

Frames of Acceptance of International Criminal Justice in Serbia

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1. Introduction

The reason why extraordinary parliamentary elections were held in Serbia in April 2016, in the words of Prime Minister Vučić, was 'because we [the Serbian Progressive Party] need a full mandate to make Serbia ready to deliver difficult decisions, economically strong and ready to enter the EU'.² As expected, the Serbian Progressive Party (SPP) won a majority of seats in Parliament, but what stood out was that the Serbian Radical Party led by Vojislav Šešelj,³ recently acquitted in the first instance judgment before the International Criminal Tribunal for the former Yugoslavia (ICTY) won 8.1 per cent of the vote. One of the most comprehensive explanations for such success was gained from an informant interviewed for this chapter who voted for Šešelj:

'I would normally never vote for such a lunatic as Šešelj. Let's make it clear that I do not support his ideas or his behaviour. However, one has to congratulate him on what he did to The Hague [tribunal, ICTY]'⁴.

So what exactly did Šešelj do to The Hague, and what are the difficult decisions Serbia will have to face to move further towards EU membership? Finally, why is the ICTY, which is approaching the end of its decades-long mandate, still so important in the Serbian public sphere?

The dissolution of the Socialist Federal Republic of Yugoslavia, which culminated in a four-year armed conflict from 1991 to 1995, triggered the establishment of the first *ad hoc* International Criminal Tribunal since the Nuremberg trials. The ICTY was set up by United Nations Security Council Resolution 827,⁵ which was passed on 25 May 1993 in response to the serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991, and as a response to the threat to international peace and security posed by those

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² Telegraf, 2017.

³ In one of the most controversial judgments delivered by the ICTY Šešelj, who was held in custody since 2003, was acquitted on 31 March 2016. More information about the case: http://www.icty.org/x/cases/seselj/cis/en/cis_seselj_en.pdf. Accessed 09 May 2017.

⁴ Personal interview ns11.

⁵ Full text of UNSC Resolution 827 (1993): <http://daccessdds.un.org/doc/UNDOC/GEN/N93/306/28/IMG/N9330628.pdf>. Accessed 09 May 2017.

violations. Today, more than twenty years after the ICTY began its mission, the question of the legacy and acceptance of international criminal justice by domestic actors is attracting significant attention.

The main subject of this study is the acceptance of international criminal justice in Serbia by the most prominent actors at the political and societal levels. It will discuss the main forms, dynamics and drivers of acceptance. Hence, the context in which the acceptance occurs is defined by the following questions: Who accepts? What is accepted? Why is something accepted? When is something accepted? The empirical research underlying this study approaches these main questions, albeit indirectly, with the help of questions not directly articulating the concept of acceptance, drawing on interviews with selected informants representing the main categories of actors in society.

The first part of this chapter will give an overview of the country context and conditions which led to the establishment of the ICTY. Particular attention will be paid to the debate around the political motivation for creating the Tribunal, to shed more light on the recurrent criticism that the ICTY is a 'politicised court'⁶. Secondly, the current situation will be briefly described before offering some background information on the broader context of the relationship between the ICTY and Serbia, and explaining the methodological approach.

The main part of the chapter is dedicated to an analysis of the acceptance of international criminal justice in Serbia. Various levels and understandings of acceptance will be presented, including direct acceptance as an outcome of international criminal justice processes, and indirect acceptance as a result of the implementation of international criminal justice norms into the local context. Both the acceptance of international criminal justice *norms* and *institutions* are analysed as is the acceptance of domestic legislation and institutions which were influenced by international criminal justice. Changes in the historical narrative and the influence of the ICTY on the narrative of the role of Serbia during the wars are explored in depth. Finally, due to the rather protracted time-frame of the ICTY's activity, dynamics of acceptance are described and longitudinal research including secondary sources is performed.

2. The Local Context

The process of Yugoslavia's dissolution culminated in the outbreak of an armed conflict in Croatia and in Bosnia and Herzegovina, in 1991 and 1992 respectively.⁷ Serbia and Montenegro established the Federal Republic of Yugoslavia in April 1992, after Slovenia, Croatia, Macedonia, and Bosnia and Herzegovina declared independence.⁸ The violence committed during the war in

⁶ Since the foundation of the ICTY, the attitude towards the tribunal in Serbia has been predominantly negative, with a striking 71 per cent as late as 2011 (BGCHR survey retrieved at: <http://www.bgcentar.org.rs/istrazivanje-javnog-mnenja/stavovi-prema-ratnim-zlocinima-haskom-tribunalu-domacem-pravosudu-za-ratne-zlocine/>). More than half of the participants stated that the tribunal was: unjust/biased/non-objective, accusing only the Serbs, anti-Serb, political and illegal.

⁷ For an overview of the theories of the break-up of Yugoslavia, see Jovic, 2009, pp. 13-33.

⁸ Slovenia, Croatia and Macedonia declared independence during 1991, while Bosnia and Herzegovina did so in March 1992.

Croatia included crimes against humanity, sexual violence, ethnic cleansing, and other war crimes.⁹ Mass atrocities were perpetuated as a result of the breakdown of previous political structures, and due to growing nationalism, the aim of which was to rid certain territories of non-members of a particular ethno-national group. The conflict in Croatia involved the Croatian Government and Croatian army and police forces on one side, and the self-proclaimed Republic of Serbian Krajina political leadership, backed by the Yugoslav People's Army and Serb police and paramilitary forces, on the other.¹⁰ The crimes were committed against non-Serbs (the majority of them being of Croatian ethnicity) in areas where there was a significant ethnic heterogeneity, i.e. in the areas which had a large population of ethnic Serbs. However, some crimes were also committed by the Croatian army against ethnic Serbs. The majority of victims were members of the army, but there was also a significant number of civilian victims on both sides.¹¹

In Bosnia and Herzegovina, the conflict was to be the deadliest of all in the disintegrating Yugoslav Federation. Both Serbia and Croatia had territorial ambitions over important parts of its territory. In March 1992, in a referendum boycotted by Bosnian Serbs, more than 60 per cent of Bosnian citizens voted for independence.¹² Almost immediately, in April 1992, Bosnian Serbs rebelled with the support of the Yugoslav People's Army and the Serbian state.¹³ Bosnian Croats soon followed, rejecting the authority of the Bosnian Government and declaring their own republic with the backing of Croatia.¹⁴ The conflict turned into a bloody three-sided fight, with civilians of all ethnicities becoming victims of horrendous crimes.

It is estimated that more than 100,000 people were killed, and two million – more than half the population – were forced to flee their homes as a result of the war that raged from April 1992 to November 1995.¹⁵ Thousands of Bosnian women were systematically raped and notorious detention centres for civilians were set up by all conflicting sides, in Prijedor, Omarska, Konjic, Dretelj and other locations. The single worst atrocity of the war occurred in the summer of 1995 when the Bosnian town of Srebrenica – an UN-declared safe area – came under attack by forces

⁹ The ICTY has a mandate to prosecute grave breaches of the Geneva Conventions of 1949, violations of the laws and customs of war, crimes against humanity and genocide.

¹⁰ For a historical overview on Yugoslav break up, see Silber, Laura and Allan Little. 1997

¹¹ To date, there is still no complete and definite official list of people who were killed or went missing during the war in Croatia.

¹² Exact turnout: http://www.slobodanpraljajak.com/MATERIJALI/RATNI%20DOKUMENTI/PLANOVI_SPORAZUMI_I_ZIJAVE_O_USTAVNOM-USTROJSTVU_BiH_1991_1995/38.pdf. Accessed 09 May 2017.

¹³ Collaboration and logistic assistance between YPA and Army of Republika Srpska was proven in a number of the ICTY cases, most notably in Perisic: http://www.icty.org/x/cases/perisic/tjug/en/110906_summary.pdf. Accessed 09 May 2017.

