Postcard from the ICTY

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Postcard from the ICTY

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The postcard juxtaposes two images of handcuffs, set against a black background. The first set of handcuffs, positioned at the top of the postcard, are made from cloth. They appear ragged, dirty with soil, and tightly bound. A sentence below the image describes them as "Exhibit No. P16/6 … (Srebrenica)", and on the back of the postcard, a further explanation is provided: "Cloth handcuffs used to bind victims wrists, found on a body in a mass grave near Srebrenica". The second pair of handcuffs are made from steel. They are lockable, and closed. The description given is that they are "UN-ICTY handcuffs". Separating the two images are the words – in English and either French or Bosnian/Croatian/Serbian – 'Bringing war criminals to justice and justice to victims'. On the back of the postcard, the logos and names of both the United Nations and the International Criminal Tribunal for the former Yugoslavia ('ICTY' or 'the Tribunal') sit in the centre-top of the card. There is plenty of room for writing a message to tell your loved one of your visit to the ICTY, and space to address the card and affix a stamp. The postcard is available at the ICTY, for no cost. A larger version of this postcard also appears as a banner, situated in the reception area of the ICTY and just adjacent to the doors which separate the public space from the space that only employees can access. The ICTY employees must walk past this image on their way into their workspace, every day. The image depicted on the postcard and banner is the key object employed by the ICTY to articulate its work, for both internal and external audiences.

The aesthetic of the postcard is striking, with the clear images and words rising out of the dark. It is clear that this postcard is designed to send a message about the work of the ICTY. The aim of the Tribunal is articulated as having two aspects: to bring war criminals to justice, and justice to victims. These two aspects are offered as interlinked – without justice being imposed upon war criminals, justice cannot be provided to victims. In both these respects, the ICTY is presented as instrumental. It is the ICTY who inflicts justice on war criminals, and it is the ICTY who gives justice to victims.

As an object the postcard (and the objects it depicts – the two sets of handcuffs) reveals a great deal about the aims of international criminal law, and the concomitant image of international criminal law. In this chapter, I examine the postcard as an object that indicates particular aims of

'Postcard from the ICTY: Examining International Criminal Law's Narratives', *International Law's Objects: Emergence, Encounter and Erasure Through Object and Image* (2017), reproduced by permission of Oxford University Press.

international criminal law, and I argue that the postcard demonstrates international criminal law's preoccupation with two objectives: ending impunity, and providing a meaningful voice for victims. I also examine the postcard as an object that is used in the branding and marketing of international criminal law.[1] In particular, I examine the claims to end impunity and to provide a place for victims as statements to market the ICTY and international criminal law more generally. But why does an object designed to 'market' an international criminal tribunal use language and imagery that suggests guilt? What is the effect of this? And what does the placement of the victim's handcuffs and the accused's handcuffs tell us about the place of the victim and the accused in these trials? I argue that, in these ways, the postcard is problematic. As a marketing technique, this postcard succeeds in promoting particular aspects of international criminal law – but in doing so, it also manipulates (and reinforces) unhelpful tropes of good versus evil, of 'deserving' victimhood, and of conviction as a core component of international criminal law. The postcard and the handcuffs provide a place to critically analyse the system of international criminal law, and the stories it tells about its aspirations and operations.

THE AIMS AND MARKETING OF INTERNATIONAL CRIMINAL LAW

Examining the aims of international criminal law provides us with a rubric to understand this system of law and its institutions and processes. Through analysing international criminal law's aims, we can identify what international criminal law aspires to, what it values, and what underpins its operations. We also then have a mechanism for assessment: aims allow us to measure the achievements of international criminal law against its own criteria, and permit a space for critique.

The aims of international criminal law are legion. These include ending impunity, the restoration or maintenance of peace, reconciliation, giving victims a meaningful voice, deterrence, a socio-pedagogic or didactic function, ensuring an accurate historical record, and setting out the 'truth' of events.[2] Of these objectives, 'ending impunity' and 'giving victims a meaningful voice' are

[1] See Christine Schwöbel, 'The Market and Marketing Culture of International Criminal Law' in Christine Schwöbel (ed), *Critical Approaches to International Criminal Law* (Routledge, 2014) 264. My thanks to Jessie Hohmann and Dan Joyce for their helpful comments on an earlier version of this chapter; and to the participants of the *Objects* workshop, whose collegial and insightful thoughts assisted my development of this chapter.

