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1. INTRODUCTION

No issue has polarized the post-authoritarian Croatian political scene as much as the issue of cooperation with the International Criminal Tribunal for the Former Yugoslavia (ICTY).

Although the pro-Western regime that came to power in January 2000 promised to reverse the anti-ICTY policies of its nationalist and authoritarian predecessor, it soon became clear that such cooperation was easier promised than delivered. Domestic political battles over whether to cooperate with The Hague-based United Nations tribunal have been intense, often dominating the media's attention and at times sparking street demonstrations. The viability of Croatia's governing coalition and the fledgling party system has been tested frequently on the tribunal issue. Within the ruling coalition, unity has given way to internecine conflict over the terms of government policy toward the tribunal. This article aims to shed light on the domestic politics of state cooperation with the ICTY by addressing the factors that have made the issue so volatile in Croatia.

A fundamental premise of this article is that one cannot understand the process of international justice without examining the domestic politics surrounding state cooperation. The United Nations ad hoc criminal tribunals are highly dependent on domestic political dynamics to fulfill their mandates to prosecute violations of international humanitarian law. International justice cannot be achieved without domestic cooperation because the tribunals lack enforcement powers to compel state compliance with court orders. The issue of cooperation—and the challenges it poses to stability and democratization in the former Yugoslavia and to the ICTY's struggle for institutional survival—will continue to be volatile as long as the tribunal exists. The strong domestic resistance to cooperation in the Balkans underscores the challenge confronting both the ad hoc tribunals as well as the permanent International Criminal Court: how to institutionalize a system of international tribunals in which neither the winners nor losers are immune from standing trial for atrocities committed during battle.

In this paper, we argue that nationalist groups in Croatia have raised the political costs of cooperation with the ICTY by effectively designing a rhetorical strategy which equates the

tribunal's indictments against Croatia's war heroes with attacks on the dignity and legitimacy of the so-called Homeland War (*domovinski rat*) fought on Croatia's territory against breakaway Serbs between 1991 and 1995. By extension, the nationalists argue that the indictments also attack the legitimacy of the country's newly won independence. The nationalists claim that the tribunal's indictments of Croats have the effect of equating the guilt of Croats and Serbs. To most Croats, this is reprehensible since Serbs are perceived as the aggressors in the Homeland War.

The *raison d'être* of the ad hoc international criminal tribunals is to obtain justice by prosecuting individuals, not nations. The nationalists' rallying cry, however, aims to turn the tribunal's mission on its head by charging that its indictments cast blame on all Croats. The nationalists' growing ability to frame the domestic debate around the ICTY indictments and the cooperation issue more generally is fueled by the government's fear of being seen as a willing accomplice of the tribunal. This fear appears to have been recently magnified in the context of falling living standards, rising unemployment, and the ruling coalition's sharply declining popularity.

The politics of cooperation reach beyond the domestic arena and also involve an interaction with ICTY officials, international institutions, and foreign governments. The Croatian government is caught between the competing pressures of nationalists who oppose cooperation and members of the international community who have conditioned Croatia's entry into Western organizations upon increased cooperation with the ICTY. The result has been an inconsistent, ad hoc policy that has quickly transformed the aftermath of each tribunal indictment of a Croatian general into a political crisis that threatens to undermine stability and the country's nascent democratization process.

The literature on international war crimes tribunals has not sufficiently probed the tribunal's interaction with elite domestic actors or examined how the ICTY and its sister court, the International Criminal Tribunal for Rwanda (ICTR), affect political change in the former Yugoslavia and Rwanda. Instead, the tribunal literature is largely based in a court-centered

perspective that examines an array of jurisprudential questions involved in the establishment and operations of the ad hoc tribunals and the permanent International Criminal Court (ICC).¹ This focus on the legal evolution of the tribunals is understandable given the great need for legal expertise in creating these courts. The result, however, has been an unintentional neglect of the political dynamics and domestic implications of these institutions.

Croatia's role in the Balkan wars of the 1990s has been largely overshadowed both in world headlines and in academic inquiries by the attention paid to the atrocities and ethnic cleansing campaigns committed by Serb forces in Croatia, Bosnia, and Kosovo. Not surprisingly, there has been significantly less scrutiny of Croatia's record of cooperation with the ICTY. Given the severity of the Bosnian Muslims' suffering and the extent of Serbian war crimes, Croatia does not stand out as victim or victimizer. But the Croatian case is distinct in the Balkan context and worthy of scrutiny precisely because Croatians were both victims and victimizers. At the beginning of the war in 1991, Croats were victims of Serb forces who inflicted great suffering at Vukovar, Dubrovnik, and other frontline towns. At the end of the war in 1995, Croatian forces involved in military actions to reclaim lost territory are accused of carrying out war crimes against Serbs, including the murder of elderly citizens and the ethnic cleansing of tens of thousands of Serbs. As both victim and victor, Croatia has long had an ambivalent attitude toward the ICTY. The government initially supported the establishment of the tribunal and has pressured the court to prosecute Serbs for crimes against Croats. However, Croatian leaders have also lobbied for immunity when the tribunal turned its attention to Croatian war crimes against Serbs. We believe that Croatia is an interesting and important case to study because it has been in the shadows of the Balkan conflict as well as in the shadows of the high-profile conflict over cooperation between the Serbian government and the ICTY.

¹ A small but important branch of the evolving literature on international tribunals has examined the relationship between international justice and social reconstruction in the former Yugoslavia and Rwanda. See Laurel E. Fletcher and Harvey Weinstein, "Justice, Accountability, and Social Reconstruction: An Interview Study of Bosnian Judges and Prosecutors," *Berkeley Journal of International Law* 102 (2000).

This article begins with a discussion of the tribunal's mandate and its limited power to compel state cooperation. Next, we place the Croatian government's dilemma concerning cooperation with the tribunal in the larger context of the experience of newly democratizing countries that confronted the question of transitional justice in the 1980s and the early 1990s. This will be followed by an assessment of Croatia's cooperation with the ICTY under the authoritarian regime of Franjo Tudjman, which ruled the country from 1990 through 1999. In the next section, we evaluate cooperation with the ICTY during the first year of the reformist government of Ivica Racan. Next, we examine the domestic politics of cooperation through narratives of the government's response to several controversial war crimes indictments: the Mirko Norac indictment in early 2001; the Ante Gotovina and Rahim Ademi indictments in mid-2001, and the Janko Bobetko indictment in the fall of 2002. In the conclusion, we discuss the inherent conflict between the tribunal's mission to prosecute violations of international humanitarian law and the objective of many transitional regimes to delay such prosecutions in order to bolster their political standing vis-à-vis domestic opponents.

2. INTERNATIONAL CRIMINAL TRIBUNALS AND THE PROBLEM OF ENFORCEMENT

On paper, the International Criminal Tribunal for the Former Yugoslavia and its counterpart, the International Criminal Tribunal for Rwanda, wield tremendous authority over states. In reality, however, the tribunals have no power of their own to compel states to hand over indicted suspects or to assist the tribunals in a number of other ways. State cooperation, therefore, often depends on the amount of pressure that the tribunals and key international actors can bring to bear on recalcitrant states. Lacking any independent enforcement powers of their own, the tribunals must rely on the good will of states or on the backing of the international community. The tribunals' founding statutes envision a clear resolution to conflicts between the tribunals and the states of the former Yugoslavia and Rwanda. These states, along with all other UN members, are almost always legally obliged to fully cooperate with the tribunals.² The tribunals' statutes, adopted by the United Nations Security Council, set out a hierarchical relationship in which the

supremacy of international law, not the vagaries of domestic and international politics, governs the pursuit of justice. In establishing the ICTY in 1993 and the ICTR in 1994, the Security Council granted the tribunals sweeping legal authority to pursue the war crimes prosecutions that they deemed necessary to bring the key perpetrators to justice for the mass atrocities that occurred in the former Yugoslavia and Rwanda. The tribunals do not monopolize war crimes prosecutions in either region since the limited capacity and duration of these institutions mean they will not be able to target all suspects. Concurrent domestic war crimes prosecutions can continue, but domestic judiciaries must, when requested, defer to the authority of the tribunal.³ The legal supremacy of the tribunals has been the source of long-running political and philosophical conflicts with the states of the former Yugoslavia and Rwanda. In the former Yugoslavia, much of this conflict has centered on state efforts to block indictments and prosecutions of members of their own national or ethnic groups.⁴

The importance of state cooperation cannot be overstated. From gaining access to crime scenes and national archives, to conducting forensic investigations, to establishing liaison offices, to interviewing witnesses and making arrests, state cooperation is crucial to the survival

² ICTY Article 29, titled “Cooperation and Judicial Assistance,” reads as follows: “(1) States shall cooperate 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.”

³ ICTY Article 9, titled “Concurrent Jurisdiction,” reads as follows: “(1) The International Tribunal and national courts shall have concurrent jurisdiction to prosecute persons for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1 January 1991. (2) The International Tribunal shall have primacy over national courts. At any stage of the procedure, the International Tribunal may formally request national courts to defer to the competence of the International Tribunal in accordance with the present Statute and the Rules of Procedure and Evidence of the International Tribunal.”

⁴ The Tutsi-led Rwandan government has long criticized the ICTR for its slow pace of prosecutions of Hutu genocide suspects and for a range of administrative problems. Recently, the Rwandan government has moved to block attempts by the prosecution to investigate Tutsi war crimes committed against Hutus.

of the tribunals.⁵ The failure of the ICTY to indict more top military and political leaders in its early years and to have more indicted leaders in custody underscores the success of individual war crimes suspects as well as the governments of Croatia, Serbia, and Bosnia's *Republika Srpska* to defy the tribunal's authority. The low level of state cooperation has fundamentally compromised the tribunal's original objective to try those most responsible for planning and carrying out war crimes. As a result, the ICTY, especially during its early years, focused its sights on lower-level cases that were somewhat more practical to investigate. However, government obstruction and the dangers of the on-going war in Bosnia posed formidable political and logistical obstacles for investigators and forensics teams that exhumed mass graves.⁶ As important as the trials in The Hague have been to uncovering the atrocities of the Yugoslav wars and punishing perpetrators, the tribunal has fallen short of its goal of focusing on top-level suspects.⁷ The ICTY, nevertheless, has made significant progress and has slowly filled some of its docket with higher-level accused, including Slobodan Milosevic and former Bosnian Serb President Biljana Plavsic. In the process, the ICTY has increasingly gained international prominence even as it is widely reviled in much of Serbia, Croatia, and *Republika Srpska*. The transfer of Milosevic to The Hague in June 2001 underscores the ability of the tribunal to obtain "big fish" suspects in some circumstances. Yet, the crucial role of U.S. political and economic pressure in this and other cases underscores the ICTY's continuing dependence on international actors and demonstrates how state cooperation often is reduced to a financial transaction.

