

# Transcript of Episode 6, “Deterring Wartime Atrocities and the Yugoslav Tribunal”

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[Note: This is a rough transcript of the audio recording, based on digital transcription and human review.]

**Morgan:** Due to the COVID19 pandemic, we know this is a difficult time for everyone. So from all of us here at *International Security*, we hope you are staying healthy and safe.

**Music:** One, two, three, go.

**Morgan:** [00:00:28] Hello, and welcome to *International Security's* Off the Page podcast. Today we are talking about international criminal tribunals and wartime atrocities in former Yugoslavia. I'm Morgan Kaplan, and I'm the Executive Editor of *International Security*. And we will be talking today with Professor Jacqueline McAllister, author of a recent *International Security* article, “Deterring Wartime Atrocities: Hard Lessons from the Yugoslav Tribunal.” And later we'll be going off the page with retired general Wesley Clark, who was a Supreme Allied Commander Europe of NATO during the Kosovo War.

In the next two episodes of Off the Page, we'll be talking about the politics of refugee return and also Chinese views on nuclear escalation. Both are great conversations that you won't want to miss, so subscribe to Off the Page on your favorite podcast platform.

Joining us now is Dr. Jacqueline McAllister, who is an assistant professor of political science at Kenyon college. Dr. McAllister, thank you so much for joining our show today.

**McAllister:** [00:01:24] Thank you very much for having me.

**Morgan:** So you've written an incredibly interesting article for us called “Deterring Wartime Atrocities: Hard Lessons from the Yugoslav Tribunal.”

Tell us a little bit about this article, about what its argument is.

**McAllister:** So this article looks at the role of international criminal tribunals in a civil war context. So civil wars are now the dominant form of warfare since the end of [00:02:00] the Cold War. And I argue that international criminal tribunals will have the best chance of deterring government and rebel forces from committing atrocities against civilians in the presence of three conditions. [00:02:00]

So the first is when ICT or international criminal tribunal officials have secured sufficient prosecutorial support. The second is when combatant groups rely on support from liberal constituencies. And then the third condition is when combat groups have centralized structures, or, basically, clear leaders that are able to exercise control over troops.

**Morgan:** Now, why do these three things need to be present, right? Why not just the first?

**McAllister:** So that's a really great question. A lot of work that's been done on international criminal deterrents so far just assumes that so long as courts have prosecutorial support, which gives them the capacity to kind of make good on the threat of international criminal prosecution, that should be enough to produce a deterrent effect.

However, there are many reasons why that will likely not be enough to deter people, I argue. Combatants might not be [00:02:46] aware of the threat. They might have many reasons for perpetrating these atrocities, such as gaining control of territory, forcing agreement, and so forth. So what I say is missing is really kind of a focus on the types of combatants that are going to be the most susceptible to those threats and an attention to the types of combatants will actually have a capacity to comply with those threats. So liberal-reliant combatants, I argue, are going to be the ones that are susceptible to the threat, mainly because if they do something super naughty, they'll lose a lot of support. It would be really hard for them to, in those instances, to effectively achieve their war aims.

And then groups with command and control then would be able to ensure that there are forces actually can comply and stop killing people.

**Morgan:** So, just to maybe take a step back, what is the history in the role of these international criminal tribunals? How are the initial ones formed? In particular, your argument is specifically about the wars in the former [00:03:46] Yugoslavia, but how do they come about?

How are they supposed to operate and were they even intended initially to deter wartime atrocities? Or is it simply to punish them?

**McAllister:** So, no, this is a great question as well. So many people will probably be familiar with the Nuremberg and Tokyo tribunals. And both of those tribunals were set up in the aftermath of World War II.

They had occupying forces that were capable of securing evidence and suspects and so forth, and the idea and of World War II was to set up a permanent international criminal court for the purposes of potentially deterring some of the things that happen in World War II. However, that didn't happen, but at the end of the Cold War, the conversation that really kind of gained steam about creating these tribunals, and the first one that was created was the Yugoslav tribunal, and that was created by the Security Council, and then we got the Rwanda tribunal.

Then there were a number of ad hoc tribunals in between and then finally, the International Criminal Court. The thing that makes tribunals like the Yugoslav Tribunal and the International Criminal Court different is, is they actually have jurisdiction or [00:04:46] authority to pursue people that may be involved in active hostilities.

And if you go back to the records of the Yugoslav tribunal, and you read the Rome Statute and kind of the commentary about the creation of International Criminal Court as well, one of the expectations of the founders, or one of the hopes, at least, of the founders was, is that in giving them that authority to pursue people in the context of active armed conflicts that they might deter people from perpetrating really nasty atrocities.

