

6 The Impact of the ICTY on Democratization in the Yugoslav Successor States

Jovana Mihajlović Trbovc and Vladimir Petrović

Introduction: What Was the Tribunal Expected to do?

The International Criminal Tribunal for the former Yugoslavia (ICTY) was created in the wave of post-Cold War transitional justice discourses. The concept of transitional justice has evolved in the last thirty years to describe and advocate a range of legal and political mechanisms applied in societies transforming from authoritarianism to democracy, as well as from violent conflict to post-conflict peace-building. The underlying presumption in otherwise heterogeneous transitional justice literature maintains that establishing, disclosing, and acknowledging past crimes delegitimizes the past regime and reaffirms the rule of law, which is deemed crucial for rebuilding social cohesion and strengthening democratic values.¹

The conviction that legal (and extralegal) measures could contribute to the undoing of war's authoritarian legacy and ease the transition to democracy has been tested in the Yugoslav case particularly through the establishment of the ICTY. The Tribunal's extralegal functions have been apparent, indeed essential, from the day of its founding. Although founded by the Security Council Resolution "for the sole purpose of prosecuting persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia,"² it promised to achieve much more. In the First Annual Report of the ICTY, its president, Antonio Cassese, summarized the institution's aims: "to do justice, to deter further crimes and to contribute to the restoration and maintenance of the peace."³ Ultimately, the ambition of the ICTY in the eyes of many was to influence the transformation of the region of the former Yugoslavia away from the anarchy of this post-communist warzone. Democratization as such was never declared a part of the Tribunal's mandate, but was strongly implied in the nexus of its adopted aims and stated achievements, listed on the official webpage as follows: "(1) Holding leaders accountable, (2) Bringing justice to victims,

136 *Ĵovana Mihajlović Trbovc and Vladimir Petrović*

(3) Giving victims a voice, (4) Establishing the facts, (5) Developing international law and (6) Strengthening the rule of law.”⁴ This chapter aims to explore what the Tribunal actually achieved in these respects, and how its work was perceived and echoed in the region.

What Has the Tribunal Achieved so Far?

The ICTY is without a doubt portrayed as a success story within a standard narrative on recent developments in international criminal law. The basis for such a claim rests in the ICTY’s statistics – during over two decades of its activity, the Tribunal indicted 161 persons. As of mid-2016, about half of these cases had ended in complete sentencing (eighty-three), whereas seven cases were still on trial or on appeal. There were nineteen acquittals and thirteen transfers of cases back to the region of the former Yugoslavia, whereas thirty-seven cases were terminated for different reasons, most frequently through withdrawal of the indictment or the death of the accused.⁵

These numbers are impressive, compared to ninety-three individuals indicted by the International Criminal Tribunal for Rwanda, twenty-three persons charged by the International Military Tribunal in Nuremberg, or twenty-eight by its twin court in Tokyo. Another important aspect springs from this comparison. Unlike these earlier tribunals, which indicted exclusively Hutus, Germans, and Japanese respectively, the ICTY was turning its attention to all the warring sides in the former Yugoslavia. As Sabrina Ramet summarizes, out of the overall number of those indicted, “72 were Bosnian Serbs; 25 were Serbs from Serbia, Croatia, or Kosovo; there were also 25 Bosnian Croats, five Croats from Croatia, nine Bosniaks, eight Kosovar Albanians (including one officer in the Croatian Army), and the remainder members of other nationalities or not reported.”⁶ The logic behind the ICTY investigations was to avoid accusations of “victor’s justice” and to try to bring to justice individuals most responsible for war crimes in the former Yugoslavia, regardless of the flag they fought under.

To which extent was that ambitious goal met? Among the accused, one finds one disputed and no less than four self-proclaimed heads of the states, at least four prime ministers and five chiefs of General Staff as well, whereas ministers, municipality leaders, and military and police dignitaries count in dozens. They were mixed with other less notable accused in the ICTY’s prison facility in Scheveningen, a coastal suburb of The Hague. Their trials were engaging events, lasting altogether over 10,800 trial days, featuring around 4,650 witnesses and generating over 2.5 million pages of transcripts.⁷ However, it needs to be said that these

impressive figures are spread rather unevenly over the two decades of the work of the Tribunal. Tracking these stages gives closer insight into the nature of accomplishments and limitations of ICTY's transformative potentials.

The First Decade

Although formally established in May 1993, it took quite some time for the Tribunal to assume its functions. Situated in The Hague, with scarce resources and limited access to information, without a police force to investigate the crimes and detain the suspects, the Tribunal was from the beginning limited in its ability to prosecute those most responsible for war crimes. Recognizing this, the first chief prosecutor of the Tribunal, Richard Goldstone, embarked on investigations grounded in a "bottom-up strategy," defined by him as "the investigation of lower-level persons directly involved in carrying out the crimes in order to build effective cases against the military and civilian leaders who were party to the overall planning and organisation of those crimes."⁸ Accordingly, only in April 1995 did the first trial commence, against Duško Tadić, a low-ranking Bosnian Serb camp guard indicted for breaches of the Geneva Conventions, violations of law and customs of war, and crimes against humanity.

Although the number of investigations and profiles of indicted people was gradually rising, it remained questionable as to what extent the prosecution would be able to struggle its way to the very top. As the first trial was unfolding, so was the war in Bosnia-Herzegovina (BiH). It is difficult to argue that the ICTY had any deterrent effect on the belligerents, bearing in mind that some of the most gruesome crimes were committed during the second half of 1995, with the principal perpetrators seemingly uninterested in the existence of the Tribunal. The Tribunal itself, however, was building interest among the public. The turning point was reached at the end of July 1995, when in a single day no less than twenty-four persons were indicted, including Radovan Karadžić and Ratko Mladić, the top political and military leaders of the Bosnian Serbs, as well as Milan Martić, the leader of the Croatian Serbs.⁹ By November 1995, indictments against Bosnian Croat politician Dario Kordić as well as Bosnian Croat Generals Tihomir Blaškić and Mario Čerkez were confirmed, and those against Karadžić and Mladić were broadened. Thus, the first transformational effects of the Tribunal became apparent – it served as an unofficial mechanism of lustration. Tainted, the leaders of the Bosnian Serbs were barred from taking part in the final peace negotiations. Representing their interests in Dayton, Ohio,

Slobodan Milošević brokered a peace agreement for Bosnia with Croatian President Franjo Tuđman and Bosnian President Alija Izetbegović. It is interesting to observe that the signatories, although rumored to be the most responsible for war crimes, were specifically obliged to cooperate with the ICTY.¹⁰

In the immediate post-war period, it was unclear how this cooperation was supposed to function. In Bosnia-Herzegovina, peace was enforced by international armed forces which showed a marked reluctance to arrest the indicted persons.¹¹ Neighboring Croatia and particularly Serbia were safe havens for fugitives, being ruled by conspicuously unindicted leaders Franjo Tuđman and Slobodan Milošević respectively. The speculations were that stability, rather than justice, was at the top of the agenda of the peace enforcers. Although some of the highly ranked indicted were arrested (General Đorđe Đukić in 1996, Slavko Dokmanović and Milan Kovačević in 1997, General Radislav Krstić in 1998, General Stanislav Galić in 1999), the best-known figures, such as Karadžić and Mladić, were not. Ousted from power, they were looming around without any serious efforts made to arrest them. Instead, it was their wartime collaborators Momčilo Krajišnik (2000) and Biljana Plavšić (2002) who landed in The Hague.

This balance was interrupted by the escalation of violence in Kosovo and the subsequent NATO bombing of the Federal Republic of Yugoslavia (i.e. Serbia and Montenegro). As the humanitarian crisis was reaching new heights in Kosovo, The Hague Tribunal finally indicted Serbian leaders. In late May 1999, a month after the beginning of the bombardment, Chief Prosecutor Louise Arbour (who had succeeded Goldstone in 1996) filed an indictment against those responsible for the deportation of hundreds of thousands of Albanians from Kosovo and the murder of 340 identified and many more unknown civilians. The indictment stated that

the campaign undertaken by forces of the FRY [Federal Republic of Yugoslavia] and Serbia in Kosovo, was planned, instigated, ordered, committed or otherwise aided and abetted by Slobodan Milošević, the President of the FRY; Milan Milutinović, the President of Serbia; Nikola Šainović, the Deputy Prime Minister of the FRY; Colonel General Dragoljub Ojdanić, the Chief of the General Staff of the VJ; and Vlajko Stojiljković, the Minister of Internal Affairs of Serbia.¹²

Hence the circle was complete, leading to the first international indictment ever against a head of the state for crimes committed during his rule.

