

THE AD HOC TRIBUNALS ORAL HISTORY PROJECT

An Interview with

John Shattuck

International Center for Ethics, Justice and Public Life

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Session One

Interviewee: John Shattuck

Location: Cambridge, MA

Interviewers: David P. Briand (Q1) and
Leigh Swigart (Q2)

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Q1: This is an interview with John Shattuck for the Ad Hoc Tribunals Oral History Project at Brandeis University's International Center for Ethics, Justice and Public Life. The interview takes place at the Massachusetts Institute of Technology in Cambridge, Massachusetts on April 7, 2015. The interviewers are Leigh Swigart and David Briand.

Q2: I just wanted to remind you, John, of what this project is about. The International Center for Ethics, Justice and Public Life for a while has been interested in trying to document the early years of the ad hoc tribunals with the idea that there's people who were involved who may not be around that much longer—not you, I'm not talking about you—

Shattuck: Well, who knows? You never know. Get them while you can.

Q2: —but who may not have gotten their personal perspectives on the institutions, about the early years, about how they came into being, the outside influences and so on. So we are interviewing people from across the different departments and sections of the tribunals, and also people like yourself who had some connection to the establishment of them so that we can capture these personal histories about the institutions.

Shattuck: Good.

Q1: Yes, and in building off of your personal history, thinking about the growth of these institutions and what's come after and where international justice has gone since then. Since we're kind of running on limited time we have to do a limited oral history, so we won't delve too far in, so I thought we could jump in, in 1993. At this point you're on your way out of Harvard and your way into the State Department. Where did that fall in terms of your awareness, reaction to the wars in the aftermath of the breakup of Yugoslavia?

Shattuck: I was certainly well aware of them before I went in, as everyone was of course. I went in with some expectations frankly that the U.S. government would be more actively involved than I found when I went in. President [Bill] Clinton when he was a candidate had campaigned on the slogan of he was going to do something about the human rights crisis in the former Yugoslavia. I don't know whether he mentioned Belgrade but he was talking about war criminals, before they were really identified as war criminals, in his campaign speeches.

Then when I went in, I realized that basically the policy was continuing from the previous administration—Yugoslavia had been regarded as a European problem, that is to say the Yugoslav breakup issues. We were all aware of the famous Jim [James A.] Baker [III] comment, "We have no dog in that fight." Therefore it was logical that in this transition

between the two administrations that a lot of the old, somewhat standoffish approach was continuing. "Standoffish" isn't really the right word because this was so early in the post-Cold War period, I don't think it was fully understood what was happening and the nature of what became known as "ethnic cleansing" but really was genocide. Nobody really knew quite what this was all about.

Q1: That word wasn't being used yet.

Shattuck: No. The [Robert D.] Kaplan book [*Balkan Ghosts*] and the "ancient hatreds" concept was already being used in Washington. I would say the primary commitment that I saw from the State Department was a kind of humanitarian commitment, that is to say supporting UNHCR [United Nations High Commissioner for Refugees] in the delivery of humanitarian assistance to refugees, which is obviously a very important piece, but U.S. involvement was very limited with respect to the political side of this.

Then it developed—Warren [M.] Christopher, in this early period before I was sworn in as assistant secretary, made a trip to Europe in April and May 1993, touring the capitals. They [were] expecting the U.S. to come in with some kind of an additional plan since Clinton had campaigned on this. Christopher's brief, whether it was his personal perspective or was something coming out of the administration—I think probably more of the latter than the former—was still pretty standoffish, although there was the early change to a so-called "lift and strike" policy—lift the arms embargos and conduct air strikes as needed. It was tried out on the Europeans and the Europeans didn't like this at

all of course because they had their troops in place and they certainly didn't want to see the U.S. doing air strikes when their troops were peacekeepers.

Anyway, this was the kind of atmosphere in which I entered the State Department. I think my first real engagement on Bosnia was at the UN World Conference on Human Rights, which took place in Vienna in June of 1993. In fact, I was sworn in in order to be able to go over there and be deputy head of the delegation.

Q2: That's the famous one, right? What's the big document that came out of that?

Shattuck: Yes, that's right, it was the declaration of the universality and the indivisibility of political, social and economic rights. There was a strong effort on the part of the Bosnians to try to get the conference to endorse a position on their behalf, which would then be relayed to the UN Security Council. There was actually a Bosnian resolution; it was almost impossible to avoid it because in June of 1993 all hell was breaking loose in Bosnia. I was determined to take this on as an issue as the deputy head of the U.S. delegation, and get the conference behind a position that would push the Security Council and effectively push the U.S. in a certain way to take a more active role in engaging on Bosnia.

At the same time I heard that the—and I wasn't involved in this particularly—that the tribunal document was being drafted. I think it was May, probably before I went in. It

was people in the legal adviser's office, and you've probably interviewed some of them, I would think.

Q2: We did. We have interviewed somebody who was involved in drafting the statute.

