

Power Over Justice: How to Try a Nation?
*International Criminal Tribunal for the Former Yugoslavia and the Tacit Approval
of the International Community*

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Útdráttur

Í ritsmið þessari verður Alþjóðlegi stríðsglæpadómstóllinn fyrir fyrirverandi Júgóslavíu tekin fyrir með það að markmiði að kanna hvort pólitísk markmið liggi fremur að bakvið virkni hans en almennar hugsjónir um réttlæti. Hafist verður handa við að greina frá ráðandi kenningaskólum Alþjóðasamskipta raunhyggju og fjálslyndisstefnu og verða þeir nýttir við greiningu þá sem sett verður fram. Sögulegt samhengi loka Kaldastríðsins verður þá tekið fyrir þar sem þær aðstæður sem þá sköpuðust í alþjóðakerfinu höfðu veigamiklar afleiðingar í för með sér er varða þann dómstól sem tekinn er fyrir. Dómstóllinn var stofnaður árið 1993, við upphaf einpóla valdasamsetningu alþjóðakerfisins og í andrúmslofti krafa um réttlæti og átakahjöðnun en réttast er að taka til slíks félagslegs samhengis þegar greint er frá viðfangsefninu. Því næst verða tekin fyrir rök sem benda til þess að dómstóllinn þjóni pólitískum markmiðum og lagt mat á þau samhliða umfjölluninni. Er það niðurstaða höfundar að dómstóllinn hafi ítrekað sýnt viðleitni til að þjóna sem pólitískt stjórnæki stofnenda hans og að kenningarskóli raunhyggju skýri með viðeigandi hætti viðleitni hans til þess að haga sér með þeim hætti.

Abstract

This thesis examines the way that the International Criminal Tribunal for the former Yugoslavia is politicized. This thesis begins with an explanatory theoretical framework of two schools of International Relations: realism and cosmopolitanism. Those two schools of thought outline how agents function in the International arena of anarchy, eminently states. In this thesis, we will use the frameworks in order to explain the behavior of the Tribunal. The end of the Cold War in the 20th century will be discussed, which marked a switch in International Relations. There was no longer a balance of power and the bipolar world between East and West disappeared; The U.S was then able to act and behave as the only global superpower. In 1993, the International Criminal Tribunal for the former Yugoslavia was established in order to bring justice and end violence. The main topic of this thesis is to research the biased behavior that took place from the moment the Tribunal was established, given that it breaks the law and is unsupported by argument.

The author concludes that the International Criminal Tribunal for the former Yugoslavia is a political tool, its behavior is explained by realist approach.

Preface

This 12 ECTS credit BA thesis is my final project for my 120 ECTS Bachelor's degree in the Political Science Department of the University of Iceland. This subject was indeed a challenging one, but this thesis began to form in my mind a long time ago. I was just a young girl when the Yugoslav wars took place. I never knew what was really going on around me. All I understood was fear and anger, but I knew that when I was older, I would find out. This idea formed in my mind when, during one period of my life, I woke up every morning to see my family watching indictments of the ICTY on TV. I could not properly understand what it was all about, but I understood what a biased argument it was, regardless of who was stating it. It was then when I decided to embark on my present journey to find out why the disintegration of Yugoslavia took place, and why an International Court would be so biased.

The discussion of former Yugoslavia in the Western environment has always been based on one point of view, and that kind of environment makes it difficult to prove your point. My willingness to reject the International Court as a lawful one is influenced by Professor Noam Chomsky. When I was a teenager, he was one of the few who argued that the Yugoslav wars and the Tribunal were motivated by a political agenda. This influenced me, and made me want to learn more about the Tribunal, including its emergence, how it functions and what law it is based on. However, I would not have been able to complete this thesis without the support of a few very important people. I would like to thank my mentor, Bradley Alfred Thayer, who believed in me, and reminded me every time *why* I was writing on this subject. You are my inspiration. Of course, I must also thank my mother for her endless encouragement. My friends, Zorana for her inspiration and Matthías for his guidance, also deserve my gratitude. I would also like to thank my aunt Ivana for her support.