So they had a lot of other expectations of these courts as well, but that was one thing that they hoped would happen.

**Morgan:** That's interesting. So prior to the International Criminal Tribunal of Yugoslavia, these courts emerged after a conflict was completed for the purposes of bringing justice to bear on a trustees that took place.

But you're saying that what made this particular tribunal unique, and I'm guessing this goes forward with future ones, is it allowed people to prosecute and even go after war criminals while it's happening. And that's kind of where the deterrent effect comes [00:05:46] from.

**McAllister:** Exactly. So there was also some other tribunals like that.

The Rwanda Tribunal came after the civil war in Rwanda and after the genocide. The hope was is that maybe in prosecuting there would be future deterrence, like sending a norm that you will be prosecuted, but the Yugoslav tribunal and ICC were very much about kind of real-time deterrence, or people hoped that they could do real-time deterrence.

**Morgan:** I mean, in some ways it almost sounds a bit like coercion actually, right? In the sense of, if people are currently engaging in wartime atrocities, by bringing in the International Criminal Court that can operate during war time, it's using this threat of punishment to change behavior in some ways.

**McAllister:** Definitely. Yeah. It was seen as kind of another tool in the toolkit for potentially alleviating some of the suffering associated with these conflicts.

**Morgan:** Right. So tell us a little bit about what the situation was and Yugoslavia, in terms of these atrocities who were committing these atrocities. And how did the implementation of the international criminal [00:06:46] tribunal affect those atrocities going forward, if at all?

**McAllister:** So the wars associated with the former Yugoslavia started gaining steam in the early 1990. These wars were associated with very aspects of Yugoslavia, or what was Yugoslavia, breaking up. So the first conflicts, there was a brief 10 day war in Slovenia, which was one of the six republics of Yugoslavia.

They separated, but then Croatia separated and Bosnia separated. And Serbia didn't want Croatia and Bosnia to separate. So the early conflicts were about Croatia and Bosnia separating. They were very, very, very violent. Croatia, the Croatian conflict, was very violent, and the first half is Serbs were securing territory to create basically Serb enclaves on, and they sent an UN peacekeepers and it was kind of quiet for a bit until at least the Croatian army rearmed and grew strong enough to kind of mount counterattacks, which happened in 1994, 1995, towards the end of the war. Bosnia, on the other hand actually was the most violent of all the conflicts. It started a year after the conflict in [00:07:46] Croatia. Again, there was a lot of violence associated with the Serb forces as they were trying to secure territory through the policy of ethnic cleansing.

And the Croats and Bosnian Muslims or Bosniaks were initially allied, but then they fought each other, and then there were factions within the Bosniaks that fought each other, and it

was just a really brutal war that saw civilians wrapped up in a lot of atrocities. And listeners will likely be very familiar with the Srebrenica genocide, which occurred in 1995 which was two years after the Yugoslav tribunal was set up, and it's usually touted as a classic example of why deterrence can't work. So those were the early ones.

And then Kosovo came next. So Kosovo, they have a very large ethnic Albanian population that had not been treated so well, since Tito died, the former leader of Yugoslavia, and originally embraced a policy of peaceful resistance and opposition, but then kind of more rebellious units rose up and they basically led a rebellion in Kosovo, which was a province [00:08:46] of Serbia. The Serbs sent in really brutal police forces and army forces to suppress the rebellion, more ethnic cleansing, and then NATO got involved there.

And then the final conflict was in what is now referred to as North Macedonia. But it was again an issue between the space for ethnic Albanians within the broader government. And that conflict was definitely the least brutal of all the different conflicts in the region. But it definitely did see atrocities by the respective sides in that conflict.

**Morgan:** So what did you find across these conflicts? Was the International Criminal Tribunal actually able to deter atrocities and under what conditions?

**McAllister:** Yeah, so the Yugoslav tribunal, I find, did not deter the groups in the Croatian, Bosnian, or Kosovo conflicts from perpetrating atrocities. So in some cases, I think some of the groups might have been susceptible to the threat, but in large part, the Yugoslav tribunal, at least in Croatia and Bosnia before arrests were [00:09:46] occurring, they just, they weren't really convinced that that tribunal would actually pursue them.

They just knew that they couldn't pursue them, so they didn't really care.

**Morgan:** Why not?

**McAllister:** Well. So unlike the Nurnberg and Tokyo tribunals, the Yugoslav tribunal didn't have its own occupying forces and it didn't have its own police force. And the situations in Croatia and Bosnia and Kosovo were very dangerous, a really poor security environment.