Shattuck: Right, exactly. That was a good development. Madeleine [K.] Albright, whom I met early on, was very strongly in favor of that and I allied myself with her and David [J.] Scheffer on her staff, who I hope you're going to interview. Working with her, we established a small team of people in the State Department who were trying to push the tribunal forward. Mike [Michael J.] Matheson is the guy that you probably should talk to. He was a career foreign service officer and he was the deputy legal adviser. It was he who really did the main part of the drafting. He's written about it too; he's published a number of articles about the early stages of the tribunal. Anyway, stop me because otherwise I'll go on and you may want to ask other questions.

Q1: Did you have any sort of grounding in that geographical region at all when you were sort of thrown into this crisis at the State Department?

Shattuck: No, none. Just a short footnote to how I happened to become the assistant secretary of state for human rights, the Clinton—

Q1: It doesn't have to be a short footnote.

Shattuck: Well, it could be reasonably short, anyway. There was a political battle over that position.

Q2: Was that the first time that there had been a position—?

Shattuck: No, it went all the way back to the [Jimmy] Carter administration, actually—Pat [Patricia M.] Derian, who was President Carter's first assistant secretary, so it was already fifteen years old. But it had become a kind of a political football in the [Ronald W.] Reagan era, and there was a sort of downgrading of the human rights part of it and an upgrading of the democracy promotion part of it. Then of course the Reagan administration emphasized alliances with human rights abusers who were valuable in the Cold War context—mostly Central America, etcetera. [Laughs] So I was a kind of a compromise figure. Clinton said he wanted somebody—or the people in the White House; I don't know whether Clinton himself took this position—wanted somebody who was not from within the government and who had a strong background in human rights and civil rights and was sort of an NGO [nongovernmental organization] type. I fit that bill.

Q1: You had been at the ACLU [American Civil Liberties Union] and—

Shattuck: I'd been at the ACLU; I'd been deputy vice chair of Amnesty International USA; I'd conducted a number of missions, etcetera, but I had no real involvement with Yugoslavia. I'd been through Yugoslavia as a student, as almost everybody had, drinking

slivovitz all the way, thinking I was enjoying every minute but probably not aware of much of what was going on. [Laughter] It was on my way to Greece. That was the extent of my knowledge of Yugoslavia.

Q2: What did you think about becoming a diplomat? That must have been a very different kind of role for you.

Shattuck: No, I actively sought it once it became clear that I was in play, as it were, because I thought it would be very interesting. I did want to try out government. I had been involved in the Clinton campaign; I knew Clinton somewhat because we were overlapping in Yale Law School some. I knew Hillary [Rodham Clinton] as well. I thought, this is a chance in this new world. Obviously 1989 was a big feature of my world, as it was everybody else's, in terms of the changes that went on in Europe, so I wanted to be part of that. But none of us really knew quite what to expect and that included people from within the government who had served—not only what to expect in Yugoslavia but expect in terms of how the whole post-Cold War world was going to unfold.

So very soon after I arrived—Somalia, Rwanda, Bosnia, Haiti. I've written about all of this; I have published on this topic, on how the U.S. and other countries struggled to try to figure out what their relationship was to these new conflicts that were developing in the post-Cold War world.

Q2: You've written about those, terming those as human rights wars.

Shattuck: Yes.

Q2: Could you talk about that a little bit? Do you mean wars that were about human rights abuses or wars about actually the nature of human rights and the need for intervention?

Shattuck: Well, it was both. The former was really probably what I had in mind when I first described this as human rights wars because clearly, if there was such a thing as universality of human rights, it certainly related to the basic right to life in the sense of prevention of genocide. That of course was the genesis of the whole Universal Declaration [of Human Rights] coming out of the Second World War. If there ever was such a thing as a human rights war, it was about people being slaughtered for their ethnic, religious or political beliefs.

But then ultimately it did become internal struggles over how to define the response and what kind of a response to have. I think the predominant view in that period was not only the ancient hatreds concept that was floating around but also the sense that the world was going to become more integrated—the [Francis] Fukuyama concept of the "end of history"—and that all the various international trends were toward further integration, and democracy was breaking out everywhere, etcetera. The idea that there would be

ethnic and racial and religious conflicts that would come up within all of that was very slow to be accepted.

Somalia was really seen as a humanitarian crisis—primarily as a famine and not a problem of human rights especially, except in the sense of famine. So then Rwanda was totally confusing initially to most people who were studying the situation. Soon afterwards it became clear that it was something quite different from integration—quite the opposite. Bosnia and Yugoslavia was sort of the paradigm of what could happen to a country over time and was happening. Later on I served as the ambassador to the Czech Republic. The Czechs of course had a velvet divorce in 1993 as well as a Velvet Revolution in 1989. Yugoslavia certainly didn't have any kind of a velvet divorce, so there was a lot of confusion in the air, let's put it that way.

Q1: How did the wheels start turning towards the setting up of these tribunals while you were in the Clinton administration, and how did you get involved?