⁵ A comprehensive assessment of the level of state cooperation with the ICTY should ideally evaluate performance in a range of categories. It is important to note that a state can provide excellent cooperation in a number of categories while withholding cooperation in other categories, such as the arrest and transfer of war crimes suspects. The major test of cooperation—based on the statements of tribunal officials, diplomats, and leading human rights organizations—is the willingness of a state to arrest war crimes suspects and hand them over to the tribunal.

⁶ See Eric Stover and Gilles Peres, *The Graves: Srebrenica and Vukovar*. Zurich: Scalo, 1998.

⁷ The ICTR, based in Arusha, Tanzania, has been far more successful in arresting "big fish" suspects. Many of the suspects in custody at the tribunal's detention center in Arusha were high-level government officials in the Hutu extremist government implicated in planning the 1994 genocide. These important trials have been greatly slowed by a range of administrative problems.

The cooperation of NATO peacekeeping troops in arresting war crimes suspects in Bosnia-Herzegovina has been a major reason why the ICTY's three courtrooms are now in constant use. The 1995 Dayton peace accords, which further obliged Serbia, Croatia, and Bosnia-Herzegovina to cooperate with the tribunal, gave the NATO forces authority to arrest war crimes suspects indicted by the ICTY. After Dayton, however, the United States in particular was reluctant to use its peacekeeping forces to make arrests, fearful of risking casualties. Over time, US and other forces have been more willing to make such arrests. However, NATO's failure to apprehend the two most important war crimes suspects—former Bosnian Serb leader Radovan Karadzic and former Bosnian Serb military commander Ratko Mladic—seven and a half years after they were indicted by the ICTY, underscores the lack of international resolve.

The presence of an international peacekeeping force in Bosnia, nonetheless, has been a tremendous boon for the tribunal since it provides a police force, albeit an often-reluctant one, to arrest war crimes suspects and send them to The Hague. The ICTY's cooperation challenge in Croatia and Serbia, however, is fundamentally different and in some senses more difficult than the challenge it faces in Bosnia. Whereas Bosnia's sovereignty is greatly constrained due to the presence of NATO troops and the role of the High Representative who acts as the de facto ruler of this divided country, Croatia and Serbia remain sovereign states with no international peacekeeping force on their soil. (However, in Kosovo, there is a NATO peacekeeping force and UN civilian administration in charge.) Eliciting cooperation from the Croatian and Serbian governments, therefore, involves exerting political and economic pressure instead of relying on an international police force.

As the Milosevic transfer suggests, international pressure can often be the decisive factor that prompts a recalcitrant state to cooperate. The threatened cut-off of economic aid and the use of cooperation as a litmus test for integration into European institutions are important cudgels in the cooperation struggle. The tribunal itself cannot actually force a state to cooperate, but it can increase the likelihood of cooperation through cultivating key international allies and by using the international media and speeches to the United Nations to shame an uncooperative state.

Nonetheless, the legal obligation to cooperate and the existence of international pressure do not foreclose a state's opportunity to evade cooperation. While the international community may punish non-cooperation in one instance, it may refrain from doing so in another instance. Croatia and Serbia, therefore, may at times have an incentive to delay handing over a war crimes suspect in order to gauge the level of international pressure they are likely to confront.

Its assistance to tribunal investigators and prosecutors notwithstanding, the Croatian government has appeared increasingly hesitant to comply with its international legal obligations when it has come to the biggest tests of cooperation—the arrest of indicted war crimes suspects and their transfer to The Hague. This is due in large part to the presence of powerful anti-cooperation political groups in Croatia. The decisive electoral victory that swept democratic leaders into power in 2000 did not sweep away the nationalist right wing parties from the political landscape. Nor did it undercut the right wing's ability to mobilize around defending the sanctity of Croatia's war of secession by protesting the ICTY's indictments of several Croatian generals who have become national heroes for their role in this war. While the right wing no longer enjoys a majority in parliament, the domestic battles over cooperation have revived its political strength.

3. INTERNATIONAL CRIMINAL TRIBUNALS AND TRANSITIONAL JUSTICE

In the 1980s and the early 1990s, efforts by newly democratizing countries to seek accountability for atrocities committed by their authoritarian predecessors played a key role in the development of the global human rights movement. They were also important background factors in the establishment of the ICTY and the ICTR. The experience of these transitional states and the transitional justice literature shed light on Croatia's internal struggles regarding cooperation with the ICTY. The transitional justice literature—developed in the 1980s and 1990s by comparativists and democratization scholars in political science—examines the choices newly democratic states make when deciding whether to prosecute or pardon the crimes of their authoritarian predecessors. Although this literature addresses the question of domestic

prosecutions, its insights can be used to illuminate the domestic political implications of international war crimes prosecutions.

In important ways, Croatia's on-going predicament is similar to the transitional justice dilemmas faced by Greece in the 1970s, South American countries in the 1980s, and South Africa and a number of post-communist countries in the 1990s. The new democratic governments in those countries confronted the moral and political questions of whether and how to face the crimes of the authoritarian regimes recently removed from power. For some elements of society, prosecutions were seen both as a moral imperative and as a precondition for building a democratic political culture. Prosecuting human rights abuses, it was argued, would strengthen a country's nascent democracy by strengthening the rule of law and deterring future human rights abuses that could undermine the stability of the new government. For others, prosecutions were viewed as a divisive force that would undermine the fragile democratization process and provoke the former authoritarian leaders to overthrow the new government. For the governments of these transitional countries, the campaign for justice, often led by relatives of victims and human rights organizations, had to be balanced against the potential of a right-wing backlash and the need for stability. Although the authoritarian leaders were no longer in power, they held varying degrees of influence over the military and the political process and, therefore, often posed significant threats to the new government. While a semblance of justice was achieved in some of these transitional countries, there are very few cases in which a new government was strong enough to hold a meaningful number of trials.⁸ Justice, as Huntington observed, "was a function of political power."⁹

The mode of transition would prove to be a critical factor in determining a new government's power vis-à-vis its authoritarian predecessors and its ability to pursue trials against

⁸ Huntington reports that among the Third Wave countries that underwent democratic transitions before 1990, only Greece was able to put a significant number of suspects on trial. Samuel P. Huntington, *The Third Wave: Democratization in the Late Twentieth Century*. Norman: University of Oklahoma Press, 1991, p. 215.

⁹ Ibid. p. 228.

leaders of the former regimes. In approximately half of the pre-1990 Third Wave democratization cases, the transitions from authoritarian rule were “transformations;” that is, transfers of power engineered by the authoritarian leaders themselves. Granting amnesty for the regime’s crimes often was a pre-condition to giving up the reigns of power. “Virtually every authoritarian regime that initiated its transformation to democracy also decreed an amnesty as a part of that process,” Huntington reports.¹⁰ Other transitions were characterized as “transplacements;” that is, authoritarian leaders negotiated the terms of an amnesty with the opposition before handing over power. In South Africa, the peaceful transition to democracy, for instance, was successful in large part because of an agreement that the African National Congress would establish a truth and reconciliation commission as an alternative to prosecutions of officials of the apartheid regime. Prosecuting former officials in the apartheid regime was widely regarded as an issue that would block the negotiated transition and perhaps spark a protracted military struggle between the ANC and the white government. The innovative nature of the truth commission won praise for facilitating a peaceful transition and contributing to national reconciliation. The South African case points to the importance, in certain delicate domestic situations, of forging alternatives to prosecutions and allowing societies to develop their own solutions to the transitional justice predicament.

Those regimes that did not plan their exit from power but were thrown out in the aftermath of a state crisis were much less able to block prosecutions since they usually did not have significant political influence. A new government that overthrew the previous rulers or otherwise took power by military means would have autonomy to conduct prosecutions unhindered by elements of the former regime. Many of the governments that took power in this way were not themselves democratic, such as the Tutsi-led Rwandan Patriotic Front that drove the Hutu extremists from power through military means at the end of the 1994 genocide.

¹⁰ Ibid. p. 215.

The cases discussed above demonstrate some of the common dilemmas raised by seeking accountability for human rights abuses. The fact that prosecutions are initiated and adjudicated in the Netherlands does not negate the transitional justice dilemma for Croatia or its Balkan neighbors. Cooperation with the tribunal can either implicate the government positively as a partner or negatively as a collaborator in the project of international justice. In many Third Wave cases, governments faced competing domestic pressures either to prosecute or to pardon the crimes of the past. In the new era of international justice, governments confront a somewhat different dynamic of how to balance the competing pressures to cooperate or not to cooperate when an international tribunal demands the arrest and transfer of war crimes suspects.