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1.0 Introduction

The end of the Cold War in 1989 preceded the breakup of the Soviet bloc in 1991, but Yugoslavia still existed. At that time, it was known as the Socialist Federal Republic of Yugoslavia (SFRY), non-aligned, geopolitically outside the Soviet bloc, and under the strong political leadership of Josip Broz Tito. It constituted six socialist republics: Bosnia-Herzegovina, Croatia, Macedonia, Montenegro, Serbia, and Slovenia.

International relations (IR) changed dramatically after the Cold War, as the fall of Communism and the emergence of a unipolar world had an impact on the rest of the world. The disintegration of Yugoslavia began in 1991 following a massive civil war in Croatia, Bosnia-Herzegovina and in the former Serbian province, Kosovo. The war in the Balkans received international attention, and the *ad hoc* International Criminal Tribunal for the Former Yugoslavia (ICTY) was established in 1993, in an effort to end violence and pursue justice for the people of the Balkans. In 2001, Slobodan Milošević, the former president of the Federal Republic of Yugoslavia (Serbia and Montenegro) was charged with war crimes and crimes against humanity. Milošević exclusively refused to recognize the Tribunal's legitimacy. As he stated in his own words, "I declare this a false tribunal and the indictment a false indictment (Milošević 2001). Despite the fact that the Tribunal was established to provide justice for all those affected by the war, it solely prosecuted Serbian nationals. At no point has it questioned the legitimacy of NATO's military actions and its neutrality must be questioned when looking at the nature of the cases prosecuted, as opposed to the ones dropped. This thesis is intended to question the ability of international law and justices to remain purely devoted to the concept of justice; in order to do so, I will demonstrate, by use of case studies, indications of the International Tribunal for the former Yugoslavia having served as a political tool for those responsible for its establishment. The international community accepts the Tribunal as just and a follower of law, and the main purpose of this thesis is to correct that record. The indictments of the Tribunal have been misrepresented and biased, as well as the conflicts that took place in former Yugoslavia. By the use of the theoretical framework provided by realism and cosmopolitanism, the author will demonstrate the cosmopolitan and Kantian approach of IR that morality and international law is possible in IR. It will lean on a realist approach of IR that interests of states are prevailing in international politics. I will answer the following question: Is the ICTY a political tool, rather than one governed by law and justice?

2.0 Methodology

The qualitative content analysis will be used to examine if and how the U.S. and Europe used the War in Yugoslavia to provide themselves with the ICTY and thereby legitimize their power position in the region. Realist and cosmopolitan theoretical perspectives will be used to articulate whether the Tribunal's tendency to be used as a political tool is true, or not.

Historical evidence from IR academics, books, and articles will be used in this thesis as well as indictments and Mandate of the ICTY, UN Charter, and international law, will be analyzed, all in the English language. Furthermore, it will examine historical books and articles about the Balkans. It is important to mention that the historical records of the Balkans will be from the perspective of the south Slavs, mostly by south Slavic writers. Part of the analysis is also based on the work of a journalist, Marlise Simons, and her coverage of ICTY for the *New York Times*. Simons was the main reporter on ICTY for the *Times*, and also the lead reporter in the Balkans. The analysis is based on her study from 1993-2003; in her work, Simons is highly dependent on the ICTY and NATO officials for her information.

3.0 Theoretical Perspectives

Chapter 3 discusses that in an anarchical world, *all* states behave the same. This chapter will examine the differences between domestic policies of states and foreign policies. If this subject is not brought up in a discussion, then states are able to hide behind terms, such as democracy and morality, which they practice inside their own state. Those states also have the capacity to paint the world as good (democratic) vs. bad (undemocratic). In order to examine the ability of an international tribunal to remain devoted solely to the concept of justice and not serve as a political tool for an international actor, the author has chosen to make use of the theoretical perspectives of realism and cosmopolitanism, as these traditions comprehensively highlight the concept of power in the international context.

3.1 Realism

The language of duties claims that we, as human individuals, have certain obligations and moral responsibilities towards others. States, of course, have obligations, but to their own people. Citizens of certain states have duties to their state, such as those found in a constitution, which is a contract defining the responsibilities and duties of citizens of their state. IR academics argue that the “community” that exists inside each state does not exist in the international arena of anarchy. As there is no contract or constitution, the term “international community” is a rather empty one (Barnett 2012).