¹⁴ The role of Croatia in Bosnia was twofold: Croatian forces collaborated with the Army of the Republic of Bosnia and Herzegovina (ARBiH) against the Army of Republika Srpska (VSR), but were also involved in Croat-Muslim war between 1992 and 1994. Croatian community in BiH founded Croatian Republic Herceg-Bosna in 1991, which formally respected Bosnian institutions.

¹⁵ Justice Report, 2007. Detailed information about the victims of the war in Bosnia can be found in Tokača, 2012.

lead by the Bosnian Serb commander Ratko Mladić.¹⁶ During a few days in early July more than 8,000 Bosnian Muslim men and boys were executed by Serb forces in an act of genocide.¹⁷

While the Serbian authorities continuously claimed that Serbia was not involved in the wars in Croatia and Bosnia, they provided vital support to the Serbian insurgent armies in those countries. The Dayton Peace Agreement put an end to the wars in 1995,¹⁸ but in 1998 the Serbian army and police led a new war in Kosovo against the ethnic-Albanian separatist Kosovo Liberation Army. After NATO military intervention and the installation of an international administration in Kosovo in 1999, first Montenegro in 2006 and later Kosovo in 2008 seceded from Serbia.

3. The Establishment of the ICTY

In order to assess the acceptance of international criminal justice norms and institutions, and the levels and understanding of acceptance, it is important to understand the political and ideological context in which the ICTY was established.

One of the most difficult questions to be answered by a country that has gone through a transition from authoritarianism or armed conflict to a democracy based on the rule of the law is how society shall deal with the atrocities and injustices of the past. Both legal and political developments of measures concerning human rights were facilitated by mechanisms of transitional justice ranging from institutional reform to promote greater respect of human rights, to political and societal promotion of such norms. In the UN report 'The Rule of Law in Conflict and Post-Conflict Societies',¹⁹ transitional justice is described as 'the full range of processes and mechanisms associated with a society's attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation'. Transitional justice may include both judicial and non-judicial mechanisms, with differing levels of international involvement (or none at all) and individual prosecutions. Its mechanisms consist of criminal justice oriented policies such as trials for war crimes. Transitional justice mechanisms are also addressed to institutional reform (vetting and lustration), reparations, and truth telling (truth commissions). According to the International Centre for Transitional Justice, one of the most influential think-tanks dealing with the matter, transitional justice is 'an approach to achieving justice in times of transition from conflict and/or state repression.'²⁰ Here the word transition is used as the 'interval between one political regime and another' (O'Donnell and Schmitter 2013, 5), and is usually identified as the

¹⁶ ICTY. 'Case Information Sheet Ratko Mladić.' Accessed 09 May 2017. http://www.icty.org/x/cases/mladic/cis/en/cis_mladic_en.pdf.

¹⁷ The ICTY indicted 20 people for the Srebrenica events of July 1995; the charges included genocide, murder, extermination and persecution. Both the ICTY and the International Court of Justice have proven beyond reasonable doubt that genocide has been committed in Srebrenica.

¹⁸ Full text of Dayton Peace Agreement: <http://daccessdds.un.org/doc/UNDOC/GEN/N93/306/28/IMG/N9330628.pdf>. Accessed 09 May 2017.

¹⁹ United Nations, 2004.

²⁰ International Center for Transitional Justice. 'What is Transitional Justice?' Accessed 09 May 2017. <https://www.ictj.org/about/transitional-justice>.

transition from an authoritarian rule to stable democracy, or from a situation of war and violent conflict to a democratic system and/or peace. Such an approach is in line with the so called 'third wave' of democratisation which advocates addressing the legacy of political repression and mass violence perpetrated by authoritarian regimes.²¹

Ruti Teitel described transitional justice 'as the conception of justice associated with periods of political change, characterised by legal responses to confront the wrongdoings of repressive predecessor regimes' (Teitel 2003, 69). Although her definition has been widely cited, it 'privileges the legal aspect of coming to terms with the past' (Roht-Arriaza 2006, 1). Nevertheless, in the former Yugoslavia the promotion of judicial mechanisms of transitional justice was generally favoured in order to come to terms with the violent past.

The dramatic changes in the international context associated with the end of the Cold War brought about a re-conceptualisation of the normative framework and practice of transitional justice. After almost fifty years of tension that dominated international relations, relative optimism emerged leading to the agreement that the UN Security Council could guarantee a new world order based on a human rights doctrine (Cassese 2003, 334-335). Throughout the 1980s and early 1990s, transitional justice had two predominant foci: human rights activists promoted a victim-oriented view, while others were more concentrated on the promotion of the rule of law.²² In the last decade of the 20th century, a legalistic approach which saw justice as a pre-condition for lasting peace and reconciliation prevailed.²³ Simultaneously, a liberal approach to the study of international relations pushed for international cooperation and the establishment of supranational institutions as guardians of acceptance and respect of the basic principles of international law.²⁴ It promoted legalism, the main claim of which was that 'the behaviour of actors in international politics is guided by norms that they believe to be appropriate' and that 'reducing atrocities is a matter of persuading elites and masses to comply with international humanitarian norms' (Vinjamuri and Snyder 2004, 346-347). According to this doctrine, the creation of an international judicial body would help to deter state-sponsored atrocities and warn the political and military elite vis-à-vis accountability in the case of human rights violations.

The disintegration of former socialist states and the revival of ethno-nationalist conflicts generated new challenges for both human rights and transitional justice practitioners. Grave breaches of human rights and new forms of violence led to widespread consensus on the duty to prosecute on the basis that justice was a pre-condition for lasting peace and reconciliation.

Thus, in the successor countries of the former Yugoslavia much of the focus of transitional justice has been on the prosecution of war crimes to trigger the pursuit of accountability for

²¹ The notion of a 'third wave of democratisation' was coined by Samuel Huntington to characterise the political transitions which took place in late twentieth-century Southern Europe, Latin America and post-communist Central and Eastern Europe. Huntington, 1991.

²² For a detailed overview of the early debates on transitional justice, see: Kritz, 2009 and Paige, 2009.

²³ For more details see Hesse and Post, 1999.

²⁴ For a detailed overview of liberal approach to the study of international relations see Jovic, 2014.

past atrocities. The ICTY was the first international tribunal since the International Military Tribunals established in Nuremberg and Tokyo in the aftermath of World War II. It was set up by the Security Council in accordance with Chapter VII of the UN Charter,²⁵ defining action with respect to threats to peace, breaches of the peace, and acts of aggression. The only possible way of creating an *ad hoc* tribunal was through political means which greatly influenced the perception and reception of the tribunal in the situation countries.

The UN Security Council Resolution 827 of 1993 also met the criticism of one part of the international community, which saw it as a fig leaf seeking to cover for inadequate intervention during the wars in Croatia and Bosnia.²⁶ The difficulties the ICTY faced at the beginning of its mandate, such as the delay before the start of the first trial and the lack of authority imposed on the countries of the former Yugoslavia were also at sharp odds with the achievements and its on-going functioning. Case law and international criminal justice norms were developed tremendously through the work of the ICTY and this chapter will deal with the acceptance of international criminal justice in Serbia and the level of understanding of, and agreement on, judicial norms and provisions in that society. Despite the success and development of international humanitarian law as a discipline, this research seeks to shed light on the modalities of translating and informing the general public about the judicial mechanism of transitional justice, and the levels of acceptance and reception of such mechanisms.