Shattuck: It's hard for me to really put my finger on any particular moment. My bureau was responsible for gathering information about the kinds of human rights abuses that were going on in Bosnia—the ethnic cleansing, war crimes, etcetera. We did a series of reports, and they were being done even as I came in, so I didn't initiate those but I expanded them. The reports—basically refugee reports compiled by political officers who were on the ground gathering information. It became clear to me as I reviewed these

reports that these were not just refugees; these were people who had actually had egregious human rights crimes committed against them.

One of my earliest encounters with the tribunal idea was with Mike Matheson, who had already started drafting the statute under some general instructions from Albright. I give Madeleine credit for the really early leadership on this. Of course, her own background coming from Czechoslovakia and all the experience of the Second World War and her refugee experience really made her a rather different type of figure inside the government from most of the other people we were working with.

Frustration was building on the part of some of us who—I, from the point of view of human rights, and seeing that these egregious crimes against the refugees and ethnic cleansing was beginning to become clear. Then there were dissidents inside the European Affairs bureau, several of whom resigned, as you know, in 1994. [Richard C.] Holbrooke in Berlin—I had some contact with him. He was frustrated to be in Berlin; he would have preferred to be in the State Department in Washington—although he did an excellent job in Berlin.

There was a kind of a loose coalition of people who were communicating. My most day-to-day communications on these issues were with three people—David Scheffer, Jim O'Brien—whom I hope you're going to talk to at some point—and Matheson. And then Mort [Morton H.] Halperin, who was over in the Defense Department waiting to get confirmed as the first assistant secretary for humanitarian affairs at Defense. He was

actively involved, and he and I knew each other very well. I had been his lawyer when he was wiretapped by the [Richard M.] Nixon White House.

Q1: Right, right.

Shattuck: He and I had together taken the deposition of President Nixon after he'd left office, so we had kind of a bond in that sense. I was communicating regularly with Halperin. But it was all very loose, and it was only Madeleine who had any sort of leverage on these issues. She was really the leader of the pack, I would say, in that period.

Q2: Was it your impression that most people were on board with this idea of supporting this international institution that was really quite new?

Shattuck: No. [Laughs] It was seen to be Madeleine's project. Nobody was really willing; there was no funding for it. The cynics were saying, including the NGOs, that this is just because the U.S. is not taking the lead and stopping any of this stuff so maybe we'll put together a tribunal that will at least assuage the guilt of those who are on the inside feeling frustrated. It was a peculiar institution to begin with, with very low expectations, including by those of us who were supporting it. I never thought it would become anything more than, at best, a kind of glorified truth commission, a place to which my reports and other reports that were coming in from NGOs and other governments could go and then be investigated further. The idea that anybody would ever be indicted or—

even more farfetched—arrested or convicted, was in this period 1993-1994 very, very limited.

Early on, as it became an institution—before there was a prosecutor but it was clear that the statute had been adopted by the Security Council—the tribunal was constantly running into opposition from the negotiators. I may have even spoken about this a little bit when we were in Brandeis—the negotiation strategy was really at odds with the accountability strategy, and the negotiators wanted everybody at the table, naturally, and they didn't want anybody indicted—any disincentives for participation.

On the other hand, they had no force behind them, the negotiators, so they were pretty frustrated too. They were very good people—people like Bob [Robert C.] Frasure, for example, who I got to know very well during this period. He was skeptical about the tribunal but because he had to deal with these thugs in Geneva, [Laughs] and he said, "The last thing we need is another complication to have this tribunal playing around, creating false hopes of accountability." Many of us thought it was probably premature to think that we can have any accountability anyway.

Q2: Can we talk a little bit about Dayton [the Dayton Accords] and how all this played out?

Shattuck: Let's take a couple of other steps before we get there. A very interesting step, which Richard [J.] Goldstone may have told you about, was his selection as the

prosecutor. Really it looked for a while as if the whole project was going to flounder because there were so many politics around the question of who should become prosecutor. By then, in 1994, early 1995, the tribunal was at least a—it was more than a paper institution. We were actively seeking a prosecutor, but the Security Council couldn't agree on anyone; the U.S. and Russia were unable to agree, although the U.S. and Russia were working quite closely together on a lot of things in that period, certainly nothing like what we have today. I played a part in this. I'm trying to remember exactly when it would have been. It was probably the summer or fall of 1994 where I had a meeting with [Sergey] Lavrov, who is now of course—

Q2: [Laughs] The famous—

Shattuck: —[Vladimir] Putin's man. He was somebody one could deal with then; he was a deputy foreign minister at that point. We met in Moscow and one of the topics that was on each of our talking points was trying to resolve this question of this tribunal and who might be the prosecutor. We talked about other things as well so it wasn't the main point of the meeting. But we both discovered that high on both of our lists was Richard Goldstone because he was somebody with a very strong human rights record, but neutral because South Africa was not seen to be in the U.S. camp particularly and it wasn't anything that was going to get in the way of anything the Russians were trying to do. When the U.S. and Russia and others, including obviously the other members of the permanent five, agreed on Goldstone, that brought the tribunal to life.

