ICTY’s verdicts and inter-state relations: an overlooked relationship

Master’s Thesis

Msc Political Science – International Politics

Jelena Lazić – s2105527

Supervisor: Dr. Gisela Hirschmann

Second reader: Dr. N. R. J. B. Blarel

Word count: 10990
Table of contents

Introduction .................................................................................................................... p. 3

Literature Review ........................................................................................................... p. 6

Theoretical Framework .................................................................................................. p. 8
  ➢  Scope Conditions ..................................................................................................... p. 10

Methodology .................................................................................................................. p. 12
  ➢  Dependent Variable ................................................................................................. p. 13
  ➢  Independent Variable .............................................................................................. p. 14
  ➢  Data Collection ........................................................................................................ p. 15
  ➢  Alternative Explanations .......................................................................................... p. 15

Analysis .......................................................................................................................... p. 16
  ➢  Case 1: Ante Gotovina and Mladen Markač (Conviction) ................................... p. 16
  ➢  Case 2: Ante Gotovina and Mladen Markač (Acquittal) .................................... p. 18
  ➢  Case 3: Vojislav Šešelj ............................................................................................ p. 20
  ➢  Case 4: Ratko Mladić .............................................................................................. p. 23
  ➢  Discussion ................................................................................................................. p. 25

Conclusion ...................................................................................................................... p. 26

References ...................................................................................................................... p. 29
Introduction

On November 22, 2017, one of the most eagerly-awaited trials ended with a life sentence for Mladić, the former Commander of the Bosnian Serb Army. The International Criminal Tribunal for the former Yugoslavia (ICTY) convicted the General of crimes against humanity, genocide and violations of the customs of war during the armed conflicts in Bosnia-Herzegovina (ICTY, 2017a). The sentence echoed within the Balkans, stirring up conflicting emotions ranging from total indignation and resentment to relief and satisfaction. Immediately after the guilty verdict, political actors in Serbia and Republika Srpska1 resorted to inflammatory discourses, scathing accusations against the ICTY and firm denials of the General’s past wrongdoings (BIRN, 2017). In Croatia, on the other hand, the ruling was well-received by the political establishment (HRT, 2017).

In light of these facts, several analysts have expressed their concern regarding the danger of rising tensions at inter-state level, and how these can hamper the broader process of reconciliation in the region (Kostovicova, 2017). The fact that ICTY sentences seem to aggravate the already existing tensions between these post-conflict countries, rather than facilitating their reconciliation, represents a striking finding that needs to be explored. The social relevance of this phenomenon acquires even more importance if we consider three main arguments related to the puzzle.

First, these reactions are not an isolated case, but erupt regularly in the aftermath of verdicts irrespective whether are convictions or acquittals (Rabaey, 2016; Szpala, 2012). The recurrent justification advanced by Balkan states is that the court delivered a biased justice and punished disproportionally their national citizens (Clark, 2009). Different reactions to verdicts depending on the nationality of the accused are not surprising. Nonetheless, if “justice must not only be done, but must be seen to be done” in the words of Antonio Cassese, the first Tribunal’s President (1994, cited in Kerr, 2007:376), specular perceptions of the verdicts may undermine the ICTY’s legitimacy, raise tensions and, consequently, hinder any step towards reconciliation (Saxon, 2005; Subotić, 2014; Kutnjak-Ivković and Hagan, 2017). Second, the main long-term goal promoted by the ICTY was the

---

1 Serb-dominated entity in Bosnia-Herzegovina
rapprochement of the different communities that were involved in the ‘90s war, which was considered to be a precondition for lasting peace in the region (ICTY, 1994:12). However, the statements full of anger and the mutual allegations that followed the Mladić’s verdict highlight how these post-conflict countries are still coming to grips with unresolved disputes at cross-border level. Therefore, such responses go to the opposite direction to the wishes of the international court. Third, the active endorsement of this goal from all parts of Balkan society, especially by political leaders and institutions, was deemed to be crucial for its achievement (Rudan, 2018:7). However, the lack of solution of extant pending issues demonstrates how reconciliation is not endorsed with strong devotion by political establishments (Rudan, 2018:7).

Despite the relevance of this phenomenon, the correlation between verdicts and inter-state relations is neglected by scholars, leaving this research domain under-explored. The analysis of this paradoxical outcome assumes further relevance if we consider that The Hague Tribunal put an end to its formal mandate in 2017 (1993-2017), thus leaving the question regarding its legacy in the Balkans still open and even more pertinent. Accordingly, the research question is: under which conditions do the ICTY’s verdicts lead to higher tensions at inter-state level?

This thesis claims that post-conflict states contest verdicts as they are perceived as imposed by a biased and unfair international court. These beliefs are further endorsed by the existence of the accountability network created by the ICTY, where powerful actors are involved and operate jointly with the institution to constrain state’s behaviour (Miller and McMahon, 2018). As a consequence, states are unwilling to cooperate and resolve their bilateral disputes inherited from the war, despite the expectations of the ICTY. In turn, since the heart of Balkan countries bilateral relations is defined by the resolution of outstanding issues, non-cooperation in this domain leads to tensions. The main expectation is that convictions will engender greater tensions than acquittals under the same scope conditions, namely, external pressures and conservative ruling parties.

The main arguments of this thesis are built on the constructivist theory, in particular the literature dealing with legitimacy, institutional power and compliance. To test the aforementioned assumptions, the analysis will rely on the appraisal of the Serbia-Croatia relationship through the
method of process tracing. The inter-state relations of these countries represent a compelling case to critically analyse the impact of the court, underpin the existing literature about international criminal institutions and contribute, with valuable lessons, to the future conflict resolution practice. Broadly, the analysis demonstrates how the ICTY’s verdicts lead to tensions in both cases. However, convictions maintain the status quo, meaning that on balance, states do not make progress toward reconciliation. Additionally, despite the expectations, the empirical evidence shows how acquittals lead to greater tensions under the same scope conditions.

The contribution of this thesis is twofold. First, it aims to fill a literature gap and assess the “impact” question advanced by many scholars by looking at inter-state relations. Indeed, discernible improvements in political ideas and domestic processes within individual countries have been the dependent variable of many academic works. Nonetheless, current knowledge has neglected how ICTY verdicts can influence political relations among post-conflict countries, thus leaving this research domain underdeveloped. Second, empirical findings may empower the current knowledge about the effectiveness of international courts, and have practical implications for the future of these institutions.