Classical realist Hans Morgenthau made the realistic study approach dominant by simply linking power to national interests. Morgenthau’s purpose was to try to develop a theory that could explain the behavior of all sovereign states (Carlsnaes 2012). Morgenthau began his career as a theorist of international law. In his first book, published in Paris in 1929, he argued the supremacy of politics over the law in IR. The hallmark of the realistic approach came in his other book, published in 1934, *La réalité des normes, en Particulier des normes de droit international*. The main aim of this study was to think about the doctrine of fundamental legal norms and their aftermath, in order to prove the impossibility of international law. Morgenthau claimed that “International politics, like all politics, is a struggle for power.” (Voina-Motoc 1999).

After the outbreak of the Second World War, many continued to view the world through a realist lens. Realism remains so dominant in IR because it focuses on recognizing the power of politics, not ideology.

The assumption is that the state is the key actor in IR, and to survive, it must pursue power because its survival is *not guaranteed*. Therefore, realism is skeptical about the

optimistic view of the West that occurred after the Cold war – the ideology of universal moral principles. Realism claims that a term such as *universal moral principles* does not exist in the world of *realpolitik*. If states are forced to survive, as realists claim, then the state must withdraw from universal morality (Dunne and Schmidt 2014). Realism offers a skeptical view of the "Peace through law" ideology; this perspective is impossible within realism. In the international arena, the law is barely law; instead, it is a tool for states to achieve their political agendas, and the law is a disguise. Powerful states misuse the law and claim it as being important only when they can see a use from it; in other words when it can serve their own agenda (Reus-Smit 2014). If the law does not exist, the same is true for the term *human rights* (Donnelly 2014).

Realism in practice would be someone who would support the bombing campaign of a neutral state if it would serve the aggressive state's military agenda to defeat his enemy. Another example may also be supporting tyrannical governments with poor human rights behaviors. It is therefore very clear for realists that almost any justification that comes from states regarding action on ethical grounds is only done for the state's own self-interests, namely the duty that they have to their own people. Ignoring the realist approach in the name of a utopian ideology of morality would be a dereliction of the state's own duty (Shapcott 2014). Despite historical records of international law pursuing justice, realists argue that international law enforcement remains dependent upon *ad hoc* enforcement measures taken by superpowers. Realists would argue for looking into the underlying distribution of the power of certain states in order to understand international criminal justice (Lamont 2010).

3.1.1 Hypothesis one

If realism is accurate, then the determination and approval of the international community to establish the *ad hoc* ICTY was done by self-interest. If that is the case, then the ICTY is a delusion or a mask and the Tribunal does not behave as a moral institution in a world of *realpolitik* international law where justice does not exist.

3.2 Cosmopolitanism

International ethics is an approach concerned with the principles of human duty, which are supposed to be moral. A challenge within the field of ethics is that a world of anarchy reinforces the self-interest of states (Shapcott 2010). Contemporary cosmopolitanism traces its roots to the political writings of Immanuel Kant, around the time of the French revolution (Kant and Reiss 1991). Kant developed an academic approach that emphasizes "right" principles that can be agreed upon by everyone. His ideas have their roots in a European

ideology of secularism and the role of natural law (Dunne 2014). Kant argued that "states need to put an end to the lawless condition of warfare" (Kant and Reiss 1991).

Cosmopolitanism requires one national identity, where obligations must be required and balanced to everyone – neighbors, friends, strangers, and all of the humanity. States, as rational actors, should act morally according to the universal law (Shapcott 2014). The dramatic shift that took place after the Cold War in IR marked a new era of widespread economic freedom and democratization, which was widely perceived as possessing American and Western qualities. It was an era of optimistic thought, where it was possible to carry out international cooperation, like strengthening the role of international institutions, such as the UN. The 1990s was marked by conflict, first between Iraq and Kuwait (Heynes et al. 2011), and then the disintegration of the SFRY in 1991, with the following civil war (Chandler 2002). The world was entering a new stage of IR, a unipolar world, and the U.S has been the only superpower since the end of the Cold War (Heynes et al. 2011).