However, there was a long road to traverse before the presence of indicted persons could be secured. By the end of the 1990s, hostilities

in Southeastern Europe had ended, but their legacy was omnipresent. Only with the death of Franjo Tuđman, the Croatian president, in December 1999 and the downfall of Slobodan Milošević in October 2000 were preconditions met for more than a token cooperation between the ICTY and the region. The driving force behind this change was the expressed ambition of Serbia, Croatia, and BiH to become member states of the European Union (EU), and more concretely their dire need of economic assistance. Particularly proactive in seizing this opportunity was the next ICTY prosecutor, Carla Del Ponte. Establishing close ties with the USA and EU administrations, she secured cooperation with the ICTY as a permanent point on the top of the agenda in their meetings with the officials from the region.¹³ This was a nucleus of “politics of conditionality” – an instrument by which Western governments pressured primarily Serbia and Croatia to cooperate with the Hague Tribunal.¹⁴

The pressure was essential in producing their compliance as, in the midst of their transition to democracy, the ICTY remained thoroughly unpopular in Serbia and Croatia, and cooperation was hence seen as an unnecessary burden by the new elites. In Croatia, indictments against Generals Ante Gotovina (2001) and Janko Bobetko (2002) were taken as a serious blow.¹⁵ The Bosnian public reacted similarly to the indictment against General Sefer Halilović (2001). In Serbia, there was a serious rift in the new government over the fate of the overthrown Milošević. Arrested in May 2001, he was transferred to the ICTY in June at the expense of a deep political and constitutional conflict between the reformist Serbian government of Zoran Đinđić and the conservative president of the Federal Republic of Yugoslavia, Vojislav Koštunica. The government subsequently found it was unable to muster support for new policies because of resistance from the security apparatus and the military.¹⁶ Meanwhile, it was criticized harshly by the non-governmental sector for its reluctance, and international factors made it clear that a willingness to move along this direction would be seen as the real measure of Serbia’s transition. The attempts of the Serbian reformist government to extradite other accused persons added to its unpopularity and brought the country to the brink of *coup d’état* at least twice – in November 2001 and in March 2003.¹⁷ Only after the assassination of Prime Minister Đinđić did a wide governmental crackdown on organized crime change the political landscape significantly. Some of the most emblematic figures of Milošević’s era, such as Vojislav Šešelj, Milan Babić, Jovica Stanišić, and Franko Simatović, ended up in The Hague in 2003. During this wave, Serbia also created a War Crimes Prosecutor’s Office and announced vigorous actions against war crimes perpetrators.¹⁸

Peak

Milošević's arrival at the ICTY and the beginning of his trial represented the symbolic peak of the Tribunal's activity. Although formally only one among the many, it was clear that his case carried a specific weight. The very fact that Milošević stood on trial represents a breakthrough in the implementation of international criminal law. As Carla Del Ponte recollects in her memoirs, "this was a historic moment – the first trial of a head of state before an international tribunal."¹⁹ Steps were taken to use this opportunity to the hilt. The initial indictment was amended immediately upon his arrival. In October, another indictment against Milošević was raised for crimes committed in Croatia, and in November the indictment for Bosnia followed. The indictments were merged into a single trial, which commenced on 12 February 2002. At the very opening of the trial, Del Ponte boldly announced: "I recognize that this trial will make history, and we would do well to approach our task in the light of history."²⁰

The Milošević trial had all the potentials to play a transformative role. Witnesses included personalities such as the leader of Kosovar Albanians, Ibrahim Rugova; the president of Croatia, Stjepan Mesić; and the last Yugoslav prime minister, Ante Marković; as well as a number of high profile international mediators who had taken part in solving the crises in Southeastern Europe. Further, documents which would normally be inaccessible for decades were exhibited as evidence and became available for research and scrutiny.²¹ Over 1,250 exhibits – documents, photos, maps, expert reports – were presented in open court. The transcript of the trial itself amounts to 46,639 pages, which contain the testimonies of nearly 400 witnesses. The prosecution tendered 930 exhibits on 85,526 pages, plus 117 video records, and produced 352 witnesses (114 *viva voce*, 218 testimonies in written form, 20 expert reports), whereas Milošević submitted 9,000 pages of exhibits including 50 videos and brought 40 witnesses from a list which initially had amounted to 1,631.²²

However, the great hopes that this trial could directly contribute to dealing with the past and sway public opinion in Serbia did not immediately materialize. The trial was broadcast fully on public television, but reactions were divided. There was some truth in claims that wide broadcasting was in fact increasing Milošević's popularity. Concerned with such a development, the authorities extinguished live broadcasting on public TV by late 2002, and only the independent television channel B92 continued to do so.

If there was no immediate success in changing public opinion, there was more luck in provoking institutional change. Under the influence of

the ICTY, both the professionalization and the centralization of war crimes investigations took place in the region. In Serbia, these efforts were institutionalized in July 2003 with the promulgation of a law on the organization of the state apparatus in the proceedings against war criminals. These political and institutional changes marked the beginning of a new trend. In accordance with the law, the Office of the War Crimes Prosecutor was formed in Belgrade, along with the War Crimes Chamber of the Belgrade District Court.²³ In Bosnia-Herzegovina, a State Court of BiH, operational from 2005, contained a special department for war crimes, hybrid in character as it had a visible international presence.²⁴ In Croatia, war crimes proceedings were gradually centralized in four centers – Zagreb, Rijeka, Split, and Osijek.

Each of these changes affected the dynamics of war crimes investigations. Their centralization and the exemption from the territorial jurisdiction of the district courts resulted in creating a specialized prosecutorial branch for these specific crimes, as well as a bench that was well versed in dealing with the complexities of war crimes. Cooperation with The Hague tribunal was improved, particularly with regards to exchange of information and evidence. In this period, for the first time the Security Council recommended in March 2004 “implementation of the completion strategy of the Tribunal . . . including the transfer of cases involving intermediate and lower rank accused to competent national jurisdictions.”²⁵ It was crucial for national prosecutions to be enabled to carry on with the task of prosecuting war crimes, whose perpetrators were estimated to be in the thousands.

However, setting up the institutional framework was no more than a precondition. The creation of domestic war crimes offices did not lead to an immediate synergic effect. National proceedings for war crimes were invariably following the bottom-up strategy, indicting low-ranked perpetrators for isolated crimes. Consequently, the audience was unable to comprehend that the proceedings in The Hague and in the region were dealing with the same subject. Still, through this activity an indispensable channel for the internalization of the process of prosecuting war crimes was set.²⁶

Although muted for the most of the time, this method occasionally delivered formidable results. For example, in June 2005, a footage of Serbian soldiers shooting Bosniak civilians was released in the course of cross-examining one of Milošević’s witnesses in the ICTY. Selection from the horrendous material it displayed was broadcast on Serbian television the same day. As officials were rushing to condemn its content, the Serbian police apprehended the suspects from the video, identified as members of the wartime paramilitary unit Scorpions. In an atmosphere of

general indignation, these direct perpetrators were brought to trial in front of a domestic court in Belgrade.²⁷ To an impartial observer, by the end of 2005 it would seem that the Tribunal had richly compensated for its slow start and was ending its first decade with marked successes.

The Last Decade

The second decade of the Tribunal's work started with a huge setback. The death of Slobodan Milošević on 11 March 2006 in the detention unit of the ICTY put an abrupt ending to its flagship trial. The case that had dragged on for more than four years was brought to an anticlimactic end. Disappointment among the interested parties was as deep as the earlier feeling of success upon his being brought to justice. "I deeply regret the death of Slobodan Milošević. It deprives the victims of the justice they need and deserve . . . It is a great pity for justice that the trial will not be completed and no verdict will be rendered," said the ICTY's chief prosecutor, Carla Del Ponte.²⁸ Journalists went on to speculate what the verdict might have been.²⁹ The body of literature about the trial, which grew alongside with the proceedings, was further enriched with studies dedicated to drawing lessons from its undesired outcome.³⁰

It is difficult to evade the impression that the death of Milošević inflicted a blow to the ICTY that stretched far beyond this actual case. Both global and local attention shrank, and pressure was mounting for the Tribunal to bring its activity to a close. The announcement of the Completion Strategy was undermining the collective morale of the institution, whose most ambitious employees started looking for jobs elsewhere. It was also giving hopes to the indicted at large that they might win the race against time. The effort was refocused on obtaining the presence of indicted persons in the detention unit of the ICTY. It was only a firm insistence on the conditionality policy which could secure their arrest and transfer. In that respect, the focus shifted from the USA to the EU. Countries aspiring to join were conditioned at every step of that way (visa liberalization, a stabilization and association treaty, a feasibility study, candidacy status). There were visible results – in Serbia, the government implemented a policy of "voluntary surrenders," leading to the surrender of fourteen indicted persons in 2005 alone.³¹ The quest for the remaining fugitives also intensified – in December 2005 General Ante Gotovina, the best-known Croatian fugitive, was arrested in the Canary Islands. Slowly but surely, other arrests followed – in May 2007 Zdravko Tolimir was arrested. However, a number of fugitives remained at large. Those problems were inherited by the last prosecutor of the ICTY, Serge Bramertz, who assumed office in January of 2008, with a clear expectation

to wrap up the work of the Tribunal. His mandate started well. In the summer of 2008 Stojan Župljanin and Radovan Karadžić were arrested in Serbia. The quest for the last fugitive, Ratko Mladić, lasted until May 2011, when he was arrested as well.³²

However, this period was also marked by controversial judgments. The first noticeable hiccups started with a trial against Naser Orić, the wartime commander of Bosnian forces in the Srebrenica enclave. Indicted in March 2003, he was found guilty in 2006. However, following his being sentenced to two years, which he had already served in the course of the trial, he seemingly walked “free.” Then, following an appeal in 2009, he was acquitted. Similar was the case of Veselin Šljivančanin, whose trial started in 2003, ending in 2007 with a five years’ verdict. He also walked out, only to return in The Hague in 2009, as on Appeal his sentence was increased to 17 years’ imprisonment. He ultimately succeeded in securing the revision of his case in 2010, reducing the sentence to 10 years and allowing him to go back to Belgrade. Mixed reactions in the region of the former Yugoslavia were an indicator of things to come.

Further inconsistencies were troubling the perception of the Tribunal’s work. Consider the case of Ramush Haradinaj, the wartime commander of the Kosovo Liberation Army, who was indicted in 2005 while serving as prime minister of Kosovo. He was allowed a provisional release, including participation in public life, until the trial started in 2007. The case basically collapsed in 2008 with his acquittal, amidst widespread rumors of the intimidation and even disappearance of potential witnesses.³³ His retrial in 2011 led to another acquittal in 2012. Even longer was the case of Vojislav Šešelj, an extreme nationalist politician from Serbia, who surrendered to the ICTY in early 2003. Another champion of witness intimidation, Šešelj transformed his trial into complete farce. Fighting for self-representation through a hunger strike and held in contempt of the court multiple times, both for extremely offensive language and for the publication of protected material involving the identity of witnesses, his trial took off in 2007, only to be suspended in 2009, continued in 2010, and later adjourned in 2010. It was soon re-continued, only to feature a dismissal of one of the judges at Šešelj’s request and the trial stage somehow brought to an end in 2013. However, due to his seriously damaged health, Šešelj was granted a provisional release in 2014, returning to Serbia after more than ten years spent in the Tribunal without a verdict.³⁴ He was enthusiastically welcomed by his supporters, as he returned right on time to take part in the Serbian general elections, managing to secure slightly over 8 per cent of the constituency for his ultranationalist Serbian Radical Party.

The ICTY consequently attempted to revoke his release but was unable to secure his presence, leaving Šešelj jubilant about “shredding the ICTY into pieces.”³⁵ Eventually, he was acquitted at the end of March 2016 in a judgment that “arrives at conclusions which are at odds with literally dozens of previous judgments issued by the Tribunal.”³⁶ Having a verdict too many proved to be an equally troubling matter in other cases, such as against Croatian General Ante Gotovina. Indicted in 2001, Gotovina was at large until December 2005. Convicted in April 2011, he was acquitted on appeal in November 2012.³⁷ The case was related to the crimes committed in the course of Croatian military operation *Storm*, which sealed the fate of Serbian statelet on the territory of Croatia – Republika Srpska Krajina – and started the tide of Serbian refugees from Croatia. The huge emotional and political stake in this verdict was derived from the fact that this operation is perceived in Croatia as cornerstone of its statehood, whereas in Serbia there is an equally strong consensus that this was the greatest ethnic cleansing committed in the course of the wars in the former Yugoslavia. Therefore, people in both societies followed the court proceedings and eventual verdict in regards to the two Generals with great interest.

When in April 2011 two of three generals (Gotovina and Markač) were convicted at the trial of first instance, Croatia exploded in anger, whereas Serbia gloated. However, more than one year after, when the same persons were acquitted, it caused diametrically opposed reactions. Interestingly, the reactions were more homogenized than ever within national narratives. The Serbian president at the time, Boris Tadić, characterized the day of acquittal as a “difficult day for international law,” while Minister of Interior Ivica Dačić proclaimed: “That confirms the claims that the ICTY is not judging, but fulfilling pre-given political tasks.” The minister with special authority for cooperation for cooperation with The Hague was also very critical, calling its contribution “selective justice, which is worse than injustice.” Nationalist opposition forces aligned. In the words of the president of the Serbian Progressive Party (SNS), Tomislav Nikolić: “If there were reasons to believe that ICTY was neutral [...] they are dispersed by the newest decision of acquittal of war criminals.” Even a human rights watchdog from Serbia, Nataša Kandić, commented that the verdict “did not bring justice to the victims.”³⁸

In Croatia, the reactions of politicians across the spectrum were notably emotional. Prime Minister Jadranka Kosor from HDZ was brief: “My heart is full.” Her main opponent, Zoran Milanović, used a similar metaphor: “The rock was lifted from our heart.” In the atmosphere of national celebration, the only dissonant tone was emitted by human rights watchdogs Vesna Teršelić and Zoran Pusić, who reminded the public:

“Somebody has to answer for the crimes which were committed. The acquittal of Gotovina and Markač does not mean that there were no crimes.” Croatian President Ivo Josipović addressed this argument: “There were crimes, but the generals are not responsible for them. It is confirmed that our fight was just and honorable.” He also stated that “it is unrealistic to expect Serbia and Croatia to see some aspects of history the same way,” which was at the same time a proclamation of the failure of the ICTY to produce a coherent historical narrative.³⁹

Celebratory homecomings awaited not only the acquitted persons, but also those who served their sentences.⁴⁰ Such was the case with the wartime leadership of Republika Srpska upon returning to their local communities: Biljana Plavšić in October 2009 and Momčilo Krajišnik in September 2013. Both of them received a warm welcome by their supporters, but also by officials of the Republika Srpska – the Serb dominated part of Bosnia, raising consternation in the rest of the country. Similarly revered are those who are not likely to return – Radovan Karadžić, who was sentenced in March 2016 to forty years’ imprisonment on a number of charges including genocide, and Ratko Mladić, whose trial is still ongoing.

In Serbia, in the meantime, an unlikely reversal matching Gotovina’s occurred in the case of Momčilo Perišić, chief of the Yugoslav General Staff, who was sentenced to twenty-seven years of imprisonment in 2011, but was acquitted in 2013.⁴¹ Even more striking was the acquittal of Jovica Stanišić and Franko Simatović, chiefs of State Security for most of the Milošević era, in May 2013. To the relief of some people, the case was ordered for retrial in December 2015. The acquittal of Milošević’s closest collaborators (related to the conflicts in Croatia and Bosnia) raised a number of questions.⁴² In laymen’s view, this was an implicit acquittal of Milošević for the Croatian and Bosnian indictments, just as much as Gotovina’s acquittal is seen as an acquittal of Franjo Tuđman for crimes committed in the course of Operation *Storm*. The fact that Tuđman, as well as Alija Izetbegović, were subjects of an investigation before they died would hardly satisfy the average Serbian observer, who would quickly point out that well over half of indicted persons are Serbs, whereas practically no one was found guilty for crimes committed against Serbian victims. In contrast, the Croatian or Bosniak average observer would typically maintain that their war was defensive, hence its crimes absolvable. They would produce a long list of Serbian wartime leaders, such as Borisav Jović or Veljko Kadijević, who evaded ICTY indictments. Actually, it seems that as of late the ICTY has finally succeeded in bringing opinions from the entire region closer, uniting them in a negative attitude toward itself. Seemingly unburdened with such developments,

the Tribunal continued its completion strategy, winding down its operations. The focus shifted toward wrapping up the ongoing trials and organizing numerous conferences about its own legacy.⁴³ From mid-2013, its functions were absorbed by the Residual Mechanism for International Tribunals, but the residue was much more significant in the eyes of the observers from the Yugoslav successor states.

How Was the Tribunal's Activity Perceived and Received in the Region?

In the spirit of the belief that establishing, disclosing, and acknowledging past crimes strengthen democratic values in the long run, the Tribunal was envisioned as a place to establish the facts about the crimes and disclose them to the world. The acknowledgement would somehow “naturally” follow. Some of the literature on the ICTY somewhat deterministically imagined that the judgements would make political elites acknowledge the past crimes, and lead the general population from denial to catharsis.⁴⁴ However, the experience of the last twenty years gave little evidence to draw any clear-cut causal conclusion.

Impact on Acknowledgement of the Crimes Committed “In Our Name”

The extent to which the Tribunal has managed to influence the transformation of societies in the Yugoslav successor states was usually tested by their acknowledgement of the crimes committed by their political and military representatives. In the discipline of transitional justice, it is generally understood that public recognition of state crimes committed by state officials is the crucial moment in regime change. Therefore, acts of public acknowledgement of past crimes and its victims, and especially symbolic acts of taking political responsibility (such as official apologies), have been regarded as utmost confirmation of the future rule of law.⁴⁵ This came to be regarded as a proof, if not a prerequisite, of democratic transformation.

Indeed, there were instances of public apologies that, at first glance, sounded most promising. The first such case took place in May 2000 when Alija Izetbegović (at that time the chairman of the Presidium of Bosnia and Herzegovina and the political leader of the Bosniaks) expressed regret for the crimes committed against Serbs and Croats on the territory held by the army he was heading during the war.⁴⁶ Soon after, the president of Montenegro, Milo Đukanović, issued a statement of apology before the president of Croatia, Stipe Mesić, in June 2000. He

expressed regret, personally and in the name of Montenegrin citizens, to the citizens of Dubrovnik “for all the pain, suffering and material losses inflicted by any Montenegrin in the ranks of the Yugoslav People’s Army during these tragic events.”⁴⁷ In September 2003, another high Montenegrin leader, Svetozar Marović, in his capacity as the president of the State Union of Serbia and Montenegro, apologized for “all the evil that any citizen of Montenegro and Serbia committed against anybody in Croatia.”⁴⁸ Croatian President Mesić met his statement with a similarly generic speech: “On my part, I would say that I apologize to all those to whom the citizens of Croatia inflicted pain or damage at any time in the past.”⁴⁹ In the years to come, such declarations were not rare, but insofar as they were usually empty of any concrete reference, they gradually lost their symbolic potential.

Most of such statements were empty of any true meaning. For instance, though Milo Đukanović was prime minister of Montenegro in 1991, he stated that he felt responsible to issue an apology exclusively as “as President of contemporary democratic Montenegro;”⁵⁰ and though he expressed “deep regret” also as an individual [*“u svoje ime”*], by putting all the blame for wrongdoings solely on the Yugoslav Army (controlled from Belgrade), he avoided taking political responsibility for his own past conduct.

The climax of hypocrisy in such a seemingly noble political act was reached by the new president of Serbia, Tomislav Nikolić, who was infamous for supporting radical nationalism during the 1990s. In an interview given in April 2013 to the public television of Bosnia-Herzegovina, he was forced by the journalist to declare his opinion about the events in Srebrenica. He first said that “genocide needs to be proven,” as if there were no ICTY judgements declaring so, and relativized the issue by claiming that “everything that happened during the wars in former Yugoslavia bears characteristics of genocide.”⁵¹ Faced with the next question, which indicated that Srebrenica is a special case due to the large number of people brutally killed, he replied in an annoyed tone: “Well, I’m bending on my knees for that, and ask forgiveness, in the name of Serbian people for the crime committed in *genocid . . . ugh . . .* in Srebrenica.”⁵² The forced and obviously dishonest statement given by Nikolić, in which he experienced trouble in uttering the symbolically important word “genocide,” was more a provocation than an act of condolence to the victims.

Such statements, wrapped in apology, by the rule mentioned that “nations cannot be guilty” and that “only individuals bear responsibility” and should face the criminal trial for that.⁵³ However, none of them mentioned individual perpetrators, and thus had a flare of collective

exculpation. Even if these statements could be understood as modest first steps towards true acknowledgement, the fact that none of them invoked any of the ICTY judgements assures us that they could be hardly attributed to the court.

Looking beyond the political elites, there is hardly any evidence that the ICTY judgements induced acknowledgement among “ordinary people.” For instance, a detailed micro study analyzed how the local population of Konjic municipality in central Bosnia reacted when confronted with the findings of the trial related to the Čelebići prison camp, in which the army of Bosnia and Herzegovina held Bosnian Serbs.⁵⁴ The judgement in the *Čelebići case*⁵⁵ challenged both the narrative of Bosniak and Serbian local communities, and the general interpretation of the war in BiH, which Bosniak and Serbian political elites publicly promulgated. On the one hand, the trial disturbed the tidy image of Bosniaks as a purely defensive and victimized party in the war; on the other hand, though seemingly feeding the Serbian nationalist interpretation of a civil-war conflict of three equal parties, it also disclosed the organized pre-war campaign of arming Serbian civilians. After following the public debate that the trial provoked, the study concluded that the views of the local population changed only moderately, remaining entrenched in the profoundly conflicting interpretations of the war.

Indeed, there are sound impediments to the expectations that the Tribunal would create judgements that would transform political opinion in the countries of the former Yugoslavia. First of all, the idea that the Tribunal would create a comprehensive historical record has been challenged by the practice of plea bargaining that increased with time. The Rules of Procedure and Evidence of the ICTY allowed the Prosecution and the Defence to negotiate the points of the indictment to which the defendant would plead guilty,⁵⁶ by rule involving discarding some of the charges. This meant that no further evidence regarding the charges would be presented, and the further trial process would deal only with the adjudication of the sentence. Therefore, the historical record of such cases inevitably remains slim, but is considered to be compensated by the positive aspects of the plea bargain – that is the presumed reconciliatory effect the statement of guilt (by the defendant) would have on the local population, especially on the victims. However, excluding the cases of Dražen Erdemović⁵⁷ and Dragan Nikolić,⁵⁸ two low-ranked members of Serb forces in Bosnia, generally the admissions of guilt have been perceived as phony among scholars⁵⁹ and dishonest among the local population (though the explanation as to why differs among the groups). While the majority of citizens in Croatia and the Federation of BiH firmly believe that the reason for a guilty plea is the pragmatic expectation of

a milder sentence, the Serbian population, to which the majority of such defendants belong, finds that it is equally due to the pressure of the prosecutor, thus less because of defendants' pragmatism.⁶⁰ To sum up, admissions of guilt by the defendants neither serve to create a complete historical record, nor foster acknowledgement (and consequentially reconciliation) among the local populations.

