

# The ICJ ruling on genocide by Croatia and Serbia should be a starting point for genuine reconciliation between the two countries

[blogs.lse.ac.uk/europpblog/2015/02/10/the-icj-ruling-on-genocide-by-croatia-and-serbia-should-be-a-starting-point-for-genuine-recc](http://blogs.lse.ac.uk/europpblog/2015/02/10/the-icj-ruling-on-genocide-by-croatia-and-serbia-should-be-a-starting-point-for-genuine-recc)

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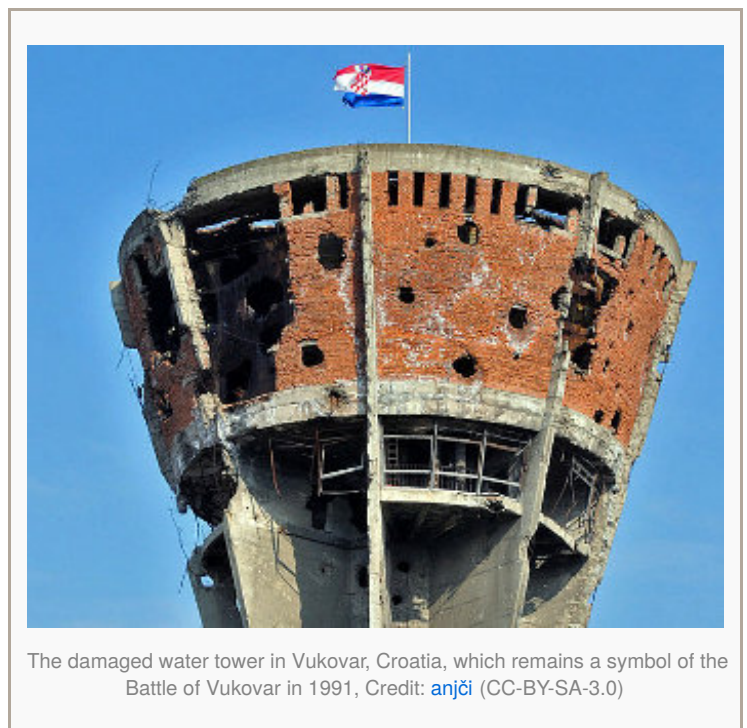
*On 3 February, the International Court of Justice ended a 16-year legal battle between Serbia and Croatia by ruling that neither country was guilty of genocide during the Croatian War in the early 1990s. [Denisa Kostovicova](#) writes on the response to the ruling in both countries, and what it means for attempts at reconciliation. She notes that while many of the responses highlighted some of the key problems which have prevented reconciliation from taking place, there are nevertheless some reasons to hope that the ruling could help draw a line under the conflict.*



Last week, the International Court of Justice (ICJ) [ruled](#) that neither Serbia nor Croatia committed genocide in the conflict in Croatia in the early 1990s. The Croatian war was one in a series of conflicts that accompanied the violent dissolution of former Yugoslavia. The Court ruled that both Serbia and Croatia committed serious crimes, but that specific genocidal intent was not established. The Court thus made a distinction between ethnic cleansing and genocide.

The verdict brought to an end a 16-year long lawsuit that started when Croatia filed the claim in 1999, accusing Serbia of targeting ethnic Croats. Serbia filed a counter-claim in 2010, accusing Croatia over the expulsion of Serbs in 1995. The rejections of Croatia's claim and Serbia's counter-claim – that were widely expected even in Croatia and Serbia – were hailed by international observers as the closing of a particularly unlaudable chapter.

The lawsuit was a costly tit-for-tat played out by the two sides at the top UN court. High political stakes prevented settling the case. No side could be seen to climb down after accusing the other of genocide. That would have been tantamount to national betrayal. Official international reactions echoed the Court's appeal to Serbia and Croatia. It was spelled out in the closing lines of the verdict, that they should 'continue their co-operation with a view to offering appropriate reparation to the victims of such violations, thus consolidating peace and stability in the region.'



Welcoming the ICJ verdict, Eduard Kukan, Member of the European Parliament's Committee on Foreign Affairs, said that Serbia and Croatia should work together 'toward a lasting reconciliation'. Key to this, according to Kukan, is finding 'a new common ground, one not based on the wartime rhetoric and on the past, but one based on the future, on the countries' European path and on their joint effort towards lasting peace and stability in the region.'

Serbian and Croatian reactions to the ICJ ruling fit neatly into a pattern that shows why reconciliation in the region has been elusive, some twenty years since the wars of the 1990s.