The Croatian case differs in several key respects from the transitional justice cases discussed above. First, the transition from authoritarian rule in Croatia differed markedly from most Third Wave countries. Croatia underwent two phases of regime transition, first in 1990 when the electorate voted in the authoritarian and nationalist HDZ (*Hrvatska Demokratska Zajednica*, Croatian Democratic Union) party to power, and then again in 2000 when the electorate voted out the HDZ and voted in a pro-democratic and pro-Western coalition. In contrast to many of the Third Wave cases, there was neither a regime-led transfer of power nor a negotiated pact between the authoritarian government and democrats waiting in the wings. But while the authoritarian forces in Croatia were displaced from power, they still pose a threat to the government. This threat is not so much in a rebellion from the barracks—as was the case in some Latin American countries—but in the ability of nationalists to spark internal turmoil that might bring down the government. Second, Croatia, unlike some of our Third Wave cases such as Argentina, did not exhibit a strong civil society-based campaign for prosecutions. The impetus for prosecutions would come externally in the form of ICTY indictments and in international pressure on Croatia to conduct domestic war crimes trials. Indeed, besides the lone voices of several small human rights organizations and a few bold politicians, such as President Stjepan

Mesic, there is no vocal domestic constituency in Croatia actively mobilizing in support of the ICTY or domestic war crimes prosecutions.¹¹

The lack of a formidable domestic drive for war crimes prosecutions in Croatia is explained in part by the fact that the victims of Croatian war crimes are not Croats living within the borders of the states, but Serbs who were forced out of the country at the end of the war in August 1995. In contrast to Argentina where survivors and victims' relatives still lived within the country's borders, in Croatia many aggrieved Serbs live outside of Croatia and are essentially powerless to have their calls for justice heard in Zagreb. Perhaps the most important factor that explains the absence of a strong domestic campaign for justice lies in the nature of Croatia's Homeland War (1991–1995), which pitted the young Croatian state against breakaway Croatian Serbs in their self-declared state, the *Republika Srpska Krajina*, and their temporary allies, the Serb-dominated Yugoslav National Army (JNA).¹² Croatia suffered heavy losses in life and territory when the Serbs attacked Vukovar and other areas of eastern Slavonia and the Krajina region in 1991. Armed hostilities largely subsided in early 1992 following a UN-brokered peace agreement, but the self-declared Serb state remained in control of nearly one-third of Croatian territory. The Homeland War culminated in two major military campaigns in 1995—Operations Flash (*Blijesak*) and Storm (*Oluja*)—that won back territory lost to the Serbs in 1991. If Argentina fought a dirty war against internal “subversives,” Croatia came to see its war of

¹¹ Croatia's own handling of war crimes prosecutions for crimes committed against Serbs during the 1991-1995 war has been widely criticized by international observers and also by some Croatian analysts. Writing in 1999, the Croatian historian Ivo Goldstein observed that in the aftermath of the killing of Serb civilians in 1995, “The Croatian authorities were inadmissibly tolerant of these actions, and legal procedures turned into a farce when the perpetrators were known or even caught. Croatia was again seriously criticized by the international community, and the most far-fetched Serb claims about the ‘genocidal’ Croats seemed to have at least some foundation.” Ivo Goldstein, *Croatia: A History*. London: Hurst and Co., 1999, p. 254.

¹² War was also pursued by the HDZ government in Bosnia-Herzegovina to support Bosnian Croats and as part of an alleged pact between Milosevic and Tudjman to divide Bosnia between Serbia and Croatia. Tudjman's active support of his Bosnian Croat proxies would also subject Croatia to scrutiny from ICTY investigators.

secession as a clean series of battles waged against an external enemy and a crucial step in the consolidation of an independent Croatian state. In the words of Franjo Tudjman, the victory over the Serbs and regaining territory lost at the start of the war represents the culmination of the Croats' "thousand year-old dream."¹³ Croatian nationalists have been able to use the memory of the Homeland War and the struggle for independence it represents as a crucial source of legitimacy. Therein lies the ability of nationalists to credibly exploit the symbols of this war in order to challenge both the legitimacy of ICTY indictments against Croatian generals and the tribunal itself. Therein also lies the interest of the HDZ and other right wing groups in vehemently opposing any supposed attack on the legitimacy of the Homeland War.

In Croatia and in other states of the former Yugoslavia, international actors often link progress in cooperation with the ICTY and domestic war crimes prosecutions to the country's preparedness to join Western institutions. The role of international incentives and pressure can act as a counterbalancing force to the strong domestic resistance to cooperate with the tribunal. In contrast to the Balkan cases, many Third Wave states did not face concerted pressure to prosecute human rights abuses.

4. THE LIMITS OF COOPERATION WITH THE ICTY DURING THE TUDJMAN YEARS

The HDZ and its founder and leader, Franjo Tudjman, were swept into power on a wave of nationalist, pro-independence, and anti-Serb sentiment in 1990. Tudjman and the HDZ held a virtual monopoly on political power in Croatia for a decade, buttressing their rule with strong control of the media, disregard for parliamentary institutions, and an extensive clientelist network. Despite granting lip service to joining Western institutions, in reality the Tudjman regime did little to respect international norms. As a consequence, Croatia was largely isolated by the end of the 1990s.

¹³ Quoted in Marcus Tanner, *Croatia: A Nation Forged in War*. New Haven and London: Yale University Press, 1997.

The Tudjman regime's turbulent relationship with the ICTY helps explain the political challenges confronting the new government's efforts to reverse Croatia's anti-cooperation policies. Even after Tudjman's death in December 1999, his anti-ICTY legacy continued to exert a powerful influence on the domestic debate over cooperation. Tudjman's persistent non-cooperation and criticisms of the ICTY as an anti-Croat institution primed public opinion against the court and established the rhetorical strategy that the right wing would use to undermine the new government's moves toward increased cooperation with the tribunal. Tudjman steadfastly refused to recognize the tribunal's right to investigate Croatian war crimes committed during Operations Flash and Storm.¹⁴ His intransigence obstructed investigators' efforts to uncover important evidence relating to Flash and Storm and slowed the issuing of indictments against Croatian generals.¹⁵ Croatia's poor cooperation record prompted then ICTY President Antonio Cassese to officially report Croatia's non-compliance to the UN Security Council in 1996.¹⁶ In 1999, Cassese's successor, Gabrielle Kirk MacDonald, filed another report of non-compliance with the Security Council to protest government obstruction of ICTY investigations of war crimes committed during Operations Flash and Storm and for the government's failure to hand over Mladen Naletilic, a Bosnian Croat war crimes suspect.¹⁷

Despite Tudjman's attacks on the tribunal, he did cooperate in some instances. Strong international pressure, especially from the US, forced Tudjman to hand over a number of

¹⁴ See Daryl A. Mundis, "Reporting Non-Compliance: Rule 7bis," in Richard May et al, *Essays on ICTY Procedure and Evidence in Honour of Gabrielle Kirk-MacDonald*. Kluwer Law International, 2001, pp. 421-438.

¹⁵ Tudjman's resistance to recognize the tribunal's authority over Operation Storm was aimed at blocking the tribunal from eventually issuing indictments against him and other top Croatian political and military leaders.

¹⁶ President Cassese informed the Security Council of Croatia's non-compliance on September 16, 1996. The report specifically criticized the Croatian government for failing to carry out an arrest warrant against Bosnian Croat general Ivica Rajic, an indicted war crimes suspect. See President's Report of September 16, 1996, UN Doc. S/1996/763, reprinted in the 1996 ICTY Yearbook, p. 219.

¹⁷ See Daryl A. Mundis, "Reporting Non-Compliance: Rule 7bis," in Richard May et al, *Essays on ICTY Procedure and Evidence in Honour of Gabrielle Kirk-MacDonald*. Kluwer Law International, 2001, p. 435.

Bosnian Croats to the tribunal.¹⁸ Interestingly, Tudjman was more forthcoming in handing over indicted war crimes suspects than were his democratic successors who pledged increased cooperation. Of the three Croatian generals indicted by the ICTY since the post-Tudjman ruling coalition came to power, only one has gone to The Hague. However, the question of handing over some indicted Bosnian Croats did not prove nearly as controversial as the question of handing over the Croatian generals. The handover of Bosnian Croats for war crimes committed in Bosnia was less politically sensitive than the handover of Croatian army generals since the Bosnian Croats were lower-level suspects; they were not seen to be as purely Croatian, and the military intervention in Bosnia was not as strongly supported in Croatia as was the Homeland War which was fought on Croatian soil.

5. AFTER TUDJMAN

The dawn of the new millennium ushered in a new political reality in Croatian politics. The political landscape changed dramatically within only a few weeks following Tudjman's death in December 1999. On January 3, 2000, the HDZ was dealt a resounding defeat in parliamentary elections, though it was still able to win forty-six out of the one hundred and fifty-one seats in the parliament (*Sabor*).¹⁹ A new center-left coalition of six parties (*sestorka*), led by a reformed Communist, Ivica Racan, and his communist successor Social Democratic Party (SDP), took over and promised to reverse the anti-democratic and anti-Western policies of its predecessor.²⁰ A month later, pro-democratic forces prevailed in the presidential elections with the victory of Stjepan Mesic, also a former high-ranking Communist and an early defector from the HDZ's

¹⁸ *Agence France Presse*, 16 July 2001.

¹⁹ For results and analysis of all elections in Croatia in the 1990s, see Mirjana Kasapovic, ed., *Hrvatska Politika 1990-2000*. Zagreb: Fakultet Politickih Znanosti, 2001.

²⁰ Throughout the election campaign, the *sestorka* coalition received substantial financial and organizational assistance from Western governments and NGOs. There are key differences between the two largest parties in the coalition, Racan's SDP and Drazen Budisa's Croatian Social Liberal Party (HSLS-*Hrvatska Socialno-Liberalna Stranka*). Racan himself is a pragmatic politician ready to agree to Western demands and conditions, while Budisa is much more oriented to issues of national sovereignty.

ranks.²¹ The new prime minister and president campaigned on a platform of leading Croatia out of the economic malaise and international isolation of the Tudjman era by forging closer ties with the West and hastening the country's entry into Europe's economic and political institutions.

The new government's rapprochement with the West entailed changing state policy in a number of areas, including speeding the return of Serbian refugees expelled from Croatia during the war and increasing cooperation with the ICTY. The US and key European states made it clear to the new government that Croatia's integration into Europe would depend on cooperation with the ICTY. Within the first several months of 2000, the new government markedly increased its cooperation with the tribunal. Perhaps more important than any one move was the forthcoming spirit among government leaders toward the ICTY. Racan and other coalition leaders promised greater cooperation and began to prepare the Croatian public for the inevitability of greater cooperation. Government leaders also moved quickly on rapprochement with other Western institutions, making frequent diplomatic visits to Brussels and other European capitals. Just several months after the election of the new government, Croatia was admitted to NATO's Partnership for Peace program. Since then, Croatia has also made significant progress on the international front in two other key areas: joining the World Trade Organization in July 2000 and signing a Stabilization and Association Agreement with the European Union in October 2001.

The electorate's repudiation of the HDZ and the new government's early moves toward cooperation raised optimism among many Western observers that Croatia's anti-ICTY policy belonged to the past. Several concrete actions by the new government underscored this optimism. The government permitted the ICTY to establish a liaison office in Zagreb, transferred Bosnian Croat war crimes suspect Mladen Naletilic to The Hague, and approved a declaration that recognized the ICTY's jurisdiction over Operations Flash and Storm.²² But even with a

²¹ Mesic served as the last president of the collective presidency of the defunct Yugoslav federation. He left the HDZ in protest of its role in Bosnia-Herzegovina.