I didn't know Richard Goldstone; he was just a name on a list. I knew his credentials. But almost as soon as I met him, I felt that he was the perfect person for the job because it needed someone with strong credentials but very good political skills. It became a highly political instrument in that early period, in the right way; it wasn't going to survive unless it was political. So he became a rather strategic artist of investigations and indictments.

I should back up a little bit more. I went to Bosnia with Madeleine Albright in January of 1994. We went to the Ovčara site near Vukovar where this ghastly story had been told by a number of refugees that people had been taken out of their hospital beds and transported in a vehicle to a remote field and shot there. It was a bit similar to what happened later in Srebrenica.

We had a fairly dramatic press conference about this on the site where Madeleine Albright said basically—with her helmet on coming out of a tank—"No one should end their life in a garbage dump," and it went around the world and it was a real spotlight on these kinds of crises. I had a press conference together with her. I was then told that I was not to go to Bosnia again, at all. The European Affairs Bureau said, "You have to stay out of there. We do not need these kinds of spotlights."

Q2: Because they thought it would do what?

Shattuck: They thought it would get in the way of the negotiations, that we don't want to stir the pot too much because we're trying—at that stage the Vance-Owen Plan was being

considered and these various other ways of settling the issues by dividing up the territory. It had nothing to do with me; it just was we don't want to put a human rights spotlight on this. So obviously I was frustrated about that. Madeleine was also frustrated but she had plenty of other things to do and didn't make another trip herself to Bosnia for a while.

Then the peacekeeping crisis with the taking of hostages of by the Bosnian Serbs of the UN peacekeepers and all that happened in May, and the negotiation of the release of the hostages, and the promise to the Serbs by the UN General [Bernard] Janvier to essentially assure the Bosnian Serbs that they would not be subject to any more bombing because of these kinds of situations. That basically opened the door to the taking over of the safe havens—Srebrenica and Žepa. At that point I said, "I can't stay out of this. I've got to get back in."

I went to see Goldstone, who I had gotten to know quite well at that point in The Hague, and Goldstone told me that he was getting ready to indict [Radovan] Karadžić and [Ratko] Mladić. This is early July 1995. The indictment I think ended up coming down something like July 20. It was after Srebrenica. I said, "That's fascinating, because that is going to provide leverage finally." This is before the decision had been made for NATO [North Atlantic Treaty Organization] to do something in response to Srebrenica. It was during that period I said there will be leverage that the U.S. government, and particularly Holbrooke, who was becoming more actively involved in this, are going to be able to threaten people with indictment, or warn them if they don't cooperate with these negotiating processes.

I then was sent to investigate what had happened in Srebrenica. I got a call from Peter [W.] Galbraith, who was the U.S. ambassador to Croatia, and he said that he had received credible information through the UN refugee agency that there were survivors of this—all these men who were missing out in the area at the time. Nobody knew where these seven thousand men were, and the Bosnian Serbs having overrun the town of Srebrenica. He said, "I think we may be able to send you in to investigate—to interview some of these survivors."

I then went to Tuzla. This is in late July of 1995. I was the first person to interview—for the U.S. government—any of the survivors. Then I filed my reports, which went back to Washington, obviously, and got a lot of attention. Madeleine found—several of us found that there were surveillance records of the NSA [National Security Agency] of the various grave sites that had been described by the surviving victims—places where people had been executed that were cited by the people that I was interviewing. She took that to the Security Council. The aerial photographs were displayed publicly in the Council and that was sort of the galvanizing moment that got the Security Council to adopt the resolution.

The president—I should give him credit for this, because I think Clinton was so shocked and appalled by what had happened in Rwanda that by the time Srebrenica came around, Clinton was not only actively supporting but pushing for deeper U.S. involvement and a change in the policy, particularly toward the Bosnian Serbs, obviously. That was when

the whole Holbrooke operation started. That's the run-up to Dayton. Holbrooke, brilliant diplomat as we all know—wonderful, difficult, truculent person who no one wants to get in the way of—decided I would be a good instrument for him, and I was perfectly willing to be the instrument.

I would go on the ground and do the sorts of investigative work that I had done in Srebrenica in late July. As he would fly into capitals, particularly Belgrade and Zagreb, obviously, to meet with [Slobodan] Milošević and [Franjo] Tuđman, he would get reports from me of the latest episode of ethnic cleansing—things that were happening in real time. Milošević was very adept at denying everything and blaming it all on the Bosnian Serbs, saying, "I'm sure that this will all pass," etcetera, but Holbrooke was able to say, "I have real-time information that I've gathered from our assistant secretary of state out in the field interviewing people." Banja Luka, Travnik, etc.—I was doing various places—and that gave Holbrooke the kind of immediate credibility to threaten more bombing, or possibly another indictment. By now the indictment had been recorded against Karadžić and Mladić.