[2] See, for example, Martti Koskenniemi, 'Between Impunity and Show Trials' (2002) 6 *Max Planck Yearbook of United Nations Law* 1; John Jackson, 'Finding the Best Epistemic Fit for International Criminal Tribunals: Beyond the Inquisitorial–Adversarial Dichotomy' (2009) 7 *Journal of International Criminal Justice* 17; Mirjan Damaška, 'The Competing Visions of Fairness: The Basic Choice for International Criminal Tribunals' (2001) 36 *North Carolina Journal of International Law and Commercial Regulation* 365; Mark Klamberg, 'What are the Objectives

often invoked as being the core rationales for the system of international criminal law. They also position international criminal law quite apart from domestic law.[3] In this way, the emphasis of the postcard on 'bringing war criminals to justice and justice to victims' is unsurprising, and is indicative of the importance international criminal law and its institutions (such as the ICTY) places on ending impunity and providing a voice to victims.

The aims of international criminal law also provide a narrative for international criminal law – and thus, an instrument to tell the community why international criminal law is valuable, and should be supported. There is a clear overlap here between the aims of international criminal law, and the ability to 'market' international criminal law. Christine Schwöbel has explored international criminal law's commitment to branding, or what she calls the marketing culture of international criminal law.[4] The ICTY postcard is, I argue, an example of the branding and marketing of international criminal law. It is a tool designed to promote the product or service of international criminal law. As Schwöbel points out, 'branding involves the creation of a unique name and image for a particular product. This is about the attributes of a product, the promise'.[5] Marketing is defined as 'the selling of the product', and is interdependent with the branding of the product.[6] Marketing is perceived to be important for international criminal law, because international criminal law is a system dependent on the support of states (for finances, for the execution of warrants, and for access to materials for investigations). States therefore require a reason to support the system and its institutions: narratives about the aims of international law provide these reasons, and are communicated through branding and marketing methods – such as this postcard.

BRINGING WAR CRIMINALS TO JUSTICE …

of International Criminal Procedure? — Reflections on the Fragmentation of a Legal Regime' (2010) 79 *Nordic Journal of International Law* 279; Carsten Stahn, 'Between "Faith" and "Facts": By What Standards Should We Assess International Criminal Justice?' (2012) 25 *Leiden Journal of International Law* 251; Mirjan Damaška, 'Reflections on Fairness in International Criminal Justice' (2012) 10 *Journal of International Criminal Justice* 611; Bert Swart, 'Damaška and the Faces of International Criminal Justice' (2008) 6 *Journal of International Criminal Justice* 87; Minna Schrag, 'Lessons Learned from the ICTY Experience: Notes for the ICC Prosecutor' (2004) 2 *Journal of International Criminal Justice* 427, 428.

[3] Bert Swart, 'International Criminal Justice and Models of Traditional Process' in Göran Sluiter and Sergey Vasiliev (eds), *International Criminal Procedure: Towards a Coherent Body of Law* (Cameron May, 2009) 93, 105. For more on how the aims of international criminal law as a legal system differ from the aims of international criminal trials and the institutions of international criminal law, see Sophie Rigney, 'Fairness, the Rights of the Accused, and Procedure in International Criminal Trials' (doctoral thesis), 2015.

[4] Schwöbel, (n 1), 264.

[5] Ibid, 270.

[6] Ibid.