²² The UN Security Council resolution establishing the ICTY and the ICTR mandate full cooperation from all UN member states. But symbolically and politically, the Croatian government's recognition of the ICTY's jurisdiction over Flash and Storm signaled its readiness to cooperate with investigations of Operations Flash and Storm.

mandate for change, the new government moved cautiously on the ICTY issue. The government, for instance, initially balked at handing over Naletilic, even though Tudjman had already made the decision to do so in 1999. Despite widespread anger in Croatia following the conviction and forty-five year sentence handed down to Bosnian Croat general, Tihomir Blaskic (at the time this was the heaviest sentence issued by ICTY judges), polls indicated that a majority of Croatians favored continued cooperation.²³

The most difficult tribunal requests—acting on indictments by arresting and transferring suspects—would not occur until mid-2001 when ICTY Chief Prosecutor Carla Del Ponte indicted two Croatian generals. But expectations of possible ICTY indictments, fanned by rumor and media speculation, would make the cooperation issue increasingly volatile in the first year of the Racan government. In August 2000—less than nine months into the new government’s mandate—there were widespread media reports that Del Ponte would indict General Petar Stipetic, the chief of the General Staff of the Croatian Army.²⁴ The tribunal eventually decided to call Stipetic as a witness and not indict him. But media reports that he might be indicted caused a serious rift between the coalition’s two main leaders, Racan and Drazen Budisa.

6. THE NORAC CRISIS²⁵

“We are all Mirko Norac.”

“Hands off our Holy War.”

—Placards at a nationalist demonstration in Split protesting a warrant issued by a Croatian court for the arrest of Mirko Norac, a general and hero of the Homeland War

²³ Ivo Josipovic, *The Hague Implementing Criminal Law: The Comparative and Croatian Implementing Legislation and the Constitutional Act on the Cooperation of the Republic of Croatia with the International Criminal Tribunal and the Commentary*. (Zagreb: Informator, Hrvatski Pravni Center, 2000) p. 257.

²⁴ See Ozan Erozdin, “Croatia and the ICTY: A Difficult Year of Co-operation,” <http://www.ceu.hu/cps/bluebird/pap/erozdin1.pdf>, 2002, pp. 13-15. Also See *Jutarnji List*, 12 August 2000, and “Croatia’s Army Chief to Testify as War Crimes Suspect,” *Agence France Press*, 24 March 2001.

²⁵ The authors are grateful to Rachel Shigekane at the Human Rights Center, University of California, Berkeley, for sharing her research on events related to the Mirko Norac and Milan Levar cases.

The first major war crimes indictment crisis for the Racan government occurred not over an indictment issued by ICTY prosecutors but by a Croatian court. In early February 2001, a court in the seaside city of Rijeka issued an arrest warrant for Mirko Norac, a retired army general involved in the defense of the strategic town of Gospic in October 1991. Norac, who later fought in Operation Storm, was a celebrated hero among Croatian nationalists. The crisis was a major event in the post-Tudjman era that influenced the government's approach to cooperation with the ICTY.

Norac faced charges of crimes against humanity for his alleged role in the killing of approximately forty Serb civilians in October 1991. Witness testimony alleges that soldiers under Norac's command took residents, among them elderly Serbs, dragged them out of their homes and executed them. The general himself is accused of killing one woman.²⁶

The right wing quickly mobilized opposition to the February 7 arrest warrant by blocking roads and organizing street demonstrations in southern Croatia. A massive protest was organized in the city of Split. On February 11, approximately 150,000 people attended the anti-government demonstration, some reportedly being bused in from neighboring Bosnia. Government officials, meanwhile, warned that road closures were suspending commerce and hurting the nation's economy.²⁷ Norac went into hiding after the court issued the arrest warrant.

Mobilization of nationalist anger at the government was not a spontaneous reaction. Since the previous summer, frequent media speculation about imminent ICTY indictments of top generals as well as separate investigations by the ICTY and the Croatian judiciary into the 1991 Gospic murders primed right wing groups to organize.²⁸ In April 2000, ICTY investigators

²⁶ "Veterans Jeopardize Croatia's Fledgling Democracy," *Deutsche Presse-Agentur*, 13 February 2001.

²⁷ "Croatian Veterans Protest War Crimes Warrant Issued by the Croatian Authorities," *Agence France Presse*, 10 February 2001.

²⁸ Erozden traces the creation of the right wing committees to the events stemming from Levar's murder. Following the August 28, 2000 attack, the government arrested five suspects for the Gospic killings of 1991. These arrests led the veterans' groups to establish committees to safeguard "the dignity of the Patriotic War." In the wake of the Gospic arrests, twelve army generals sent in a letter protesting the attack on the Homeland War. Mesic then dismissed the generals. This led the HDZ Central Committee to

exhumed the bodies of ten Serbs in a grave near Gospic. In September, Croatian police arrested six Croats under suspicion of carrying out war crimes in Gospic. The ensuing investigation led Croatian authorities to issue a warrant for Norac's arrest in February.

The investigation into the 1991 Gospic killings proved difficult and dangerous well before the Rijeka court issued a warrant for Norac's arrest. A key witness in the Gospic investigation, Milan Levar, who had incriminating evidence against Norac and his alleged co-conspirators and who had been interviewed by both ICTY investigators and Croatian authorities, was killed in late August 2000 when a bomb exploded as he repaired a car in Gospic. Levar's murder raised the stakes of the domestic judiciary's investigation of the Gospic case. The government's strongly worded response to Levar's murder and President Mesic's September dismissal of Norac and seven other generals for publicly criticizing the government's alleged false portrayal of the Homeland War prepared the government for the ensuing confrontation with the nationalists in the wake of the Norac arrest warrant in February 2001.

To the protestors, the government's pursuit of Norac was tantamount to a betrayal of the Homeland War. The effort to portray the Norac investigation in this light is seen in the slogans and signs at the Split demonstration: "We are all Mirko Norac," read one placard popular among protestors. Other placards underscored the symbolic importance of the Homeland War: "Hands off our Holy Way," "Croatian Judas—remember that you cannot betray all Croats," "Amnesty for all Defenders." The government's pursuit of Norac was not the only target of the protests. The demonstrators also sought to protest the government's new policy of increased cooperation and the rumored ICTY indictment of Norac. To the protestors, the Norac arrest warrant and the trial of his co-conspirators in the Gospic killings were blamed on the government's readiness to give in to international pressure. "The government's policy of high treason is the result of a blind cooperation of the Croatian government with The Hague and other European offices, which even

charge that the government was creating a civil war climate. See Ozan Erozdin, "Croatia and the ICTY: A Difficult Year of Co-operation," <http://www.ceu.hu/cps/bluebird/pap/erozden1.pdf>, 2002.

today cannot accept the independent state,” said a statement issued by a committee organizing protests in eastern Slavonia.”²⁹

Government officials moved quickly to stem the rising tide of nationalist protest. They countered the accusations of selling out the Homeland War by clearly defending the state’s prerogative to prosecute war crimes and by accusing the opposition of intentionally destabilizing the government.³⁰ Although clearly startled by the size of the protests, government leaders articulated what was at stake. On February 9, two days after the warrant was issued, Racan told parliament that the government would not give in to pressure from those forces that wanted to undermine the legal order. To Racan, the crisis was a defining moment and “a test for a democratic and law-abiding Croatia.”³¹ The opposition to the Rijeka court’s investigation of Norac, Racan said, constituted an attack on the state from those forces that were lodging “a serious attack on the democratic legal order of the country.” Pressure, he added, would not force the government to interfere with the independence of the judiciary and risk isolating Croatia internationally. In the Norac crisis, justice for war crimes was presented as an integral part of establishing the rule of law and democratization more generally.

President Mesic accused the nationalists of manipulating the Norac crisis for their own political ends. The protests over the Norac case, Mesic said:

[were] created by those who want to change the balance between political forces, but not through elections. They want to use General Norac to create such a heated atmosphere in which it would be possible to obtain the power, only without elections, since they surely would lose them. Those who have been looting and robbing Croatia so far cannot count on the citizens voting for them. But they think that if they bring

²⁹ “Premier says Government will not Yield to Pressure over Norac Case,” *BBC Summary of World Broadcasts*, 12 February 2001.

³⁰ Opinion polls during the crisis reflected the public’s opposition to handing over Norac to the ICTY. According to *Slobodna Dalmacija*, sixty-six percent polled were opposed to Norac’s transfer to The Hague. However, forty-six percent said that Norac should be tried by a Croatian court if there was evidence of his involvement in war crimes. Thirty-one percent said that Norac should be immune from prosecution in light of his role in protecting Croatia during the war. See <http://www.cdsp.nue.edu/info/students/marko/slodal/sldal43.html>.

³¹ “Premier says he has no Information on General Norac’s Whereabouts,” *BBC Summary of World Broadcasts* 10 February 2001.

things to [a] boiling point... if they convince the public that the Croats are in danger, then they naively think that there could be an upheaval and that someone would bring them to power. Those are simply illusions by people lost in a fog.³²

Interestingly, Drazen Budisa, the coalition leader most wary of cooperation with the ICTY, was particularly outspoken about the nature of the alleged crimes Norac committed. In an interview with the Croatian weekly newsmagazine, *Nacional*, Budisa said he could not defend Norac given the severity of the indictment. “We can’t defend this,” he said. “Only a coward kills women and children.”³³

The momentum began to slowly shift to the government’s side several days after the Split protest. Attempts by war veterans’ associations to organize another large demonstration failed. An anti-government protest in Zagreb on February 15 drew only 5,000 people. The low turnout apparently reflected growing discord among veterans’ group organizers.³⁴ The momentum continued to shift as Norac met with Mesic and Racan, apparently to discuss the possibility of surrendering. As long as Norac remained at large, the protests might continue to grow. But if Norac decided to turn himself in, the wind would be taken out of the nationalists’ sails. Statements issued by the international community urging the government not to give in to the nationalists may have strengthened the government’s resolve. The Council of Europe called on Croatia to “maintain its firm stand” and to “abide by the rule of law and cooperate closely with The Hague tribunal.”³⁵

It soon became apparent that the rumored ICTY indictment of the general was the central obstacle blocking his surrender. Norac told a Croatian newspaper that he would surrender only if there were guarantees that he would not be sent to The Hague.³⁶ It remains uncertain how close

³² Interview with TV Bosnia-Herzegovina on 11 February 2001. Text of report carried by BBC Summary of World Broadcasts, 13 February 2001.