3.2.1 Hypothesis two

If cosmopolitanism is more accurate, then the determination and approval of the international community to establish the *ad hoc* ICTY should have been done in order to pursue justice and uphold international law. If that is the case, then the ICTY should be neutral and behave as a moral institution, and bring everyone who committed crimes in former Yugoslavia to face a court of law.

4.0 Historical overview of IR after the Cold War

Chapter 4 is a discussion of the historical background of International Relations (IR) and the dramatic change that took place after the Cold War. During the time of the Cold War, the international community was a bipolar system that resulted in much greater stability. That all changed with the fall of Communism, the emergence of the unipolar world, and U.S. dominance. The historical perspective of IR after the Cold war is important because it had an impact on the whole world.

4.1 Post-Cold War

The end of the Second World War resulted in a new world order dominated by two superpowers. The causes of the Cold War included the ideological debate between the USSR and the U.S., as well as a mutual concern about the other's intention (Cox 2014). The Cold War created stability – a bipolar world – where no one superpower was dominant. With the fall of the USSR in 1991, the U.S. had a new role to play. Even though the U.S. was considered the greatest power on earth during the Cold War, it suddenly had the opportunity to act as one. The end of the Cold War was a moment of victory for the U.S.; essentially, a dominant power filled the role to reshape the world how it saw fit (Waltz 2000). The world has been witness to U.S. dominance for some time, as they have imposed their hegemonic policies all around the world. It was no different for the Yugoslav wars in the 1990s, as former U.S. president, Bill Clinton, had increased the power of the U.S. and could impose his own solutions during the Yugoslav wars. He also pushed for the enlargement of NATO, driving the western military alliance more Eastward (Cox 2014).

4.2 Globalization: The apparent change of values and morality in the international community

Globalization is a term that has more than one meaning. It can refer to the expansion of global free markets, but after the Cold War, globalization also has a growing connection to international law and justice (Shapiro 1993), from the UN system, the EU, the desire for changes of laws of war, and to the determination of will for human rights to the establishment of an International Criminal Tribunal for the former Yugoslavia (Held 2002).

Over 200 years ago, Immanuel Kant argued in his work that regarding humankind, states and individuals should act as one universal state towards each other (Cavallar 2012).

Violence and the violation of law and justice in one place may also spread to other places and can be experienced everywhere. In our world, there is no real desire for the unity of national community – we are all one species. Rather, we live in a world that Professor of

Politics and International Relations, David Held, calls "overlapping communities of fate", where countries are in constant interaction with each other (Held 2002).

In May 1993, the UN Security Council took a new decisive step and established the International Criminal Tribunal for the Former Yugoslavia (ICTY) to maintain international peace and security, as well as bring justice. It was an explicit relationship between peace, justice, politics and law (United Nations 1999).

Former UN Secretary-General, Kofi Annan, argued for the establishment of an International Criminal Court: "In the prospect of an international criminal court lies the promise of universal justice. The Tribunal was established to charge those who committed crimes during the Yugoslav wars, and bring justice to its people" (Kofi Annan, at the Diplomatic Conference in Rome 1998, in United Nations 2009).

5.0 Historical background of Yugoslavia

In Chapter 5, a discussion of the history of Yugoslavia will be examined, all the way from the Byzantine Empire until the death of the Yugoslav president, Tito. The emergence of the Yugoslav ideology throughout history occurred due to the country's occupation from multiple superpowers. It is a realist ideology, which tells us that the south Slavs could only be free and control their own lands by establishing their own Yugoslav state, only then they could assure the survival of their state in a world of anarchy. The history of the former Yugoslavia is important in order to refute the western accusation of "Serbian dominance", and argue that the emergence of the ICTY was based on the interest of other states.

5.1 The Byzantine, Ottoman and Austrian Empires

For centuries, several national groups and the followers of three major religions have lived within this comparatively small territory. The Balkans is a region of Southeast Europe located at a remarkable crossroads of Europe and the Near East. It is not just the distinct identity and fragmentation of the Balkans that explain their violent history, but also the importance of their geopolitical location. The history of the Balkans is one of occupation that has created divisions between Slavs that are still evident today (Šimonović 1999). The influence left by the Byzantine Empire on the political and cultural development of the southern Slavs is extremely strong. The hallmark of Byzantine influence in the present is the Christian Orthodox religion, which has played a prominent role in Slavic culture. Obviously, the degree of Byzantine impact is to a great extent determined by geographical position (Otrogorsky 1963). The Byzantine Empire survived the fragmentation and fall of the Western Roman Empire in the 5th century AD and survived for a further thousand years until it fell under the occupation of the Ottoman Turks in the 14th century (Teall 2016). The hallmark of the Ottoman Empire was also its religion, in their case, Islam. This made part of the Slavic population Muslim, while the rest were Christian Orthodox. This conversion created a division among the southern Slavs (Buban 1999). In addition, the Slavs were exhausted after centuries of occupation under various empires. The very first ideology proposing a southern Slavic state emerged in the 17th century among Croat writers and philosophers. They pushed the argument that the Slavs could only regain their lost freedom by uniting against authoritarianism and tyranny (Cohen 1995).

5.2 World War I and the Kingdom of Yugoslavia

In 1878, the Austro-Hungarian Empire occupied a territory in the Balkans, which today is Bosnia. The Slavic population, mainly Croats, was greatly influenced by the Roman Catholic

Church. With the occupation of the Austrians, Yugoslavia came under threat.

The Yugoslav revolutionary movement, Young Bosnia (Serbo-Croatian: Mlada Bosna), which included Serbs, Muslims (Bosnians) and Croats, promoted the Yugoslav ideology of a southern Slav unification of territories. Arch Duke Franz Ferdinand of Austria was killed by a revolutionary Serb member of Young Bosnia, Gavrilo Princip. This marked the beginning of a strong Yugoslav nationalist movement among the southern Slavs against Austrian rule (Djokić 2003). At his trial in 1914, Princip stated: *"I am a Yugoslav nationalist, aiming for the unification of all Yugoslavs and I do not care what form of state, but it must be freed from Austria"* (Princip 2003 p. 14). Austrian's and German's had planned to expand their empires to the East, Princip's act is considered to be one of the main reasons for the outbreak of World War I in 1914 (The Weight of Chains 2010).

During World War I, many Yugoslav politicians formed a Yugoslav Committee (Serbo-Croatian: Jugoslavenski odbor) in London, where they had made their headquarters. This was a political interest group promoting the ideological goal of an independent Yugoslav state (Mladinić 2007). In 1917, towards the end of the war, the Committee met with the Serbian Parliament in Corfu, Greece, where the creation of the Kingdom of Yugoslavia was established by what was known as the Corfu Declaration. The Declaration was signed by the Yugoslav Committee, which represented Slovenes, Croats and Serbs, and the representatives of the Kingdom of Serbia under the principles of national self-determination. The Declaration was the first step towards building the new State of Yugoslavia (Sotirović 2014). The Corfu Declaration stated that, "the Serbs, Croats and Slovenes were the same by blood, by language, by the feelings of their unity, by the continuity and integrity of the territory which they inhabit undividedly, and by the common vital interests of their national survival and manifold development of their moral and material life" (Corfu Declaration 2010). The Old World order was gone; the creation of the first Yugoslav state was in 1918 (Sotirović 2014) – the Kingdom of Serbs, Croats and Slovenes, and later the Kingdom of Yugoslavia. The Kingdom of Yugoslavia was short-lived, another war was about to break out (Weight of Chains 2010).

5.3 The Socialist Federal Republic of Yugoslavia

In 1941, the Axis powers invaded Yugoslavia, known as the *Invasion of Yugoslavia* (Serbo-Croatian: Aprilski rat/Travanski rat) or the April War (Tomasevich 1975). This was mainly accomplished by German forces, but also Italian, Hungarian, Bulgarian and Albanian forces. An anti-Axis resistance movement, the Royal Yugoslav army (exclusively made up of Serbs) tried to act, but without success; they were weak compared to the Germans (Weight of Chains

2010). A Croatian fascist organization, the Ustaše, along with Nazi Germany, created a Catholic hierarchy (Parenti 2002). Croatia and Bosnia-Herzegovina were united into a fascist state (Weight of Chains 2010) under the Ustaše regime called the Independent State of Croatia. It was a brutal state where a large ethnic cleansing took place, most of it at one of the largest concentration camps in Europe, known as the Auschwitz of the Balkans, Jasenovac (Parenti 2002).

