

# Peace and Reconciliation in the Balkans: Croatia vs. Serbia

Written by Nikolina Židek

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In 1999, Croatia filed an application against Serbia (at the time Federal Republic of Yugoslavia) before the International Court of Justice (ICJ) claiming that Serbia committed genocide against the Croatian population at the beginning of the war in Croatia in 1991. In 2010, Serbia filed a counter-claim against Croatia claiming that Croatian forces committed genocide against ethnic-Serbian population in 1995 during the Military- Police Operation Storm while reclaiming its territory.

The mandate of the Court was to establish state responsibility for genocide. On 3 February 2015, the ICJ rendered its judgment establishing that no genocide was committed neither by Croatia nor Serbia.

The court established the facts relying on judgments brought by another international tribunal; the International Criminal Tribunal for the former Yugoslavia (ICTY) that establishes individual responsibility for genocide, war crimes and crimes against humanity in the wars on the territory of the former Yugoslavia. The ICTY has not rendered any genocide verdicts for the crimes committed in Croatia, but has done so only for the crimes committed in Srebrenica, in Bosnia and Herzegovina against Muslim population. Final verdicts on genocide are given so far in two cases (Krstić, Popović et al.), one case is on appeal (Tolimir), two cases are on trial (Karadžić and Mladić), while two defendants died before the termination of the criminal procedure (Talić and Milošević).

Therefore, it was expected that the Court would dismiss the genocide charges by both countries, especially having in mind its (ICJ's) ruling on Bosnia and Herzegovina's claim against Serbia and Montenegro in 2007. In that ruling, it was established that Serbia had not committed genocide in Srebrenica. However, the Court ruled that Serbia was responsible for not preventing genocide in Srebrenica, not cooperating fully with the ICTY and not punishing the perpetrators.

In the above-discussed context, the aim of this article is to analyze the effect of the ICJ's ruling on, and its contribution to peace and reconciliation in the Balkans. The following questions arise from the process before the ICJ and its judgment:

### **What is the Direct and Immediate Effect of the Judgment?**

The ICJ has not established anything new. The most important immediate effect of the judgment is that no side won and at least the *status quo* is maintained. Both sides knew that they would not gain the suit but they did not back down in spite of high financial costs (Croatia spent around €3,6 million, and Serbia around €0,8 million), because the political costs at home were much higher. Otherwise they would have been proclaimed traitors of national interests and would lose political points.

The judgment also served as a litmus test to see the preparedness of the countries to deal with past crimes. By analyzing the statements of Croatian and Serbian high state officials after the ruling, we can see that both sides interpreted the ruling as they saw fit for their domestic purposes. Croatian politicians stated that they were disappointed with the verdict, but that the Court clearly established that "Croatia was victim of aggression" (President

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Grabar Kitarović), that “the war was led on Croatian territory” (Foreign Minister Pusić) and that the judgment showed that “the Operation Storm was a legitimate military operation” (Minister of Justice Miljenić,). On the other hand, Serbian President Nikolić stated that the judgment confirmed that Croatian army committed atrocious crimes against Serbs. These statements clearly show that, as until now, local politicians on both sides keep instrumentalizing and misusing international justice verdicts for their local purposes. Subotić (2009) called this misuse of transitional justice for domestic political purposes a “hijacked justice”.

While the world’s highest court ruled that neither Croatia nor Serbia committed genocide against each other’s populations in the war in Croatia, it has established that crimes were committed by the Yugoslav People’s Army and Serb forces against ethnic Croat population in 1991, and that Croat forces committed crimes against ethnic Serbian population during and in the immediate aftermath of Operation Storm in 1995. Therefore, the judgment contests the mainstream official narratives in both countries and the relativization of crimes committed by own nationals. For instance, although in 2012 the ICTY Appeal Chamber acquitted Croatian generals Gotovina and Markač of crimes committed during Operation Storm, the ICJ’s ruling states that the crimes were committed against Serbian population; therefore not allowing the mainstream Croatian narrative to forget or ignore the victims due to the ICTY’s acquittal.

Similarly, the final recommendation of the Court to the Parties is a clear message to “continue their co-operation with a view to offering appropriate reparation to the victims of such violations, thus consolidating peace and stability in the region”.

## What If One of the States Had Won the Suit?

To see the significance of the judgment in establishing that neither side has committed genocide, we should think of what would have happened otherwise. First of all, the winning party would have the right to seek reparations from the losing party. This would imply significant economic costs for the losing party (both countries are in a deep economic crisis) and it would further deepen the lack of trust between the two countries. Also, the losing party would be the first state sentenced for genocide and its nationals would carry the label of “genocidal nation”. The winning party would carry home the status of the greatest victim of atrocious crimes which would greatly serve the domestic narrative. This scenario would definitely not contribute to stability and future reconciliation.

## What Is Role of International and Domestic Justice in Promoting Peace in the Balkans?

The ICTY was established in 1993 by the United Nations Security Council Resolution 827 with the purpose to “respond to threats to international peace and security, to bring to justice the persons who were responsible for serious violations of international humanitarian law and to contribute to restoration and maintenance of peace”. Wilson (2005) states that the Tribunal’s main contribution is that it collected extremely valuable testimonies and facts, and that its database is an important tool for future generations, if it will not be interpreted as biased. On the other hand, Orentlicher (2008) emphasizes the positive effect of removing reactionary forces from the political scene and thus indirectly contributing to democratic consolidation.