4. The Relationship between the ICTY and the Serbian Government

The states created after the dissolution of Yugoslavia had an obligation to accept cooperation with the ICTY by signing the Dayton Agreement in 1995. Article IX of the *General Framework Agreement* requires full cooperation with all organisations involved in the implementation of the peace settlement, including the ICTY,²⁷ and Article 29 of the ICTY Statute regulates the co-operation and judicial assistance of the target countries.²⁸ In 1996, the Tribunal signed a Memorandum of Understanding with the Yugoslav authorities which allowed the Prosecution to open an office in Belgrade.²⁹ The subsequent extradition of Dražen Erdemović and Radoslav

²⁵ United Nations. Chapter VII. Accessed 09 May 2017. <http://www.un.org/en/sections/un-charter/chapter-vii/>.

²⁶ For an overview of criticism for non-intervention during the 1990s wars in the former Yugoslavia, see: Bass, 2000.

²⁷ Full text of Dayton Peace Agreement: <http://daccessdds.un.org/doc/UNDOC/GEN/N93/306/28/IMG/N9330628.pdf>. Accessed 09 May 2017.

²⁸ Article 29 Co-operation and judicial assistance 1. States shall co-operate with the International Tribunal in the investigation and prosecution of persons accused of committing serious violations of international humanitarian law. 2. States shall comply without undue delay with any request for assistance or an order issued by a Trial Chamber, including, but not limited to: (a) the identification and location of persons; (b) the taking of testimony and the production of evidence; (c) the service of documents; (d) the arrest or detention of persons; (e) the surrender or the transfer of the accused to the International Tribunal.

²⁹ Opening of the field office in Belgrade is mentioned in paragraph 63 of the ICTY's annual report, which is available at: http://www.icty.org/x/file/About/Reports%20and%20Publications/AnnualReports/annual_report_1997_en.pdf. Accessed 09 May 2017.

Kremenović to The Hague opened up a short-lived semblance of cooperation,³⁰ but Belgrade's relations with the Tribunal rapidly deteriorated with the advent of the Kosovo crisis.

The overthrow of Slobodan Milošević on 5 October 2000 created the conditions for the establishment of tangible cooperation between Yugoslavia and the ICTY. However, this cooperation materialised primarily as a result of intense international pressure, and on several occasions came at a high political cost for domestic stakeholders. The growing importance of the ICTY issue on the political agenda began with the arrest of Milošević in 2001, and contributed significantly to the fragmentation and polarisation of the Serbian political scene. In 2002, the Serbian Parliament adopted a law on cooperation with the ICTY, and a law on war crimes the following year.³¹ These laws enabled Serbia to respond to the requests made by the ICTY, including finding suspects, delivering archival and judicial material, and providing information on possible witnesses or victims. The law on war crimes set up important institutions within the police, the office of the prosecutor and local courts which had the exclusive task of investigating, prosecuting and judging in the matter of war crimes. These included the Office of the Prosecutor for War Crimes, the War Crimes Chamber within the High Court in Belgrade, and the War Crimes Investigation Service within the Serbian interior ministry.

The European Union (EU) made cooperation with the ICTY an important condition of its accession policy vis-à-vis the Western Balkan countries, making the start of accession negotiations contingent on full cooperation with the ICTY. To date, this policy of conditionality has led to the arrest and extradition of 46 Serbian war crimes suspects, including almost the entire Serbian political and military leadership from the 1990s.³²

Research conducted in Serbia into the wars of the 1990s shows that, even after the fall of Milošević, the dominant atmosphere in society was marked by the denial of Serbian state involvement in the wars of the 1990s (McMahon and Forsythe 2008; Clark 2008; Spoerri and Freyberg-Inan 2008; Gordy 2013), and an evasion of responsibility of the 1990s regime for the outbreak of war (Obradović-Wochnik 2009). A few studies conducted in post-Yugoslav countries have analysed the acknowledgement and denial of the official historical narrative from the perspective of ordinary citizens, showing that some elements of denial may be found among members of all ethnic communities (Clark 2009; Orentlicher 2008; Orentlicher 2010; Obradović-Wochnik 2009). Another study showed that citizens tend to regard crimes committed by members of their ethnic community as 'individual excesses' and the crimes of

³⁰ More details on Erdemović case can be found on the following link: <http://www.icty.org/case/erdemovic/4>. Accessed 09 May 2017.

Kremenović was remanded back to Federal Republic of Yugoslavia after he was being questioned about Srebrenica by the OTP in 1996.

³¹ Full text of the Law on cooperation can be retrieved on the following link:

http://www.paragraf.rs/propisi_download/zakon_o_saradnji_srbije_i_crne_gore_sa_medjunarodnim_tribunalom_za_krivicno_gonjenje_li_ca_odgovornih_za_teska_krsenja.pdf. Accessed 09 May 2017.

Full text of the Law on war crimes can be retrieved on the following link:

http://www.paragraf.rs/propisi/zakon_o_organizaciji_i_nadleznosti_drzavnih_organa_u_postupku_za_ratne_zlocine.html. Accessed 09 May 2017.

³² Detailed chronology of the arrests from 2003 to 2011 can be found on the following link:

http://www.b92.net/info/vesti/index.php?yyyy=2011&mm=07&dd=20&nav_category=64&nav_id=526606. Accessed 09 May 2017.

others as premeditated (Čorkalo et al. 2012). Much research has also been conducted into the way the local media has reported war crime trials (Udovičić et al. 2005; Ahmetašević and Tanner 2009; Volčič and Erjavec 2009; Džihana and Volčič 2011; Ljubojević 2012), illustrating how the reports treat them as a political topic and not as a process of establishing truth about the past.

5. Narratives about the Past in Serbia

Before analysing the acceptance of international criminal justice in Serbia, it is important to briefly explain official historical narratives about the past in Serbia. Compared to other post-Yugoslav states, Serbia has a different relationship to the wars of the 1990s: the country never fought for independence, but was in fact the one from which the other states seceded.³³ Even though Serbia recognised the independence of all ex-Yugoslav republics except Kosovo a long time ago, in official discourse and in most of its media outlets the wars in Croatia and Bosnia are still considered as civil wars.³⁴ This particular definition helped to relativise the roles of the defending party and of the aggressor.³⁵ The Serbian case is significant because there are no state organised commemorations to remember the 1990s wars, although the Serbian Government sometimes sponsors commemorations organised by victims' associations. All the initiatives commemorating victims or episodes of the conflicts in Croatia and Bosnia have been organised by civil society organisations.

The role of Serbia in the wars, combined with the ever-stronger evidence of violations committed by the Serbian armed forces, has had a strong effect on mainstream media, which reported only on a narrow selection of high-profile cases, such as Vukovar or Srebrenica. This policy of focusing on war crime trials that could not be ignored was reflected in the way that some of the questions used in the interviews for this study were selected.

In the Serbian discourse on the war in Croatia, there are two major events: the fall of Vukovar in 1991, and Operation 'Storm' in 1995. The relatively long ceasefire after the fall of Vukovar, interrupted only by minor military operations, contributed to mainstream avoidance of putting the two episodes in any causal relationship. A lot has been written about Operation 'Storm' in Serbian newspapers, as the crimes committed in its aftermath resulted in Serbian civilian casualties. However, 'Storm' is carefully taken out of context and out of relation to the creation of Republic of Srpska Krajina (RSK) to avoid possible revenge theories.

Vukovar and crimes committed by the Yugoslav People's Army (JNA) were not frequent media topics before the beginning of the war crime trials. The number of crimes committed by Serbian

³³ This argument was often used by Milošević to describe Serbia as the guardian of Yugoslav integrity. However, the reasons for the breakup of Yugoslavia were much more complex (see Jovic, 2009).

³⁴ Particularly interesting was a debate in Serbia's oldest newspapers outlet, *Politika*, from May to June 2004, about the nature of the war in Croatia. The debate was triggered when Vuk Drasković, then Serbian Minister of Foreign Affairs, invited Croatian authorities to drop charges against Serbia in genocide case before the ICJ, because the armed conflict represented a civil war. Accessed 09 May 2017.