Q2: Can I just interrupt? You were doing what you call investigations on—who was giving you information—?

Shattuck: Interviews.

Q2: I know, but who was giving you information on who to interview? How did you know how to go about this? This seems like a kind of a particular sort of approach to collecting information.

Shattuck: It turned out to be the perfect thing for the Human Rights Bureau to be doing. We had excellent contacts with the UNHCR in particular; I'd say our principal collaborator on all this was UNHCR because they were in the camps. They didn't consider themselves human rights investigators but they would know people who would have stories and they would pass those along.

Q2: Had they already sort of canvassed the people who were staying there to know what their story was? Did they already have some preliminary findings?

Shattuck: Yes, certainly for Srebrenica they did. They had identified four or five people who they felt should be interviewed and interviewed by a government, rather than just by UNHCR because their mandate is not to gather human rights information.

Q2: I'm just wondering how it worked on the ground.

Shattuck: Yes, exactly. Again, the backdrop of Rwanda is always there. UNHCR was badly burned in Rwanda too, and particularly when the camps in Goma ended up being infiltrated by the *génocidaires* there. They wanted to have a partnership with us and they were pleased to do that. Then there were political officers from the embassies—Belgrade,

Zagreb; we didn't have an embassy in Sarajevo at that point. There were human rights organizations with whom we worked closely. All my contacts in the past had helped out in that sense. So we—we being myself and our bureau—were the kind of point people to gather this data. We turned it over to the tribunal obviously, but even more important was what the tribunal got through some other, more covert sources. Holbrooke was extremely effective in developing ties with the various U.S. intelligence agencies to gather information about what was happening.

Q2: It sounds like from what you said that when you first came into the Clinton administration, you as a human rights person had certain standards that were not quite met.

Shattuck: Right.

Q2: Did you feel that when you got into the field there that you were able to exercise the kind of oversight that you thought really needed to happen?

Shattuck: I could see the role that I could play and allying myself with Holbrooke, and with Tony [W. Anthony] Lake and Sandy [Samuel R.] Berger in the White House, who approved of what I was doing and gave me authority even though there was a lot of debate inside the government about what the response should be. But the debate began, I have to say, when I made my Srebrenica report. I'll never forget coming back from my trip probably about the first of August 1995, back to the State Department and meeting as

we did every morning with the secretary's meeting of assistant secretaries of state where all of these issues had been so contentious in the previous period—the European Affairs Bureau basically tried to pooh pooh what was going on in the human rights area, the refugee people doing their thing, etcetera.

When I made the report on what I'd seen and what I'd heard about the mass executions, you could really hear a pin drop in the room. There was no longer any debate about whether this was genocide. That was the infamous debate that took place earlier, basically trying to tamp down the use of the term "genocide." This is true in Rwanda and again in Bosnia. When the real hard evidence came in, and I was able to gather it and get it from others, then—and particularly with Clinton's own change in direction and policy—people lined up behind this.

I would say that was the max—and now I'm going to turn to the tribunal—that was the point of maximum connection between the accountability strategy and the negotiation strategy; they came together and they came together because Holbrooke wanted them to come together. He needed instruments. He knew that he had force; he had diplomacy backed by force because the NATO response to Srebrenica was authorized by the Security Council, but he also wanted the accountability mechanism to threaten. Of course, this is what led to the decision to sideline Mladić and Karadžić and force all of this on Milošević and make him deal on their behalf. None of that would have been possible if the tribunal had not—with Richard Goldstone's engagement—done what it did on their indictment.

Q2: If I can just go back to this question of the use of the term "genocide," Was the average high ranking person in the Clinton administration aware that the U.S. [Laughs] has ratified the Genocide Convention, aware that we have obligations?

Shattuck: Oh, yes. Well, [Laughs] the legal advisor's office certainly was aware of that. This was painfully clear in the Rwanda era. I don't know how much you want to hear about Rwanda, but I could tell you all the stories about that too because I was the only U.S. official to be sent to Rwanda during the genocide. I did exactly what I've described here in the context of Srebrenica and Bosnia—I also did in Rwanda. I came back to Geneva and had a press conference in late April, early May of 1994 in which I said what was happening. I had seen it with my own eyes; I'd seen the bodies floating down the Kagera River. There was no question it was mass killing, but it would seem to me to be genocide because the victims were mostly Tutsi.

I was then called to account by the legal advisor's office who said, "You can't use that term publicly. You may believe that this is genocide, but that's a legal conclusion. That legal conclusion obligates the United States as a signatory to do something about it, to take appropriate action," which is what the Genocide Convention provides. Soon after that, the policy changed in Washington and they started calling it genocide. So yes, the answer is people were well aware of this, I think.

Q2: I recall the same debate came up in relation to Dafur.

Shattuck: Yes, oh yes.