The aim of ending impunity galvanises international criminal justice. The ICTY was established because the United Nations Security Council was 'determined to put an end to such crimes and to take effective measures to bring to justice the persons who are responsible for them'.[7] Elsewhere, the Rome Statute specifically mentions ending impunity as the *raison d'être* of the International Criminal Court (ICC).[8] Impunity can be understood as 'the impossibility … of bringing the perpetrators of violence to account … since they are not subject to any inquiry that might lead to their being accused, arrested, tried and, if found guilty, sentenced to appropriate penalties, and to making reparations to their victims'.[9] Thus, ending impunity requires an individualised criminal process against a particular person, involving prosecution, and probably conviction. Any failure to prosecute — either passive (for example, neglecting to investigate), or active (such as the use of amnesties)[10] — signals impunity; and in turn, this suggests the inability of law to account for mass atrocities, official toleration of violence, and a sense that perpetrators are protected (and even enabled) in their commission of crimes. At a broad level, the call to end impunity therefore emphasises the system of criminal law as a response to atrocity. At a more individualised level, ending impunity will emphasise prosecutions against particular people.[11] Karen Engle has tracked the recent rise in the rhetoric of ending impunity, and argues that human rights advocacy has moved 'from naming, shaming, and sometimes judicially trying states for their violations of human rights to finding ways to hold individuals criminally responsible for them'.[12] However, this focus on individualised trial can be criticised as permitting a decontexutalisation of the events surrounding the crimes, which can allow the underlying structural causes of the atrocities to be

[7] SC Res 827, UN SCOR, 48th sess, 3217th mtg, UN Doc S/RES/827 (25 May 1993), as amended by SC Res 1877, UN SCOR, 64th sess, 6155th mtg, UN Doc S/RES/1877 (7 July 2009) ('*ICTY Statute*') preamble.
[8] *Rome Statute of the International Criminal Court*, opened for signature 17 July 1998, 2187 UNTS 90 (entered into force 1 July 2002) ('*Rome Statute*') preamble.
[9] United Nations Economic and Social Commission on Human Rights, *Report of the Independent Expert to Update the Set of Principles to Combat Impunity*, E/CN.4/2005/102/Add.1 (8 February 2005).
[10] Karen Engle, 'Anti-Impunity and the Turn to Criminal Law in Human Rights Law and Advocacy' (2015) 100 *Cornell Law Review* 1070, 1077.
[11] This is particularly apparent with the system of complementarity at the International Criminal Court. It is not clear whether processes like a Truth and Reconciliation Commission which allowed amnesties would permit a case to be admissible at the ICC. See Diba Mazjub, 'Peace or Justice?: Amnesties and the International Criminal Court' (2002) *Melbourne Journal of International Law* 247.
[12] Engle, (n 10), 1071.

ignored.[13] The emphasis on trials may be seen as another symptom of international law's obsession with crises, rather than with engaging in a systematic examination of the causes of conflict.[14]

While ending impunity requires both a system of international criminal law and particular prosecutions, it also suggests the importance of a finding of guilt at the end of the trial. As impunity connotes 'the exemption from punishment',[15] and punishment only comes after a finding of guilt, ending impunity is tied to conviction. Indeed, international criminal law is a system that 'thrives on conviction'.[16] As such, *conviction* becomes integral to the aims of international criminal law. Mirjan Damaška has argued that because ending impunity is so central to international criminal law, 'high acquittal rates could easily augur failure of [the courts'] mission'.[17] He advocates an 'abandonment, or relaxation, of some cherished domestic procedural arrangements', because 'international criminal courts cannot successfully pursue their manifold objectives by strictly abiding by most demanding domestic rules of procedure'.[18] Thus, relaxing or even abandoning procedural mechanisms can be undertaken to end impunity.

In this case, the postcard is resolute in its suggestion of culpability. War criminals will be brought to justice. There is no permitted possibility that the accused is not guilty. There is no room for the nuance of the presumption of innocence. There is no acknowledgement of the possibility of acquittal. Not only do the words reinforce the guilt of the 'war criminal', but these words are paired with an image of handcuffs – which are such a powerful object of guilt that they are often not allowed in a courtroom, so as to maintain the image of the accused's presumed innocence.[19]

Here we start to see the complex (and troubling) interactions between guilt, the aims of international criminal law, and the marketing of international criminal law. In this postcard, guilt