In the following section the current literature will be presented, with its relative insights and gaps. Subsequently, the main expectations will be derived from the theoretical structure and the methodology designed accordingly. The ensuing section is the empirical analysis, where four verdicts will be analysed in a chronological order to grasp variations in tensions that occurred between 2010 – the year before the first verdict and 2018, the year after the last one. The results will be followed by a discussion on the difference in outcomes between convictions and acquittals. This thesis will conclude with an appraisal of the broader academic and practical implications, contributions as well as objective limitations.
**Literature Review**

Since the establishment of the ICTY, debates over the value, significance and effectiveness of the institution, transitional justice mechanisms and international criminal justice have become more salient (Miller and McMahon, 2018). Backed by their different educational backgrounds, scholars produced diametrically divergent opinions when assessing the outcomes, and the current literature can be categorized into two main strands. Among the most enthusiastic proponents of the international court are legal scholars who – inevitably – praise its contribution to the advancement of international humanitarian law (Tochilovsky, 2003). They believe in the court’s deterrent effect and conceive it as “an essential ingredient of peace building in the former Yugoslavia” (Akhavan, 1998:739). Therefore, their concerns revolve around juridical details, such as improvements in the rule of law or the number of suspects arrested, transferred and prosecuted at The Hague (Subotić, 2015).

Conversely, political scientists focused on different outcomes, namely, the progress in terms of democratization and respect for human rights across the region. However, even those who recognized substantial changes, suggested how these achievements are not attributable to the court itself, but to the willingness of states to cooperate (Peskin, 2005; Kerr, 2007), the ICTY-conditionality promoted by EU as a strategy to spur compliance with the Court (Wentholt, 2017), or internal developments championed by political leaders themselves (Snyder and Vinjamuri, 2004). The most sceptical pundits have outlined the lack of any political and social change. Critiques levelled against The Hague Tribunal concern its cumbersome and costly bureaucratic structure (Zacklin, 2004), the dependence on great power interests (Bardos, 2013), its remoteness from the conflicts’ epicentre (Clark, 2008) and the lack of an independent and coercive capacity.

This classification under two broad strands can be further investigated by zooming into the existing literature that deals with legal proceedings, their perception and effectiveness. Advocates of legal accountability claim that criminal trials provide individual accountability, strengthen the rule of law and have a deterrent power (Meernik, 2005). Jack Snyder and Leslie Vinjamuri (2004), on the other hand, have argued that truth commissions and amnesties are more efficacious in promoting a
stable democracy and preventing further violence than prolonged and polarizing trials and, when legal accountability is more than necessary, these proceedings should fall under the local court’s jurisdiction. In this respect, the potential of perceptions to influence the prosecution’s impact has been tackled as well, albeit not extensively. For instance, Saxon (2005) compares how different communities (Croats, Serbs and Muslims) perceive the judicial institution and its accomplishment of trials. Other authors, instead, have privileged single case-studies and analyzed how the ICTY’s image at community level can influence the evolution of domestic politics (Spoerri and Freyberg-Inan, 2008); the impact of ICTY on the perception of justice (David, 2014); and how the degree of support for the court differs across ethnic lines (Kutnjak-Ivković and Hagan, 2017).

So far, pundits have been mainly concerned with solving four outstanding perplexities: the lack of a shared understanding about the meanings of “impact”, “effectiveness”, “peace” and “reconciliation”, resulting in a plethora of interpretations (Clark, 2009), the need to empower the research field with a strong empirical basis (Miller and McMahon, 2018; Subotić, 2015), the causal inference due to the ICTY’s diffuse mandate (McMahon and Miller, 2012:423) and methodological issues. The question “what should scholars look at?” is particularly thorny, and resulted in assessments that tend to privilege broad, state-level measures and outcomes such as democratization, civil society, the rule of law, criminal accountability and so forth. In this respect, however, what emerges is an almost exclusive emphasis on the domestic level of analysis, with an under-estimation of the consequences that international courts may have on foreign policy dealings.

Another shortcoming is the lack of scholarly works interested in observing the variation in outcomes when comparing acquittals and convictions. Jelena Subotić (2014), for instance, addresses the linkage that elapses between public narratives and political repercussions in the aftermath of three cases of acquittals: Haradinaj, Gotovina and Perišić. Her conclusion is that the ICTY’s verdicts have been interpreted within the public discourse of the region as responsible for ending reconciliation and strengthening nationalism (2014:175), thus hampering broader transitional justice efforts. However, she only focuses on absolutions, thus neglecting the outcomes of convictions.
Consequently, this thesis will fill this academic gap by investigating what impact convictions and acquittals have on inter-state relations and how, together with other factors, they influence foreign policy dealings.

**Theoretical Framework**

Considering that this thesis will investigate the impact that the ICTY’s legal proceedings have on individual political actors and their foreign policy behaviour, constructivism represents the most suitable theory, especially in light of its interest in the interaction between legitimacy, power and compliance. In particular, constructivist scholars have placed great emphasis on rules and have been active in defining the ways in which international institutions forge, reflect and diffuse normative intrinsic meanings (Simmons and Martin, 2002). According to them, international institutions create these guiding principles, determine actors and their roles which, over time, can change their identities and interests as a result of continuous interactions with rules (Simmons and Martin, 2002); hence, they have a bearing on states’ conduct (Barnett and Finnemore, 2004).

For these scholars, the more a body is perceived as neutral, impersonal, and performing transparent and fair procedures, the more actors will respect its authority and conceive the establishment as rightful (Barnett and Finnemore, 2004). Concretely, subordinate actors must utter their consent to the particular power relation they are involved in through evident actions or public expressions of acquiescence (Beeham, 2013:31). This argument is particularly relevant as legitimacy represents the cornerstone of institutional power and is fundamental to understanding conformity with institutional rules and procedures that constrain actors’ behaviour (Zaum, 2013:16). Conversely, withdrawal or refusal of consent, non-cooperation, passivity, resistance or open disobedience to rules and decisions are all expressions of non compliance. In turn, these actions erode institutional legitimacy (Beeham, 2013).