³³ Peter Finn, “In Croatia, Law vs. Patriotism; Thousands Rally for Ex-General Accused of War Crimes.” *Washington Post*, 16 February 2001.

³⁴ *Ibid.*

³⁵ *Central European Review*, 19 February 2001.

³⁶ “Croatian War Crimes Suspect Not Sought by UN Court,” *Agence France Presse*, 21 February 2001.

the ICTY was to actually indicting Norac, either before or after the Rijeka court issued the warrant for the general's arrest. Nevertheless, ICTY Chief Prosecutor Carla Del Ponte's decision to defer to the Croatian judiciary on February 21 clearly bolstered Racan's position vis-à-vis the nationalists and helped defuse the crisis.³⁷ Shortly after Del Ponte's announcement, Norac turned himself in to the Croatian police. He insisted that he never intended to defy the Croatian legal system. "Fighting for this country, I also fought for its legal institutions," Norac said.³⁸

In some respects, the challenge presented by the right wing in the Norac case was stronger than it would be in subsequent crises. However, despite the road closures and the huge demonstration in Split, the nationalists may have overplayed their hand by overtly challenging the government's authority. The government directly confronted this challenge by accusing the right wing of trying to use the war crimes issue to undermine the rule of law and topple the government. The domestic court's indictment of General Norac, although very controversial, was not seen to be as threatening to Croatia's sovereignty in the same way as the subsequent indictments of Croatian generals handed down by the international tribunal.³⁹

Despite the size of the protests and the political threat they posed to the ruling coalition, the crisis ended favorably for the government. This crisis is noteworthy because of the government's strong stand against the nationalists, the ICTY's decision to defer to the Croatian judiciary, and the support Racan received from key coalition leaders skeptical of war crimes prosecutions. The coalition's decisiveness to support war crimes prosecutions would turn to discord when the ICTY issued its first indictment of Croatian generals for atrocities committed during the Homeland War.

³⁷ See Statement by the Prosecutor Concerning the Croatian Judiciary's Investigation of General Mirko Norac, ICTY press release, 21 February 2001.

³⁸ Eugene Crcic, "Former Croatian General Surrenders," *Associated Press*, 22 February 2002.

³⁹ It is not yet clear whether the Croatian courts are prepared to deal with domestic war crimes cases fairly and if there are an adequate number of properly trained judges to adjudicate these cases. The Norac trial, which began on June 25, 2001, has been interrupted by several adjournments. The first adjournment came in September 2001 after Norac punched one of his co-defendants during a break in a court session.

7. THE JULY 2001 CRISIS

“This is a moment of truth for Croatia.”

—Zlatko Kramaric, Liberal Party President and member of the governing coalition⁴⁰

“The Croatian state and people cannot be anyone’s hostages.”

—President Mesic, commenting on right wing opposition to the ICTY’s indictments of Generals Ademi and Gotovina⁴¹

Throughout Croatia, news of the Serbian government’s handover of former President Slobodan Milosevic to the ICTY in late June 2001 was greeted enthusiastically. Croatians had long blamed Milosevic for the destruction of Vukovar and for the loss of close to one-third of the country’s territory to Serb forces in 1991. Milosevic’s arrival in The Hague, however, would soon prompt Chief Prosecutor Del Ponte to turn her attention to Croatian generals suspected of bearing command responsibility for atrocities against Serbs during the Balkan conflict. With Milosevic in custody, Croatian politicians would now have less leverage to protest indictments against its own citizens by claiming tribunal bias. The Croatian media had long speculated that ICTY prosecutors would hand down indictments implicating Croatian generals. But until mid-2001, the ICTY had only issued indictments of Bosnian Croats for war crimes committed in Bosnia and had not yet treaded on Croatia’s celebrated Homeland War.

On July 6, 2001, Del Ponte met with government officials in Zagreb and reportedly asked them to arrest two generals named in sealed indictments and transfer them to The Hague. The content of the indictments, which had been given to the Croatian authorities in mid-June, quickly leaked to the Croatian media. The identity of the two generals named in the indictments soon became the worst kept secret in Croatia. One indictment charged General Rahim Ademi with crimes against humanity for his role in commanding forces in the Medak Pocket area of central Croatia in 1993. The other indictment charged retired general Ante Gotovina with crimes

⁴⁰ “Croatian government mulls cooperation with UN war crimes court,” *Agence France Presse*, 7 July 2001.

⁴¹ “Croatian general rejects trial by UN war crimes tribunal,” *Agence France Presse*, 11 July 2001.

against humanity for his role in commanding forces during Operation Storm in 1995. News of the indictments led to a serious political crisis. As in the Norac crisis, the events of July 2001 initially appeared to threaten the ruling coalition's hold on power.

The threat to the government was, if anything, more significant than in the Norac crisis because of dissension within the coalition's ranks. The cooperation question quickly split the leaders of the two main parties in the coalition, Prime Minister Racan of the SDP party and Drazen Budisa of the HSLS (*Hrvatska Socialno-Liberalna Stranka*, Croatian Social Liberal Party). Within days of Del Ponte's visit, four HSLS party members who were cabinet ministers in the governing coalition resigned to protest Racan's decision to arrest the generals.⁴² Nationalists threatened to hold mass rallies. The threat of instability and unrest was clearly on Racan's mind. "Naturally, I am afraid of unrest," he said.⁴³

Despite growing turmoil within the coalition, Racan initially moved swiftly on Del Ponte's request to arrest the two generals. The day following Del Ponte's visit, the cabinet met in a six-hour emergency session to debate its response to the ICTY indictments. Following the meeting, Racan announced that the government would immediately hand over the generals. He issued a strong defense of the government's decision, arguing that Croatia had a legal obligation to cooperate with the ICTY and that the country's bid for entry into European institutions would be harmed by a failure to hand over the two generals. "To turn down the request from the ICTY would be to plunge Croatia in to the abysses of the Balkans conflict," Racan said.⁴⁴

The government's decisive stance played very well internationally. Diplomats quickly praised the government's pledge to cooperate. Lawrence Rossin, the US Ambassador to Croatia, applauded the decision, noting it would significantly strengthen support for Croatia from the US and the international community.⁴⁵ Javier Solana, the European Union's foreign policy chief,

⁴² Nick Thorpe, "Hague Indictments Spark Croatian Crisis," *The Guardian*, 9 July 2001.

⁴³ *Ibid.*

⁴⁴ "Croatian government agrees [to] handover war crimes suspect," *Agence France Presse*, 8 July 2001.

⁴⁵ *HINA news agency*, 9 July 2001.

hailed the government's "courageous" decision, adding that it "represents a very constructive step towards Europe and the respect of European values."⁴⁶

During the crisis, Racan walked a tightrope, balancing the need to cooperate with the ICTY and remain in good favor with the international community on the one hand with the need to keep his government together and not completely alienate nationalist groups on the other hand. The resignations of the four ministers clearly posed a threat to the government, but at the same time it provided Racan with an opportunity to strengthen his hand politically by turning his handling of the crisis into a referendum on his government. In the wake of the resignations, Racan called a vote of confidence. He won the July 15 vote decisively. Racan's comfortable margin of victory suggests that the government had sizeable support in the Sabor despite the dissension within the ruling coalition. As a result, the coalition appeared to emerge from the crisis with a stronger hand to continue its pro-cooperation policies and its other promised reforms. The government's hand was strengthened by the fact that nationalist protests did not draw the large crowds that had been feared.

As in the Norac crisis, various right wing groups mounted rhetorical attacks that portrayed the ICTY indictments as attempts to criminalize the Homeland War and cast collective blame on all Croats. To bolster their arguments, these groups invoked powerful symbols of the war such as the siege and destruction of Vukovar at the hands of the Serbs and the heroism of Homeland War generals. A coalition of veterans' associations proclaimed that the Ademi and Gotovina indictments threatened the Croatian state's "survival" and that the decision to cooperate could only come from "a government which does not protect national values but the policy of bargaining and betraying all values achieved in the Homeland War."⁴⁷ The Association for the Promotion of Croatian Identity and Prosperity, led by the son of the late President Tudjman, urged the government not to give in to pressures from the ICTY to hand over Croatian generals on the basis of "bizarre indictments" and stated that such a handover would call into

⁴⁶ *HINA news agency*, 13 July 2001.

⁴⁷ *HINA news agency*, July 7, 2001.

question the “national pride, dignity, and legal safety of Croatian citizens.”⁴⁸ The indictments also spurred condemnation from prominent Croatian celebrities. “Croatia was the victim and its generals and soldiers were heroes. That is the only truth,” said a statement issued by a group of the country’s most famous athletes.⁴⁹

In the face of such opposition, Racan’s decision to arrest the generals and his handling of the crisis appears to have signaled a new and more decisive approach with the ICTY, according to a number of analysts. “Having faced down Budisa and humbled the HSLs, it seemed that Racan had turned a corner and finally adopted a bolder stance regarding war crimes and cooperation with the ICTY,” the International Crisis Group (ICG) opined.⁵⁰ But as we discuss below, the prime minister did not actually follow this pro-cooperation stance with concerted action. Instead, he adopted portions of the nationalist critique of the tribunal and also failed to follow through on his promise to arrest General Gotovina. Had Racan acted differently in both instances, he might have strengthened the government’s hand, weakened the nationalists’ influence over the cooperation debate and, in the process, reduced the domestic volatility of future ICTY indictments.

Despite the lack of large anti-government protests, Racan still feared that the nationalists’ vocal criticism of the government’s pro-cooperation stance would resonate throughout Croatian society. In order to placate the right wing, Racan and other government officials repeated the argument that the tribunal’s indictments criminalized the Homeland War. In a letter to Del Ponte, Racan claimed that the Gotovina indictment’s portrayal of Operation Storm aimed at the “criminalization and indirect denial of the Storm operation’s legitimacy.”⁵¹ Specifically, Racan took issue with the indictment’s assertions that 150,000 to 200,000 Serbs

⁴⁸ Ibid.