[13] Koskenniemi, (n **Error! Bookmark not defined.**~~2~~); Tor Krever, 'International Criminal Law: An Ideology Critique' (2013) 26 *Leiden Journal of International Law* 701; Engle, above n 10, 1119; Immi Tallgren, 'Sensibility and Sense of International Criminal Law' (2002) 13 *European Journal of International Law* 561, 594.
[14] See Hilary Charlesworth, 'International Law: A Discipline of Crisis' (2002) 65 *Modern Law Review* 377.
[15] Amnesty International, 'Policy Statement on Impunity' in Neil J Kritz (ed), *Transitional Justice: How Emerging Democracies Reckon with Former Regimes* (United States Institute of Peace Press, 1995) 219, cited in Engle, (n 10), 1077.
[16] William A Schabas, 'Balancing the Rights of the Accused with the Imperatives of Accountability' in Ramesh Thakur and Peter Malcontent (eds), *From Sovereign Impunity to International Accountability: The Search for Justice in a World of States* (United Nations University Press, 2004) 154, 165.
[17] Damaška, 'Reflections on Fairness in International Criminal Justice', (n **Error! Bookmark not defined.**~~2~~), 613.
[18] Ibid 612.
[19] See Robert G. Neds, 'Criminal Defendants: Maintaining the Appearance of Innocence' (1972) *Missouri Law Review* 660.

is inferred as a way of both setting out the aims of the ICTY, and of marketing the institution (and the system of law). More than just an aim of international criminal law, the promise of ending impunity has become part of the branding and marketing of international criminal law.[20] This marketing is perhaps even more acute in the case of the ICC, which relies on states to provide direct funding (unlike the ICTY, which has been funded by the United Nations Security Council). As Sara Kendall points out, in order to receive political and financial support from States Parties, the ICC has had to 'cast itself as more ambitious than it can be: hence its overdetermined claims to 'ending impunity''.[21]

As a marketing technique, the call to end impunity is particularly clever because it both names the problem (impunity) and the only possible solution – international criminal law. Impunity becomes not only something to rally against, but also something to bolster the position of international criminal law, because impunity is the problem to which *only* international criminal law is the solution. Connected to this, Schwöbel argues that the anti-impunity rhetoric 'may be a screen' to shield 'the purpose of growth and ultimately empire-building': in her view,

> advocates of international criminal law appear to be artificially creating gaps, declaring the given norms, institutions, and experts inadequate to address injustices. They then present the world with the necessary solution, i.e. the norms, institutions, and experts of international criminal law.[22]

Indeed, in contemporary times it is almost impossible to consider that anyone would advocate in favour of impunity. As such, the call to 'anti-impunity often "concoct[s] the anxiety it lives from"'.[23] Thus we can see that the aim to end impunity becomes a marketing tool associated with the maintenance of a system, in spite of the fact that impunity itself no longer has the power or influence it perhaps once had. The postcard is an example of this: it declares that war criminals must be brought to justice, and few today would disagree. Yet in stating this, the postcard is also intimating that there is a problem with 'impunity', to which the ICTY is the 'necessary solution'.

In this postcard, the certainty that the 'war criminal' is guilty – and that the ICTY can 'bring them to justice' – positions the ICTY as an institution with the ability to enforce retributive justice upon

[20] Schwöbel, (n 4).
[21] Sara Kendall, 'Commodifying Global Justice: Economics of Accountability at the International Criminal Court' (2015) *Journal of International Criminal Justice* 113, 133.
[22] Schwöbel, (n 4), 270.
[23] Engle, (n 10).

evil, and suggests that the ICTY should be supported for this ability. And yet there is something unsettling about this marketing from an institution that is, in fact, charged with upholding the rights of the accused and the presumption of innocence – not with assuming or reinforcing guilt. Indeed, the ICTY Statute states that all accused enjoy the presumption of innocence,[24] and that proof of guilt must be established 'beyond a reasonable doubt'.[25] If a prosecutor cannot bring evidence that is sufficient to meet this high standard, an acquittal must follow.[26] Further, the ICTY Statute vests the Trial Chambers with the responsibility to ensure that trials 'are fair and expeditious'.[27] The rights of the accused must be upheld, as 'minimum guarantees'.[28] These responsibilities are not invoked in the marketing of the ICTY through this postcard, but they are what the tribunal is charged with. Perhaps this is because the possibility of acquittals sits uneasily alongside this desire to end impunity, and acquittals are not good marketing tools – as Damaška reminds us, with his warning that acquittals are not seen as strengths of the Tribunal but rather as 'failure'.[29] The phrase 'bringing to trial people who are alleged to have committed war crimes' may be a more accurate description of the ICTY's mandate, but it is certainly less engaging than the bold claim that the ICTY 'brings war criminals to justice'.