One solution to obtain a state’s respect for the institution and its rules would be the exercise of coercive capacity. However, institutions such as the ICTY lack coercive power and cannot punish
actors if they do not comply with their judgments (Zaum, 2013). The only means of exerting pressure they can rely on is their productive power, namely the one deriving from their moral and legal authority (Barnett and Finnemore, 2004). Through this power, which operates in a social context and has a diffuse nature (Barnett and Duvall, 2005), institutions can interlace strategic connections with other actors and create networks to engage them to join its cause.

Indeed, Miller and McMahon (2018:26-28) demonstrated the existence of an accountability network created by The Hague Tribunal. In proving their claim, these scholars relied on Social Network Analysis (SNA), an empirical methodology capable of detecting and tracing this system of linkages between various actors. This network, according to them, is made of strategic connections with national governments and international organizations that, working on its behalf, helped the institution to change states’ conduct and advance international justice. Nevertheless, this thesis argues that precisely because of this dependence on influential actors, trials and, accordingly, verdicts are perceived as manoeuvred by major powers or regional players and therefore disputed.

In a post-conflict context, general compliance and recognized equity of procedures are the lifeblood of international tribunals (ICTY, 1994). If they defect in delivering fair outputs and legal proceedings in the eyes of the struggling actors, they will be inevitably contested, de-legitimized, spur negative reactions within the countries (Peskin, 2008) and therefore fail to achieve their stated objectives. In particular, former warring parties are expected to cooperate in solving their bilateral disputes inherited from the war and establish good neighbourly relations. These post-war contentions have a highly politicized nature and significant implications for the political relations between these countries (Djolai and Nechev, 2018). Consequently, in the aftermath of a verdict – the main output of an international court – states will be unwilling to respect the ruling, and cooperate with each other in resolving cross-border issues. As a result, they will destabilize their inter-state relations.

Lastly, convictions are conceived by the ICTY as means to attribute the culpability of the appalling crimes to individuals, provide the just sentence and make sure that no one will evade the law (ICTY, 1994:12). Nevertheless, guilty verdicts are most often equated with the “collective responsibility” of the entire nation in these post-conflict countries, meaning that crimes are not
conceived as being perpetrated by individual citizens, but rather by whole countries in the form of the endorsement of the political establishment and the acquiescence of the population (Clark, 2008:88-95). Building on the aforementioned assumptions, the perception that these guilty verdicts are punishments imposed by external and biased powers may result in greater frictions. Therefore, as this type of verdict can eventually signify the culpability of the whole country, the main expectation is that convictions will lead to greater tensions than acquittals between post-conflict countries.

Scope Conditions
To add complexity to the causal mechanism, this thesis will consider two scope conditions, namely circumstances under which the relationship between the independent and dependent variable is expected to hold true (Foschi, 1997).

As many international actors are involved within the ICTY’s network with the clear aim of forcing states to comply, the first scope condition is international pressure. Given the assumptions formulated within the theoretical framework, these pressures are assumed to spur backlash and resistance to justice, since they are perceived as imposed by external politically motivated or ethnically biased Western powers (Spoerri and Freyberg-Inan, 2008). Specifically, any kind of exogenous pressure that may take the form of international financial aid, admission to the European Union or other political rewards in exchange for compliance is included within this concept. In particular, the EU has made the normalization of relations with bordering countries and the full cooperation with the ICTY explicit requirements for the aspirant Balkans’ countries in their membership bids (EC, 2012). These countries are expected to implement “comprehensive and convincing reforms” in crucial areas, such as “the rule of law, competitiveness, and regional cooperation and reconciliation” (EC, 2018a:4). Consequently, the European Commission is committed to supporting and monitoring progresses made by these former warring parties, with a particular attention to the resolution of outstanding issues such as the demarcation of borders, missing persons, refugees and the rights of national minorities (Djolai and Nechev, 2018).
These pressures may be exerted with a different level of intensity. The articulation of the necessity to meet the aforementioned conditions as an “absolute imperative” by EU high-representatives, is the most eloquent sign of a high level of pressure. One step below is the discussion of the issue in all documents related to the progress evaluation of the candidate country. A weaker way to put pressure on states is the acknowledgement of the conditionalities in the progress reports and under the short-term priorities of the accession partnership. On the other hand, the poor treatment of the issue in the progress reports and its inclusion in non-prioritized areas of the accession partnerships can be coded as a lower level of pressure. Finally, when the respect for conditions is poorly discussed in the progress reports, we can talk about the lowest exertion of pressure (Glüpker, 2013:225).

The second scope condition concerns internal dynamics: compliance with the ICTY is the result of careful weighting between strong international pressures and domestic active demands for international justice. Domestic elites that belong to parties with a conservative label or are affiliated with the previous regime, will have ideological, political and pragmatic reasons to oppose the international justice and presumably stand up to international pressures with greater decisiveness. Other political players, instead, may endorse the court and its objectives only “instrumentally”. They comply with international demands on the surface, while their real aim is to foster an image of themselves as reformists and internationalists, and obtain compensations and pay-offs from great powers (Subotić, 2009a:366).

Within this context, imminent elections may represent a useful benchmark for the analysis. In fact, the approaching time of the vote may be a propitious moment for those politicians with nationalistic proclivities, who can galvanize the electorate and get rid of domestic political opponents by exploiting the popular images of the “biased” and “unfair” Tribunal. Political leaders may capitalize on such over-spread perceptions and foster a winning narrative inspired by the brand-new conviction against their fellow citizen. This strategy can also be adopted by leading parties to guarantee a space within the next legislation. In fact, both verdicts and bilateral disputes can easily become politicized for domestic, populist purposes (Dimitrov, Djolai and Wunsch, 2015:7). Thus,
when verdicts are pronounced in concomitance with imminent elections, leaders may pursue strong positions in foreign policy to artificially increase their public support (Foyle and Van Belle, 2017:5) and this is more likely when a conservative party holds the top positions.

**Methodology**

To test empirically the expectation formulated within the theoretical framework, this dissertation will rely on a qualitative case study that analyses the path that Serbia-Croatia’s relationship followed in tandem with ICTY’s verdicts. This is a most-likely case, since there is a high likelihood that the scope conditions will occur and have an impact on the dependent variable (George and Bennett, 2006). The within-case variation will be appraised through method of process-tracing, which allows for an inductive grasp of the interactions among the circumstances that may influence the dependent variable. In particular, this thesis will appraise whether the state’s refusal to cooperate among each other is specifically caused by their perception of the Tribunal as biased. Subsequently, both types of rulings will be tested under the same scope conditions to observe differences in the outcomes. The added value of this method is that it helps to assess whether the independent variable has a causal significance and how it interacts with the scope conditions (George and Bennett, 2006).