So it was hard for personnel to get into these countries. And then not only that, but people, including NATO, at least while these conflicts were being fought, was not inclined to arrest people. So arrests did start happening in post-conflict Bosnia around 1997, but during these conflicts, there were no arrests.

There just were not convinced that they would be pursued at all.

**Morgan:** Where did it succeed?

**McAllister:** It succeeded actually in Macedonia. So what we see in Macedonia at that point, the tribunal was in a position. They were on the ground very early on in that conflict. And when things started to get [00:10:46] really nasty in that conflict, they were actually getting support from NATO and a bunch of other places they mobilized support from to pursue combatants. And some of the combatants in that conflict were really, really concerned

about the risks of being found, like being accused of war crimes or committing war crimes and sufficiently that kind of motivated them to do things that I think they would have liked to do but didn't because of that fear of prosecution.

**Morgan:** You know, something interesting about your argument and your approach to studying the deterrent effects of international criminal courts is that it's an argument that is applicable both to state and nonstate actors. And so my instinct would be to think that both types of actors may respond differently to an international criminal tribunal or to international law. Should we expect the two types of actors to be differentially pressured by the presence of an international criminal tribunal?

**McAllister:** I think that in studying civil war dynamics, it is important to kind of think about the differences between [00:11:46] government security forces and rebel security forces nonetheless, and in the context of research for this project, I found that both governments and rebels face two core challenges that can really affect the court's ability to impact their behavior.

So the first is these groups need support from somewhere, and if they need support from places that are really concerned about what these courts say, that can be really important. And then the other thing that these groups share in common is kind of organizational issues. So governments tend to be better organized than rebel groups. But to the extent that they have leaders in command, that can also be relevant here. So there are important differences between these groups, but these two characteristics of government forces and rebel forces are important for the deterrent effect.

**Morgan:** What's the take home for those out there? Was the ICTY a success?

**McAllister:** So I think the Yugoslav tribunal's experience is very important. And what it, I do find a deterrent effect under a narrow set of conditions [00:12:46] within these conflicts. But the interesting thing is, is that the conditions I find where there is a deterrent effect are actually present in many contemporary civil wars.

So for example, I find a deterrent effect in the Macedonian conflict. And I think a lot of that stems from the fact that it was still a low intensity conflict. And we see, while we hear a lot about conflicts in places like Syria and Yemen, low intensity conflicts similar to what happened in Macedonia are actually far more common.

The other thing is that the other factors like prosecutorial support, combatant groups that rely on liberal constituencies, and that are organized and so forth, we tend to see those factors operating in a lot of different civil conflicts where the ICC is active. So the effect is there. I think it's really important to understand that this effect is conditional and incurring under a narrow set of circumstances than existing research or policymakers think it might, but it is there.

And in terms of developing a kit for dealing with [00:13:46] conflicts and human suffering and those conflicts, having a better understanding about what these tribunals can and cannot do will help that broader holistic response to these situations.

**Morgan:** And I'd love to drive that point home a little bit more, which is based on what you've uncovered in your research, what is the policy takeaway?

What is the policy implication of your findings?

**McAllister:** One, international criminal tribunals are not silver bullets for deterring all these crimes, right? Their effect is very conditional. I cannot stress that enough. The other thing I think is really important to keep in mind about these tribunals is that while international criminal tribunals can do a lot to kind of mobilize prosecutorial support and thereby enhance their ability to pursue suspected war criminals, they really do need states to step up and help them get access to evidence and crime scenes and suspects and so forth. And it's very unrealistic to expect these courts to be able to have any deterrent effect if we're not willing to kind of support them. And here I'm thinking about kind of [00:14:46] the International Criminal Court and the UN Security Council's referred a number of situations to the International Criminal court but hasn't always been willing to kind of back that process up with concrete support and people give the court hard time for not deterring, but it's hard when they can't really even get into these places.

A second implication would be that these courts can have a deterrent effect, and one way that we can maybe grow that deterrent effect would be continuing the benefits of military trade and inter-governmental organization relationships with liberal states and relations. The liberal-led order has a lot of perks to it, and the more we can kind of make those perks attractive to more actors and kind of buttress them, I think we can do a lot more there.

**Morgan:** Dr. McAllister, I only have one more question for you and that is, are you ready to go off the page?

If you enjoy listening to Off [00:15:46] the Page, you'll enjoy reading our quarterly journal, *International Security*, which is edited and sponsored by the Belfer Center at Harvard Kennedy School and published by the MIT Press. To learn more about the journal, please check out our website at [belfercenter.org/is](http://belfercenter.org/is).