⁴⁹ Jamie Wilson and Ian Black, “Goran calls indicted men war heroes,” *The Guardian*, 13 July 2001.

⁵⁰ *Croatia: Facing up to War Crimes*. International Crisis Group Briefing Paper, 16 October 2001.

⁵¹ “Croatian Party Slams UN War Crimes Tribunal over Indictments,” *Agence France Presse*, 27 July 2001.

were forced out of Croatia during Storm. Racan, like many Croatian politicians, maintain that the Serbs left Croatia on their own accord. “Racan made clear,” the ICG observed, “that he essentially agreed with Budisa’s objections to the indictments of the generals, but believed that Croatia had no choice except to argue its case within the framework of the Tribunal.”⁵² Racan’s echoing of the right wing’s critique of the indictments would foreshadow the government’s increasing resort to this line of attack against the tribunal in the future. The government’s increasing willingness to use the nationalist rhetoric about the tribunal—albeit in more subtle and diplomatic tones—would ensure that the right wing would continue to have a major role in framing the cooperation debate. It appears, therefore, that Racan tried to play both sides of the issue by agreeing to hand over the generals on one hand, but then attaching his name to the nationalist critique of the ICTY on the other hand.

Racan did not move quickly on the arrests as he had promised. The arrests took a back seat to domestic politics as Racan and other coalition members prepared for the July 15 vote of confidence in parliament. The failure to make the arrests immediately following the July 7 cabinet meeting would give General Gotovina plenty of time to elude authorities. The government had reason to believe that delay would facilitate Gotovina’s escape given that the identity of the indicted generals had been leaked to the media and that General Gotovina had, as early as July 11, indicated his intention not to face trial in The Hague.⁵³ By the end of July 2001, it was apparent that Gotovina was on the run. Questions about the general’s whereabouts would plague Racan throughout the summer of 2001. “Don’t ask me every day where Gotovina is, I told you I don’t know,” he told journalists.⁵⁴ (As of late January 2003, the general remains at large.) In late July 2001, Ademi voluntarily turned himself in to tribunal authorities in Amsterdam. “I’m going to The Hague voluntarily and with a clear conscience, because I did not order any atrocities during the Homeland War,” Ademi said before leaving Zagreb.⁵⁵

⁵² *Croatia: Facing up to War Crimes*. International Crisis Group Briefing Paper, October 2001.

⁵³ “Croatian General Rejects Trial by UN War Crimes Tribunal,” *Agence France Presse*, 11 July 2001.

⁵⁴ “Thousands Gather in Support of War Crimes Suspect,” *Deutsche Presse-Agentur*, 26 July 2001.

It remains unclear whether the government deliberately delayed arresting Gotovina in order to give him a chance to elude capture. While the international community praised Racan's initial decision to arrest the generals, it has not strongly criticized the government for allowing Gotovina to flee, perhaps believing that arresting the general was actually beyond the government's control. Western diplomats continue to express concern about this issue, yet the general's escape has not appeared to have substantially hurt Croatia. A telling indication of the West's soft approach is seen in a May 2002 visit to Zagreb in which a top British diplomat issued a call for Gotovina to surrender, but then announced a five million pound donation aimed at helping Croatia meet European Union standards on economic, legal, and educational issues.⁵⁶

Tribunal officials and some international human rights organizations have taken a much harder line on Zagreb's handling of the Gotovina case. Del Ponte lays the blame for Gotovina's escape on the government and maintains that it is still within its power to arrest the general. Del Ponte said that she provided Croatian authorities the sealed indictments in June of 2001 in order to give them a chance to arrest the two generals. "My trust was misplaced," Del Ponte recently reported to the UN Security Council. Gotovina "was allowed to evade arrest and according to various reliable sources he is now enjoying a safe haven in the territory of Croatia."⁵⁷ Human Rights Watch called Zagreb's failure to arrest Gotovina "a disturbing disregard for its international commitments."⁵⁸

For the government, the July 2001 crisis may have had a beneficial, if unintended, resolution since Ademi's voluntary surrender assuaged the West while Gotovina's escape appears

⁵⁵ "Hague Tribunal Croat arrives 'with clear conscience.'" Nick Thorpe, *The Guardian*, 26 July 2001. Some have speculated that Ademi's Albanian ancestry accounts for why his indictment was significantly less controversial than that of Gotovina.

⁵⁶ "British minister calls on Croat general to surrender," *Deutsche Presse-Agentur*, 29 May 2001.

⁵⁷ Address by the Prosecutor of the International Criminal Tribunals for the Former Yugoslavia and Rwanda, Mrs. Carla Del Ponte, to the United Nations Security Council. 29 October 2002.

⁵⁸ This criticism was leveled at the government for the failure to arrest both Gotovina and General Bobetko who was indicted by the ICTY in 2002. "Human Rights Watch Open Letter to EU Foreign Ministers, EU High Representative for Common, Foreign, and Security Policy Javier Solana, and European Commissioner for External Relations Chris Patten," October 2002.

to have temporarily mollified the right wing. As our next case study shows, the lack of strong international criticism of Gotovina's escape may also have emboldened the government to use delay as a means to avoid making an arrest the next time an ICTY indictment would be handed down. Nevertheless, Gotovina's escape appears to have encouraged nationalist forces by undermining the government's authority and by showing that nationalists can defy the government's policy of arresting war crimes suspects indicted by the ICTY. Today, few politicians dare speak out about the importance of arresting Gotovina. For Croatian nationalists, Gotovina's case has become a *cause célèbre*. In November 2001, the city council of Zadar declared Gotovina an honorary citizen⁵⁹ and the following April, the county of Split-Dalmatia gave honorary citizen status to both Gotovina and Ademi.⁶⁰

8. THE BOBETKO CRISIS

“There is no court on earth to have tried an army which defended and liberated its country, nor will there ever be.”

—Former Army Chief of Staff Janko Bobetko explaining his refusal to recognize his indictment by the ICTY for crimes committed during Croatia's victorious Homeland War⁶¹

“This is about full cooperation, in every case and at every time. It is a commitment we have made.”

—President Mesic in a nationally televised address to the Croatian people⁶²

Late September 2002 marked a long-awaited event for many Croatians—the opening of the ICTY prosecution's case against Slobodan Milosevic detailing Croatia's suffering a decade earlier at the hands of the Serbs. Yet throughout the country, the end of September would be

⁵⁹ “General wanted for war crimes honorary citizen of Croat city,” *Agence France Presse*, 22 November 2001.

⁶⁰ “Croatian generals suspected of war crimes honored,” *Agence France Presse*, 8 April 2002.

⁶¹ “General Bobetko says he will not surrender to Hague Tribunal,” *HINA news agency*, 20 September 2002.

⁶² “Croatian President addresses nation regarding Bobetko indictment,” *HINA news agency*, 25 September 2002.

more remembered for the start of the government's most serious cooperation conflict with the ICTY. Just days before the resumption of the Milosevic trial, prosecutors unsealed their most explosive indictment to date against a Croatian citizen, charging Janko Bobetko, the eighty-three-year-old former Army chief of staff and national hero of the Homeland War, with crimes against humanity allegedly committed against Serbs in 1993. The on-going political crisis surrounding this indictment is recounted here through late January 2003.

This most recent crisis underscores the increasing volatility of the cooperation issue in Croatian politics and the government's growing fear of a nationalist backlash and electoral defeat at the hands of the HDZ. Despite its pro-cooperation stance during the July 2001 crisis and its continued pledges of full cooperation, the government quickly opposed the tribunal's request to arrest Bobetko and transfer him to The Hague. The government subsequently wavered as it sought to assuage international pressure to hand over Bobetko. In the end, the general may end up in a jail cell down the hall from Milosevic in The Hague. However, domestic political opposition and Bobetko's deteriorating health make his transfer to the ICTY an increasingly unlikely prospect. As of late January 2003, the government continued to press its diplomatic initiative against the indictment and to defy the tribunal's request to transfer Bobetko.

Although it is too early to draw conclusions about this on-going crisis, an analysis of the government's initial reaction to the indictment suggests important shifts in its approach to cooperation with the ICTY. What is particularly noteworthy is that Prime Minister Racan took the lead in criticizing the Bobetko indictment rather than doing so only after nationalist forces mobilized opposition to cooperation. His criticisms of the Bobetko indictment were substantially harsher than his criticisms of the July 2001 indictments. Echoing long-running nationalist complaints, Racan called the Bobetko indictment "unconstitutional" and an effort to criminalize the Homeland War.⁶³ With the exception of President Mesic, politicians across Croatia's political

⁶³ "Parliament adopts conclusions, backs Govt. acts toward ICTY," *HINA news agency*, 27 September 2002.

spectrum have lined up behind Racan's opposition to the ICTY indictment. In late September, the Sabor voted unanimously to oppose the indictment.⁶⁴

The government's response to the crisis attests to the nationalists' growing influence over the cooperation debate. At the same time, however, Racan's swift condemnation of the ICTY has enabled the governing coalition to co-opt the right wing's monopoly on issues of national sovereignty. The crisis—which has consumed the attention of the government and public alike—may yet be turned into an opportunity for the struggling government coalition to bolster its weak political position in advance of early elections that might be held in 2003.

The government's defiance is paralleled by Bobetko's own intransigence. The general proclaimed that he would rather die than be sent to The Hague. To Bobetko, trying the winners of a war violates the rules of victors' justice. "There is no court on earth to have tried an army which defended and liberated its country, nor will there ever be," he said.⁶⁵ Bobetko's comments underscore the challenge of creating a system of international tribunals in which neither the winners nor losers are immune from facing justice for committing atrocities.

President Mesic has been the one consistent voice for cooperation throughout the indictment crises.⁶⁶ The president has persistently challenged the nationalists' accusations that ICTY indictments impose collective guilt on the Croatian nation. "We cannot allow the Bobetko Case to become 'The Croatia Case,'" Mesic said.⁶⁷ According to Mesic, the danger of the Bobetko crisis lies not in the indictment itself but in right wing revisionism. "Extreme political circles, which have become more vociferous and aggressive lately, are persistently reiterating the

⁶⁴ Noting the contradiction in Racan's anti-cooperation stance in the Bobetko indictment and his pro-cooperation stance in the Ademi and Gotovina indictments, Drazen Budisa called on the government to change its policy on the earlier indictments. "Croatia: Budisa Supports and Criticizes Government," *HINA news agency*, 23 September 2002.

⁶⁵ "General Bobetko says he will not surrender to Hague Tribunal," *HINA news agency*, 20 September 2002.

⁶⁶ Although Mesic is the commander in chief of the military, the Croatian constitution limits the powers of the presidency. When it comes to issues of cooperation with the ICTY, Mesic has little decision-making authority.

⁶⁷ *Vjesnik*, 23 September 2002.

theory that the world, which allegedly does not want the Croatian State, wishes to destroy its foundations with the Bobetko indictment,” he said.

The government has portrayed itself to the international community as fully supporting cooperation while engaged in a legal conflict with the tribunal over the Bobetko indictment. Toward that end, the government filed two legal briefs with the tribunal’s Appeals Chambers challenging the legality of the indictments. The strategy was clearly designed to buy time for the government since the ICTY prosecutor enjoys clear statutory authority to indict suspected war criminals.⁶⁸ While tribunal indictments target individual wrongdoing, it is not unusual for these indictments to place the context of an alleged crime in the larger political and historical context of the Balkan wars. In the Milosevic indictment, for example, his alleged crimes are placed in the context of the larger national project to create a Greater Serbia. Reference to alleged government conspiracies to carry out war crimes, therefore, often become an important part of the prosecution’s case. Nevertheless, the tribunal’s reference to the political context in which crimes were committed and the role of non-indicted individuals raise an important philosophical question as to whether the indictments implicate the state as a whole in the crime, and thus, imply a level of collective guilt.

Racan pledged that the government would accept the Appeals Chamber’s ruling. However, the government has remained steadfast in its refusal to arrest and transfer Bobetko even though the Appeals Chamber rejected its case in late November.⁶⁹

⁶⁸ While tribunal indictments target individual wrongdoing, it is not unusual for these indictments to place the context of an alleged crime in the larger political and historical context of the Balkan wars. In the Milosevic indictment, for example, his alleged crimes are placed in the context of the larger national project to create a Greater Serbia. Reference to alleged government conspiracies to carry out war crimes, therefore, often become an important part of the prosecution’s case. Nevertheless, the tribunal’s reference to the political context in which crimes were committed and the role of non-indicted individuals raise an important philosophical question as to whether the indictments implicate the state as a whole in the crime, and thus, imply a level of collective guilt.

⁶⁹ By the end of October, the tribunal’s Appeals Chamber had not yet ruled on the government’s motions. In a late October 2002 visit to Zagreb, Del Ponte encouraged Racan to give up on the appeal, saying that states have no right to take such measures. See BBC Worldwide Monitoring text of a Croatian TV interview with Carla Del Ponte, Oct. 24, 2002. Interestingly, Del Ponte indicated that the tribunal at the time had no plans to lodge a formal complaint with the UN Security Council regarding Croatia’s non-

Several factors may explain the government's decision not to immediately arrest Bobetko. First, by the fall of 2002, Racan's coalition government had been seriously weakened since the last ICTY indictment in July 2001. Rising unemployment, discontent about the speed of economic reforms, and impatience at the slow pace of integration into Europe has undermined the government's popularity. The drop in public support for the government has been a boon to the opposition HDZ party which has seen its popularity rise substantially while the approval rating for the ruling coalition has fallen significantly.⁷⁰ Although still in the opposition, the HDZ has the highest popularity of any political party in Croatia. The government's decreasing popularity and the prospect of early elections has made Racan reluctant to act on the Bobetko indictment.

Bobetko's prominence as the highest-ranking army official during the Homeland War makes his arrest and transfer to The Hague a difficult proposition for the government. If the Ademi and Gotovina indictments were controversial, the charges against the elderly and popular Bobetko are proving explosive in large part because of his stature. Polls conducted by the Croatian Puls agency in late September 2002 indicated that eighty-four percent of Croatian citizens oppose sending Bobetko to The Hague. Seventy-one percent retained the same attitude even under threat of political and economic sanctions.⁷¹

The government's likely calculations of the international community's reluctance to apply substantial pressure or impose sanctions on Croatia may have encouraged the government

compliance. Del Ponte added that she was generally pleased with Croatia's level of cooperation, especially in providing witnesses and documents.

⁷⁰ See *Fokus*, 15 November 2002, <http://www.fokus-tjednik.hr/>. See also "Koalicija Gubi Popularnost, ali dobiva izbore?" *Vjesnik*, 5 June 2002. The original ruling coalition of six parties was reduced to five in the summer of 2001, and then to four in the summer of 2002 when the HSLs walked out and Racan resigned. This coalition crisis was the result of continuing disputes with Slovenia. A new government was voted in several weeks later, with Racan resuming his role as prime minister.

⁷¹ The HDZ has retreated to the background, saying that it "does not want to be the government's alibi [for non-cooperation] in the event of [sanctions or other negative consequences]." The Bobetko case has also brought out old conflicts within the right wing over who is the true defender of national interests. Far right-wing parties have used the occasion to criticize the HDZ for initiating cooperation with the ICTY in the first place, back in 1996. *Vjesnik*, 5 October 2002.

to delay acting on the tribunal's indictment. Racan hopes that further delay will, on the one hand, weaken the resolve of the tribunal and the international community and, on the other hand, increase the chance that the ailing Bobetko will be declared unfit to stand trial in The Hague. As of late January, Bobetko was in a Zagreb hospital recovering from double heart by-pass surgery. His doctors maintain that the retired general is too ill to stand trial.

Croatian politicians may also be closely watching the tribunal and the international community's response to the non-cooperation of its neighbors in Serbia and in Bosnia's *Republika Srpska*. Despite Serbia's marked increased cooperation since Milosevic's fall from power in October 2000, a number of indicted war criminals, including former Bosnian Serb General Ratko Mladic, remain at large.⁷² The international community's reluctance to apply sanctions against Serbia may, in the eyes of the Croatian government, lower the risk of not immediately acting on the Bobetko indictment. The government's effective delaying tactics prolong the crisis, but also help it assess the likelihood that the West will resort to punitive measures to ensure that Bobetko stands trial.

So far, it appears that the Croatian government's expectation of weak Western resolve has been on target: the international community has issued a number of calls for the government to arrest Bobetko, but for the most part its public statements have been measured. With the exception of Britain and the Netherlands, the international community has taken no concrete actions against Croatia. In late September 2002, Denis MacShane, British Foreign Office Minister, insisted that Croatia provide immediate and unconditional cooperation in the Bobetko case.⁷³ Subsequently, Britain cancelled ratification of the Stabilization and Association Agreement, signed between the European Union and Croatia in October 2001.⁷⁴ In December, the Netherlands announced its decision not to sign the Stabilization and Association Agreement

⁷² Former Serbian President Milan Milutinovic surrendered to ICTY authorities on January 20, 2003. Milutinovic was indicted by the ICTY in May 1999.

⁷³ "Croatia: UK Urges Handover of Croatian Wartime Gen. Bobetko," *HINA news agency*, 27 September 2002.

⁷⁴ *HINA news agency*, 16 October 2002.

because of Croatia's refusal to send Bobetko to The Hague. Aside from these measures, Europe has seemed reluctant to intensify pressure on the Racan government. This can be seen in a statement of EU foreign ministers in late October, which reiterated an earlier call for cooperation, but stopped short of issuing any ultimatums.⁷⁵ The EU's approach reflects a prevalent view in Western diplomatic circles that the international community should be sensitive to the realities of Croatian politics and the weakness of Racan's coalition. Yet, the decision not to raise the level of pressure on Croatia may embolden Racan to continue to delay cooperation while warning the West that increased pressure may destabilize the government. It is important to note, however, that Western pressure on Zagreb has not subsided completely. EU officials have suggested that continued defiance of the tribunal risks closer ties with the West. In early November, EU official Jacques Wunenburger said he does not expect any positive statements on Croatia's application for membership in the EU until the Bobetko problem is solved.⁷⁶ Although the Croatian government has promised to cooperate with the ICTY, Wunenburger said there is an impression "that it is only doing so due to international pressure."⁷⁷

Interestingly, the ruling coalition and right wing opposition have publicly played up the threat of sanctions and international isolation although the international community has not taken such harsh action against Croatia. For the ruling coalition, reference to the possibility of sanctions may be used to prepare the electorate that eventually it may prove too costly not to send Bobetko to The Hague. The right wing has also warned about the possibility of sanctions, arguing that such economic measures would imperil Croatia's sovereignty.

As with Serbia's handover of Milosevic, economic conditionality may yet be used to force Racan's hand in sending Bobetko to The Hague. But for several reasons the international community, and the US in particular, may continue to apply only moderate pressure on Croatia.

⁷⁵ "EU ministers more lenient with Croatia than had been announced," *HINA news agency*, 21 October 2002.

⁷⁶ Interestingly, the Croatian government is going ahead with its formal application for EU membership in February 2003.

⁷⁷ "EU tells Croatia to hold off its membership application," *AFX News Limited*, 5 November 2002.

In contrast to Serbia, which was the target of NATO intervention and is widely regarded as the main culprit in the Balkan wars, there is far less global awareness of the crimes committed by Croatia's armed forces. World headlines have made the plight of Bosnian Muslims and the crimes of Bosnian Serbs an indelible part of the late twentieth century. Had they lived, former president Tudjman and his defense minister, Gojko Susak, would likely have faced indictments, and Croatia's role both in Bosnia and in the Homeland War would have likely received far greater international attention than it has. This relative lack of international awareness of Croatia's role in the war appears to go hand in hand with diminished international pressure on Zagreb to meet its legal obligation to cooperate with the tribunal.

The US role in the Balkan conflict may moderate the level of pressure it brings to bear on the Croatian government. Washington's support of the Tudjman regime in its bid to regain territory lost to the Serbs in both Croatia and in Bosnia may dampen its resolve to see Bobetko stand trial in The Hague. Furthermore, the United States' virulent opposition to the International Criminal Court has led to a diplomatic initiative to have countries sign bi-lateral agreements that ensure that they will not hand over American soldiers who could theoretically be indicted by the ICC. America's diplomatic initiative to obtain immunity for its own forces while pressing Balkan states to hand over war crimes suspects has undermined the moral force of its calls for Zagreb and Belgrade to fully cooperate with the process of international justice.