In this way, the ICTY reinforces the guilt of the 'war criminal', in order to support its own operation. In order to end impunity, the Tribunal must function, and 'bring war criminals to justice'. While this reinforcement of guilt complements the aim of ending impunity, it also fortifies the idea that acquittals are a failure (rather than the sometimes appropriate outcome of a proper trial process). The advancement of guilt as a method of marketing is troubling for an institution which must balance the aim of ending impunity with the necessity of according the accused a fair trial, the presumption of innocence, and procedural rights.

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[24] *ICTY Statute* art 21(3); *Rome Statute* art 66.
[25] *ICTY Statute* art 18; International Criminal Tribunal for the Former Yugoslavia, *Rules of Procedure and Evidence*, Doc No IT/32/Rev.48 (adopted on 11 February 1994, amended 19 November 2012) ('*ICTY Rules*') r 87*; Rome Statute* art 66(3).
[26] However, there are some concerns that the judgments of international criminal trials rest on unsatisfactory epistemological grounds , see Nancy Combs, *Fact Finding Without Facts: The Uncertain Evidentiary Foundations of International Criminal Convictions* (Cambridge University Press, 2010)). In relation to the International Criminal Court, Simon De Smet has argued that there is a lack of certainty about what the standard 'beyond reasonable doubt' means. See Simon De Smet, 'The International Criminal Standard of Proof at the ICC — Beyond Reasonable Doubt or Beyond Reason?' in Carsten Stahn (ed), *The Law and Practice of the International Criminal Court: A Critical Account of Challenges and Achievements* (Oxford University Press, 2015) 861.
[27] *ICTY Statute* art 20; *Rome Statute* art 64(2).
[28] *ICTY Statute* art 21(4); *Rome Statute* art 67.
[29] Damaška, 'Reflections on Fairness in International Criminal Justice', (n **Error! Bookmark not defined.**~~2~~), 613.

As Engle has argued, human rights advocates must be encouraged to 'imagine a world in which the culture of impunity is not their principal opponent'.[30] In a similar way, in order to achieve a truly transformative moment, advocates of international criminal law should be focused on ending atrocities and the conditions that give rise to them – rather than simply on ending impunity. Certainly, where 'ending impunity' connotes 'conviction', advocates of international criminal law must guard against any weakening of the trial process. As part of this vigilance, advocates of international criminal law should rally against marketing which reinforces guilt as a necessary outcome of a trial process.

… AND JUSTICE TO VICTIMS

If the goal to end impunity is the galvanizing force of international criminal law, a second core rationale for international criminal law has been the emphasis on providing redress to the victims of atrocity. The victims are positioned as the primary reasons for the existence and the performance of the system— they are 'the one in whose name criminal justice is exercised'.[31] This focus has been further strengthened in recent years, by the ability for victims at the ICC to participate formally in trial proceedings, through 'Victims Representatives' (the participating victims are usually not physically present themselves).[32] Previously, at institutions including the ICTY, victims were only able to participate in the trial if they appeared as witnesses.[33] Indeed, the centrality of the victims is also evident in the postcard, which articulates 'bringing justice to victims' as a primary aim and activity of the ICTY. Here, the victims are symbolised by the ragged cloth handcuffs used to bind the wrists of the victims at Srebrenica. And yet, as I set out here, there are significant problems with this symbol of victimhood: it emphasises some victims and not others, reinforces a 'good versus evil' narrative, and positions the Tribunal as a hero acting on behalf of agentless victims.

It is worth pausing to reflect on the particular language used on the postcard to describe the cloth handcuffs. On the front of the postcard, the handcuffs are identified by a prosecution exhibit number and, in brackets, the word 'Srebrenica'; and we know that the handcuffs were 'found on a

[30] Engle, (n 10), 1127.
[31] Sara Kendall and Sarah Nouwen, 'Representational Practices at the International Criminal Court: The Gap between Juridified and Abstract Victimhood' (2013) 76 *Law and Contemporary Problems* 235, 254.
[32] *Rome Statute* art 68(3). See Kendall and Nouwen, (n 31), for a critique of the position and treatment of victims.
[33] Salvatore Zappalà, 'The Rights of Victims v the Rights of the Accused' (2010) 8 *Journal of International Criminal Justice* 137, 137–8.