And now joining the conversation is retired general Wesley Clark, who was Supreme Allied Commander Europe of NATO during the Kosovo War and is currently a Senior Fellow at UCLA is Berkle Center. Clark also served as the military advisor to the American team that negotiated the Dayton Accords peace agreement in 1995.

General Clark, thank you so much for joining our show today.

**Clark:** Well, thank you. It's a pleasure to be on it and discuss this very important topic.

**Morgan:** So General Clark, I thought we'd kick off the conversation by asking what your reactions were to reading this piece, as someone who was a Supreme Allied Commander in Europe during this time period of which the article's talking about. What was your kind of reaction to the argument, and also to the kind of portrayal of the International [00:16:46] Criminal Court during this?

**Clark:** Two principal reactions. First on, I'm delighted to see some excellent scholarly research on this. At the time, of course, when you're involved in it, you can't get access to all these different participants. You can't really understand that the motives at various levels. But the second thing is that what's not in the piece that's a crucial variable is the degree to which the United States was willing to support the International Criminal Tribunal. And that varied greatly during the time period of this study, because when the ICTY was formed, the United States was internally split on how much support we would give. State Department, Madeleine Albright at the United Nations, very strongly supportive. The Pentagon, not so supportive, and we didn't have troops on the ground until 1996 in Bosnia, so there was nothing we were going to do. Once we put our troops down there, then we had already decided we would not go after these [00:17:46] indicted war criminals.

That was part of our thinking to avoid provoking more conflict. That changed in the summer of 1997, and with that change, ICTY became incredibly more empowered. Incredible.

**McAllister:** I agree, General Clark. You're playing to a very, very important aspect of the relationship between the ICTY and the United States. The U.S. relationship was very, very important and a lot of the way I came to think about prosecutorial support, which is one of the key ingredients, I think is crucial for these courts to have a deterrent effect or any kind of effect whatsoever. A lot of my thinking about that variable actually arose from looking at the U S relationship with the ICTY early on. And one of the key reasons why the ICTY case is precisely so interesting to look at is because relative to other international criminal courts, we're seeing the ICTY actually had a lot more support.

And a lot of that support definitely did come from the United States. So when the [00:18:46] ICTY was first set up, for example, they didn't have a headquarters or staff or anything. And you're definitely right. Madeline Albright, she sent a bunch of lawyers, computers, and so forth to the Hague to really kind of help that operation get going.

And throughout it all, the U.S. was a very important partner to the ICTY, which is again, a very interesting thing for understanding the potential effect of the court.

**Morgan:** How does the ICTY actually operate in the same space as NATO, for example in the Yugoslav conflict. I'm trying to get a sense of, perhaps our listeners are interested in what it actually looks like from a bureaucratic perspective to have an armed conflict going on, but also to have this legal body operating in the same space.

So perhaps General Clark, you can tell us a little bit about what that was like.

**Clark:** Well, actually, all we needed from the International Criminal Tribunal was the name of the indicted person. We didn't use U.S. and NATO means for information collection to try to [00:19:46] locate that person and then to detain them. That became the mission in the summer of 1997: Detain and indict, persons indicted for suspected war crimes and send them to The Hague for prosecution.

So we weren't collecting the evidence at that point. We weren't in the field cooperating one-on-one with the International Criminal Tribunal. They just gave us the names and whatever evidence they had. We then put together the process for finding them, and I would just tell

you this process that was put together to find these, we called them PIFWCs: persons indicted for war crimes, P I F W C s.

These PIFWCs works that we went after, this set the basis for the entire counterterrorism actions in Iraq and Afghanistan, going after all of the high value targets and including al-Zaqari, Saddam Hussein, and even today in Syria. That was the basic methodology that we created, which was to take various pieces and sources of [00:20:46] information, personal information, intelligence-collected information, financial information, synthesize it, and work out how to find that person. And we get at first Major General Dave Grange, who was commanding the First Infantry Division, set this up in the fall of 1997. Major General Larry Ellis followed it when First Armor Division took over for U.S. forces, and then we brought our allies, the British and the French into this system, and that's the system that was, you know, has been used for 25 years essentially with, you know, further enhancements as we got better sources of information.

**Morgan:** So one thing that's interesting, and I, you know, I picked this up from reading Dr. McAllister's article, is that the International Criminal Tribunal for the Former Yugoslavia is ongoing as the civil war itself is going on.