The appraisal of Serbia-Croatia relations is a suitable test-case as the occurrence of both scope conditions can be traced between 2010 and 2017, which is the time-frame of the analysis. In fact, international pressures toward these two countries have been consistent since 2003, when the European Council confirmed the EU perspective for Balkan countries during the Thessaloniki Summit (EC, 2003) and intensified its presence within the region by working side by side with the ICTY (Dimitrov, Djolai and Wunsch, 2015). The issues these countries are expected to resolve are: the border demarcation on the Danube, the Serbian law on universal jurisdiction, the minority rights in both countries and the missing persons. Moreover, in both countries elections were held on a regular basis, and testified an alternation of parties throughout the time-frame taken into consideration.
Additionally, this case-study provides an empirically rich terrain to analyse the correlation between verdicts and state’s commitment to solve their political dealings since exactly between 2010 and 2017 the majority of ICTY judgments have been pronounced (Jakić, 2016). Specifically, four ICTY’s verdicts have been selected by looking at the crimes of the accused: only those who have been suspected of direct or indirect atrocities against Serbs or Croats will be considered. This allows to isolate the reactions political leaders had in the aftermath of convictions and acquittals of their own fellow citizens. Accordingly: the conviction of the Croats Ante Gotovina, who held the rank of Colonel General in the Croatian army and was the Commander of the Split Military district during the indictment period, and Mladen Markač, the Commander of the Special Police of the Ministry of the Interior, and their subsequent acquittal in 2012. Then, the acquittal of Vojislav Šešelj, leader of the Serbian Radical Party and the recent conviction of the Bosnian Serb General Ratko Mladić.

**Dependent variable**

Tensions at inter-state level are the **dependent** variable. This thesis will investigate the behavioural reactions of the political class involved in foreign policy decisions as Presidents, Prime Ministers (PM), Foreign Ministers or Ambassadors and other officials whose speeches or statements overtly reflect the views of the top leadership. For parsimonious reasons, elites (unit of analysis) will be considered as representatives of existing societal foundations and reflecting wide-spread community’s perceptions about the court (Brummer and Thies, 2015).

Since this thesis claims that the normalization of relations between post-conflict countries can scarcely progress without solving bilateral disputes first, the level of cooperation in addressing them will be the relevant criterion for the appraisal of the improvement and regression of their political relations. Hence, political leaders’ commitment to solve open issues will be an assessment benchmark for inter-state political dealings. Moreover, these disruptive factors will be taken as evidence when they occur in concomitance with ICTY’s sentences and should be followed by clear demonstrations against the institution as evidence of non-compliance. Subsequently, concrete actions that may decelerate the broader process of reconciliation should be evident.
Tensions will be appraised by coding reactions according to three potential types of outcomes. The reluctance to engage in joint solutions, boycott official meetings with high representatives, lack of contacts and verbal demonstrations of a low interest to improve cooperation following a verdict, will be indicators of tensions. On the other hand, verbal declarations of the willingness to address pending issues and ad hoc official meetings for their resolution will be considered as devoid of negative repercussions on political dynamics only when concluded with the signature of an agreement. In absence of a written statement, joint declaration or treaty, the nature of relations in the aftermath of a verdict will be judged as maintaining a status quo. Specifically, the maintenance of a stalemate means that although there is a stable level of commitment, the steps undertaken are not enough to be considered as relevant progress. Therefore, although tensions are present, there is a certain level of cooperation. Consequently, mixed situations where steps further in relation to one bilateral problem are concomitant with tangible setbacks in another will fall into this category, regardless of the conclusion of an agreement.

Acknowledging the problem of endogeneity, this thesis will trace variations in tensions before and after verdicts. In fact, verdicts may spur tensions between post-conflict countries that already have problematic diplomatic relations because of unresolved contentions and old grievances. Therefore, only political repercussion strictly linked to ICTY’s verdicts will be considered as relevant empirical findings. Thus, to be significant for the analysis, elite statements, press releases and counter-measures taken against the neighbour country need to be expressly consequences of judgments.

Independent Variable

The independent variable(s) of this thesis are the ICTY’s verdicts. Between 1993 and 2017, The Hague Tribunal has indicted 161 persons, above which 90 have been sentenced, 19 acquitted, 13 referred to a national jurisdiction, 37 had their indictments withdrawn or are deceased and 2 trials will be concluded by the Mechanism for the International Criminal Tribunals (MICT) (ICTY, 2017b). Verdicts are conceived as the main outcomes of the ICTY’s work and, therefore, destabilizing factors
which may have political repercussions and compromise the political dealings’ dynamics. So far, the issue of which type of verdict is most likely to spur tensions is still under-explored. Consequently, this thesis will focus on convictions and acquittals to grasp possible differences in outcomes as both types of verdicts have strong political repercussions.

Data Collection

This dissertation will underpin the analysis by reviewing primary and secondary sources as ICTY’s official documents and press releases; reports of other national, regional or international organizations; EU reports; government and NGO reports; Foreign Ministries’ releases; scholarly articles; statements; speeches and interviews obtained from the most circulated online newspapers and journals in Serbia and Croatia. These data will constitute the empirical findings necessary for the evaluation and the development of a chronological line of events that demonstrate changes in tensions between countries, their commitment to respect the institutional work of the international court and the degree of stated and tangible cooperation on bilateral issues.

Alternative explanations

The impact issue raises the problem of the causal inference. To keep the assumed causal path between the dependent and independent variable as reliable as possible and control the complex causality, two factors will be held constant.

The first control variable originates in the rational choice literature, according to which individuals behave following the logic of consequences. In this model, political actors behave rationally and pursue their specific goals by using all the institutional, material and persuasive resources at their disposal. According to this theory, the positive impact of the trial’s verdict is dependent upon pre-existing domestic conditions: along with the presence of political actors or coalitions which endorse and fight for the sake of transnational criminal justice (scope condition of this thesis), strong administrative and legal institutions, and the absence of potential spoilers should
be present. If all these preconditions are missing, trials are likely to obstruct the court’s efforts to defuse tensions (Snyder and Vinjamuri, 2004).