Q2: "We don't want to call it—"

Shattuck: There it was the other way around, because there Colin [L.] Powell did call it genocide and nothing was done. The term was thrown loosely around, if you will. There were those who said that Dafur was much more complicated and closer to a civil war than either Bosnia or Rwanda.

Q2: It is interesting when you look at the way that the term "genocide" was used in the public sphere, and yet the first cases at the ICTR, they had to prove that there was a genocide. The legal determination and the public perception are sort of two different things.

Shattuck: That's right, yes, and that was the point that the legal advisor was making to me, saying, "Look, if you reach a legal conclusion that it's genocide, you've got to be able to prove that because that puts an obligation on the signatory states, including the U.S."

Q1: Can you describe the differences in your involvement with the ICTY verses the ICTR? Were you working on both at the same time? How did you go back and forth between the two?

Shattuck: ICTY of course was the forerunner of it all. I was involved in setting up the ICTR. The point that was made by me, Scheffer, Madeleine and others—it was the same actors in some ways—was that you can't set something up related to a European population where genocide is committed when you know that it's been committed in an African population and not have a tribunal to adjudicate it. That was the argument used inside the U.S. government. There wasn't much opposition to it, and the U.S. government certainly went along with the establishment of the ICTR. The real struggles were—and Scheffer can tell you more about this—were funding and administration and all of the early problems of simply getting the UN to staff the thing and get both of them off the ground.

Q2: There were people from the State Department who were sent over to be in the prosecutor's office at the ICTY, right?

Shattuck: Right, yes.

Q2: Did the same thing happen at the ICTR?

Shattuck: Yes.

Q2: Is that [Pierre-Richard] Prosper and people like—?

Shattuck: Yes, exactly. There were quite a number of U.S. prosecutors in both places. There were only one or two U.S. judges—there was Judge [Gabrielle Kirk] McDonald, who I guess was the first. You ought to interview her, by the way. I hope you're going to do that.

Q2: Yes, we would like to.

Q1: Yes, we're going to try.

Shattuck: Anyway, yes, so the staffing was partly the U.S.—but as you may recall, the U.S. was at war with the UN through the person of Jesse [A.] Helms [Jr.] of the U.S. Senate on the payment of dues. The U.S. could send all the people that it wanted but if it wasn't going to pay its dues the UN wasn't going to cooperate with the U.S. in setting up this tribunal, which a lot of people in the UN didn't really think was necessary. So it was not a very attractive time for—

Q2: Did the U.S. feel equally that they should send people to form part of the defense teams?

Shattuck: Good question. I think ultimately they were funding part of the defense teams, but I think they were mostly private defense counsel that were sent. This is a scenario that I'm not so familiar with so I don't know. It's a good question though. I don't think there was any—in fact I'm sure the Legal Advisor's office at the State Department would have

insisted on very strong adversarial approaches toward the trial, so the staffing of the defense counsel was important, but I don't remember whether the U.S. sent people to do that.

Q1: What do you think the impact was of having the ICTY take place in The Hague verses the ICTR taking place more locally in Tanzania?

Shattuck: A complicated story. The Rwandan government did not approve of the ICTR going to Arusha because it felt that if there was going to be any value to these trials, they had to take place *in situ*; they had to be in Rwanda, otherwise there was no visible and demonstrable justice. ICTR ended up being a real stepchild politically because it was sent to Tanzania. It wasn't in The Hague, but Tanzania and Arusha—they might as well have been in The Hague from the point of view of Rwanda. The Rwandan government started looking at alternative methods—these famous Gacaca trials with very little due process—but that's what the Rwandan government did. I think the ICTR was, at least in those early days, even more sort of shunted aside than ICTY. ICTY was playing, as I just described, a major role in the lead-up to the Dayton Peace Process, whereas ICTR was under-funded, under-staffed, sent out to oblivion in Arusha—where it probably had to be because if it had been in Rwanda I don't think any trial could have been fairly conducted. That was definitely a problem.

Q2: I read in an interview someone did with you that was on the internet where you spoke about meeting [Paul] Kagame in the early years, and I just wonder what you thought about him then and what you think about him now.

Shattuck: Hmm. [Sighs] He was a remarkable figure of course. He was the liberator, but as I write in my book, the RPF—the Rwandan Patriotic Front, which he headed—was not without guilt itself even prior to the genocide—that is to say the RPF was conducting these raids into Rwanda and that was creating an atmosphere in which the Hutu *génocidaires*—the extremists on the Hutu side—began to push back. Ultimately I'd say that the great balance of guilt was on the part of the *génocidaires*, certainly not on Kagame's part. He did come in and liberate. It was clear that he had no respect whatsoever for the so-called "international community"—for good reason because look at what happened. He was particularly excoriating the French and the French liberation effort when the French paratroopers were sent in and they effectively were able to save—even though they may not have intended to—a lot of the people who committed the genocide by helping them get out of the country.

