A Response to Viktor Peskin and Michael Struett’s Comments on Courting Democracy in Bosnia and Herzegovina: The Hague Tribunal’s Impact in a Postwar State

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In July 2011, Serbian police arrested Goran Hadžić, the last of the International Criminal Tribunal for the former Yugoslavia’s (ICTY) indicted war criminals. Hadžić, who had eluded Serbian police before, was leader of Croatia’s self-proclaimed breakaway region, the Republic of Serb Krajina. Local prosecutors said he was caught while trying to sell a stolen painting by Amedeo Modigliani, a possible trophy from the wars of 1990s (Jolly 21 July 21 2011). Unlike Bosnian Serb General Ratko Mladić, who was transferred to The Hague in May to great media fanfare, Hadžić was unknown outside of Southeastern Europe. Mladić’s appearance in court, on the other hand, retrained the world’s focus on the ICTY and begged the question, “why now?” The answer lay with the obvious carrot of EU membership. Both events coincided with Serbia’s desire to fix a date for the start of EU accession talks. The cold calculation that the execution of the requirements of international justice would bring political and monetary gains figured more prominently than what Serbia’s ambassador to the UK called its “legal and moral obligation to the Hague process” (Tisdall 20 July 2011).

Beyond the Tribunal proceedings, in recent years, Serbia has been using law to promote its own version of the wars of the 1990s, reaching into Bosnia-Herzegovina to accuse its military leaders of crimes. In March 2011, it issued an arrest warrant for former Bosnian Army General Jovan Divjak, for his alleged role in the Dobrovoljačka case, in which members of the Yugoslav People’s Army (JNA) were killed as their column pulled out of Sarajevo. Divjak was arrested in Vienna where he spent almost five months under house arrest before Austrian authorities let him return to Bosnia-Herzegovina,
arguing he was unlikely to receive a fair trial in Belgrade and noting a lack of reliable procedures for evidence-sharing between the two states. Divjak’s arrest sharpened divisions still present in the region concerning the rule of law, and the continuing contestation of the nature of the war. Furthermore, the Divjak case was evidence of a two-track policy in Serbia, one in which it makes some concessions (like handing over war criminals) while actively pursuing a specific agenda elsewhere. Such is the situation in the region: one step forward, two back.

Now that all of the indicted war criminals have been transferred to the ICTY, a few additional observations about the court and its impact can be made and areas for future research identified. In addition, recent studies can help put the findings of Courting Democracy into a larger context.

Since the 2006 general elections in Bosnia-Herzegovina, and the 2010 elections that a year later had yet to produce a government, the political climate has soured as international attention has waned. There is reason to believe that disillusionment with the ICTY is on the rise even if the court has reached the important goal of apprehending its last indictee. For example, a recent study published by United Nations Development Programme (UNDP), Facing the Past and Access to Justice, asked Bosnians whether they feel that relevant facts about the war in the country have been established. A surprising 84.4 percent of Serb respondents, 64.7 percent of Croat respondents and 57.9 percent of Bosniak respondents felt they had not (Pajić and Popović April 2011). Given the millions of pages of documentation produced by the court, these numbers do not inspire confidence in the public’s reception of ICTY findings. This was not for a lack of interest in the subject, either: over 70 percent of all respondents to this study said that what happened in the war was important or very important to them (Ibidem). In Courting Democracy, however, I cautioned that survey data is only one measure of the court’s effectiveness and that even in Western democracies, citizens report low levels of confidence in courts. Public attitudes toward the court will mirror the country’s political (mis)fortunes.

At present, more troubling is the fact that Bosnia-Herzegovina continues to suffer from an absence of what writer and journalist Ed Vulliamy calls reckoning. In a moving article in The Guardian in the wake of Mladić’s arrest, Vulliamy observes that while justice has been served, Mladić’s transfer is small consolation and a “hollow victory” in a country that lacks a general awareness

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1 The exact phrasing of the question was: “Do you think that relevant facts about the events during the war in BiH have already been established?”