And so did you notice during your time as SACEUR, the fact that what the criminal tribunal was doing were actually affecting the ability to deter atrocities?

**Clark:** From the time we started going after [00:21:46] PIFWCs in the summer of 1997, everything changed. At that point, the mid-level persons became, they were aware of NATO's power and before that, NATO had been looked at on the ground as a, yeah, powerful, but they're not going to interfere with us.

Suddenly, NATO became a factor, and when we became a factor, it magnified the deterrent impact of the International Criminal Tribunals. Now, from the beginning, we had known from listening to people like, like Milosevic, that there was always a certain impact and awareness of potential prosecution. And you may know that Mr. Karadzic in his, his orders to General Mladic would say things like, "Clear out such and such a village, but do not violate international law," which was like, you know, cover your you know what. Because of course they were going to violate international law, but he was aware of it and he was trying to protect himself and so they were, they were [00:22:46] always at the top level aware of this.

When you get down into the end of the lower level commanders and the passions on the battlefield of, that's a different issue, but at the top, the Serbs were incredibly aware of international law. They just didn't believe it had any real impact until NATO began arresting people.

**McAllister:** Yeah. Something I came across in my own research show the PIFWC campaign is definitely a turning point in 1997 and I definitely, in my own interviews, saw evidence that the higher-ups especially were increasingly aware and concerned of it.

But one of the issues I was bumping up against, so this was in 1997 and then, so the conflicts in Bosnia and Croatia had been over with peace agreements. The conflict in Kosovo was getting amped up in 1998 and into 1999, which is when NATO came in. But a lot of the



veterans I talked to on the Serb side there, that was within, at least the Federal Republic of Yugoslavia, the PIFWC campaign wasn't there, and there was a sense amongst the combatants that I talked to that at [00:23:46] least while they were aware of the tribunal, they didn't think NATO would actually end up arresting them as long as they stayed within that territory. And then during the campaign, I think, or there was some question about whether NATO would actually start well arresting people on the ground and it was kind of put off until the end of the air campaign.

So it's kind of interesting to see kind the higher-ups have maybe this sense that they thought they could get away with it, and then kind of the lower-downs thinking so long as they didn't actually go anywhere where NATO was on the ground, they could get around it. I think it was good for them to know NATO could potentially arrest them, but it wasn't until you actually got in on the ground in Kosovo that the same kind of condition applied. They thought they were untouchable at least so long as they were in the Federal Republic of Yugoslavia during that conflict, is what I heard from people on the ground. But I was, and you dealt with the higher-ups throughout the whole conflict, and I wonder if in your discussions with them, they were aware, do you think at any point in time, people like Milosevic thought that NATO would come for them, [00:24:46] or was it something he could eventually find his way out as such as like Karadzic's reports that, "Oh, don't, you know, respect international humanitarian law, I'll cover myself and get away with it."

**Clark:** So, for example, in within a couple of weeks we saw evidence of a mass grave in the Western Kosovo region. We took pictures of it. We then begin to pick up information that the Serbs had tried to move that grave site and conceal it. And then the next thing was we heard about bodies being dumped down mine shafts.

And in the subsequent trials, it turned out that the Serbs were loading Kosovar bodies on the trucks and bring them back into Serbia. One of these trucks ran off the road, ran into a river. And, um, the local police chief in Serbia recovered the truck and they opened it and they were shocked to find in it a bunch of dead civilians who had been killed by the, by the Serbs, and they were trying to conceal the [00:25:46] evidence.

So certainly Milosevic and Mr. Sainovic and, and the generals who were working down there, they were very aware that NATO would use the power of international law against them.

**Morgan:** The article and the conversation we're having is about how international criminal tribunals can deter wartime atrocities, but something that's coming out here in this conversation is that it may deter wartime atrocities under some circumstances, particularly the ones that Dr. McAllister was talking about.

But it also seems to potentially increase the effect of hiding wartime atrocities or in the sense of making leaders think, "well, I'm still going to commit them, but I have to do it in a way that protects ourselves from potential prosecution."

**Clark:** Oh, of course. Of course. They were trying to project themselves.

In fact, I will tell you at the end of the bombing campaign in Kosovo, when the weather started to clear and we were flying 24 hours a day and we had struck [00:26:46] targets all throughout the country. We were still very careful about trying to avoid any civilian casualties in this. We were just trying to put pressure on in order to empower the diplomacy that would end the war.

Milosevic wasn't quite buying it. And Louise Arbour, who was the chief prosecutor at the International Criminal Tribunal, called me the 24th or 25th of May of 1999, and she said she had the evidence to indict Milosevic for war crimes. Should she do this? And she said, "There's a split opinion. Some people in the U.S. government believed that if he's indicted, he will be even less cooperative with international diplomacy. What's your view?" And I said, you've got to indict him because, once he's indicted, he knows he has no more way to have diplomatic conversations with the Europeans who, in the past he had sort of, he brought them in, he'd sort of befuddle them, he would give them a little piece of an [00:27:46] agreement to try to make them heroes and buy them off and stall. All that stalling was finished off when he was indicted because then the Europeans were not able to talk to Milosevic because he was then an indicted war criminal.

So at the top, the International Criminal Tribunal had enormous impact on ending the conflict successfully.

**McAllister:** I had two points. So one about kind of the deterrent effect, and the interesting thing I saw as the higher-ups in Kosovo, I think they still thought that they could get away with it for at least a period of time, but by the final Yugoslav conflict in North Macedonia, that was after most of it should actually been handed over to The Hague and it was a totally different ballgame. And not only were they aware, but it seemed to be percolating down to their behavior.

The second point, with respect to the indictment for Milosevic, I think that is a very interesting thing to think about as well. So the indictment at least publicly was made known around May 27th and they got Milosevic to concede, I think pretty much a [00:28:46] week later. And it's kind of interesting looking back at that period of time and thinking about which set of factors actually got him to eventually stand down. And I thought about this question a lot myself, and it's hard to know in hindsight which factor it was, but some of the evidence that I've received and kind of talking to other people besides Clark is one of the most important effects that indictment had was actually for NATO itself.

So the NATO campaign itself ultimately was 78 days, but it was supposed to be far shorter. And at this particular point in time, as General Clark was saying, Milosevic had been really dodgy and not really seemed like he was going to bow to NATO pressure and just, it was a lot longer of a campaign than intended to be. Support for Operation Allied Force was waning. And one of the best things about the indictment was that it actually kind of was a signal that yes, what NATO was doing was right. There's a reminder of what we're fighting for. This guy is bad news, and we got to see this through. I mean, [00:29:46] he's being indicted for really horrific crimes and so forth. So that was really one big effect that I think is also important to consider.

And then the other thing too, looking historically at that moment in his decision to stand down, I think maybe increase the pressure, but I, you look to, he was negotiating a lot with the Russians at this particular point in time, and the envoy at the period, Viktor Chernomyrdin, he basically kind of pooh-poohed the indictment and really didn't give it much credence. And I feel like, in my analysis, it seemed like Russian pressure kind of, "We're not going to support you anymore, Milosevic," might've been more important than the indictment, but I don't know. It's kind of hard to fully piece together the effect of the indictment, but it's also interesting to think about the other things it did as well and the role that indictments can play in kind of getting an end to these kinds of situations, for sure.

**Morgan:** So one, one question I have at this point in the conversation is, is we're talking a lot about the effects of the international criminal tribunal on behavior and [00:30:46] deterring trustees in the former Yugoslavia, but General Clark, you would also mention that a lot of the lessons learned have found its way outside of Yugoslavia. You brought up the war in Iraq, you brought up the war in Afghanistan. How does the history and the impact of what happened in Yugoslavia affect both how the United States and other actors approach matters of deterring and also bringing to justice wartime atrocities in other conflicts elsewhere around the globe, but also do we think it actually had an effect on other potential perpetrators outside of the former Yugoslavia?

**Clark:** Well, first of all, I think when I'm talking about the lessons learned, I'm talking about the military intelligence, special operations procedures that we put in place that we then carried forward. I'm not talking about the broader impact of the International Criminal Tribunal. You know, when we created a sort of 52 face cards there in Iraq and we identified high value targets, we wanted to go after.

That was [00:31:46] just like the way we went after the persons indicted for war crimes, but that wasn't international law. That was just the United States and how we saw it in Iraq in 2003, four, five and so forth.

Now, a very important factor to consider is that it's the role of Russia. Russia, just instinctively anything that builds up NATO and the United States, Russia instinctively has opposed, regardless of whether it was good for Russia or not. And this was true in the 1990s, but in the 1990s, the Russian bureaucracy was struggling to be organized. President Yeltsin didn't have a tight grip on what was being done and said, so Vice President Gore talked Russian Vice President Viktor Chernomyrdin into participating in these peace talks. And so that brought Russian influence in.