body in a mass grave near Srebrenica'. The language is generic. We do not know the name of the person whose wrists were bound in these handcuffs. Perhaps this is appropriate in the particular circumstances, but nonetheless it is indicative of a reality where victims of atrocity often become 'disembodied, depersonified, and … depoliticised'.[34] Such abstraction means that victims are 'not concrete persons of flesh, blood and water, with individual names and individual opinions'.[35] Rather, they are positioned as 'deity-like', and become the sovereign entity of international criminal law.[36] Yet in the process, they lose their own selves in the service of international criminal law. The handcuffs suggest a punishment, a certain violation: this is strikingly different in its particularity from the generic language ascribed to the victim himself. We do not know who the man is, but we have a real sense of the violence that was inflicted on him. He is reduced to a story about the method of his killing. We do not know anything about this victim, except that he died with his hands bound.

I use the gendered pronoun 'he' in relation to this victim, because the description on the postcard that the body was found 'in a mass grave near Srebrenica' implies that he was one of the 7,000-8,000 men and boys who were killed in the eastern part of Bosnia in 1995. And thus we can see that the postcard emphasises one particular type of victim: the man of Srebrenica. This object is inherently gendered, in a way perhaps not immediately apparent. In making this particular victim a representative of 'The Victims' at the ICTY,[37] the ICTY has chosen to focus in its marketing on one particular aspect of atrocity and of victimhood. In emphasising this victim, other experiences of victimhood are ignored. The women of Srebrenica are not given a place in this object. The traumas of these women are not recognized in these handcuffs.[38] This image only evokes a particular, male, experience of atrocity.

Moreover, in this image of victimhood there is no place for victims and the various experiences of atrocity in areas other than Srebrenica. This symbol denies the victims of the Omarksa camp, or the massacre of Prijedor, or – even further afield – the victims of places like Vukovar, Pejë, or

[34] Sarah Nouwen, 'Justifying Justice' in James Crawford and Martti Koskenniemi (eds), *The Cambridge Companion to International Law* (Cambridge University Press, 2012) 327, 340.
[35] Ibid.
[36] Ibid; Kendall and Nouwen, (n 31), 254.
[37] See Kendall and Nouwen, (n 31).
[38] For example, the rapes committed against the women as part of the assault on the Eastern enclaves of Bosnia; see *Prosecutor v Krstić* (International Criminal Tribunal for the Former Yugoslavia, Case No IT-98-33).

Belgrade. It ignores the victims of sexual violence, such as of the widespread rapes that occurred in the former Yugoslavia.[39] And in this image of victimhood, we also see no acknowledgment of victims that were not Bosnian Muslim. What of the victims of other ethnicities: the Croats, Serbs, or Kosovars? This image compresses and simplifies the multitude of experiences of victimhood, leaving behind the complexity both of the victims and the crimes committed against them.[40]

The postcard's two sets of handcuffs also reinforce a perceived divide between victim and perpetrator. Here, victim and perpetrator are presented as two very separate entities. Indeed, in international criminal justice, this dichotomy between perpetrator and victim is often reinforced. However, the emphasis on the difference between victim and perpetrator is perhaps inaccurate. Not infrequently, the accused may have been a victim of crimes, and victims may be perpetrators; indeed, 'the lines between victims and victimizers in atrocity often are porous'.[41] Yet such complexity is not admitted in the postcard, and instead – as is so often the case - the difference between the perpetrator and the victim is reinforced. There is no disruption of the comfortable narrative of good versus evil.

Reinforcing the difference between perpetrator and victim, the postcard emphasises the difference in the experience of justice for these two separate entities: justice is given to the victim but enforced upon the perpetrator. The statement that it is the ICTY 'bringing war criminals to justice and justice to victims' positions the Tribunal as the institution responsible for this movement of 'justice' – it is the ICTY that provides and enforces justice. In this statement, we see the Tribunal acting *as* savior for the agentless victims, *against* the evil of the war criminal.