The second control variable stems from the transitional justice literature. Since this research focuses on how societies and states engage with the past, it claims that among the main culprits of the regional tensions is the ICTY’s Outreach Program\(^2\). They contend that it failed to bridge the gap in knowledge and appreciation of its work at community level, address the needs of local communities, promote discussion and reconciliation even though they were its main goals (McMahon and Forsythe, 2012).

**Analysis**

*Case 1: Ante Gotovina and Mladen Markač (Conviction)*

On April, 15, 2011, the Trial Chamber of The Hague Tribunal found the Croatian Generals, Ante Gotovina and Mladen Markač, guilty of war crimes against humanity and violations of the laws or customs of war committed during the Operation Storm military campaign. The operation occurred between July and September 1995 with the objective of permanent removal of Serb population from the Krajina region (ICTY, 2011a). The accused were sentenced to 24 and 18 years’ imprisonment respectively on charges of persecution, deportation, plunder, wanton destruction, two counts of murder, inhumane acts, cruel treatment and participation in the Joint Criminal Enterprise (JCE). Both Generals have been absolved of charges of inhumane acts (forcible transfer) as a crime against humanity, while the third defendant, the Commander Ivan Čermak, was acquitted of all charges (ICTY, 2011a).

Immediately after, thousands of people took to the streets of Zagreb to make their protests heard, and shouted “treason” and “thieves” manifesting strong opposition to the Tribunal’s decision that, according to them, “turned the victim into aggressor” (BIRN, 2011). In fact, most of Croats that

---

\(^2\)The Outreach Programme is an ICTY’s body with the mandate of contributing to peace and security in the region
remonstrated that day, interpreted the imprisonment of the two Generals as a condemnation of Croatia’s wartime efforts to defend the country from the aggression of the Yugoslav People’s Army (YPA). In Croatia Gotovina and Markač are celebrated as heroes who conducted a glorious campaign, the Homeland War, for the independence of the country from the former Yugoslavia. Reactions of the political leadership were not less vocal, and unanimously criticized the rulings as unfair (Matejčić, 2011). Croat PM Jadranka Kosor commented the verdict as “unacceptable” and declared her determination to work with the cabinet to overturn it (Simons, 2011). Allegations went well beyond the international court, resulting in a drop in public support for Croatia’s accession to EU in the span of one week (Willis, 2011; Stojić, 2018:156), reflecting a mass antipathy toward EU which was perceived as responsible for the Tribunal’s decision (Matejčić, 2011).

It is worth mentioning that in Serbia reactions were totally the opposite. The Croatian narrative strongly contradicts the Serbian one, according to which Operation Storm was an offensive campaign aimed at creating an ethnically homogeneous Croatia at the expense of the Serbian population (Clark, 2013). The Serbian President Boris Tadić (Democratic Party) said that ICTY’s verdicts were “in line with the law” and a promising basis for the reconciliation with Croatia (Tportal, 2011). Additionally, in response to the Croatian PM’s expression of gratitude toward the generals and the Operation Storm, he called for the necessity to defuse the situation, as war crimes defendants and ICTY rulings should not be instrumentalized as means for acquiring power during the ongoing pre-election campaign in Croatia (Vecernji List, 2011). Indeed, the verdict arrived at a significant time for Croatia: general elections were imminent and negotiations for EU accession were nearly concluded. On December 4th of that year, the Croatian electorate penalized the ruling party, the conservative Croatian Democratic Union (HDZ) led by the PM Kosor (Antić, 2012). The conviction strengthened the opposition, as precisely under the HDZ Croatia enhanced its cooperation with the Tribunal and delivered the generals to the ICTY in 2005, a condition for the EU membership (Stojić, 2018).

Nevertheless, if in the short-term the conviction generated strong political reactions in Croatia, it did not compromise the cooperation with the neighbouring country (EC, 2011). The inauguration
of the new Croatian President in 2010 ushered in a positive momentum for the diplomatic dealings of these countries of the former-Yugoslavia, which culminated in several meetings of the two Chiefs of State and other senior officials (EC, 2010). Some positive achievements followed the Gotovina and Markač verdict: the signature of a ministerial declaration on the refugees’ problem with other Balkan countries (EC, 2011), Serbian and Croatian commitment in drafting a bilateral agreement on war crimes prosecution, and the conclusion of a bilateral protocol on the return to Croatia of cultural properties taken during the war (EC, 2012). Nonetheless, no meetings of the bilateral Commission on Missing Persons were held and no solutions for the border demarcation were found (EC, 2011; EC, 2012). Overall, there were no signs of regression in his domain of cooperation.

Case 2: Ante Gotovina and Mladen Markač (Acquittal)

A few months after the first decree, the Appeals Chamber of the ICTY reversed the Trial Chamber’s prior decision and acquitted both Ante Gotovina and Mladen Markač on November 16, 2012. The argument that was brought in support of the overturning is the contestation of the “200 Metre Standard”, according to which “an artillery projectile fired by the Croatian Army which impacted within 200 metres of a legitimate target was deliberately fired at that target” and therefore a reasonable evidence of the crime that was committed (ICTY, 2012:9). On the contrary, the judges held that the Trial Chamber erred in concluding that all artillery impact sites located more than 200 metres from a target were to be considered deliberately fired, that artillery attacks ordered by Mr. Gotovina and Mr. Markač were unlawful and in finding the existence of a joint criminal enterprise (ICTY, 2012:30-34). Therefore, this enshrined that the Croatian military operation was legal, no crimes against humanity occurred and, consequently, the Generals were immediately released.

As many scholars pointed out (Simurdić, 2016a; Jakić, 2016), relations between Belgrade and Zagreb entered a new phase in 2012, which seemed to many as a regression. Indeed, the elections held on May 6, 2012 in Serbia changed the political landscape within the country. Both the presidency and the government were led by the members of the Serbian Progressive Party, which was known for
its hard-line stance on foreign policy and unwillingness to improve inter-state relations with Croatia (Simurdić, 2016b). Nonetheless, although there is no evidence that the upcoming verdict has caused rising tightness during the pre-electoral period, the electoral results generated some discomfort from the Croatian side, whose fears of a freezing of relations were not groundless and were soon confirmed. Indeed, on his first day of office, the newly appointed Serbian President Tomislav Nikolić called Vukovar, subjected to a Serbian siege in 1991 (Subotić, 2013), a “Serbian town to which Croats should not return” (B92, 2012a) spreading consternation and fear in the whole region. Therefore, the pre-verdict cross-border relationship has been significantly destabilized by these declarations of the President.