Croatia and Serbia cooperated with the ICTY by extraditing their nationals to the Tribunal instrumentally and pragmatically under the European Union conditionality policy. While complying with the requirements by the Tribunal, the states presented the Tribunal’s decisions at home according to their domestic political purposes. The extradition of Serbian military officials to The Hague was interpreted as an ultimate service to the country within the EU conditionality policy, and the ICTY’s judgment was proclaimed anti-Serb and biased. The dominant public discourse in Croatia selectively accepted and rejected “truths” about the war established by the ICTY, that is, only accepting those judgments that confirmed the already existing official narrative of the war. In that light, the judgment that acquitted the general Gotovina of crimes committed in the Operation Storm was seen by the wider Croatian public as the final confirmation of the definition of the Homeland War given in the parliamentary Declaration: “just and legitimate, defensive and liberating, and not an aggressive and conquering war.” (Koren, 2011, p. 136)

Consequently, the prospects of the ICJ judgment in contributing to peace and stability should be combined with the

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acceptance of the ICTY's work by Croatia and Serbia, and even more, the work of Croatian and Serbian domestic courts on prosecuting perpetrators at home, especially their own nationals. If we leave this task to truly independent and functional judiciaries in both countries, the political relations will be unburdened, and Croatia and Serbia can work on improvement of their relations in other fields.

## **Conclusion: Some Comments on the ICJ's Judgment and the General Prospects of Sustainable Peace and Reconciliation in the Balkans**

The specificity of transitional justice efforts in Croatia and Serbia lies in the fact that after the war ended the victims and the perpetrators stayed on the other side of the border. Unlike other major transitional justice projects where truth, justice, and reconciliation were considered necessary for preserving national unity and building a future together with former political enemies, in this case the major incentive of living together is practically absent. While, as Dimitrijević (2003) concludes, reconciliation in Serbia and among Serbs has already been achieved and therefore their reconciliation with others will be more difficult, Croats have also created their homogenous mainstream narrative of a heroic and innocent nation that was a victim of aggression (and never a victimizer). This narrative, embedded in two parliamentary declarations (Declaration on Homeland War and Declaration on Operation Storm), is supported even by the liberal forces, because they do not want to lose votes.

The ICJ's judgment helped in establishing that, although not genocide, atrocious war crimes and crimes against humanity were perpetrated by both sides against each other. And it also sent clear political messages to Croatia and Serbia: that it is time that they start cooperating to settle the fate of missing persons (paragraph 359) and that they have the obligation of consolidating peace and stability in the region (paragraph 523).

With the nationalist right-wing party in power in Serbia and the new Croatian President also coming from nationalist right wing HDZ (and most probably the same party will win the parliamentary elections this year), apparently the prospects for confidence-building measures are not good. But the last fifteen years in the Balkans have shown that right-wing political parties have turned out to be more operative. Such was the case with HDZ's Prime Minister Ivo Sanader who extradited Croatian generals to the ICTY and Serbian President Nikolić who committed himself to lead Serbia into the European Union and moderated his ultranationalist speech. It is easier for them to implement "hard" reforms or make decisions that domestic spoilers usually resist if a moderate and liberal option is in power. We have recently witnessed that the Serbian Prime Minister Vučić attended Croatian President's inauguration, and that the new Croatian President Grabar Kitarović announced that she would soon officially visit Serbia. We will soon see whether the relations will improve.

Regarding the prospects of stability and peace, at the moment we can realistically expect that the institutional reform (especially of judiciary) within EU negotiations results in deterrence effect. Croatia has already implemented institutional reforms and has become a member of the EU. Serbia started accession negotiations in January 2014. Hopefully, Croatia will not block Serbia in the negotiation process (as Slovenia did to Croatia to solve bilateral issues). However, it would be useful to constructively use its leverage to insist on some transitional justice issues, such as the fate of the missing persons, established in the "Declaration on the Role of the State in Addressing the Issue of Persons Missing as a Consequence of Armed Conflict and Human Rights Abuses" signed by the presidents of Croatia, Serbia, Bosnia and Herzegovina (BiH) and Montenegro in August 2014 in Mostar, BiH.

In the absence of domestic drive, the EU institutional reform through enlargement process can be considered a surrogate or indirect transitional justice mechanism. Such reform of the "fast moving (political) institutions" (Roland, 2004) can definitely bring about deterrence effect and stability. On the other hand, reconciliation is a slow process. In order to achieve reconciliation the "slow moving institutions", such as culture, beliefs and values have to change. And this change should come only from within and with the change of generations in Croatia and Serbia.

If we take into account the example of the last eleven years in Argentina since Néstor Kirchner came into power (2003-2007) – Cristina Fernández also continued with the same policy (2007- ) – we can see that even twenty years after the end of the military dictatorship it was not too late, and that transitional justice efforts regained momentum. Therefore, we can only conclude that, when there is political will and when the moment comes, changes can occur

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and victims can eventually get redress through justice, truth and memory. Meanwhile, it is up to the civil society organizations to keep seeking the truth, until they find an interlocutor in their respective governments.

Civil society organizations in the Balkans in fact are working on the Initiative for RECOM towards the establishment of a Regional Commission tasked with establishing the facts about victims of the wars in the former Yugoslavia. This body would be the first regional truth commission in history and an adequate solution to this specific situation. Hopefully, the ICJ's judgment will also contribute to bigger support of the state authorities of the former Yugoslavia for establishing the Commission.

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