The Image of the Tribunal in the Region

Looking beyond the technical potentials and limitations of the ICTY to establish indisputable facts, and thus transform local societies, it seems to be much more decisive (for the democratic transformation) whether members of those societies regard the court findings as "indisputable facts". This is closely connected with popular perceptions of the Tribunal, as an institution, among the local population(s) and the extent to which the Tribunal's image was disputed.

Opinions of the local population about the ability of the Tribunal to provide an impartial history of the region differ significantly among the ethnic groups. A small number of Serbs (both from Serbia and Republika Srpska) believe that trials before the ICTY contribute to knowing "the whole truth" about the wars.⁶¹ By contrast, a large proportion of Bosniaks believe that the ICTY contributes to "knowing the truth" about the wars.⁶² In Croatia the answer is most balanced.⁶³ It seems that the direct victims of the war, especially Bosniaks, are most inclined to believe in the truth-establishing ability of the ICTY.⁶⁴ The trust in the credibility of the Tribunal is consistently lowest among the Serbian population, compared to others, with the main reason being the large number of accused co-nationals.⁶⁵

Furthermore, the perception that "only Serbs are being prosecuted in The Hague," while the number of those accused of crimes against Serbs is almost "negligible,"⁶⁶ feeds into the widespread opinion among the Serbian population that the Tribunal is biased against Serbs, and that it functions as "an instrument of victor's justice and a symbol of Serb humiliation."⁶⁷ The perception of partiality and unfairness on the part of the Tribunal is to a lesser extent shared by Croatian population as well. As a long-time reporter from the ICTY remarked, "the 'popularity' of the ICTY in the former Yugoslavia is inversely proportional to the number of accused that come from these . . . ethnic communities."⁶⁸

Congruent with the perception of anti-Serb bias, the Serbian population generally does not regard the fact that the largest number of the accused are of Serb ethnicity as a reflection of the fact that the largest number of crimes were committed by Serb forces. Instead, it is explained

Table 6.1 Population surveys relating to trust in the ICTY as institution

| Time of the survey | How many people ... | Population of | | | |
|--------------------|--|---------------|---|------------------|---|
| | | Croatia | Federation of BiH | Republika Srpska | Serbia |
| 2002 | ... have trust in the ICTY | 21% | 51% | 4% | 8% |
| 2009 | ... hold generally positive opinion about the ICTY | | For comparison: 73% among Bosniak population living in Serbia | | 14% (overall population) 8% (among ethnic Serbs) |
| 2010 | | 21% | | | |
| 2010 | | | 54% | 16% | |
| 2011 | | 21% | | | |
| 2012 | | | 59% | 15% | |

Sources: Data for 2002 are extracted from the survey commissioned by the Institute for Democracy and Electoral Assistance, at www.idea.int/europe_cis/balkans/ (accessed on March 5, 2015]. Data for the period 2009 to 2012 are extracted from the already mentioned public opinion surveys commissioned by the Belgrade Centre for Human Rights and conducted in Serbia, Croatia and BiH from 2009 to 2012, at www.bgcenter.org.rs (accessed on 5 March 2015).

Table 6.2 *Population surveys relating to perception of bias against defendants' "own" population in the conduct of the ICTY*⁶⁹

| Time of the survey | How many people ... | Population of | | | |
|--------------------|--|---------------|-------------------|------------------|--|
| | | Croatia | Federation of BiH | Republika Srpska | Serbia |
| 2003 | ... believe that the ICTY treats the defendants from their 'own' population with a negative bias | | | | 69% |
| 2004 | | | | | 69% |
| 2005 | | | | | 69% |
| 2006 | | | | | 63% |
| 2009 | | | | | 70% (overall population) 75% (among ethnic Serbs) |
| 2010 | | 51% | | | |
| 2010 | | | 9% | 56% | |
| 2011 | | 49% | | | |
| 2012 | | | 13% | 63% | |

For comparison:
less than 1%
among
Bosniak population
in Serbia

Sources: Data extracted from the public opinion surveys commissioned by the Belgrade Centre for Human Rights and conducted in Serbia (2003–2006 and 2009), Croatia (2010 and 2011) and Bosnia-Herzegovina (2010 and 2012), at www.bgcenter.org.rs (accessed on 5 March 2015).

through the frame of a conspiracy theory.⁷⁰ Still, the perception that the ICTY is a “political court” is not limited only to Serbian population, the best example being a pattern of reactions in Croatia on the *Gotovina* judgments. The idea that political reckoning guides judges in their decisions is shared also by other ethnic groups. For instance, the Bosniak population tends to perceive ICTY sentences as too lenient, which they often understand as result of political levelling in the adjudication process.⁷¹ Another study of Sarajevans of all ethnicities showed that they increasingly see the ICTY as “politically influenced in its decision-making.”⁷²

Part of the explanation usually offered is the generally quite low knowledge about the way the ICTY functions. In the early post-war years, a lack of information and misconceptions about the Tribunal were widespread not only among the general public, but also among those who are supposed to be experts in the field, namely local judges and prosecutors⁷³ and NGOs dealing with the issues of human rights.⁷⁴ A consecutive mirroring study showed significant improvement in the level of information about the ICTY among local civil society organizations,⁷⁵ and one could expect a similar improvement in levels of knowledge and understanding among the local legal profession, due to the extensive training which they were given by international organizations.⁷⁶

Regarding the general public, though the majority of the population admit they are poorly informed about the ICTY, its procedures, and ongoing cases, an even larger majority holds strong opinions about it. The pattern of poor information is similar across the region;⁷⁷ only the evaluation of the Tribunal differs. The overall impression is that the stance towards the ICTY is based on prejudice and favoring of one’s own group, not on the level of understanding about its conduct. The lack of information, however, obviously hinders no one from being opinionated.

One of the most immediate answers to the question of why the ICTY did not make the expected impact is that the media outlets reported on the trials unprofessionally,⁷⁸ twisting the information coming from The Hague. Much research has been conducted on the way the local media reported the war crime trials, including the arrests of the well-known fugitives.⁷⁹ These studies analyzed in various ways the themes that dominated the discourse on war crimes trials and particularly how the ICTY is represented. A common assertion, found in all of these studies, is that the media generally frame war crimes as a political topic, intertwined with power relations, both domestically and internationally, and inherently connected with the process of EU integration. It is framed less as a process of fact-finding, establishing truth, or writing history.

Consequently, media reporting is strongly tinted with an ethnic perspective which overlaps with the division between perpetrator and victim communities, thus creating, even unintentionally (as in the case of civic-oriented media), groupist perceptions of ethnic perpetrator and ethnic victim.

Initially there was a substantial lack of understanding of the ICTY procedures and legal notions (for instance, what constitutes a particular crime such as genocide). The legal knowledge became sounder over time, though mistakes such as conflating an indictment with a judgement still persist.⁸⁰ Generally, the quality of reporting about the ICTY trials improved over time (i.e. more accuracy, detail, and understanding was shown) but also became more formalistic, allowing emotional framing in the comments and columns.⁸¹ However, the media kept the ethnic profile in their reporting by emphasizing the claims of innocence of their “own defendants” and favoring the victims from the ethnic group that the media targets. In spite of the ethno-centric and tendentious manner of reporting, the local media do transmit the court’s findings with considerable accuracy. Therefore, the adjudicated facts are available in the local public sphere(s) but are not shaping public opinion. However, the technically correct and sober reporting of the media in the course of the trials was undone by the dramatic and sensationalist coverage of symbolically important judgements, which gave little space to the issues actually relevant for the process of dealing with the past. It was also undone by a huge shift in the perception of the Tribunal in the region, where even its most fervent supporters have openly expressed criticism of the latest judgments.