³⁵ For dynamics of official narratives about the break-up of Yugoslavia analysed through history textbooks, see Pavasović Trošt, 2012.

forces in 1991 was much larger than those committed by Croatian forces, and so silence is the most common response to the Vukovar crimes. Croatian Memory Day, commemorating the fall of Vukovar, is rarely mentioned in the Serbian media, and even when it is, the articles do not analyse the conflict in Croatia in its totality, not even to push forward the nationalist agenda. Unlike the Homeland war in Croatia or the war in Bosnia where the narrative about the war is extremely important for national identity construction and still represents a regular subject of the everyday discourse, Serbia's involvement in both wars is more often ignored or reduced to discrete isolated events.

Similarly, war in Bosnia is also reduced to a limited number of episodes, Srebrenica being the most important. For example, it is enough to count the articles dealing with other episodes in order to get an overall impression, and the siege of Sarajevo and Prijedor camps are almost unknown to the wider public and information about the war crimes committed on those occasions is extremely limited. The lack of articles describing the conflict in Bosnia is easily verified through digital archives with the use of key words; for example, Prijedor is mentioned up to 25 times per year by Politika (and not only in the context of war crimes), while Srebrenica is at least twice as frequently (and in 2005 up to 100 times) and almost exclusively in the context of war crimes.³⁶ This study consulted available digital archives and searches through key words such as 'war crimes', 'Srebrenica', 'conflict', 'war in Bosnia' or newspaper sections such as 'society' or 'foreign politics', but this did not provide enough information about the general descriptions of war. Therefore, one must look at specific events in order to get the broader picture.

6. Interviewing Societal Actors in Serbia

This research deals with the forms, dynamics and drivers of acceptance of international criminal justice in Serbia and seeks to explain the distinction between the need to prosecute war crimes and the way attitudes towards the main driver of international criminal justice are formed. The need to prosecute war crimes is related to the acceptance of the principles of international criminal justice, and why and how past wrongdoings should be defined and categorised at the international and local levels. The study assesses perceptions of success or failure of the ICTY to reach its objectives, especially on the reconciliation process and possible transformative roles regarding narratives of the war. Finally, this research analyses whether a perception exists concerning the impact of the ICTY on the question of responsibility, i.e. Serbia's role in the wars of the 1990s.

Six different groups of informants were chosen: political leaders/former politicians; members of NGOs; leading country experts such as historians, lawyers, journalists, political scientists working in the field of transitional justice; war veterans; former refugees who fled from

³⁶ Data from digital newspaper archive ebart: <http://www.arhiv.rs/novinska-pretraga>. Accessed 09 May 2017.

Croatia;³⁷ and members of the Croatian minority in Serbia. Political leaders, civil society members and influential intellectuals are the most exposed domestic actors having a decisive effect on the acceptance of international criminal justice within society, but other important groups such as war veterans, former refugees and the Croatian minority have also been included as their identity and relationship to the 1990s wars frames the way in which international criminal justice is accepted. This research was mainly conducted in the capital city Belgrade and in Serbia's northern province of Vojvodina, where the majority of the former refugees from Croatia and Bosnia live. Vojvodina's historically multinational structure can also shed light on the importance of ethnic identity identification in Serbia in relation to the acceptance of the outcome of war crime judgments. Most initial contacts with the representatives of the general population were obtained through friends and acquaintances and were later developed through the snowballing technique. Contacts to war veterans were created using purposive sampling through different organisations of which they are members. Finally, when approaching experts such as historians, political scientists, journalists or lawyers, interview requests were directed specifically to a person who was known for their experience and knowledge of transitional justice.

Political leaders and members of institutions relevant to the study of acceptance of international criminal justice were chosen because of their role in decision making processes, but also because of their promotion of official historical narratives. However, this group was the hardest to approach. Several rejected the enquiry for interviews when contacting the Ministry of Justice or National Council for the Cooperation with the ICTY. For example, the section for EU integration within the Ministry of Justice expressed a lack of competence regarding the EU membership conditionality with the ICTY. In a similar manner, the press office of the Ministry could not nominate an expert willing to discuss the topic of ICTY cooperation. Once the Office of the National Council for the Cooperation with the ICTY was closed in 2014 and integrated into the Ministry of Justice, it became significantly harder to contact members of the National Council directly, even though it is still working, as they hold some of the most important functions within the Serbian Government. However, secondary sources such as TV and written media were used in order to trace statements and opinions of the political leaders regarding the ICTY and international justice in general. Members of civil society groups were contacted as they acted as civil parties at local trials for war crimes; they are also initiators of dealing with the past,³⁸ public debate promoters and aid givers to marginalised groups within society. War veterans combine quite a large heterogeneous group within Serbian society, and despite their limited influence on official government decisions, their direct involvement in war events is often part of the counter narrative about the past. Ethnic minorities often lack a strong

³⁷ 'Former refugee' refers to a person who gained refugee status after fleeing from Croatia in the 1990s (directly or via a third country) and who in the meantime obtained Serbian citizenship. Approximately 618,000 people from Croatia and Bosnia had refugee status; currently around 35,000 still do (data from the Republic of Serbia's Commissariat for Refugees and Migration).

³⁸ Transitional justice initiatives promoted by the NGOs in the Yugoslav successor states are often described as *dealing with the past* and comprise, among other things, efforts to inform and document past breaches of international humanitarian law, educational initiatives regarding transitional justice, memorialisation, outreach, and support for the regional initiative RECOM.

nationalist attachment to the official discourse and tend to give a more nuanced perspective regarding this research subject. Such diverse groups understand and describe acceptance in various ways, and have some common points of convergence when it comes to applying international criminal justice. One also has to consider that 'justice' has a number of meanings and that it means different things to different people.

Although this chapter is primarily focussed on the individual level of acceptance, the informants related their personal attitudes with those of the state or society in general. However, the informants were not only asked about their individual opinions but also how they perceive the acceptance at official and societal level. In that case, one can talk about the perceptions of acceptance of international criminal justice.

To analyse the acceptance of international criminal justice, 52 semi-structured interviews were conducted of a duration ranging from 30 to 90 minutes. The notion of acceptance being somewhat vague and combined with the rather unknown notion of international criminal justice, the use of proxies was required to qualify different levels of acceptance. Therefore, the participants of this research expressed their attitudes towards the ICTY, the judgements, the possibility of establishing the truth about the past and the victims. They were also asked to compare the work of domestic and international tribunals and were finally questioned about other non-judicial mechanisms of transitional justice, such as official apologies and the initiative for a regional truth commission.

7. Acceptance of International Criminal Justice

7.1 Direct Acceptance of the Legal Norms International Criminal Justice

The ICTY has authority to prosecute individuals on four categories of offences: grave breaches of the 1949 Geneva Conventions, violations of the laws or customs of war, genocide, and crimes against humanity.³⁹ The Hague Tribunal, as it is commonly labelled, has no authority to prosecute States for the crime of aggression or crimes against peace. The Statute of the ICTY, which regulates the Court's functioning, is based on a mixture of civil and common law. The ICTY was not given attention in the mainstream media and political arena in Serbia until the arrest of former president Slobodan Milošević in 2001, but the information about the law exercised by the Tribunal was never widely explained and therefore decreased the chances of acceptance of international criminal justice. A prominent member of Serbian civil society and long-time human rights activist stressed that common law was 'generally hardly understood in the region and nobody put an effort to explain those principles during live TV coverage of the processes'.⁴⁰ Thus, 'even though Milošević and Šešelj seemed [to be] winners for the local audience [in Serbia], their statements bore no relevance for the trials',⁴¹ as it was hard to

³⁹ Ibid.

⁴⁰ Personal interview NGOBG1.

⁴¹ Ibid.

separate political appearance from the legal defence they have supposed to perform in the courtroom.