Freedom for the indictees meant triumph, joy and national celebrations in Croatia, where both the political establishment and the general public shared the ICTY’s final interpretation of the Homeland War. Instead, the acquittal was received with dismay in Serbia. It stirred up anger, disappointment and hardened the already wide-spread view of the court as biased (Subotić, 2013) or as an institution that allowed the “legalization of ethnic cleansing against Serbs”, as the Serbian PM Dačić declared (Ristić, 2012). The President went even further and expressed his anger by saying that “after all this we cannot have the same relationships with our neighbours. If some wanted to get us fighting again, they found the perfect way” (B92, 2012b) alluding to a serious blow to the process of reconciliation.

The most prominent act of remonstration was the decision of the Serbian high officials to raise the issue during the UN General Assembly thematic debate on global criminal justice in April 2013 (EC, 2013). In this occasion, Vuk Jeremić, the Serbian former Prime Minister and President of the UN General Assembly, questioned the contribution of international justice to regional rapprochement and underlined how it “is critically important to ensure that atrocities are neither denied nor bizarrely celebrated as national triumphs” (UN, 2013). The Serbian President, who was also present, reiterated his dissatisfaction with the sentence, accused the Tribunal of being politically motivated, a promoter of selective justice at the expenses of Serbs and responsible for opening old wounds (UN, 2013). The
idea that the verdict cooled the post-conflict dialogue with Croatia was diffused and endorsed across the Serbian political spectrum.

Concretely, what followed were the Serbian decisions to reduce cooperation with the ICTY on the technical level and boycott its conference scheduled for November 22 (Government of Serbia, 2012a). Moreover, the Deputy PM for European Integration Grubjesić cancelled her trip to Zagreb, where she was expected to extend the Protocol on cooperation in the field of European integration, admittedly as a repercussion for the release of the Generals (Government of Serbia, 2012b). The cooperation with regard to bilateral issues underwent tangible slowdowns. Indeed, the EU annual report mentioned the creation of a joint mixed commission to address bilateral issues in March 2013 (EC, 2013), a clear evidence of the cooling of their relations. The same brief reported how the countries resumed their formal contacts on missing persons only in July 2013, meaning that contacts have been suspended in the previous months. Additionally, it also warned how the issue of refugees’ pensions within the bilateral working group between Serbia and Croatia still needed to be tackled. Finally, despite Croatia-Serbia judicial cooperation was sustained, the process was deemed to be slow and greater political commitment required (EC, 2013).

Case 3: Vojislav Šešelj

Serbian-Croatian relations reached their lowest point in 2015. Distinct events combined resulted in the worst year for the diplomatic relations of these two countries. Some of these destabilizing factors have been imported from outside, especially from EU, as the economic depression, the slowing down of the EU enlargement process, the terrorist threat and the migrant crisis (Minić, 2016a). Other prickly circumstances had an internal origin, such as the revival of ethno-nationalisms in both countries (Djukanović, 2016) and the election of Kolinda Grabar-Kitarović, the candidate of the right-wing HDZ, as President of Croatia (Lalić and Grbeša, 2015). Tangible shifts regarding bilateral relations could have already been detected in the air during the Croatian electoral campaign, but they became evident as soon as Grabar-Kitarović took office. In fact, one of her first actions concerned the protest
for the release of Vojislav Šešelj, the ultranationalist Serbian politician and self-declared enemy of Croatia, due to his health problems (Rabaey, 2016).

Hence, relations were already strained when political elites of Belgrade and Zagreb learnt about the acquittal of Šešelj who, until very recently, was a close comrade of Tomislav Nikolić, the Serbian President and Aleksandar Vučić, the newly appointed PM. The ICTY’s ruling was delivered on March 31st of 2016, after 13 years of lawsuit rendered difficult to conclude due to Šešelj’s controversial behaviour (Rabaey, 2016) and in the middle of an already fierce pre-electoral campaign in Serbia with a view to the polling scheduled for April.

Vojislav Šešelj is a Serbian politician, mostly known for his provocative attitudes, inflammatory speeches and the unrealized dream to create an ethnically homogeneous “Greater Serbia”. In 1991 he founded the Serbian Radical Party (SRS), a right-wing political faction which still exists today. During the ‘90s war, Šešelj actively participated in the recruitment, military training, and organisation of Serbian volunteers in paramilitary groups connected to the SRS, commonly known as Četniks or Šešeljevci (ICTY, 2016a). According to the Prosecution (ICTY, 2016a:1-2), he instigated, supported and directly participated in the crimes attributed to the Serbian forces between August 1991 and September 1993 by virtue of his involvement in a JCE. Public denigration, incitement to hatred and the calling for a forcible displacement of people were intentionally brought against non-Serbian populations, mainly Croats, living in Vukovar (Croatia) and Hrtkovci (Serbia) as means for the realization of the ideology of a “Greater Serbia”; hence resulting in violations of the laws or customs of warfare and crimes against humanity. Despite the gravity of charges, the majority of judges concluded that evidence did not support the existence of a criminal purpose (ICTY, 2016b).

Reactions in Belgrade were quite contained, apart from Šešelj’s closest collaborators and fiercest supporters that applauded the verdict. PM Aleksandar Vučić, who was putting enormous effort to appear as a reformer committed to solve pending issues with Croatia, did not go out of his way and confined himself by stating that he “was ‘proud’ that the government had protected the dignity and laws of Serbia, and ‘citizen’ Šešelj”, but he also stood back from the far-right militant and his party’s politics (Rabaey, 2016; Vukojčić, 2016). At the same time, he criticized the ICTY’s activity,
defined as politically motivated and incapable of fostering reconciliation (Vukoječić, 2016).