I negotiated or I discussed with Kagame—I didn't really have any basis for negotiation—the setting up of the International Criminal Tribunal for Rwanda. He said, "We'll support that on two conditions—one that it be placed in Kigali, and two that it have the death penalty." Those were obviously non-starters. The UN was not about to put its tribunal in Rwanda, and as far as the death penalty is concerned that was also a non-starter under UN rules. I had respect for the position that he was articulating. I felt that he

had integrity at that point. There were some early complaints about the way in which his governance style was turning authoritarian, but not so clearly at that earlier stage. I think what he's done since is remarkable—he's saved his country; it's certainly doing better economically than most other parts of Sub-Saharan Africa—but at a price in terms of human rights.

Q1: Getting back to this idea of human rights wars, I wonder if I could read a little excerpt from your introduction to *Freedom on Fire*. You say, "The human rights wars of the 1990s present a powerful lesson of the urgency of building international institutions, policies and relationships to contain the terrorism of our time. Only by working with the rest of the world to address human rights crises that breed terror can we hope to forestall the outbreak of new and more devastating wars against civilians before they become a dominant feature of the twenty-first century."

As you look from the perspective of 2015 back on the work of the ad hocs, obviously they haven't completed this work yet, but how do you view their effectiveness, their impact on adjudicating the kinds of things that you set out in this introduction?

Shattuck: I think they demonstrate all of the difficulties of bringing accountability to bear, to try to deter and prevent the kinds of activities that they were set out to prosecute. Certainly you've got the conflict between fairness and fair trials and fair adjudications on the one hand, and the chaotic circumstances in which the crimes were committed and the difficulties of adjudicating those. You've got the problems of an international tribunal set

up under UN auspices outside of the place where visible justice needs to be performed in order to have any serious impact on giving the victims a sense that they have been vindicated in some way, or at least protected. Then you've got the unevenness of the adjudications. I think as you look at the results of some of these tribunals, particularly ICTY, the very narrow definitions of the command principle and the various defenses that have been allowed, which have basically let off many of the higher level officials, particularly the Croats—there are a lot of difficulties I think that have come out of this.

What do I think in balance? I think in balance it was certainly worth the effort, and I think it went far beyond what I would have expected. As I said at the outset, the expectation was that it might be a glorified truth commission. The irony is that it wasn't a truth commission. In a sense that might have been more valuable. I've always said that truth commissions can be valuable in promoting both justice and peace. "Truth and reconciliation" is the South African term, and it may be not applicable in other situations where you don't have the relationship between the majority and the minority that existed in South Africa, but still truth commissions bring out the facts and air them for everyone to understand, and do it in an impartial way so that people can't challenge those facts. That turned out not to be the role of the tribunals. I think that role might have been a more effective role because there's still today ongoing dispute about the facts.

I think it's slowly being accepted by the Serbs in Serbia that they had the predominant responsibility for what happened in Bosnia, and I think it's not accepted on the part of the

Croatians that they had a major instigating role in stirring up the Serbs in many ways—Vukovar, for example. A truth commission might have done a better job. Now, looking at it from the point of view of developing principles of international law that relate to holding people accountable for genocide, crimes against humanity, yes, I think there's been a big contribution on that, but again I think some of the jurisprudence has been pretty crabbed.

Q2: Are you talking about [Jovica] Stanišić?

Shattuck: Yes, the Stanišić case. I'm trying to remember the names of the various cases in which this happened. You can see how it does happen—the judges are certainly going to look at evidence and they're not going to hold anybody accountable for something that they didn't actually personally engage in. But that elides over the facts. The facts are that there was an orchestrated effort to ethnically cleanse and ultimately commit genocide against these people. So who's responsible? The tribunals don't tell us.

Q2: That's interesting. I remember hearing someone who worked at the Cambodian tribunal for a while say that he became very aware that legal facts and the facts of history—how they are lived by people—are two different things, and that people who come to a court wanting to find the truth and give their version—that their version is maybe not contributing to the demonstration of legal facts so they're not allowed to say it or it's dismissed.

Shattuck: Right. Yes.

Q2: But a truth commission gives a different kind of truth than what a legal court does.

Shattuck: I'm probably putting too much on the truth commission concept. I'm a realist at bottom about all of these things. I don't think a truth commission can ever get at all the facts and all the truth, but it can get at the broad responsibilities for putting in motion these kinds of activities that end up—once they're being carried out at lower levels—become the essence of genocide, whereas a court is likely to try to affix specific responsibility on individuals, as it should, and the systemic aspects of it get overlooked.

Q2: Do you think that's what was at the root of some of this—what you think is faulty jurisprudence?

Shattuck: Yes. I'm not holding myself out as someone who has closely studied all of the jurisprudence of the tribunals but I do find from time to time getting frustrated by major adjudications. Obviously we're all frustrated by the Milošević trial. That was no fault of the tribunal in a sense, although it went on and on and gave him plenty of opportunity. Then of course he disappeared as nature took its course. I don't know what's going to happen with Mladić and Karadžić. These are big deals. We have to see what happens. Maybe something will happen. Maybe there will be in essence a truth commission. But all of these people who were looking for the truth I think are no longer really looking to the tribunal to give it to them.