Therefore, there was no interest among wider parts of the general population to acquire information about the principles of international criminal justice on their own or through complicated judicial material provided by the tribunal. Not only was the legal material hard to translate to members of local communities, but the 'war crimes per se are complicated matters as they include a large number of perpetrators and victims and have a state apparatus in the background',⁴² explained a journalist working on transitional justice issues. In addition, interethnic conflicts where mass violence was planned under a complex chain of political and military command required legal developments beyond classical forms of responsibility. Command responsibility or joint criminal enterprise, absent from national jurisdiction, are mostly perceived negatively if not rejected, as it is usually understood among a wider audience that anybody holding a senior position is potentially subject to criminal prosecution by the ICTY. The ICTY also abstained from hiring experts from the region of the former Yugoslavia, 'which opened some problems regarding not only elementary forms of translation, but also cultural one[s]',⁴³ pointed out by a historian who conducted research on the role of expert witnesses in the ICTY trials.

When interviewed, a majority of the members of the local population separated the notion of criminal justice from the ICTY, and while there was a negative attitude towards the ICTY, criminal justice is not discredited, a finding that coincides with previous surveys conducted in Serbia.⁴⁴ On the contrary, many informants outlined that it is much needed, not only to contribute to fact finding, but also to stop the ever-present dispute about the past. However, even though 'almost everybody would say that the perpetrators should be punished, this sentence always continues with but what they did to us',⁴⁵ warned an informant from the Serbian Office of the War Crimes Prosecutor.

Finally, legal experts agree that the ICTY contributed greatly to the development and acceptance of international criminal justice, but this achievement was not given any relevance in the situation country among the general population.

7.2 Indirect Acceptance (Local Norms and Institutions)

The ICTY had a major influence on domestic political actors in Serbia and facilitated the establishment of local institutions specialised in the prosecution of war crimes. In 2003, the Serbian authorities created special institutions for the prosecution of war crimes: A War Crimes

⁴² Personal interview EJBG1.

⁴³ Personal interview EHBG1.

⁴⁴ Detailed tables with results from 2004 to 2011 can be found at: <http://www.bgcentar.org.rs/istrazivanje-javnog-mnenja/stavovi-prema-ratnim-zlocinima-haskom-tribunalu-domacem-pravosudu-za-ratne-zlocine/>. Accessed 09 May 2017.

⁴⁵ Personal interview GBG1.

Chamber within the Belgrade District Court and an Office of the War Crimes Prosecutor and a special unit for investigating war crimes within the police.

National courts and local legislation reflect the state's ability to deal with the past through war crime trials, made without explicit conditionality dictated by the EU and the international community, as it was the case with the cooperation with the ICTY. Domestic trials for war crimes offer a very challenging framework from which one can directly observe the evolution and changing attitude of state institutions towards war crimes and historical narratives. In Serbia, surveys by the Belgrade Centre for Human Rights showed that almost every second interviewee expressed concern regarding the independence of the Special Court.⁴⁶ One former refugee from Croatia expressed both preference and scepticism towards national courts in Serbia:

'My impression is that the Serbian judiciary is by far the most just when they open a process. Once the trial is set up they don't advocate for some national interests. However, they do not open enough processes.'⁴⁷

Domestic indictments are perceived as positive and enjoy a high rate of acceptance among the general population even when the outcome of the trial is considered not to be fair or just, mostly as the local institutions were in charge of and responsible for the trials and not the international community which would impose 'its' justice. There is a need 'to believe in a judicial system of one state if we want to make certain changes in our society',⁴⁸ stated another former refugee. However, almost every informant agreed that all post-Yugoslav countries should increase their judicial capacities in order to secure a much larger number of fair trials. There is a general perception that domestic trials are desirable, but that they are rare and biased. In addition, an 'impunity gap' between direct perpetrators tried before the Special Chamber for war crimes in Belgrade and high ranking officials tried in The Hague is one of the major problems in order to 'get the whole picture about specific event[s]'.⁴⁹ '[No] high rank politicians or army officials are accused before the Special Court in Belgrade'⁵⁰ as 'the Prosecutor is very cautious not to involve Serbian state apparatus in any specific war crime',⁵¹ warned two leading independent journalists. Consequently, the role of the state institutions was minimised or completely cancelled and hence the role of Serbia in the conflict was never truly questioned. The inability to 'deal with crimes in a non-politicized way',⁵² as an expert interviewee clarified, led to a failure to establish a link between trials at the ICTY and those held at domestic level.

⁴⁶ Belgrade Center for Human Rights. Question 83 of the 2011 survey: <http://www.bgcentar.org.rs/istrazivanje-javnog-mnenja/stavovi-prema-ratnim-zlocinima-haskom-tribunalu-domacem-pravosudu-za-ratne-zlocine/>. Accessed 09 May 2017.

⁴⁷ Personal interview IZBG1.

⁴⁸ Personal interview IZNS1.

⁴⁹ Personal interview EHBG1.

⁵⁰ Personal interview EJBG2.

⁵¹ Personal interview EJBG1.

⁵² Personal interview EHBG1.

7.3 Acceptance of the Institution - Failures and Successes

The society in Serbia has always been highly polarised when it comes to the question of the acceptance of the ICTY. The ICTY became a relevant topic in the public sphere with the Milošević trial as the live coverage of the trial was widely discussed and watched, and even more once the EU conditionality became intertwined with ICTY cooperation. Even though most of the interviewees from all spectrums of society agree that those who committed war crimes should be held responsible and face trial, their answers showed divergence regarding the institution implementing international criminal justice norms.

Some of the recent studies do not hesitate to voice criticism about some aspects of the ICTY's mission; for example, much of the early rhetoric about the transformative potential of international criminal law helped foster unrealistic expectations that institutions such as the ICTY could not meet (Nettelfield 2010). Even though the goal of achieving reconciliation in the region is not quoted among the tribunal's objectives, several former ICTY Presidents and Prosecutors called for it in 1995 after signing the Dayton Agreement,⁵³ and later on, former Prosecutor Carla del Ponte sought to promote the social transformative role of the ICTY that can lead to reconciliation processes.⁵⁴ However, both informants and secondary sources claimed that it is 'unreal[istic] to expect reconciliation among nations managed by a court, its main duty is to prosecute and establish facts'.⁵⁵

Some of the informants, mainly members of the war veteran population, while supporting the need for 'just' international criminal justice, completely discredited the ICTY as an institution:

'When you ask me if I have an attitude towards the tribunal, I don't have any, because it is not a court. It is an international nonsense which does not lead to reconciliation; instead it strengthens the deepening of the hate, and might even be a future spark for possible new conflicts in the Balkans'.⁵⁶

To situate the outcome of this research within the broader context of society, the research results from the interviews were compared to other quantitative surveys on the attitudes towards the ICTY which have been conducted by the Belgrade Centre for Human Rights (BCHR) and the OSCE⁵⁷ since 2004. The beginning of the work of the ICTY was not followed with enthusiasm because, as one legal expert interviewee recalled:

⁵³ 'Justice is an indispensable ingredient of the process of national reconciliation.', 'The Tribunal welcomes the parties' commitment to justice'. Joint statement by the President and the Prosecutor: <http://www.icty.org/sid/7220>. Accessed 09 May 2017.

⁵⁴ 'The Tribunal was established as a measure to restore and maintain peace and promote reconciliation in the former Yugoslavia', in Clark, 2014.

⁵⁵ Personal interview NGOBG2.

⁵⁶ Personal interview VBG3.

⁵⁷ Results of such surveys are accessible online at: <http://www.bgcentar.org.rs/bgcentar/eng-lat/citizens-perceptions-of-human-rights-law-and-practice/stavovi-prema-ratnim-zlocinima-haskom-tribunalu-domacem-pravosudu-za-ratne-zlocine/>. Accessed 09 May 2017.