Similarly, Croatia’s PM Tihomir Orešković expressed his anger toward the international court and stated that “this verdict is an embarrassment for the Hague Tribunal and represents a defeat for the Hague prosecution” (Milekić and Dzidić, 2016). However, unlike the Serbian establishment, all the forces within the political arena received the acquittal with strong reactions. The Croat President Grabar-Kitarović said that her country could not accept such a shameful outcome and banned Šešelj from entering Croatia (Vukoječić, 2016). The sequel of this strong action was a letter to the Secretary-General of the UN, where she expressed her deep disappointment with the judgement (President of Croatia, 2016). Moreover, on this occasion, she also she recalled Serbia’s refusal to “extradite to the ICTY three of its nationals who are indicted before the ICTY for intimidation and bribing witnesses in the Šešelj case”; she deemed that such counterproductive conduct “damaged the credibility and quality of the testimony” and invoked Serbia to fully cooperate with the ICTY (President of Croatia, 2016).

Coincidentally, the third Intergovernmental Conference for the opening of chapters 23 on judiciary and fundamental rights and 24 on justice, freedom and security for Serbia was scheduled for July of the same year (Minić, 2016b). Repercussions for Serbia came in the form of a blockade of its path toward the EU membership. Indeed, in the wake of the release of Šešelj and the disappointment that followed, the Croatian establishment assumed a more uncompromising stance on the fulfilment of EU conditions (B92, 2016). Exactly one week after the ICTY’s ruling, the announcement of the Croatian delegate’s refusal to endorse the opening of talks on Chapter 23 of the accession book arrived unexpectedly. This decisions has been interpreted by the Serbian establishment as an attempt to obtain concessions on bilateral matters. Indeed, Croatia’s complaints relied on three foundations: the treatment of the Croatian minority in Serbia, Serbian cooperation with the ICTY, and jurisdiction of Serbian courts over war crimes committed in other parts of the former Yugoslavia (Anastasijević, 2016).
Additionally, there are the landslide victories of Aleksandar Vučić (SNS) in Serbia and Andrej Plenković (HDZ) in Croatia. The fact that both were by-products of conservative parties did not help to defuse the situation (Pavlović, 2016; Mason, 2016). After two months of strained relations, Croatia and Serbia signed a joint declaration tackling their pending issues in June 2016. Despite this formal documents, the nature of their relations continued to be mixed in the subsequent months (EC, 2016). The cooperation on war crimes has taken a few steps backwards as a consequence of political tensions and the decision of the Office of the War Crimes Prosecutor of Serbia to refrain from participating in the regional conference of war crimes prosecutors in Brijuni, Croatia (HLC, 2016). Moreover, the countries neither resolved the issue of refugees’ pensions nor the outstanding problem of the demarcation of borders (EC, 2016).

Case 4: Ratko Mladić

Overall, near the end of 2016 dealings were still stagnant and did not take a positive turn in the new year. Indeed, the first half of 2017 incurred the effects of the strong recrudescence which rattled the previous year, and seemed to get better during the summer, particularly after the Western Balkan Summit held in Trieste (European Western Balkans, 2017). In the meantime, Vučić became the President of Serbia, thus strengthening his personal direction in foreign policy and, most importantly, becoming the new counterpart of Grabar-Kitarović.

The verdict of Ratko Mladić did not arrive as a bolt from the blue. His case became particularly famous as he spent 16 years absconding and was delivered to the ICTY by Serbian authorities in 2011 (ICTY, 2011b). The indictment against the former Commander of the Bosnian Serb Army included the charge of genocide as well as other crimes perpetrated against Bosnian Muslims and Bosnian Croats by Serb forces under his command between 1992 and 1995. He is notorious for ordering the execution of over 7,000 Bosnian Muslim men and boys in Srebrenica (1995), the shelling and sniping of Sarajevo, the torture of non-combatants and the psychological, physical and sexual abuse of

---

3 Aleksandar Vučić was elected in April 2016 and Andrej Plenković in September 2016.
civilians in Bosnia-Herzegovina. Moreover, according to the Prosecutor, Mladić operated as a member of a JCE whose specific aim was to eliminate or permanently remove Bosnian Muslim, Bosnian Croat and other non-Serb inhabitants from large areas of Bosnia and Herzegovina (ICTY, 2017a). The judges of the Trial Chamber sentenced him to life imprisonment for accusations of genocide, crimes against humanity and violations of the laws or customs of war on November 22, 2017.

As for Gotovina and Markač, the Mladić’s trial was particularly important since it could have, at the very least, enshrined the involvement of the Serbian leadership in a JCE during the wartime and, accordingly, the culpability of the whole country. Although that has not been the case, Croatian PM Plenković alleged that it was a misfortune that the verdict had not included that (Government of Croatia, 2017). In Serbia, on the other hand, President Vučić adopted a pragmatic stance declaring how the conviction “should not surprise anyone” and in tandem with PM Ana Brnabić, encouraged his citizens to look at the future (B92, 2017). This lowering of tones from the Serbian top-leadership, however, does not mean that there was no contestation. In fact, the most extreme factions issued statements praising Mladić, and reiterated how the Hague Tribunal was under the influence of foreign powers. Foreign Minister Ivica Dačić, for instance, endorsed the ICTY’s final ruling but, at the same time, declared that the only purpose of the ICTY was to demonstrate Serbia’s war culpability (Kurir, 2017).

Besides concluding the work of the international court, the life sentence for Ratko Mladić was pronounced a few days after the guilty verdict for Prlić et al., and the clamorous suicide of Praljak (ICTY, 2017c). These events contributed to the lifting of tones that have been highlighted by the press for months. Aware of the strained situation and under foreign pressure (Djolai, 2018), the two Presidents organized a tête-à-tête meeting in February 2018. Concomitantly, official delegations of Croatia held a bilateral encounter, with the declared aim to find a common ground for the solution of those issues that continuously divide the countries (President of Croatia, 2018). This official visit of the Serbian President in Zagreb broke with the past and made the international community wish for significant changes after the turmoil that followed the verdict of Mladić. Although Vučić and Grabar-
Kitarović renewed their old commitments, tackled the problem of missing persons and the border dispute, the meeting did not lead to any proposal, program, solution for the long-standing ethnic divisions or concrete plans for joint initiatives (Cirić, 2018). Moreover, the problem of refugees is still unresolved and the latest EU report found the cooperation on missing persons unsatisfactory, especially as the commissions of the two governments did not meet since June 2015 (EC, 2018b).