But the Russians also went behind us. They set up a special operation that was unfolded on Pristina airport to try to split the country. And I, this may have also had been revealed to [00:32:46] Milosevic. He and his people probably knew about this operation and, and what it was supposed to do. It would have completely obviated everything NATO had done in coachable. And so it would have split the country and given the Serbs 40, 50%, the Northern half of the country, which is what they wanted.

**McAllister:** And just to clarify for the audience, this was an agreement, kind of struck in the context of the final days, before Milosevic agreed to pull out his forces from Kosovo.

**Clark:** So, I mean, I think, you know, we don't really understand everything that happened in Kosovo today because we never, we never got access to the other side, the Russian side and the Serb side, unlike when you look at World War II, for example, and you have much better access to what Germans thought and did. You don't have that access here. So we're, we're sort of only seeing half of it.

But when you go past 2000 and you see Vladimir Putin coming into Russia, you see that there was resistance against this idea of, of responsibility to protect. The Australian foreign ministry and the United [00:33:46] Nations seized on the humanitarian intervention adventure in Kosovo, and they created a doctrine called "responsibility to protect," R2P.

And it was supposed to, you know, extend the reach of international law and improve behavior during conflict and provide just, justification and indeed a requirement to protect civilian populations. It was, it's gone by the wayside, in part because of the United States itself. When the United States took actions in Kosovo, we were not unified politically. In fact, the Republican-led Congress refused to support President Clinton's air campaign. And the result of that was that when it was over, the Republican-led Senate said, "Oh God, we've got a president who's been, he was impeached. He was a draft dodger, and we can't. I mean, he actually won a military conflict. How awful." And so, and then, you know, these were the Democrats. So the Democrats, they didn't say, uh, you know, "we won a victory." They just said, "well, it's over." So the lessons were never really won. They were never encapsulated in the United [00:34:46] States. And I was shocked and horrified to see that men like Paul Wolfowitz had insisted when they, he became Deputy Secretary of Defense, that not only would the United States not join the International Criminal Court, but we demanded that other countries exclude any consideration of U.S. behavior under ICC standards. And so we declared ourselves exempt from the ICC that put us in the category of Russia, China, and Iran. It wasn't a good step forward, and so unfortunately, what Dr. McAllister has documented is sort of a high point of international law in constraining conflict. We have yet to see further steps that would advance it, in my view.

**McAllister:** Yeah. So kind of getting back from a scholarly perspective, the answer about kind of what has been the broader effect of deterrence outside of the Yugoslav case study, and there's actually a good amount of research, and I'm finishing my own manuscript where I've looked at the ICC's experience contemporary civil [00:35:46] Wars.

And the argument I make for the Yugoslav case actually holds for the ICC cases, and I found evidence of a deterrent effect in those cases. So the effect is a little bit more complicated. I think generally the evidence suggests it's been more in a deterrent direction than not. So that's important to keep in mind.

And then the other thing I think that General Clark is putting his finger on here that's really interesting and important is, kind of the U.S.'s waxing and waning roles with international criminal tribunals. I mean, in the rhetoric we hear these days, the United States seems to be very, very hostile to these bodies. So last spring when the ICC prosecutor was in the midst of pursuing investigations into torture and U.S. forces crimes committed potentially in Afghanistan, they withdrew her visa and threatened sanctions on people and so forth. But

that kind of belies the historical reality of the United States playing a very, very important role in supporting these institutions in the development of these things.

And a third [00:36:46] point I was thinking of, I want to respond to what General Clark was just saying, that one of the things that I find really, really interesting about kind of the arguments against the United States having a relationship with the court is the fact that its jurisdiction is something that we don't want to be beholden to.

And the fact of the matter is, is that under the U.S. Uniform Code of Justice and our own laws, we actually are kind of beholden already to all the norms that the Rome Statute and the International Criminal Court are trying to enforce. So it's a little bit interesting there. So I mean, we should want to be beholden to these things, and in many respects, we actually already are beholden to them, which is an interesting thing to keep in mind.

**Morgan:** Well, so that brings up two interesting follow-up questions. You know, we can obviously take them one at a time, but what is the argument that people make for why the United States should not join the International Criminal Court? And the second is, do you think there's ever going to be a period of time or a moment where United States will actually become party to the [00:37:46] statutes?

**Clark:** I think it would change if you had a progression of government in the United States. It's just this issue about international law is fundamental to understanding the International Criminal Court system, and you know, all through the 1990s Republican senators like Jesse Helms refused to support the United Nations.

Every year there was a fight about putting the budget forward to the United Nations. There were challenges in the court system. Despite the fact that the United States signs treaties, there's a body of jurists in the United States who insist that no matter what the treaty is, we can't be bound by any international agreement, and this international criminal court is a subset of that larger discussion in society. And until we have a more enlightened politics, I don't see any movement on the International Criminal Court.