‘Nobody believed that someone will be held responsible before such courts. Everybody believed that “we are not the Nazis, it cannot be that bad”, and there was no benchmark which could have helped the tribunal to be taken seriously’.⁵⁸

In surveys carried out in 2011 by the BCHR, when asked about the ‘attitude on the ICTY in general’, 71 per cent of the respondents answered that they had negative attitudes, with a striking 46 per cent having extremely negative opinions. The main reasons mentioned were perceptions that the purpose of the ICTY was to blame the Serbs for war suffering, lack of fair trials, and the judgment of the ICTY as unjust, biased and partial.⁵⁹ About three quarters of the survey participants found the ICTY biased when the accused was of Serbian nationality, and opposed the assumption that the trial was fair. Speaking about the ICTY’s potential for creating a historical record, or as the survey coined it ‘contribute to finding the truth about the events in wars’,⁶⁰ the interviewees’ opinions were divided. However, 60 per cent of the respondents answered that they were not familiar with the work of the ICTY.

Most of the informants agreed that some form of international criminal justice institution was accepted and needed in order to prosecute the wrongdoings committed during the conflicts in the former Yugoslavia, as ‘there was no sign that the states were going to prosecute their own high and mid ranked officials suspected for war crimes’.⁶¹ Both NGO activists and experts agreed that the main reason was not the lack of judicial capacity, as the institutional judicial structure was developed and ‘the criminal code of the SFRY was one incorporating international law norms’,⁶² but the lack of ‘political will’⁶³ and ‘threat to political stability’.⁶⁴ However, the court was seen with mistrust from the beginning of its work. One prominent independent media journalist explained the situation:

‘At first, the media just followed the trials and that resembled very much the situation at domestic courts - the media report but during the process prosecutors and judges are not releasing any statements. However, the defence lawyers talked voluntarily so only the accused side of the story was to be heard. That of course created a bad reputation for the tribunal as the local audience perceived the trials from a football fan perspective’.⁶⁵

⁵⁸ Personal interview ELBG1.

⁵⁹ Ibid.

⁶⁰ Ibid.

⁶¹ Personal interview NGOBG2.

⁶² Personal interview ELBG1.

⁶³ Personal interview EJBG2.

⁶⁴ Personal interview EPSBG1.

⁶⁵ Personal interview EJBG1.

Such observation is in line with the BCHR's survey as the answer to the question: 'To what extent have attitudes of the following people and institutions stated publicly influenced your attitude towards the ICTY, i.e. who did you believe most?' showed that the most trusted are local political analysts, writers and intellectuals, to whom the general population trusted almost two times more than representatives of state institutions. Moreover, the outreach section of the ICTY, responsible for press releases and divulgation of non-legalistic explanations of the judgements, was founded only six years after the tribunal had begun its work. That means the only information coming from the Tribunal itself was judicial material requiring in-depth explanation in order to be understandable for the general audience. The bridge between The Hague and the local audience was left to domestic actors, many of whom misinterpreted and manipulated the work of the ICTY even though in the region of the former Yugoslavia the possibility of access to information is multiple, through publications of various NGOs, the ICTY's website or reports by news agencies. However, it mainly depends on 'specific interest and autonomous search for information'⁶⁶ as 'the only thing that appears through public channels of information is the fact that members of a certain nationality were acquitted and the Serbs are convicted',⁶⁷ explained an NGO activist.

It is difficult to tell if the level of acceptance of international justice strategies would have been higher if more members of another community had been sentenced. One war veteran asserted that the ICTY decisions have a negative impact on the local community and that 'we would bear that situation more easily if everybody would be found responsible – when only the Serbs are tried, then people do not believe in the tribunal, in justice, in anything'.⁶⁸ In general, not the proceedings but the selection of cases was criticised. In addition, when the accused were punished, the duration of the sentences was usually not questioned, unless it differed significantly in trial and appeals judgement.

However, even if the ICTY did not exist, an interviewee suggested that 'divided societies would always have one side satisfied and the other not', but 'if somebody thinks that this region can achieve some kind of reconciliation, then you cannot spare one side and punish the other'.⁶⁹

The ICTY was reproached for the lack of sympathy with local societies in the former Yugoslavia, and one former refugee stated that 'there are unpleasant situations where the prosecutor is not sure about the correct name of a person or a place where the crime happened'.⁷⁰ In addition, the possibility that indictees would not have a defence counsel has turned some of the processes into shows and performances, with the *Šešelj* case being particularly striking as 'they just kicked him out of the courtroom and threw him into Serbia'.⁷¹

⁶⁶ Personal interview NGOBG2.

⁶⁷ Ibid.

⁶⁸ Personal interview VBG1.

⁶⁹ Personal interview IZNS1.

⁷⁰ Personal interview IZBG1.

⁷¹ Personal interview VBG3.

Despite the negative attitude towards the ICTY, trials were not considered to be a homogenous matter on which one can form a general opinion. Some judgements such as *Lukić* of the *Foča* case were accepted as they were described as effective, with appropriate punishment. Still, a large number of reversed judgments like in the *Gotovina et al.* case, *Stanišić* and *Simatović*, *Haradinaj*, *Orić* and *Perišić* case to name a few⁷²; or situations where the punishment was drastically diminished like in the *Blaškić* case, undermined the acceptance of the Court decisions. Most of my informants mentioned these judgments as examples of illogical practices of the ICTY. However, international criminal justice is needed and the atrocities of the past should be addressed somehow. Yet, the victims are those most affected by the Court's shortcomings and feel betrayed and victimised anew, as stated by most of the NGO activists, but also former refugees.

Shortcomings like the excessive duration of the judicial processes, and the unnecessary costs of such an institution are perceived as negative for justice enforcement:

'I think that the court lasts for too long so that it lost its importance and legitimacy. If everything lasted much shorter maybe some justices would have been satisfied. But like this everything is so diluted, people forgot what was happening there [in the ICTY]'.⁷³

The most important role of the ICTY according to most of the informants⁷⁴ was the creation of archives. Not only did the Tribunal oblige post Yugoslav states to open their archives, but despite 'judgements having limited influence, as they are primarily related to individuals, all the experts' reports can give enough material for historians to use',⁷⁵ transitional justice advocates agreed. However, a representative of a major independent media warned that:

'The facts established during the trial did not enter into the public speech. For example such is the case of *Šljivančanin* who handed over Croatian prisoners to Territorial defence,⁷⁶ was convicted, served his sentence, but came back as a liberator and enjoys such treatment'.⁷⁷

That is because the court 'while being loud and important and powerful was not the only vector of memory'.⁷⁸ National states offered counter narratives which were very often better accepted in the society: for example, even though a myriad of ICTY decisions labelled mass killings in Srebrenica as genocide, the Serbian Parliament kept on insisting it was a massacre. However,

⁷² Croatian Generals Gotovina and Markač were found guilty and received sentences of 24 and 18 years respectively. The Appeals Chamber overturned the first judgment and acquitted them of all counts of the

⁷³ Personal interview HRSU1.

⁷⁴ While it is somehow self-explanatory that the experts using the archival material for their research would praise the existence of the ICTY archives, other interviewees saw them as a tool for establishing the truth about the war events.

⁷⁵ Personal interview NGOBG1.

⁷⁶ The Territorial Defence was a military reserve force affiliated with the constituent republics of Socialist Yugoslavia.

⁷⁷ Personal interview EJBG2.

