrade, Serbia, upon her early release.

The NGO director cited above spoke of denialism not only in BiH but throughout the region, as she continued, “things that have been established as facts by the ICTY are still a matter of dispute in this region ... after [UER] they come back to the communities and they are in a position where they are denying all of the things that have happened during the conflict” (interview, NGO director, Sarajevo, November 6, 2017).

Where denialism is rife, it is compounded when unrepentant perpetrators return, as the Serbian rights activist in the RS described: “He didn’t change [and] he’s coming back a hero ... instead of the shame, instead of the guilt [no] ... all the things that these war criminals [were] fighting for ... it’s legitimized, privileged ... as their ... war glory effort” (interview, NGO, Banja Luka, November 24, 2017).

This type of return has been detailed in the literature documenting perpetrators’ rhetoric. Ristić has described Šljivančanin’s self-portrayal as a defender of the nation. He does not discuss the crimes for which he was convicted but emphasizes his efforts in fighting those “trying to destroy Yugoslavia.” Thus, Ristić noted that, despite being found guilty of atrocity crimes, Šljivančanin is regularly invited to give media interviews and is reported on with “a sense of intimacy” in the media and spoken of as a “proud, heroic and truthful individual” (Ristić, 2018, p. 400).

This glossing over of the historical records established as fact in the ICTY’s decisions was raised by another interviewee. He began his response to his views on UER by giving a specific example of a war criminal being recently placed in a prestigious public position: “The message they are sending is wrong ... the Serbian Minister of Defence decided to appoint the former General sentenced by the ICTY, to be a lecturer at the Military Academy” (interview, NGO director, Sarajevo, November 6, 2017).

The former general, Lazarević’s, first seminar to the academy was entitled, “The Heroism and Humanity of Serbian Soldiers in Their Defense Against the NATO Aggression” (Radio Free Europe report, October 31, 2017).⁷ Although I do not know the details of the lecture, the title does not indicate any acknowledgment that atrocity crimes were committed under his watch. Lazarević was granted UER in September 2015; if early release had been denied, he would have been in prison, not able to be appointed as a lecturer at a military academy. Lazarević most certainly could have given this lecture after his completed sentence, but frustration at the glorification of war criminals—who themselves appear to deny, or at very least gloss over, the historical record of atrocity crimes—was intertwined, in one interviewee’s mind, with the fact that he had been granted UER. He was deeply frustrated with the “simple-minded” decision making and the “fact that many of them are in position after been *early* released ... to falsify the facts that have already been established as such.” He concluded that the “ICTY fell into that gap ... not having enough wisdom to decide on the individual’s request to be released from the sentences and their

potential role in the society where they are been sent” (interview, NGO director, Sarajevo, November 6, 2017).

The importance of context and recalling of multiple audiences in society was flagged by Petrović in relation to video evidence of atrocities, validated in The Hague but being challenged in the region, as he cautioned:

No matter how much hope other authors vest in the extra-legal effects of trials and their didactic utilization, what we face is random effects which are up for grabs in an ongoing battle of context-specific interpretations of past events and their meanings (Petrović, 2014, p. 108).

It is not known how much actual consideration was given by the presidents who granted early release about the context—the society to which the perpetrator was returning—but if they had, the potential for upset should have been clear.

Throughout the time that the ICTY granted UER, denialism was rife among political elites in the RS. A key instance is the dismissal of the Srebrenica genocide by Dodik and other political elites. The ICTY’s Final Krstić decision, in April 2004, confirmed the genocide in Srebrenica, as found in the judgment by the Trial Chamber in 2001. After this decision, families of the disappeared from the Srebrenica area filed applications to the Human Rights Chamber for BiH. The Chamber ordered the government of RS to “conduct a full, meaningful, thorough, and detailed investigation into the events.” After ongoing pressure from the Office of the High Representative, the RS government reluctantly established a commission to investigate alleged RS state involvement in the massacre. The Commission concluded its work in June 2004—which uncovered a number of mass graves (Trbovc, 2016). Nevertheless, the RS official apology, pronounced by then Prime Minister Cavić, avoided the term “genocide” (Subotić, 2013; Orentlicher, 2018). Instead, he stated, the “Bosnian Serb Government shares the pain of the families of Srebrenica, is truly sorry and apologizes for the tragedy” (November 11, 2004, cited in Fischer & Simić, 2015, p. 34).

Six years later, RS President Dodik was quick to dismiss the “tragedy” of Srebrenica. In August 2010, the Steering Committee of the Peace Implementation Council issued a declaration in Sarajevo that “reaffirmed that genocide in Srebrenica, war crimes and crimes against humanity committed ... must not be forgotten or denied” (Arslanagik, 2010). Dodik reacted strongly. He stated that the international community was attempting “to impose responsibility for the genocide—which did not happen—on an entire nation” (Arslanagik, 2010).