Now what comes out of this? Obviously, ultimately it leads into the International Criminal Court, but I think the International Criminal Court—much as I favor the U.S. becoming part of it because I think it's absurd to stand aside—I don't think it's going to solve any of these problems. I think the same problems—in fact, if anything, they get magnified on the international scale given the jurisdiction of the court. Then you have this question of the focus on primarily African cases, etcetera. I am a proponent of international justice but I recognize fully the limitations that it has.

Oddly enough we were more idealistic about the possibilities of international justice in those early days in 1993, even though our expectations were very low [Laughs] but we hadn't encountered these problems that I'm describing now. The high water mark for me at least of the ICTY in particular is the lead-up to Dayton, when the combination of accountability and negotiation came together. That's from the point of view of a lawyer who was primarily a negotiator and a diplomat. I think one could look at the contributions of the tribunals in a very different way—an enormous contribution in the jurisprudence of gender violence. This is a huge step forward. The fact that heads of state were actually brought to trial is actually a remarkable event too.

Q1: We're just about at an hour here. If there's any other questions that you had, or if you wanted to say any final words?

Shattuck: This is a bit of a detour but it's an interesting one. When I was U.S. ambassador to the Czech Republic I got to know Václav Havel quite well. Havel was very skeptical about truth commissions, and I think Havel represented in a sense the prevailing view among Europeans, particularly Eastern Europeans who lived through communism, about truth commissions. The problem with the truth commission, Havel always said, is we're basically all guilty. The same problem is of course there for tribunals as well but even more for truth commissions.

It's kind of remarkable when a man like Havel would say we're all guilty because he was one of the great moral leaders, but the point he was making is that when you live under a system that forces you to behave in a certain way, you could be heroic, but most people are guilty of the crimes of the system. I think that's true of a genocide too, sadly. It doesn't mean that everyone was guilty of genocide who happened to be a Rwandan Hutu or a Bosnian Serb by any means, but the systemic elements that Havel was pointing to are present in all of these mass crimes—communism being a mass crime that went on for years and years so in a sense he was only talking about communism. You could also say to some extent the same thing is true of mass crimes, crimes against humanity that people get caught up in. This was particularly true in Rwanda. It becomes clear that almost anybody can commit these crimes and can be induced to commit these crimes.

There's something almost deeply flawed in human nature that draws people into this. There are also good tendencies that people have to stay out of the crime, so in the end, how do you judge this? You need to judge it, and I guess you need to have individuals

who you can hold up and say, "Slobodan Milošević represents the guilt of the whole Serb nation so we can lift the cloud of collective guilt once we've convicted him." That seems unsatisfactory, actually.

Q2: I remember an ICTR judge saying to me once, "If someone had said to me, 'Kill your neighbor or I'll kill your children,' who's to say what I would have done?" It's maybe kind of simple to say they should never have done that, but what do people do when you're given that choice? It's a difficult thing to choose.

Shattuck: Yes.

Q2: Of course, they weren't judging low-level perpetrators at the ICTR, but she was giving it as an example of the kinds of dilemmas people faced.

Shattuck: I know. Yes, *Sophie's Choice*. I mean, there it is.

Q1: Alright.

Shattuck: So, thank you.

Q1: Thanks very much, John. This has been great.

[END OF INTERVIEW]

Albright, Madeleine K.	5, 10, 11, 14, 15, 16, 23
Baker, James A., III	2
Berger, Samuel R. "Sandy"	19
Carter, James E., Jr. "Jimmy"	6
Christopher, Warren M.	3
Clinton, Hillary Rodham	7
Clinton, William J. "Bill"	2, 3, 5, 6, 7, 9, 16, 19, 20, 21
Derian, Patricia M.	6
Frasure, Robert C.	12
Fukuyama, Francis	8
Galbraith, Peter W.	16
Goldstone, Richard J.	12, 13, 14, 15, 20
Halperin, Morton H.	10, 11
Havel, Václav	32

Helms, Jesse A., Jr.	24
Holbrooke, Richard C.	10, 15, 17, 19, 20
Janvier, Bernard	15
Kagame, Paul	26
Kaplan, Robert D.	3
Karadžić, Radovan	15, 17, 20, 30
Lake, W. Anthony "Tony"	19
Lavrov, Sergey	13
Matheson, Michael J.	5, 10
McDonald, Gabrielle Kirk	24
Milošević, Slobodan	17, 20, 30, 33
Mladić, Ratko	15, 17, 20, 30
Nixon, Richard M.	11
O'Brien, Jim	10
Powell, Colin L.	22
Prosper, Pierre-Richard	23
Putin, Vladimir	13

Reagan, Ronald W.	6
Scheffer, David J.	5, 10, 23
Stanišić, Jovica	29
Tuđman, Franjo	17