⁷⁸ Personal interview EHBG1.

while ‘the question of responsibility is not yet tackled upon, the court has raised the awareness that anyone can end up being prosecuted by the ICTY’.⁷⁹

7.4 ICTY’s Influence on Historical Narratives and the Role of Serbia in the Wars of the 1990 - Indirect Acceptance of the Court’s Narrative

There is a continuous development in the way legal heritage is discussed and remembered. According to Osiel, trials are significant if they have the potential to trigger a public debate about past wrongdoings and society’s wounds (Osiel 1997). He contends that ‘they succeed in concentrating public attention and stimulating reflection; such proceedings indelibly influence collective memory of the events they judge’ (ibid. 2). On the other hand, the claim that war crime trials are massive events is confronted by the claim that the law is ‘boredom on a huge, historic scale’ (Wilson 2011, 11).

Historical narratives are usually left outside the trial context as the reasons that led to the beginning of the war do not constitute a criminal act. Other important elements for the narrative about the war, such as the nature of the conflict and ‘who started it’ are simply not relevant for the judicial truth, and hence beyond the interest of a tribunal.

Since the Nuremberg trials were set up, opinions have clashed on whether ‘courts ought to write a historical narrative of an armed conflict’ or not (Wilson 2011, ix). After observing the Vichy regime’s trials Tzvetan Todorov concluded that:

‘Law courts make poor classrooms. The law deals with a kind of truth that has only two forms – guilty and innocent, black and white, yes and no; but the questions set by history rarely have simple answers of that kind’ (Todorov 2003, 209).

Similarly, it would be hard to claim that the ICTY intentionally formed a coherent narrative of the Yugoslav breakup, wars and their origins (Wilson 2011; Waters 2013, 73). Many domestic actors interviewed for this research cannot accept the narrative of the historical record produced at the ICTY as they perceive it as a selective and negligent version of the causes of the war:

‘We take that [ICTY’s] narrative as the factual one, but in fact it is only a small part of what actually happened. When The Hague dealt with Srebrenica and established that genocide was perpetrated there, how much attention did they draw on what happened before the massacre?’⁸⁰

⁷⁹ Personal interview NGOBG1.

⁸⁰ Personal interview VNS1.

Likewise, the so called *Vukovar* three case dealt with the war crimes committed at the Ovčara farm and completely left out the siege of Vukovar and other crimes perpetrated in one of the places worst affected by the war.⁸¹

Another aspect which has been discussed is the causes and consequences of the war. Judicial processes do not deal with the causes of war itself but with *jus in bello* aspects. This legal strategy of dealing with war crimes was described by one of the war veterans as 'entering a car, falling off road and then your neighbour tells you that 'your brakes did not work'.⁸²

However, one legal expert underlined that even when the ICTY's judgements were rendered and heinous crimes were described and proven beyond reasonable doubt:

'We cannot agree that direct perpetrators really committed horrible crimes and we keep repeating that "it was not precisely like that", how can we then agree about the reasons for the outbreak of the war?'⁸³

7.5 Role of Serbia – Responsibility and Accountability

During the 1990s, the Serbian state apparatus handed over a couple of ICTY indictees, and according to a human rights activist who witnessed that period:

'As their [the 1990s regime] understanding of the tribunal was completely ignorant, they sent Erdemović who confessed his participation in genocide. Of course he alone cannot commit the crime of genocide'.⁸⁴

Once the importance of the ICTY started growing and when it started touching upon all the state institutions, Serbia became reluctant to cooperate with it, and:

'At the beginning, state media were silencing all the horrors that happened in Bosnia and Herzegovina, Croatia and Kosovo, which consequently silenced any discussion regarding the responsibility of Serbia in those conflicts'.⁸⁵

After Milošević's regime was overthrown in 2000 and state control over media was lifted, multiple voices about the past war crimes started to spread in the Serbian public sphere. NGOs gathered around the topic of dealing with the past and gained a stronger voice and started campaigning for broader discussions about the past atrocities committed in the name of the Serbian state.

⁸¹ ICTY. 'The cases.' <http://www.icty.org/cases/party/749/4>. Accessed 09 May 2017.

⁸² Personal interview VBG1.

⁸³ Personal interview ELBG1.

⁸⁴ Personal interview NGOBG1.

⁸⁵ Personal interview EJBG2.

In 2003, in the aftermath of the assassination of Prime Minister Zoran Đinđić, a journalist explained that:

‘Units who performed the murder were the same ones involved in many war crimes under the state control. Those circumstances created a favourable atmosphere for questioning what was done in the past in the name of Serbian citizens’.⁸⁶

The EU conditionality helped the ICTY’s coercive potential and drew attention to the issue of war crimes. The outrage caused by the death of Đinđić and the revelation of the connection between state crimes and organised crime produced confusion. The outcome was a significant number of arrests and extraditions to the ICTY. Nevertheless, this was a serious threat to political stability for the government, which preferred not to open a public debate about Serbian institutions’ wrongdoings in the 1990s.

In 2005, the broadcast of a tape showing the execution of six young Bosnian Muslims from Srebrenica by a Serb paramilitary unit called the ‘Scorpions’ shook the Serbian public. The footage was used as evidence material in Milošević’s trial before the ICTY, and was repeatedly screened on B92 television and on national television RTS. It was also the first time the NGOs asked the Parliament to adopt a resolution acknowledging the Srebrenica genocide. Another appeal to Parliament was made after the decision of the ICJ in the case application of the Convention on the Prevention and Punishment of the Crime of Genocide where Bosnia and Herzegovina filed a complaint against then Serbia and Montenegro. In 2007, the ICJ cleared Serbia from direct responsibility and involvement in the Srebrenica genocide, but it ruled that Serbia had breached the Genocide Convention by failing to prevent the genocide and to bring perpetrators to justice. Finally, in 2010 the Serbian Parliament adopted the Declaration on Srebrenica after many debates and amendments. Nevertheless, the Parliament failed to call Srebrenica genocide; instead it ‘severely condemned crimes committed against the Bosnian population in Srebrenica in July 1995’.⁸⁷

The adoption of the Declaration on Srebrenica increased requests to condemn crimes committed against members of the Serbian nation and citizens of Serbia. Therefore, on 14 October 2010 the Serbian Parliament adopted another declaration, this time addressing crimes committed against ethnic Serbs. This declaration:

‘Invited parliaments of other countries, and primarily countries from the territory of the former Yugoslavia, to condemn those crimes (against Serbs) and give full support to their states’ institutions and international

⁸⁶ Personal interview EJBG2.

⁸⁷ RTS, 2017a.

institutions in processing perpetrators and to [...] pay respect to Serbian victims'.⁸⁸

Once again, the concept of 'crime' in Srebrenica, against the potential 'myriad' of crimes committed against the Serbian nation contributes only to relativizing the atrocities committed by the Yugoslav People's Army.

Society in Serbia has a split opinion regarding this declaration, which is also the result of the research work conducted for this chapter. Concerns of those opposed to it can be summarised with the following statement of an NGO activist:

'If the Serbian Parliament approves the Declaration on crimes neglecting the judgements of both the ICTY and the ICJ, it turns out that the state is not recognising the above-mentioned tribunals?'⁸⁹

Discussions during the parliamentary debate on the declaration resulted in conflating genocide in Srebrenica to the war crimes committed against Serbs in the nearby municipality of Bratunac. This relativisation of guilt made Srebrenica events look like a consequence of the atrocities perpetrated by the Bosnian Army units in Bratunac:

'What is striking is that the killings of 39 civilians from Bratunac which happened on Christmas 1993 was "transferred" to July 12, i.e. one day after the Remembrance Day of the Srebrenica genocide, and then another 3000 victims were added so that those two towns [Bratunac and Srebrenica] have the same connotation, especially for the young generations'.⁹⁰

The war of the 1990s is almost completely left out of the school curricula, hence, a school teacher interviewed for this chapter explained that those born after the 1990s:

'Do not even know where are situated certain sites of war crimes and what happened there, but still manage to be very angry⁹¹ against an unknown enemy. Hence, although we keep on saying that the war is over, we have to move on, we are still participating in a war [with former enemies] via schoolbooks,⁹² literature, whatever. And again the victims are not receiving the status they need'.⁹³

⁸⁸ RTS, 2017b.