Dodik’s rhetoric was matched in August 2018, when the RS government repealed the 2004 RS Government Report on Srebrenica, despite the report coming from a final and binding decision of the Human Rights Chamber of BiH (Office of the High Representative (OHR) 54th Report of the High Representative for Implementation of the Peace Agreement on BiH to the Secretary-General of the United Nations (November 6, 2018)).⁸ The RS government of 2018 asserted that the 2004 Report was accepted at the time because of external pressures (Arslanagik, 2010; Fischer & Simić, 2015).

The success of this narrative of the Bosnian-Serbs being victimized by Western powers was illustrated by an interviewee from the Victims and War Veterans’ Association in Banja Luka, as he noted that the ICTY was backed by NATO powers. There has not been a UER of a perpetrator convicted of genocide at the ICTY, to date, but a number of interviewees argued to the effect that many who return “are not accepting the judgment from the Hague ... their behavior after they return to communities ... they believe that they have been unfairly convicted ... they are refusing to acknowledge the things they have been convicted for” (interview, NGO director, Sarajevo, November 6, 2017).

This indicates the magnitude of the task that faced the ICTY in its self-assigned goal of creating a valid historical record of the atrocities in the former Yugoslavia. Unconditional early release does not in itself undermine the historical record but, witnessed through the eyes of persons who already perceive the ICTY as biased and as releasing convicts who are seen as unjustly imprisoned, it was believed by these interviewees to feed into the denialism of the crimes the ICTY

determined had occurred. For some, the unintended message received is that UER is a correction of errors. Many in BiH believed that the ICTY could have done more to tackle this, and they were frustrated that this context was overlooked.

Conclusion

The Bosnian Serb human rights activist cited above regarding denialism being rife in the RS, proffered an explanation for the UER practice, which at that time was ongoing. He concluded that the practice may have appeared neat on paper in The Hague but that the judges “don’t think about the wider political context” (interview, NGO, Banja Luka, November 24, 2017).

His explanation was that judges focused on following the letter of the law without considering the societal context—released prisoners being treated as war heroes by political elites. His explanation echoed critiques of Tribunal judges made by observers such as Hodžić and Klarin. They criticized judges on the grounds that their focus solely on the development of international criminal law led to side-lining the social context of the crimes. When this was discussed with one NGO director, he sighed and noted that “they never understood the tremendous burden that they had to deal with ... there should have been appropriate follow-up, to send a message, instead of hiding behind that role.” He believed they had a duty, considering they were the ones who were releasing perpetrators early. With no conditions attached, perpetrators returned and were “reinstated into society, full pensions, publishing books, being made the chief of a military academy—what kind of a message does that send?” (interview, NGO director, Sarajevo, November 6, 2017).

Although most interviewees were skeptical of apologies, some felt that a public apology and an acknowledgment of one’s crimes could be a justification for a grant of early release. This would be a sign of rehabilitation, a change of mentality. One interviewee suggested a public apology for the crimes may have helped combat denialism; “None of the perpetrators ... had made public statements, nor did they offer their apologies.” She stressed that “people would believe them ... rather than the victims” (interview, RS, November 23, 2022; the potential value of remorse has been discussed by Simić and Holá, 2020; and Yarnell, 2021).

The Serb human rights activist proposed that the Tribunal should have introduced conditions so as to not to provide perpetrators with the opportunity to stir up antagonisms. He believed that the Tribunal should have had the foresight to do so, given the “history [of the] Nuremberg Trials [and] the case of Albert Speer” who, after being sentenced at Nuremberg “never changed, decades later” (interview, NGO, Banja Luka, November 24, 2017). Coincidentally, this parallel was also drawn a year later in an article by Karstedt when comparing ICTY convict Plavšić and Nuremberg convict Speer. Karstedt (2018, p. 384) recommended that future ICTs “might become more proactive in monitoring return ... and see it as part of their task.” This could, she argued, encompass the imposition of “conditions of release,” although she did not specify what these conditions might be.

The Bosnian interviewee elaborated her point, arguing that the Tribunal should impose “more political consequences.” For some, this meant not granting any early releases; for others, having conditions attached to early release was a minimum step—conditions such as a prohibition on glorifying war-crimes and denial of atrocities. Twenty-five of the 57 BiH interviewees believed that conditional release would have lessened their sense of disappointment with UER—including those who initially presented with an air of nonchalance about the practice.

Although most interviewees in BiH were against early release, there were a number, notably judges, who initially did not object to it *per se* but were dissatisfied with its unconditional nature. This attitude was summed up best by one NGO interviewee. His immediate response when asked to express his thoughts on early release was that it was “ordinary,” but he then paused and took a more nuanced approach:

The one problem I have with it [UER], the thing that undermines it is it's a one-off decision and nothing you do or say has any bearing on it ... I will give you a very concrete example. ... Plavšić admitted guilt ... you say ... "she admits the crime and she feels terrible" and ... because of that you ... release her after two-thirds of the time served and the first thing she said after going out, she said that the ICTY is a political court and that she didn't mean anything that she said. I don't think that that's acceptable ... if you do it because of that and that turns out not to be true then you should arrest her and force her to serve the rest of the four years in prison. (interview, NGO, Sarajevo, December 1, 2017)

Had the conditions applicable now been in place in 2009, Plavšić may well have been returned to Sweden to serve out her sentence, or she may simply have gone home quietly. Similarly, Lazarević would not have been available to give a lecture on the heroism of the Serb troops in Kosovo, which the interviewee raised with a sense of outrage. And if he had, there would have been consequences. In January 2019, the Tribunal amended the "absurdity" of UER (interview, NGO, RS, November 24, 2017) on the instruction of the UN Security Council, and perpetrators are not now released unconditionally. Restrictions are placed on their return: for example, a ban on communication with the media. Although perpetrators can speak to the media after their sentence period, they are less likely to receive an orchestrated welcome after being on home turf and under the radar for some years.

This article has addressed a neglected element of international criminal justice: punishment's premature ending. It has shown how UER disrupted a Tribunal's key expressive value of punishment: stigmatization of the perpetrator and his or her crimes, (ICTY, 2002), which could be (mis)interpreted and manipulated to counter the undeniable record of events. UER, in the view of many interviewees, added fuel to the fire of existing antagonisms in an ethnically divided society. It is true that unrepentant perpetrators could have returned to the region after their sentence was complete and similarly stirred up antagonisms, but it would not have been the Tribunal who enabled it, as the perpetrators would have served their full sentence. It was an "own goal," another example of which the Tribunal provided "fodder to those who sought to discredit it" (Milanović 2016a, p. 1374).

This article does not claim to be generalizable to other ICTs that make UERs. It recognizes that circumstances existing in BiH—ethnic divisions, triumphalism, denialism of atrocities—are particularities that other postconflict societies may or may not share. These particularities were bound to inform perceptions of UER and the Tribunal itself (Ford, 2012; Stover, 2005), as was made clear in the interviews with a range of stakeholders. However, the issues identified may be applicable to other ICTs, commonalities that can only emerge through similar comparative qualitative research. The conclusion here is a straightforward one: There is a potential element of "transferability" (Delmar, 1970, pp. 115–128) involved when considering the factors that shaped stakeholders' perceptions in BiH. The specific circumstances highlighted in this article in relation to BiH may enable other ICTs practicing the early release of perpetrators who commit atrocity crimes and who are then returned to the region to be alert to the pitfalls involved.

Notes

1. Between 1998 and 2012, the ICTY president granted unconditional early releases. From 2012, as the ICTY was winding down and the UN International Residual Mechanism for Criminal Tribunals (IRMCT) became responsible for the enforcement of sentences, the IRMCT's president granted unconditional early releases.
2. PhD researchers who conduct interviews are required to obtain approval through the university's Filter Ethics Committee. A description of this researcher's proposed method was submitted, peer reviewed, and approval obtained by Ulster University Ethics Filter Committee. The Research adhered to the Policy for the Governance of Research Involving Human Participants. Retrieved November 12, 2022, from <https://www.ulster.ac.uk/research/policies>.
3. ICTY website. Retrieved November 12, 2022, from <https://www.icty.org/en/about>.
4. Hodžić, like Klarin, also has a background in journalism rather than law or academia. Retrieved November 12, 2022, from <https://harriman.columbia.edu/event/justice-unseen>.

5. Belgrade Centre for Human Rights surveys conducted in 2010 and 2012. These surveys, sponsored by the OSCE, were analyzed by Milanović (2016b, p. 253). Direct survey results (in Serbo-Croat only) are available at: <http://www.bgcentar.org.rs/bgcentar/wp-content/uploads/2013/10/Javno-mnenje-u-BiH-i-stavovi-prema-Me%C4%91unarodnom-krivi%C4%8Dnom-tribunalu-za-biv%C5%A1u-Jugoslaviju-u-Hagu-ICTY-2010-detajjne-tabele.pdf> (2010) and <http://www.bgcentar.org.rs/bgcentar/wp-content/uploads/2013/10/Javno-mnenje-u-BiH-i-stavovi-prema-Me%C4%91unarodnom-krivi%C4%8Dnom-tribunalu-za-biv%C5%A1u-Jugoslaviju-u-Hagu-ICTY-2012-detajjne-tabele.pdf> (2012) (retrieved November 12, 2022).
6. For example, under the terms of the Good Friday Peace Agreement 1998 (also known as the Belfast Agreement), which brought the conflict in Northern Ireland to an end, prisoners for conflict-related offenses were granted release on license, which had strict conditions attached.
7. Radio Free Europe. Retrieved November 12, 2022, from <https://www.rferl.org/a/serbia-eu-warns-over-war-criminal-teaching-military-academy/28825820.html>.
8. Office of the High Representative to Bosnia and Herzegovina. Retrieved November 12, 2022, from <http://www.ohr.int/?p=100167>.

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