## **A mirror image of local reaction**

There was common ground between the reactions coming from Serbia and Croatia. Both leaderships accepted the ruling. They also referred to the 'future' and 'regional peace and stability'. Cynics might say that local leaders are good students when it comes to saying the right thing for an international audience. Statements aimed for domestic consumption bear this out.

The leaderships in both countries also shared their dissatisfaction with the ICJ ruling. Dissatisfaction stems from a lack of recognition from the UN's highest court of the *degree* of victimhood suffered by the two nations during the conflict in Croatia. But, the sides did not reject the ruling flatly because it was important for Croats and Serbs that their suffering was recognised.

Furthermore, dissatisfaction was tempered by an approval of the Court's dismissal of the other country's claim of genocide. Such reactions convey a belief of having achieved a successful defence of their interpretations of the conflict. In the case of Croatia, the operation against the Serbs was a 'legitimate military operation', according to the words of the country's Justice Minister, Orsat Miljenic. However, local human rights NGOs criticised the official discourse that supports only 'our cause'.

Overall, there was a lot of agreement in the reactions coming from Croatia and Serbia. But the agreement was not of the sort that indicates readiness to come to grips with hard questions about their own nation's criminal responsibility. Both sides view the past, and, hence, the ICJ ruling, through an ethnic lens. This means that victims are entitled to justice on the basis of their ethnicity and not on the basis of their suffering.

## **Dilemmas of reconciliation**

Responses to the ICJ ruling revealed the political dynamics that have stood in the way of reconciliation in the Balkans. While not leaving Croatia and Serbia with a clean slate, the ruling still offers an opportunity to reassess how reconciliation should be approached. This exercise may be instructive for the Balkan region as a whole. The process is bound to be marked by two dilemmas: how to engage the European Union and how to identify a local constituency for reconciliation.

Croatia became the 28<sup>th</sup> member of the European Union in 2013. Serbia is on its way to EU membership, having been granted candidate status in 2012. Clearly, European integration has thus far not managed to do for Serbia and Croatia what the European project did for Germany and France, only years after World War Two. They established the European Coal and Steel Community in 1951, while Serbia and Croatia are now counting the decades after their war.

While scholars discuss and disagree over the impact of the International Criminal Tribunal for the former Yugoslavia (ICTY), one fact is critique-proof. The international tribunal has prevented the denial of war crimes: a strategy which appealed to post-war leaderships in the region.

The EU has played an important role in this process by introducing ICTY conditionality. The dynamics of European integration of the Balkan states was linked to cooperation with the international tribunal, such as the extradition of war crimes suspects. But the EU has much more to offer and teach through its own example of post-conflict reconciliation. With the EU's vested interests in peace and security in the Balkans, it should lead to new thinking on how to encourage the process. A focus on a society that worked so well for the EU may be a good starting point.

A lack of inter-ethnic rapprochement in the Balkans also reflects to a large extent both elites' and civil society's loss of moral authority to lead reconciliation efforts. Political elites have too often instrumentalised victims and their suffering for their short-term political ends. Similarly, segments of civil society have proved to be ethnically-centred (not unlike the elites), and grant-oriented rather than justice-oriented. So, who can be the EU's partner in reconciliation in the Balkans?

There is no easy answer to this question, but the truth will out in different shapes and forms – even in the Balkans. Youngsters are querying their fathers in Bosnia-Herzegovina about what they did during the war; Albanian women are confronting social stigma and putting the issues of war time rape in Kosovo on the agenda; and some Serbian security officers are breaking their code of silence and speaking about the crimes committed by their units in Kosovo.

These examples show that there is an alternative to the ethnic rhetoric coming from national elites and from segments of civil society in the Balkans. This means that the socialisation of young generations into nationalist interpretations of the conflict may be prevalent, but is by no means inevitable. The above examples also show that there are local demands for justice. This means that there is a gap in our understanding of post-conflict justice in the Balkans, which is based on supply and diffusion (as well as subversion) of international norms. Lastly, they show that the passage of time does not dull the suffering and the quest for truth.

Unearthing and acknowledging what happened to all victims can lay the foundations of meaningful reconciliation. This is the challenge that needs to be met for reconciliation in the Balkans to stand a chance.

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## About the author

**Denisa Kostovicova** – *London School of Economics and Political Science*

Denisa Kostovicova is Associate Professor in Global Politics in the Department of Government and a Research Fellow at the Civil Society and Human Security Research Unit in the Department of International Development at the London School of Economics and Political Science. Her research interests include nationalism and democratisation in the global age, post-conflict reconstruction and security, civil society and human security, war crimes and transitional justice and European integration of Western Balkans.



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