This triangulation of victim, perpetrator, and Tribunal operates to promote the role of the ICTY and of international criminal law. Here, all the characters have their roles and their relationships. However, the only one with any power is the Tribunal. Its activity is presented as something worthy of support, and in this way, is marketed to the public consumers of the postcards. Thus we see that

[39] See *Prosecutor v Kunarac* (International Criminal Tribunal for the Former Yugoslavia, Case No IT-96-23) and *Prosecutor v Furundžija* (International Criminal Tribunal for the Former Yugoslavia, Case No IT-95-17/1).
[40] What other option is possible, though? It would be similarly challenging if there was a whole 'gallery' of postcards, each dedicated to a particular site of atrocity; each essentialising a particular victimhood. Such a gallery might also reveal the problem with selectivity of international criminal law – there would ultimately be many crime scenes not present in the postcards, because they are not present in the prosecutions.
[41] Mark Drumbl, 'The Ongwen Trial at the ICC: Tough Questions on Child Soldiers' (14 April 2015) *Open Democracy* <https://www.opendemocracy.net/openglobalrights/mark-drumbl/ongwen-trial-at-icc-tough-questions-on-child-soldiers> accessed 28 February 2017.

– rather than promoting the voice of victims, which is the purported aim of the Tribunal – this postcard operates instead to bolster the position of the ICTY. It does this through a particular representation of victims (as needing the Tribunal to provide them justice), but this representation may not actually benefit the victims. Schwöbel has examined such portrayals of the ICC, and argues that a binary is created, 'between the strong, interventionist, active' international criminal lawyers, and the 'weak, subjugated, passive' individuals in whose name the lawyers purport to speak.[42] In this object of the postcard, the Tribunal is presented as what Anne Orford would call 'the character able to act in the world, and to imagine, create and bring about new worlds in his image'.[43] This presentation is achieved through the postcard's representation of the accused as the guilty character and the victims as the character dependent on the Tribunal. Through this marketing, the international community is provided with a reason to support the work of the Tribunal: to support the helpless victim against the evil war criminal.

A REIMAGINATION

The idea of 'bringing war criminals to justice and justice to victims' is rhetorically powerful. It is also persuasive: of course, it is not desirable either to allow war criminals to enjoy impunity, or to permit victims to languish without redress for the harms they have suffered. And, of course, for too long this is exactly what occurred in post-conflict settings. The ICTY was established (in part) to address the situation where atrocities went unpunished and victims were left without amends. Clearly, 'bringing war criminals to justice and justice to victims' – replacing the handcuffs of atrocity with the handcuffs of law – is symbolic of all that international criminal law has set out to achieve, and thus cannot easily be rejected. Its use to promote and market international criminal law (and the ICTY) is also understandable. Ending impunity and giving a meaningful voice to victims are aims of international criminal law, but they are also narratives about why international criminal law must be supported and thus why the product or service of international criminal law should be promoted. As a marketing tool, this postcard does promote international criminal law as being able to achieve justice against criminals and for victims.

Yet the simplicity of 'bringing war criminals to justice and justice to victims' belies a far more complex reality. Atrocities must not be reduced to narratives of 'good versus evil', and victims

[42] Schwöbel, (n 1), 278.
[43] Anne Orford, 'Reading Humanitarian Intervention' (Cambridge University Press, 2003), 170.

should not be sorted into categories of those more and less worthy of redress. Conviction should not be promoted as a core activity of international criminal law: international criminal law must ensure that trials are fair and comply with established procedural standards. These stories, told by the postcard, are problematic. The postcard is indicative of the decontextualisation that international criminal law has been critiqued for; of the way it fails to engage with the structural causes of conflict and yet emphasises a simple answer of guilt to a very complicated and sad situation. It can only be hoped that one day, the marketing of international criminal law need not rest upon messages of necessarily guilty perpetrators, agentless victims, and 'white Knight', muscular Tribunals.[44] Perhaps the only way to achieve this is to bolster the position of international criminal law, so that it need not market itself in order to gain support. Yet this, too, sits uncomfortably. Perhaps it is more accurate to say that we wish for a world where there is true structural justice, and there is no need for international criminal law at all.

[44] On 'white knights' and muscularity in humanitarianism, see Orford, ibid, and Anne Orford, 'Muscular Humanitarianism: Reading the Narratives of the New Interventionism' (1999) *European Journal of International Law* 679.