Nonetheless, positive steps can be mentioned as well. For instance, Coordinators in charge of resolving pending issues met in February 2018 (Djolai, 2018), the Intergovernmental Mixed Committee for protection of minorities held its seventh encounter on January 30, 2018, the first since October 2014 (Djolai, 2018), and the triangular meeting with Bosnia-Herzegovina unfolded favourably as leaders renewed their commitment to work on bilateral disputes (Simić, 2018).

Discussion

Overall, the findings have confirmed that court’s verdicts give reasons for new avalanches of allegations against the ICTY, and that verdicts can trigger repercussions on intra-state bilateral cooperation with regard to pending issues. The only exception was the conviction of the Generals Gotovina and Markač: this sentence did not raise tensions and this was mainly due to the presence of progressive and pro-European leaders in both countries. Remarkably, the results did not substantiate the main assumption. Although convictions do have an impact on the level of commitment in resolving pending disputes, tensions are higher after acquittals. As a matter of fact, the imprisonment of Mladić in 2017 obstructed further collaborations between Serbia and Croatia, and the result was the maintenance of the status quo. Conversely, the acquittals of Gotovina and Markač in 2012, and Šešelj in 2016, demonstrated a regression in their negotiations at cross-border level.

One possible explanation for this unexpected result is that when a suspect war criminal becomes a free man despite the atrocities committed, the fairness of procedures is re-examined. In turn, this undermines the overall credibility of the institution and leaves the question “who is responsible” unanswered (Irwin, 2013). Furthermore, released indictees represent destabilizing factors not only because they may purposely resume their past activities, as Šešelj (Delauney, 2016),
but also because the sentiment of injustice linked to the acquittal is often revived during celebrations, official meetings and important negotiations. Therefore, acquittals can have perverse consequences: they may legitimize popular denials of the crimes committed.

Moreover, the analysis corroborated how in all the four cases verdicts were followed by accusations against the Tribunal, powerful actors or organizations and, in particular, the EU, with subsequent drops in support for the membership. This evidence not only substantiates the theoretical framework, but also shows how international pressures have more leverage on pragmatic coalitions, while in presence of conservative parties, they spur higher tensions. Lastly, except for the Gotovina and Markač’s conviction, all the subsequent rulings were preceded by existing tensions, showing how since 2012 the countries entered a new phase characterized by fragile diplomatic affairs which have been further destabilized by verdicts.

**Conclusion**

This dissertation arose from the will to answer the following question: if one of the main goals of The Hague Tribunal is to stimulate the process of reconciliation between post-conflict countries, then why in concomitance of its rulings tensions within the Balkan region seem to rise? In attempting to answer the puzzle, it relied on a qualitative single case-study and explored the correlation between ICTY’s verdicts and Serbia-Croatia relations with an eye on bilateral disputes. Four cases have been analysed: the conviction of Croats Gotovina and Markač and their subsequent acquittal, the release of the Serb politician Šešelj and the conviction of the Bosnian-Serb Commander Mladić. These cases have been selected as all the indictees were tried for crimes against Serbs or Croats. Two scope conditions were taken as relevant benchmarks for the causal mechanisms: the conservative ruling party and the international pressure, as both are expected to create conditions for greater tensions in conjunction with verdicts. The expectation was that both verdicts would have had impacts on the nature of dealings, but convictions would have sparked major tensions.
The main finding of this thesis is that acquittals lead to greater tensions than convictions. Indeed, although convictions lead to tensions between post-conflict countries, they preserve the state of play of their cooperation in solving open disputes. Conversely, acquittals have a greater potential to destabilize their relations when following conditions are present: international pressures are exerted, conservative elites hold top-level positions and elections are impending. Since one of the goals of the ICTY was the achievement of the reconciliation among Balkan countries, the empirical evidence of this thesis has significant implications. Indeed, the fact that these countries are still dealing with pending issues and, most importantly, a verdict may protract the situation of deadlock or hamper the normalization of inter-state relations, should not be disregarded.

This work has some limitations that must be mentioned. Considering that domestic and international variables work simultaneously, it is complicated to specify the precise amount of change brought by any single factor (McMahon and Forsythe, 2008). Although this dissertation selected only instances that can be targeted as direct reactions to verdicts, it acknowledges that other factors may have been influential. Similarly, rising antagonisms in the aftermath of rulings may just be consequences of existing and long-standing tensions. Moreover, it is equally true that political actors may maintain solid relations without solving their post-war outstanding disputes or, conversely, they may embark on diplomatic struggles even after solving them. Nonetheless, although bilateral disputes do not always destabilize bilateral relations, particularly when it comes to business interests, they have a highly politicized nature and, therefore, may have repercussion on the political level (Djolai and Nechev, 2018).

This thesis contributed to the current literature in several ways. First, in shifting the level of analysis from the domestic outcome to inter-state relations, it introduces a new perspective that scholars may take into consideration in future research. Then, it considers the degree of cooperation and willingness to tackle unresolved disputes inherited from the war in order to portray a picture of the nature of their cross-border dealings. Another input is the appraisal of an under-explored variable, namely the ICTY’s verdicts, with a distinction between convictions and acquittals and their impact on political establishment’s foreign policy behaviour.
If the contributions mentioned so far have interesting implications for academia and the current literature, there are also broader ones for practitioners. The proof that both rulings may compromise the negotiations on pending issues between states and, potentially, destabilize the whole region, can have some repercussions on the future of these institutions and their mode of implementation. After all, the ICTY was the first of its kind, and lessons from its work can be beneficial for posterity. For instance, the idea that judgments may exculpate or blame the whole country is wide-spread within these countries, meaning that the ICTY’s objective to punish individuals instead of whole collectives did not reach the civil societies and political establishments. Moreover, the case-study from the former Yugoslavia is also valuable as a global test case of the feasibility of high-profile transitional justice project: lessons learned from ICTY jurisprudence can be generalized and applicable to other trials before the International Criminal Court as well as in future domestic and hybrid trials (Subotić, 2009b).

References:


Key Figures of the Cases. [online] Available at: <http://www.icty.org/en/cases/key-figures-cases> [Accessed 8 March 2018].


35


Mason, P., 2016. Croatia’s election is a warning about the return of nationalism to the Balkans. *The Guardian*, [online] Available at:


