

# CARNEGIE COUNCIL *for Ethics in International Affairs*

## International Justice in Rwanda and the Balkans: Virtual Trials and the Struggle for State Cooperation [Full Text] *Ethics & International Affairs, Volume 22.4* (Winter 2008)



***International Justice in Rwanda and the Balkans: Virtual Trials and the Struggle for State Cooperation***, Victor Peskin (Cambridge: Cambridge University Press, 2008), 294 pp., \$85 cloth.

***Phil Clark (Reviewer)***

Victor Peskin's analysis of international justice focuses on "virtual trials": the battles by ad hoc criminal tribunals to secure state cooperation in the enforcement of international law. Concentrating on this under-explored

theme, this book is a major contribution to the literature on transitional justice. Drawing on more than three hundred interviews in Rwanda and the Balkans and at the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR), Peskin provides a penetrating international relations analysis of international law, highlighting crucial interplays among tribunals, states, and international organizations.

While emphasizing the importance of politics, he goes beyond the classical realist critique of international law as merely the tool of powerful elites to portray the ad hoc tribunals as important agents in their own right. He argues that at times, through conciliation or confrontation, the ICTY and ICTR have achieved state cooperation and, at others, they have been powerless in the face of national or international intransigence. Peskin's substantial contribution is to show—through an empirical analysis of cases—why the tribunals have variously succeeded or failed in convincing states to hand over evidence and/ or such prominent suspects as Slobodan Milosevic.

Following a useful introductory chapter that neatly conceptualizes how to analyze tribunal-state dynamics in international justice, Peskin dedicates four chapters each to the Balkans and Rwanda, concluding with a chapter on the lessons from the ad hoc tribunals for the Special Court for Sierra Leone and the International Criminal Court (ICC). Throughout this work he deftly weaves a consideration of state and international politics through his analysis of ICTY and ICTR practice; and he offers an excellent chapter on the eventual transfer of Milosevic to The Hague, highlighting that the arrest and prosecution of major suspects invariably rely on the (sometimes accidental) coalescence of domestic and international factors and the tribunals' ability to respond. Peskin argues persuasively that the ICTY has generally succeeded more often than the ICTR in balancing conciliatory and confrontational approaches toward states, including generating

international condemnation of governments that harbor suspects or withhold evidence. He argues that the Rwandan government—capitalizing on international guilt over the lack of intervention to halt the 1994 genocide and the ICTR's various judicial bunglings—has gained a "monopoly on the mobilisation of shame" (p. 152), focusing international attention on the ICTR's shortcomings rather than on the government's own noncooperation with the tribunal. Crucially, in analyzing "virtual trials" in the Balkans and Rwanda, Peskin underscores that tribunals must comprehend domestic politics in post-conflict societies if they are to deliver effective justice. In particular, he praises Louise Arbour, the former ICTY chief prosecutor, for hiring Balkan country experts soon after she assumed her position, which enabled her to successfully pressure domestic actors. More recent institutions, such as the ICC, would do well to heed this lesson, given their tendency to hire generalist (usually American or Western European) legal advisors in situations that require detailed knowledge of domestic political, legal, and social conditions.

The only significant problems with this book arise in the later chapters on the ICTR, where Peskin's analysis of the political battles between the tribunal and the Rwandan government repeats two clichés—perhaps unsurprising given Peskin's reliance on interviews with ICTR officials and Western diplomats for his understanding of Rwandan politics. First, Peskin correctly critiques a romanticized view of the Rwandan Patriotic Front (RPF), the current ruling party in Rwanda, as the valiant liberation force that halted the genocide in 1994 and ushered in a new era of peace and stability in Rwanda. However, he overstates the "responsibility that the Tutsi-led RPF rebels also [bear] for the events of 1994 and for forestalling international efforts that might have saved more Tutsi lives" (p. 155). Certainly the 1990–94 civil war sparked by the RPF invasion of Rwanda was an important catalyst of the genocide—and the RPF committed crimes during that period that warrant investigation—but it is unjustifiable to state that the RPF therefore "bears responsibility" for the conspiracy by the Hutu government of the day to exterminate the Tutsi population.

Second, throughout the chapters on the ICTR, Peskin portrays the RPF as monolithic and comprising a highly centralized government. Here he fails—as most international commentators do—to recognize the fissures and factions within the RPF. Whereas Peskin's analysis of the Balkans explores the ICTY's negotiations with sympathetic elites in Serbia, Bosnia, and Croatia, his treatment of the Rwandan context excludes the possibility of similar negotiations between the ICTR and influential members of the RPF who quietly support the ICTR's cause. That successive ICTR chief prosecutors have also overlooked these potential allies, preferring to highlight the Rwandan government's intransigence, is one important cause of the persistent bad blood between the institutions, which has greatly hampered the ICTR's work. Peskin's own critique of the ICTR's often ham-fisted diplomacy toward the Rwandan government—particularly under chief prosecutor Carla del Ponte—would benefit from a more in-depth analysis of Rwandan internal politics.

These issues aside, this book is a most welcome dissection of the messy political business of international criminal justice. Through an innovative conceptual framework and dedicated field research, Peskin illuminates the complexities of prosecuting high-ranking suspects whom states often wish to shield. Consequently, Peskin provides indispensable insight into the challenges that international justice institutions face in securing state cooperation—and, perhaps most important, into the sparse moments when the ICTY and ICTR have overcome those challenges to deliver something other than victor's justice.

—PHIL CLARK

*Phil Clark is Research Fellow in Courts and Public Policy at the Centre for Socio-Legal Studies, University of Oxford, and co-convenor of Oxford Transitional Justice Research.*

Copyright © 2013 Carnegie Council for Ethics in International Affairs