Continued government delay, and a decision by the international community not to intensify pressure, could give Racan the upper hand in its battle with the ICTY. Racan is searching for some sort of compromise or, as he has said, "an optimum solution" that will satisfy all parties.⁷⁸ However, there is little that the tribunal can offer by way of concessions short of allowing Bobetko to enter a plea in Zagreb, rather than traveling to The Hague, as the government has suggested. The government's claim that Bobetko is unable to go to The Hague because of deteriorating health got a new lease on life in mid-November when he was admitted

⁷⁸ "Premier Racan on 'Bobetko' case," *HINA news agency*, 20 September 2002.

to a Zagreb hospital.⁷⁹ Ultimately, the government's claim that Bobetko is too ill to stand trial may provide the government a way out of the crisis while dodging international blame. If that happens, Racan may again survive another indictment crisis. But Racan's success in discrediting the tribunal will not make the next crisis disappear any quicker when the next indictment is handed down from The Hague.

9. CONCLUSION

To the tribunals and their international supporters, the tribunals are founded on the principle of discerning individual responsibility, not casting collective blame. This principle is meant to separate those most responsible for war crimes from society as a whole in order to avoid a cycle of blame that may fuel new wars by demonizing an entire people. But the tribunal's definition of its own mission is seen differently in Zagreb, Belgrade, and Banja Luka.

The ICTY indictments of the Croatian generals raise the uncomfortable question that the Homeland War was not the cleanly fought, honorable battle portrayed by government leaders. In Croatia, accusing the tribunal of casting collective guilt has paid handsome dividends to nationalist forces both during and after the Tujman regime. Each new ICTY indictment provides another opportunity for the nationalists to reassert themselves as the defenders of Croatia's national sovereignty by portraying the tribunal as a foreign aggressor that, as General Bobetko says, seeks "to erase our history, condemn our freedom and remove from our memories the proud days of the struggle for a free Croatia."⁸⁰

The depth of national resistance to war crimes prosecutions throughout the former Yugoslavia underscores the importance of a creating an international institution such as the ICTY that has the fortitude to hand down controversial indictments. The UN Security Council established the tribunal as an independent institution with a mandate to uncover atrocities and

⁷⁹ "Croatian prime minister: Denouement in Gen Bobetko's case near," Croatian Radio, Zagreb, 14 November 2002.

⁸⁰ "General Bobetko says he will not surrender to Hague Tribunal," *HINA news agency*, 20 September 2002.

indict those responsible, regardless of whether they are on the losing or winning side of a war. The imperatives of stability and democratization may in certain circumstances provide a government with sensible reasons to delay or forego prosecutions. But the tribunal stands for the principle that there is no justifiable reason to obstruct its efforts to bring the perpetrators of war crimes to justice. Ideally, therefore, the tribunal stands outside the cauldron of domestic politics and the political considerations of domestic actors. In this vision, the tribunal does not need to act strategically either for its own benefit (by assessing whether a controversial indictment or judgment will jeopardize international and domestic support) or for the benefit of a government (by assessing whether a decision will bolster or undermine a democratic transition).

Both the tribunal and the government, however, are arguably bound together for better or worse in each other's political realities. In this sense, the tribunal is both a cause of political turmoil in Croatia but also a target of political pressure by Croatian officials. Although the tribunal's lack of enforcement powers renders it weak and dependent on states, it nevertheless has become a prominent actor in Croatia, Serbia, and elsewhere in the former Yugoslavia and thus, cannot be ignored. As this article has highlighted, the tribunal has affected the reformist government's fragile hold on power and the future of democratization in Croatia.

The political earthquakes set off by the handing down of controversial ICTY indictments raises the question of how far the tribunal should go in its efforts to prosecute war crimes and how sensitive it should be to the need for domestic stability in the on-going democratic transitions in Croatia and in Serbia. For many Third Wave countries emerging from authoritarian rule in the 1980s and early 1990s, trying to strike a balance between the need for justice and the need for stability constituted a major challenge of their transitions. Yet, with the emergence of the international ad hoc tribunals, a government's decision on when and whether to prosecute—or whether to pursue innovative alternatives such as truth commissions—is no longer entirely in its own hands. Croatian government officials have sought to play up the specter of instability in the hopes that the tribunal and its international community sponsors treat Croatia as a special and exceptional case. For its own interests, the tribunal must be concerned about stability in Croatia

and in Serbia since cooperation is more forthcoming under the reformist regimes than under the nationalists.

At certain moments of heightened crisis, there may be merit in the tribunal displaying some sensitivity to Croatia's internal political dynamics, for the benefit of the tribunal to continue to be in the best possible position to obtain future cooperation as well as to bolster a fragile democratic regime. The Chief Prosecutor could, for instance, delay a controversial indictment until after voters in Croatia go to the polls in the next election. Yet, Del Ponte's maneuvering room has been significantly curtailed by growing international pressure to complete her investigations and indictments quickly in order to enable the ad hoc tribunal to meet its tentative closing date of 2008. For the tribunal, delay will undermine its ability to prosecute all the targets of its investigations and may mean that those Croatian war crimes suspects deemed most responsible for war crimes never face justice. "There will be no second chance for our prosecutions," Del Ponte told the UN Security Council in October 2002. "We cannot sit back and wait, or engage in protracted negotiations with those who have a duty to comply with the Tribunals' orders or requests."

For Del Ponte and other tribunal officials, a key question is how sensitive the tribunal should allow itself to be. And if it is sensitive to the Croatian situation should it also be as sensitive to Serbia and as willing to delay prosecutions of Serb suspects? The latter proposition would not likely be well received in Croatia. Indeed, the ICTY's failure to arrest key Serb suspects—especially those accused of being responsible for atrocities against Croats in Vukovar—has long sparked strong criticisms from Zagreb.

If there are indeed domestic crises that are so dire as to warrant a delay in the handing down of an indictment, then how should the tribunal gauge the likelihood of such a crisis? How, for instance, does the tribunal—as well as other international actors—evaluate when the government's playing of the stability card is sincere or is being used to manipulate the international community? In 1999, when Tudjman failed to hand over Mladen Naletilic, an indicted Bosnian Croat war crimes suspect, then opposition leader Ivica Racan dismissed

Tudjman's justifications for the delay as a ruse. "What is at work here," said Racan, "is the primitive mentality of the state authorities which firmly believe that they will manage to fool the international community. The responsible people in the government protect those who should not be protected, and conceal things that should not be concealed at all."⁸¹ To what extent, if any, is Racan's past criticism of Tudjman's handling of the cooperation issue applicable to Prime Minister Racan's current handling of cooperation issue? Racan's apparent moral indignation in 1999 has made way to a new imperative—staying in power during an uncertain democratic transition.

While the indictments of the three generals have sparked the most serious crises in the post-Tudjman era, it is debatable where the responsibility for these crises lay. Is it the indictment itself that causes the crisis or rather the government's mishandling of the situation? The government is not a passive bystander to politics within its own borders, even though it often portrays itself to the international community as being rent by nationalist anger over the indictments. The government has managed to weather several cooperation crises and it may be in its power to continue to do so. As US Ambassador-At-Large-for War Crimes Issues Pierre-Richard Prosper has said, the government has an important role in ensuring that the indictments do not destabilize Croatia.⁸²

Not allowing war crimes indictments to reach the crisis level may rest on the willingness of mainstream Croatian politicians to confront the myths about the tribunal perpetuated by nationalists. The public's negative perception of the ICTY and of government cooperation can be altered through the articulation of a moral imperative to prosecute war crimes on all sides of the Balkan conflict. Whether or not the truth of Croatian atrocities against Serbs is accepted in Croatia—as well as whether the truth of Serb atrocities against Croats is accepted in Serbia—

⁸¹ Ivo Josipovic, *The Hague Implementing Criminal Law: The Comparative and Croatian Implementing Legislation and the Constitutional Act on the Cooperation of the Republic of Croatia with the International Criminal Tribunal and the Commentary*, (Zagreb: Informator, Hrvatski Pravni Center, 2000), p. 252.

⁸² *HINA news agency*, 6 October 2002.

may depend much more on how leaders respond to the tribunal than in anything that a tribunal outreach program or a tribunal judgment says. Toward that end, Mesic's explanations that the tribunal does not undermine the legitimacy of the Homeland War make him a uniquely courageous and important figure in Croatia.

At certain key junctures, it is in the tribunal's best interests to be mindful of the domestic consequences of war crimes indictments. Del Ponte's decision to go to Zagreb to seek the arrest of Ademi and Gotovina after Milosevic's transfer to The Hague is a clear example of how strategic timing of indictments can be useful, at least to the prosecution's aims to obtain state cooperation. Del Ponte's high profile visit to a mass grave in Vukovar in May 2002—although as overtly political as a candidate running for reelection—is also an example of sensitivity to Croatia.⁸³ Being sensitive in these ways may produce temporary gains, but will not solve the fundamental conflict that exists between an international tribunal pursuing its mission to prosecute atrocities and a government pursuing its mission to stay in power. Short of quashing controversial indictments, the tribunal will likely never be sensitive enough for domestic leaders facing pressure from nationalists. Ultimately, as Del Ponte says:

There will never be a “good” time to execute warrants and arrest notorious public figures. There is always some short term political consideration at work, some local power struggle or regional election... Broad concerns of this kind will always occupy the minds of those who have to struggle with the reconstruction of divided societies, and such issues will, of course, be uppermost in their minds. An ideal moment will never arise for the arrest of war criminals. But no system of justice anywhere in the world is expected to work that way. The right time to arrest a murderer is always “now, today.”⁸⁴

For Croatian government leaders—and for many of their counterparts throughout the former Yugoslavia—the question of facing the past is better left until tomorrow.

⁸³ “UN tribunal's chief prosecutor visits atrocity sights in Croatia,” *Deutsche Presse-Agentur*, 7 May 2002.

⁸⁴ Address by the Prosecutor of the International Criminal Tribunals for the Former Yugoslavia and Rwanda, Mrs. Carla Del Ponte, to the United Nations Security Council. 29 October 2002.