Conclusion

From its inception, the ICTY generated passionate reactions. With its inherently mixed legal record, there are strong reasons to assume that such a trend will persist. Both its supporters and opponents are likely to use its enormous legacy selectively in order to support their respective viewpoints. These simplistic opinions would hardly do justice to over two decades of judicial activity, which (that much is certain) transformed significantly the political landscape of the Yugoslav successor states. Who can say how the Balkans would look if there had been no Tribunal? Would the war be characterized by more massacres? Would we have ever gotten to know the details of the worst atrocities in Europe since the end of the Second World War? Would the perpetrators still be at large, and furthermore still in positions of power? Would Milošević still rule Serbia, locking the region into some sort of low-intensity conflict for decades to

come? No one has definite answers to such questions, but merely evoking them makes one fully acknowledge the contributions made by the ICTY to political transformation in the region, which succeeded over the years to bring to light a number of war crimes, indict and secure the transfer of their perpetrators, remove from the region a number of persons who were responsible for and symbolized the radical policies of the 1990s, produce a pocket lustration, invigorate war crimes prosecutions, and even induce a change in popular perception of wartime criminality.

All these activities surely had a beneficial impact on the political scene of transitional countries. Although democratization was never a part of the stated mandate of the ICTY, it came to be seen as an expected by-product, a “collateral profit” in achieving goals put before the court. Amidst these inflated expectations, there was a predictable outcome. Just like regional reconciliation, democracy-building in the Yugoslav successor states turned out to be a much more complex phenomenon, only partially related to the ICTY trials. Even the rule of law, which undoubtedly is one of the cornerstones of democracy, needed and still needs to be upheld in these countries, not in The Hague. Therefore, arguably, more could be done in the direction of improving the legal systems of the Yugoslav successor states in anticipation of the end of the ICTY’s mandate. As it happened, the situation was reversed, with the ICTY’s credibility and image suffering over the years. Despite the great effort to establish facts about the crimes in objective and authoritative manner, it came to be regarded by the local population as a political body on the international and local political stage. In the last couple of years, even the greatest supporters – the victims’ organizations and civil society human rights defenders – adopted this perception. Such an image of the Tribunal proved to be the greatest limitation to the presumed impact it should have made. The relation between the ICTY and democratization of the region have remained locked within a paradox – it was expected to change the minds and hearts of the local population, but, by the very nature of its activity, the Tribunal was condemned to achieve unpopularity in the region. These limitations were successfully countered in the first half of Tribunal’s activity through intensive leaning on a conditionality policy based on the desire of post-Yugoslav states to integrate in Western political structures. During the second decade, however, attempts to improve the image and stature of the Tribunal mostly crumbled in the face of various inconsistencies, diminishing its transformative potentials. At least in the short run, two decades are hardly enough for such a complex process to unfold. Therefore, the verdict on the ICTY is still open, and the potential to achieve lasting democratic transition in the region of its jurisdiction remains.

Notes

1. Neil J. Kritz (ed.), *Transitional Justice: How Emerging Democracies Reckon with Former Regimes. Volume I: General Considerations* (Washington: United States Institute for Peace Press, 1995); Ruti G. Teitel, *Transitional Justice* (New York: Oxford University Press, 2002); Alexander L. Boraine, "Transitional Justice: A Holistic Interpretation," in *Journal of International Affairs*, Vol. 60, No. 1 (Fall 2006), pp. 17–27.
2. United Nations Security Council Resolution 827 (25 May 1993), paragraph 2, at www.icty.org/x/file/Legal%20Library/Statute/statute_827_1993_en.pdf (accessed on 5 March 2015).
3. ICTY, "The First Annual Report of the ICTY (29 August 1994)," paragraph 11, at www.icty.org/x/file/About/Reports%20and%20Publications/AnnualReports/annual_report_1994_en.pdf (accessed on 28 February 2015).
4. ICTY, "About the ICTY, Achievements," at www.icty.org/sid/324 (accessed on 5 March 2015).
5. ICTY, "Key Figures of the Cases," at www.icty.org/sid/24 (accessed on 4 August 2016).
6. Sabrina P. Ramet, "The ICTY – Controversies, Successes, Failures, Lessons," in *Southeastern Europe* Vol. 36, No. 1 (2012), p. 1.
7. ICTY, "About the ICTY, Infographics: Facts and Figures," at www.icty.org/sid/11186 (accessed on 4 August 2016).
8. Quoted in Michael Scharf, *Balkan Justice: The Story Behind the First International War Crimes Trial Since Nuremberg* (Durham: Carolina Academic Press, 1997), p. 85. More on Goldstone's views in Richard Goldstone, "A View from the Prosecution," in *Journal of International Criminal Justice* Vol. 2, No. 2 (June 2004), pp. 380–384.
9. ICTY, Press Release, "Milan Martić, Radovan Karadžić and Ratko Mladić Indicted along with 21 Other Accused" (25 July 1995), at www.un.org/icty/latest/index.htm (accessed on 29 January 2015).
10. General Framework Agreement for Peace in Bosnia and Herzegovina, article X, at www.ucdp.uu.se/gpdata/database/peace/BoH%2019951121.pdf, (accessed on 5 March 2015).
11. The prevailing understanding was that NATO forces in Bosnia-Herzegovina have the authority, but not the obligation, to make such arrests. See: Paola Gaeta, "Is NATO Authorized or Obligated to Arrest Persons Indicted by the International Criminal Tribunal for the Former Yugoslavia?", in *European Journal of International Law* Vol. 9, No. 1 (1998), pp. 174–181.
12. ICTY, "The Cases," *Milošević case (IT-02-54)*, Initial Indictment "Kosovo" (22 May 1999), paragraph 38, at www.icty.org/x/cases/slobodan_milosevic/ind/en/mil-ii990524e.htm, (accessed on 5 March 2015). See also Arbour's recollections in Louise Arbour, "The Crucial Years," in *Journal of International Criminal Justice*, Vol. 2, No. 2 (June 2004), pp. 396–402.
13. Carla Del Ponte, in collaboration with Chuck Sudetic, *Madame Prosecutor: Confrontations with Humanity's Worst Criminals and the Culture of Impunity* (New York: Other Press, 2009).

156 *Jovana Mihajlović Trbovc and Vladimir Petrović*

14. Judy Batt and Jelena Obradovic-Wochnik (eds.), *War Crimes, Conditionality and EU Integration in the Western Balkans*. Chaillot Paper No. 116 (Paris: European Union Institute for Security Studies, 2009).
15. Christopher K. Lamont, *International Criminal Justice and the Politics of Compliance* (Farnham and Burlington: Ashgate, 2010); Nikolas M. Rajkovic, *The Politics of International Law and Compliance: Serbia, Croatia and The Hague Tribunal* (London: Routledge, 2012).
16. Mladen Ostojić, *Between Justice and Stability: The Politics of War Crimes Prosecutions in Post-Milošević Serbia* (Farnham: Ashgate, 2014).
17. In November 2001, the Unit for Special Operations arrested two indicted persons, brothers Predrag and Nenad Banović, and immediately went on strike, partially blocking Belgrade, demanding, among other requests, promulgation of the Law on Cooperation with the Tribunal. The law was indeed passed in 2002. In early 2003, the retired head of that unit was organizing assassination attempts on Zoran Đinđić. One of the propaganda cornerstones was action called “Stop to The Hague”. On 12 March 2003, the assassination attempt was successful. However, the rump government introduced a state of emergency and cracked down on the conspirators. Milos Vasić, *Atentat na Zorana Đinđića* (Belgrade: Politika, B92, Vreme, Narodna knjiga, 2005).
18. Republic of Serbia Office of the War Crimes Prosecutor, “About Us,” at www.tuzilastvorz.org.rs/html_trz/o_nama_eng.htm (accessed on 5 March 2015).
19. Del Ponte, *Madame Prosecutor*, p. 120.
20. ICTY, “The Cases,” *Milošević, Slobodan (IT-02-54) “Kosovo, Croatia and Bosnia,”* Initial Indictment “Kosovo” (22 May 1999), paragraph 38, at www.icty.org/x/cases/slobodan_milosevic/ind/en/mil-ii990524e.htm, (accessed on 5 March 2015). Norman Cigar and Paul Williams, *Indictment at The Hague: The Milošević Regime and Crimes of the Balkan War* (New York: New York University Press, 2002); Michael P. Scharf and William A. Schabas, *Slobodan Milošević on Trial: A Companion* (New York: Continuum, 2002); Chris Stephen, *Judgment Day: The Trial of Slobodan Milošević* (London: Atlantic Books, 2004).
21. Judith Armatta, “Historical Revelations from the Milošević Trial,” in *Southeastern Europe* Vol. 36, No. 1, (2012), pp. 10–38.
22. On this documentary base see ICTY Court Records, at <http://icr.icty.org/default.aspx>, (accessed on 5 March 2015). Human Rights Watch, “Weighing the Evidence: Lessons from the Slobodan Milosevic Trial,” Vol. 18, No 10(D) (December 2006), at www.hrw.org/sites/default/files/reports/milosevic1206webwcover.pdf (accessed on 5 March 2015); Gideon Boas, *The Milosevic Trial: Lessons for the Conduct of Complex International Criminal Proceedings* (Cambridge: Cambridge University Press, 2007).
23. Diana F. Orentlicher, *Shrinking the Space for Denial: The Impact of the ICTY in Serbia* (Belgrade: Centre for Transitional Processes, 2008), pp. 69–94.
24. Olga Martin-Ortega, “Beyond The Hague: Prosecuting War Crimes in Bosnia and Herzegovina,” in James Gow, Rachel Kerr, and Zoran Pajić (ed.), *Prosecuting War Crimes: Lessons and Legacies of the International*