⁸⁹ Personal interview NGOBG2.

⁹⁰ Personal interview NGOBG1.

⁹¹ Personal interview HRSU1.

⁹² The informant was mentioning not only the wars of the 1990s, but different interpretations of WWII.

⁹³ Personal interview HRTV1.

When it comes to the question of responsibility, some of my informants agreed that the state apparatus:

‘Should prevent individuals from making a farce out of war crime trials. Here I think about Šešelj⁹⁴ and similar cases. Here [in Serbia] notions like human rights, duties and responsibilities and sanctions for inappropriate behaviour are all mixed up’.⁹⁵

Often the members of the Croatian minority had positive opinions about the ICTY, agreeing that the state should also ‘accept the ICTY’s decisions, I guess they [the ICTY] established some kind of truth after all these years’,⁹⁶ but there is a doubt in finding a common version of the truth for all the former warring parties. Most of the informants agreed that the state should cooperate on an institutional level, ‘but you cannot take from us the right to have freedom of speech’.⁹⁷ Moreover, the element of understanding and realising what was done not only by the members of the other (former enemy) part, but also that of ‘our own’ was strongly emphasised.

However, ‘a certain atmosphere is created [in Serbia] where everything related to war crimes is irrelevant and normalised – such lack of moral backing is generating a permanent damage to the society’.⁹⁸ A last example of events backing such claims happened in August 2016, when two ministers – Ivica Dačić and Aleksandar Vulin – expressed their full approval of claims that the ICTY’s verdict convicting former Bosnian Serb political leader Radovan Karadžić also said that former Yugoslav President Slobodan Milošević wasn’t guilty of genocide and crimes against humanity in Bosnia and Herzegovina. This controversial point was triggered by a quotation of the paragraph 3460 of the Karadžić verdict, which states that although Milošević shared political goals with Karadžić and supplied him with logistical assistance, ‘the Chamber is not satisfied that there was sufficient evidence presented in this case to find that Slobodan Milošević agreed with the common plan’.⁹⁹

‘Milošević, Yugoslavia and Serbia are innocent. The lies about genocide and war crimes which have served as the basis to punish Serbia and Serbian people have been destroyed,’ declared Dačić in a press conference¹⁰⁰.

⁹⁴ Šešelj did not have a defense council and used his trial to promote political ideas, while acting disrespectfully towards the Judges and Prosecutor. More information about the case can be found on the following website: http://www.icty.org/x/cases/seselj/cis/en/cis_seselj_en.pdf. Accessed 09 May 2017

⁹⁵ Personal interview IZNS1.

⁹⁶ Personal interview HRSU1.

⁹⁷ Personal interview VNS1.

⁹⁸ Personal interview NGOBG1.

⁹⁹ ICTY. 2016. Prosecutor v. Karadžić. http://www.icty.org/x/cases/karadzic/tjug/en/160324_judgement.pdf. Accessed 09 May 2017.

¹⁰⁰ N1, 2017.

Similarly, minister Vulin argued:

‘When such a tribunal recognises that Milošević did not participate in an organised criminal enterprise, it is clear that Serbia was right’.¹⁰¹

Quoted statements of some of the most senior members of the Serbian Government demonstrate ways in which judicial material can be misused and subject to abstract interpretation in order to ‘rehabilitate the former leader’s policies and their own role in the wars of the 1990s, with which the country has never truly come to terms’.¹⁰² Many of the informants expressed their concerns with the fact that the burden of dealing with the past was left entirely to the ICTY:

‘The ICTY triggered some kind of competition in the victim identity, who is going to be a bigger victim. That is problematic. [...] What needs to happen is to organise war veterans from all three sides to visit places of mass graves and places of suffering. [...] If we only manage to listen to the other people, to hear their stories, we are diminishing the chances for any future wars’.¹⁰³

Even those who did not oppose the narrative of the wars provided by the Tribunal have had difficulties in realising this grand narrative to that of their own experience. They expressed a desire for a more holistic approach to dealing with the past, ‘on a horizontal level’,¹⁰⁴ that is among people who had survived similar experiences, but belonging to the former warring party. Such a complex situation does not have to be necessarily a bad thing according to one of the expert informants:

‘Serbia is a more fertile ground than Croatia or Kosovo for resolving the question of responsibility. In those countries the past is seen straight forward within a classical narrative of victor-victim. In Serbia, which has not officially taken part in the war, epistemological chaos persists. The process of dealing with the past is hence twofold: on one side you have to distance yourself and accuse the past regime, but on the other side you must understand that this regime was both you and me’.¹⁰⁵

¹⁰¹ IndexHR, 2017.

¹⁰² BalkanInsight, 2016.

¹⁰³ Personal interview VNS1.

¹⁰⁴ Personal interview IZNS1.

¹⁰⁵ Personal interview EHBG1.

Although most of the informants had a positive attitude to the idea of the establishment of a regional truth commission, they were extremely critical of the way that the RECOM initiative¹⁰⁶ was set up and outlined that the victims would never be satisfied with the outcome of the trials:

‘Nothing can bring justice to victims and their families. When such horrendous crimes are committed, I think it is impossible to satisfy the victims. We can speak about legal fulfilment of the processes, while depriving those that never found their dearest from any rights’.¹⁰⁷

8. Conclusion

This chapter dealt with one of the longest and most complex processes of the acceptance of international criminal justice in Serbia. Not was international criminal justice subject to major development at the International Criminal Tribunal for the former Yugoslavia, but the Tribunal, in all its forms, has functioned for more than two decades. The research focussed on various levels of acceptance: direct, that is, the outcome of international criminal justice at The Hague; and indirect, that implemented domestically as a consequence of the international tribunal on domestic factors. It has tried to assess the acceptance of the institution performing international criminal justice – the ICTY – and to discuss its failures and successes. A large part of this chapter was dedicated to a political influence of the Tribunal in terms of debates about the role of Serbia in the armed conflicts in the former Yugoslavia. Finally, the dynamics of acceptance were presented through the explanation of changes of perspectives of international criminal justice norms and institutions over time.

The transitional justice process in Serbia has so far been limited only to war crimes trials, but limiting such an important process only to criminal persecutions is not enough. Even though the involvement of Serbian nationals in serious breaches of humanitarian law is not denied unconditionally, it is still considered to be isolated actions undertaken by paramilitary units or individuals not following issued commands. This problem is also due to a so called ‘impunity gap’ between high ranking officials brought before the ICTY and the lowest ranked alleged criminals tried in domestic courts.

Hence, the master narrative within the identified frames about the war remained untouched. As a result, challenging dominant frameworks for interpreting the past is inherently limited. What has happened more often is that certain judicial facts have become official ‘truths’, depending on whether or not they contradict the dominant master narrative about the war.

¹⁰⁶ Since the end of 2005, representatives of the civil society for the ex-Yugoslav region, guided by the Humanitarian Law Centre in Belgrade, Documents from Zagreb, and the Research and Documentation Centre in Sarajevo have worked on a regional approach for establishing the truth. Regional approach and cooperation (RECOM) should give more chance to deal with the past than the national level perspective.

¹⁰⁷ Personal interview IZNS1.

The very understanding of the tribunals' legacies is not necessarily fixed, but may change over time as the local perception of the past and the domestic politics of the present change. Almost all the interviewees agreed that the Tribunal's work and the results of the international criminal law practices are not enough for the broader aim of reconciling societies and enhancing a dialogue between former warring parties. A more holistic approach to transitional justice should be implemented jointly by international and local actors, through a systematic, persistent and a long-lasting confrontation with the past.

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