**McAllister:** So the arguments against joining the court: There's a four main points we generally hear.

So the first one is, is that there's concern that we don't want an international [00:38:46] court prosecuting our people. We don't want our people that are out fighting across the globe, doing a lot of things that other countries are not necessarily willing to do to fight terrorism and so forth. We don't want our troops to be beholden to some foreign court. So that's first argument.

The second argument is there's a concern that there could be politically motivated investigations and prosecutions. So this also fits into the kind of the UN-type argument. Where the United States view that people are going to come after us unfairly or come after our allies like Israel on fairly, there's also due process concern. So they think the protections at the ICC are not as strong as they would be in U.S. courts, which is not at all the case.

And then kind of an interesting, in bit of a contradictory point, that sometimes makes it's people are on the one hand so scared of the ICC coming after U.S. personnel, but on the other hand, they argue that it's really ineffective and point to the fact that this court's been set up for quite a while and hasn't had many convictions and so forth, which also kind of [00:39:46] belies some of the evidence that suggests that it actually can be effective. So those are the arguments against joining the ICC.

But in terms of prospects, I'm not even sure a progressive government at this point would be enough for the U.S. to join the International Criminal Court. I think there tends to be a lot of opposition, especially from the Pentagon, for joining the International Criminal Court. And we saw under Barack Obama's administration, there was a warming up to the court and we had non-member, or we were, we went to all the meetings of the International Criminal Court as kind of an observer, and I think his administration would have been more inclined to join the court, but kind of domestic political factors weren't there.

That said, one thing that is kind of interesting to point out about the could change or affect the prospects of U.S. membership in the court is actually U.S. public support for the court. So I was just looking up the latest survey data on U.S. support for the court. And most Americans really think that the U.S. should dedicate resources to the court, and a [00:40:46] majority, or an increasing number of Americans, believe, like 50% now, from 34% in 2014 believe that the U.S. should actually join the court. And then the most surprising thing about this finding was, is that support for the ICC held even when participants were told that U.S. forces could potentially be investigated for crimes in Afghanistan for torture and so forth. So there is, I think, increasing public support for membership at the court, which could swing things. But I don't know if we're going to see that for a while.

**Morgan:** Great. Well, at this point in the show, we have a little bit of a tradition, which is we like to ask our special guests whether they have any advice for junior scholars, junior practitioners, junior service members. So General Clark, we'd love to hear what advice you have for our listeners.

**Clark:** Well, I think you have to look at cause and effect in international relations very carefully because there are many, many, many factors. So if you look [00:41:46] at this excellent paper by Dr. McAllister, and it's the best piece I've seen on looking at the impact of the International Criminal Tribunal at various levels, there's only so far you can go in scholarly analysis.

The truth is that much of international relations is driven by the temperament and the politics, the internal politics, the bureaucratic politics that you may not be able to see on particular actions. So, for example, the struggle between Democrats and Republicans over the proper role of international law is fundamental to this issue.

The structure of decision making in Russia, post-Soviet Russia, was fundamental to the outcome in Bosnia and Kosovo. And as we move forward on issues like this, they have to be seen through multiple lenses. The art of good scholarship is to be able to see an array, all of the different lenses through which the action can be seen and understood [00:42:46] in an effort to get to the bottom of the explanatory forces behind it.

Good scholarly work that we've seen from Dr. McAllister is an important part of pushing international relations in the right direction. And, uh, we all owe Dr. McAllister a debt of gratitude for her good work.

**Morgan:** Fantastic. Well, thank you so much General Clark, and thank you, Dr. McAllister for joining our podcast episode today.

**McAllister:** Thank you both as well. It was a real pleasure.

**Clark:** Thank you.

**Julie Balise:** “Off the Page” is a production of *International Security*, a quarterly journal edited and sponsored by the Belfer Center at the Harvard Kennedy School and published by the MIT Press. Our program is produced and edited by Morgan Kaplan, the Executive Editor of *International Security*. The associate producer and technical director is Benn Craig. Digital communications by me, Julie Balise. Thanks to our intern, Kendrick Foster, for additional assistance. And special thanks to Hilan Kaplan for composing our theme music. Upcoming episodes and additional material for “Off the Page” can be found online at [belfercenter.org/offthepage/](http://belfercenter.org/offthepage/). All articles from the journal can be read at [mitpressjournals.org/is/](http://mitpressjournals.org/is/).