- Criminal Tribunal for the Former Yugoslavia*, (London & New York: Routledge, 2014), pp. 116–132.
25. UN Security Council Resolution 1534 (26 March 2004), paragraph 6, at www.icty.org/x/file/Legal%20Library/Statute/statute_1534_2004_en.pdf (accessed on 5 March 2015).
 26. Vladimir Petrović, *Gaining Trust Though Facing the Past? Prosecuting War Crimes Committed in the Former Yugoslavia in a National and International Legal Context*. CAS Working Paper Series No. 4/2011 (Sofia: Center for Advanced Study, 2011).
 27. Vladimir Petrović, “A Crack in the Wall of Denial: The Scorpions Video in and out of the Courtroom,” in Dubravka Žarkov and Marlies Glasius (eds.), *Narratives of Justice In and Out of the Courtroom: Former Yugoslavia and Beyond* (Cham et al.: Springer International Publishing, 2014), 89–110.
 28. “Carla Del Ponte feels ‘total defeat’,” in *Swissinfo* (12 March 2006), at www.swissinfo.ch/eng/carla-del-ponte-feels-total-defeat-/5063708 (accessed on 5 March 2015).
 29. Roger Cohen, “To His Death in Jail, Milosevic Exalted Image of Serb Suffering,” in *New York Times* (12 March 2006), at www.nytimes.com/2006/03/12/international/europe/12assess.html?pagewanted=all&_r=0 (accessed on 5 March 2015); Peter Ford, “How Milosevic Death Sets Back Justice,” in *Christian Science Monitor* (13 March 2006), at www.csmonitor.com/2006/0313/p01s04-woeu.html (accessed on 5 March 2015); Joshua Rozenberg, “Trying Milosevic: What Went Wrong?,” in *The Telegraph* (14 September 2006), at www.telegraph.co.uk/news/uknews/1528821/Trying-Milosevic-what-went-wrong.html (accessed on 5 March 2015).
 30. Even during the trial concerns were voiced that prioritizing the narration of a history of the Yugoslav conflict over the due process might have negative consequences. See James Gow and Ivan Zverzhanovski, “The Milošević Trial: Purpose and Performance,” in *Nationalities Papers*, Vol. 32, No.4, (December 2004), p. 897. In later assessments, the decision to join the three indictments was widely criticized, not only for creating a too large and unmanageable case, but also for “trying to prove too much.” See Gideon Boas, *The Milosevic Trial: Lessons for the Conduct of Complex International Criminal Proceedings* (Cambridge: Cambridge University Press, 2007). On the other hand, such an approach did generate massive records analyzed in Judith Armatta, *Twilight of Impunity. The War Crimes Trial of Slobodan Milosevic* (Durham and London: Duke University Press, 2010). Many conflicting views on the Milošević case are assembled in Timothy William Waters (ed.), *The Milošević Trial: An Autopsy* (Oxford: Oxford University Press, 2013).
 31. Ostojić, *Between Justice and Stability*, pp. 90–93.
 32. See documentary series *Pad haških begunaca [Downfall of the ICTY Fugitives]*, I-III, Slaviša Lekić (ed.), produced by Brendon&JSP, broadcasted on *Prva TV* (Belgrade), January 2015.
 33. Matthew Brunwasser, “Death of War Crimes Witness Casts Cloud on Kosovo,” in *International New York Times* (6 October 2011), at www.nytimes.com/2011/10/07/world/europe/death-of-war-crimes-witness-casts-cloud-on-kosovo.html?_r=0 (accessed on 5 March 2015).

34. Christina Alam, "Seselj's Provisional Release: Hate Speech, International Criminal Procedure and Transitional Justice," in *Jurist* (7 February 2015), at www.jurist.org/forum/2015/02/gregory-gordon-seselj-release.php (accessed on 5 March 2015).
35. Milan Nešić, "Miting SRS u Beogradu, Šešelji poručio 'Rasturio sam Haški tribunal,'" in *Slobodna Evropa* (Prague), 15 November 2014.
36. Marko Milanović, "The Sorry Acquittal of Vojislav Seselj," in *EJIL: Talk!* blog of the European Journal of International Law (4 April 2016), at www.ejiltalk.org/the-sorry-acquittal-of-vojislav-seselj/ (accessed on 4 August 2016).
37. Marko Milanović, "The Gotovina Omnishambles," in *EJIL: Talk!* blog of the European Journal of International Law (18 November 2012), at www.ejiltalk.org/the-gotovina-omnishambles/ (accessed on 5 March 2015); Ljiljana Radonic, "The Acquittal of the Croatian Generals Ante Gotovina and Mladen Markač," in "Cultures of History" forum (20 August 2013), at www.imre-kertesz-kolleg.uni-jena.de/index.php?id=455&l=1 (accessed on 5 March 2015).
38. Reactions to the *Gotovina* judgment in Serbia are assembled in Vladimir Petrović, *Hubris of Themis: ICTY and the Balkans Two Decades After*. Paper prepared for 20th Annual ASN World Convention, Columbia University, 25 April 2015, p.5.
39. Reactions to the *Gotovina* judgment in Croatia are assembled in *ibid*, p.6.
40. For instance, such were homecomings of Dragoljub Ojdanić in August 2013, Dario Kordić in June 2014, and Vladimir Lazarević in December 2015.
41. Sash Jayawardane and Charlotte Divin, *The Gotovina, Perišić and Šainović Appeal Judgements: Implications for International Criminal Justice Mechanisms*, Policy Brief 13 (The Hague: The Hague Institute for Global Justice, September 2014), at www.thehagueinstituteforglobaljustice.org/wp-content/uploads/2015/10/PB13-Gotovina-Perisic-Sainovic-Appeal-Judgments.pdf (accessed on 4 August 2016).
42. Katherine Pruitt, "Destroying the Legacy of the ICTY: Analysis of Acquittals of Jovica Stanišić and Franko Simatović," in *San Diego International Law Journal*, Vol 15., No. 2 (May 2014), pp. 359–57.
43. See conference papers collected in Richard H. Steinberg (ed.), *Procjena naslijeđa MKSŽ [Assessing the Legacy of the ICTY]* (The Hague: ICTY Outreach Programme, 2011); Nerma Jelačić (ed.), *ICTY Global Legacy: Conference Proceedings. The Hague 15–16 November 2011* (The Hague: ICTY Outreach Programme, 2012); *Naslijeđe MKSŽ-a u bivšoj Jugoslaviji: Transkripti konferencija. Sarajevo 6. novembar 2012. Zagreb 8. novembar 2012. [Legacy of the ICTY in the Former Yugoslavia: Conference Transcripts. Sarajevo 6 November 2012. Zagreb 8 November 2012]* (The Hague: ICTY Outreach Programme, 2013).
44. Such as Payam Akhavan, "Justice in the Hague, Peace in Former Yugoslavia? A Commentary on the United Nations War Crimes Tribunal," in *Human Rights Quarterly* Vol. 20, No. 4 (1998), pp. 738–816.
45. Elazar Barkan and Alexander Karn (eds.), *Taking Wrongs Seriously: Apologies and Reconciliation* (Stanford: Stanford University Press, 2006).

46. "Balkanski Willi Brandt?", in *Slobodna Evropa* (Prague), 13 November 2004, at: www.slobodnaevropa.org/content/article/831235.html (accessed on 25 February 2015).
47. Pobjeda (Podgorica), 25 June 2000, pp. 1, 3.
48. Vreme (Belgrade), 20 November 2003, at: www.vreme.com/cms/view.php?id=358575 (accessed on 25 February 2015).
49. Pobjeda (Podgorica), 11 September 2003, pp. 1, 2.
50. Vijesti (Podgorica), 26 June 2000, p. 3.
51. B92 (Belgrade), 25 April 2013, at www.b92.net/info/vesti/index.php?yyy=2013&mm=04&dd=25&nav_id=708322 (accessed on 25 February 2015).
52. Ibid.
53. Such was the statement of apology of the president of Serbia, Boris Tadić, upon his first official visit to Bosnia-Herzegovina, in December 2004. See Blic (Belgrade), 7 December 2004, at www.blic.rs/stara_arhiva/politika/74216/Izvinimo-se-svi-jedni-drugima (accessed on 25 February 2015).
54. Lara J. Nettelfield, *Courting Democracy in Bosnia and Herzegovina: The Hague Tribunal's Impact in a Postwar State* (Cambridge: Cambridge University Press, 2010), chapter 6.
55. ICTY, "The Cases," Mucić et al. (IT-96-21) "Čelebići Camp," at www.icty.org/case/mucic/4 (accessed on 5 March 2015).
56. ICTY, Rules of Procedure and Evidence, at <http://www.icty.org/sid/136> (accessed on 5 March 2015).
57. Martha Minow, *Between Vengeance and Forgiveness: Facing History after Genocide and Mass Violence* (Boston: Beacon Press, 1998), p. 36.
58. Dan Saxon, "Exporting Justice: Perceptions of the ICTY Among the Serbian, Croatian, and Muslim Communities in the Former Yugoslavia," in *Journal of Human Rights* Vol. 4, No. 4 (October-December 2005), p. 560.
59. Janine Natalya Clark, "Plea Bargaining at the ICTY: Guilty Pleas and Reconciliation," in *European Journal of International Law* Vol. 20, No. 2 (April 2009), pp. 415-436. Jelena Subotić, "The Cruelty of False Remorse: Biljana Plavšić at The Hague," in *Southeastern Europe* Vol. 36, No. 1 (January 2012), pp. 39-59.
60. Based on the public opinion surveys commissioned by the Belgrade Centre for Human Rights conducted in Serbia (2009), Croatia (2010 and 2011) and Bosnia-Herzegovina (2010 and 2012), at www.bgcentar.org.rs/istrazivanje-javnog-mnenja/stavovi-prema-ratnim-zlocinima-haskom-tribunalu-domacem-pravosudu-za-ratne-zlocine/ (accessed on 4 August 2016).
61. Ibid.
62. Ibid.
63. Ibid.
64. Diane F. Orentlicher, *That Someone Guilty Be Punished: The Impact of the ICTY in Bosnia* (New York: Open Society Institute, 2010), p. 42.
65. See the earlier series of public opinion surveys ordered by the Belgrade Centre for Human Rights conducted from 2003 to 2009, at www.bgcentar.org.rs/istrazivanje-javnog-mnenja/stavovi-prema-ratnim-zlocinima-haskom-tribunalu-domacem-pravosudu-za-ratne-zlocine/ (accessed on 5 March 2015).
66. Orentlicher, *That Someone Guilty Be Punished*, p. 92.

67. Marlene Spoerri and Annette Freyberg-Inan, "From Prosecution to Persecution: Perceptions of the International Criminal Tribunal for the Former Yugoslavia (ICTY) in Serbian Domestic Politics," in *Journal of International Relations and Development* Vol. 11, No. 4 (December 2008), p. 375.
68. Mirko Klarin, "The Impact of the ICTY Trials on Public Opinion in the Former Yugoslavia," in *Journal of International Criminal Justice* Vol. 7, No. 1 (March 2009), p. 92.
69. For the need of comparison, we chose to make unfavorable simplification by considering as "own population" Croats in Croatia, Serbs in Serbia and the Republika Srpska, and Bosniaks in the Federation of BiH.
70. Two-thirds of Serbian population held that opinion in the survey commissioned by the Belgrade Centre for Human Rights in 2004, at www.bgcenter.org.rs/istrazivanje-javnog-mnenja/stavovi-prema-ratnim-zlocinima-haskom-tribunalu-domacem-pravosudu-za-ratne-zlocine/ (accessed on 5 March 2015).
71. Miklos Biro et al., "Attitudes toward Justice and Social Reconstruction in Bosnia and Herzegovina and Croatia," in Eric Stover and Harvey M. Weinstein (eds.), *My Neighbor, My Enemy: Justice and Community in the Aftermath of Mass Atrocity* (Cambridge: Cambridge University Press, 2004), p. 193.
72. Sanja Kutnjak Ivković and John Hagan, "The Politics of Punishment and the Siege of Sarajevo: Toward a Conflict Theory of Perceived International (In)Justice," in *Law & Society Review* Vol. 40, No. 2 (June 2006), p. 402.
73. Human Rights Center and the International Human Rights Law Clinic, University of California, Berkeley and Centre for Human Rights, University of Sarajevo, "Justice, Accountability and Social Reconstruction: An Interview Study of Bosnian Judges and Prosecutors," in *Berkeley Journal of International Law* Vol. 18, No. 1 (2000), p. 103.
74. Kristen Cibelli and Tamy Guberek, *Justice Unknown, Justice Unsatisfied? Bosnian NGOs Speak about the International Criminal Tribunal for the Former Yugoslavia. A Project of Education for Public Inquiry and International Citizenship*, Tufts University, (Boston: Tufts University, 2000).
75. Nettelfield, *Courting Democracy*, p. 161.
76. Lilian A. Barria and Steven D. Roper, "Judicial Capacity Building in Bosnia and Herzegovina: Understanding Legal Reform Beyond the Completion Strategy of the ICTY," in *Human Rights Review* Vol. 9, No. 3 (September 2008), pp. 317–330.
77. Based on the already mentioned public opinion surveys commissioned by the Belgrade Centre for Human Rights and conducted in Serbia, Croatia, and BiH from 2009 to 2012.
78. Radenko Udovičić et al., *Savladavanje prošlosti i uloga medija: monitoring pisanih i elektronskih BH medija* (Sarajevo: Media Plan Institut, 2005); Erna Mačkić and Shiv Kumar Sharma (eds.), *History Overshadowed by Trivia II: Regional and International Media Coverage of the First Year of Radovan Karadžić Trial* (Sarajevo: BIRN BiH, 2011).

79. Such as: Nidžara Ahmetašević and Marcus Tanner (eds.), *History Overshadowed by Trivia: Regional Media Coverage of Karadžić Arrest* (Sarajevo: BIRN BiH, 2009); Amer Džihana and Zala Volčič (eds.), *Media and National Ideologies: Analysis of Reporting on War Crime Trials in the Former Yugoslavia* (Sarajevo: Mediacentar Sarajevo, 2011); Katarina Ristić, *Imaginary Trials: War Crime Trials and Memory in Former Yugoslavia* (Leipzig: Leipziger Universitätsverlag, 2014).
80. Such confusion is noticeable even in academia when an author quotes an indictment, instead of a judgement, as a narrative established by the court.
81. See analysis in Jovana Mihajlović Trbovc, “Public Narratives of the Past in the Framework of Transitional Justice Processes: The Case of Bosnia and Herzegovina” (Doctoral thesis, Faculty of Social Science, University of Ljubljana, 2014), at http://dk.fdv.uni-lj.si/doktorska_dela/pdfs/dr_mihajlovic-trbovc-jovana.pdf (accessed on 5 March 2015).

PROOF