An anti-Axis resistance movement, the communist Yugoslav Partisans, which promoted the Yugoslav ideology, had significant support among local people in the territories of the former Yugoslavia (Wilmer 2002). Their leader was a Croat, Josip Broz Tito, who was largely supported by the general population. In 1945, Yugoslavia was liberated by the Partisans when they defeated the armed forces of fascist Croatian Ustaše and the Germans. Yugoslavia was liberated and a new state was formed – the Socialist Federal Republic of Yugoslavia (SFRY), under the leadership of Josip Broz Tito (Weight of Chains 2010). The Federation included six socialist republics: Slovenia, Croatia, Bosnia-Herzegovina, Serbia, Montenegro, and Macedonia. It included two autonomous provinces within the Serbian Republic: Vojvodina and Kosovo (Lutz and Lutz 2013).

Socialist Yugoslavia was built on the Yugoslav ideology that promoted brotherhood and unity (Mesić 2004). Together, they could live in a peaceful and substantial territory. After World War II, Socialist Yugoslavia enjoyed remarkable economic success and development. “Between 1960 and 1980, it had one of the most vigorous growth rates: a decent standard of living, free medical care and education, a guaranteed right to a job, one-month vacation with pay, a literacy rate over 90 percent, and a life expectancy of 72 years.” Yugoslavia also offered its multi-ethnic citizenry affordable public transportation, housing utilities with a not-for-profit economy that was mostly publicly owned – a market–socialist economy (Parenti 2002).

Yugoslavs were proud of their postwar economic development and their independence from a bipolar world, due to their independence of both the Warsaw Pact and NATO. At the time of the Cold War, Yugoslavia developed its "independent world politics", and pursued a policy of neutrality after the Tito-Stalin Split of 1948 (Perović 2007). Yugoslavia was one of the founding members of the Non-Aligned Movement, which was a movement with groups from the majority of world states that pursued independent policy and tried to resist major pressure from the major powers. The states within the movement were not formally aligned with or against any major power bloc ("NAM Description and History" 2001). Josip Broz Tito died on May 4, 1986, and his funeral was the largest state funeral in recorded history (Vidmar

et al. 1981).

Furthermore, 1989 was the beginning of a different era of international relations; it marked the beginning of the unipolar world with the fall of the Berlin Wall in 1989 and the USSR in 1991 (Haynes et al. 2011).

5.4 Disintegration of Yugoslavia

The disintegration began in 1991 when Croatia and Slovenia wanted independence from SFRY, based on the justification of the “right of the Croat and Slovene nation to self-determination”. The Yugoslav constitution states the right to self-determination, including that secession was in the hands of the nations, i.e., to the ethnic groups recognized in the constitution: Croats, Macedonians, Montenegrins, Muslims (added in 1974), Serbs and Slovenes. The West, notably the United States, immediately recognized the independence of Slovenia and Croatia. There was, however, one problem; the borders of Slovenia and Croatia that were recognized by the West were SFRY old boundaries between the six republics. There were other ethnic groups trapped in the newly independent states, and therefore, the decision was not in conformity with the constitution. By 1992, Bosnia-Herzegovina also declared independence, a move supported by the West, Croats, and Muslims, or Bosnians, as they are called today. However, ethnic Serbs then living in Bosnia-Herzegovina wanted to remain with the SFRY, in the borders of their own ethnicity. Europe and the U.S. supported a violation of the SFRY’s constitution, which trapped ethnic groups because they wanted the SFRY to break up for their own interests. They were a part of every step that caused that to happen.

In SFRY, all the ethnic groups lived in one state, under one law, one constitution and one government. That all changed with the breakup of SFRY and the declaration of the new states; the federal protected rights no longer existed (Peterson and Herman 2002).

Serbia and Montenegro remained, and formed the Federation of Yugoslavia (The Weight Of Chains 2010). In 1993, conflict erupted in former Yugoslavia, which resulted in ethnic cleansing. The conflict commanded international attention, and in order to bring an end to the suffering, the UN Security Council established the *ad hoc* ICTY in Hague, Netherlands. At the UN Conference in Rome 1999, former UN Secretary-General, Kofi Annan, argued that International Criminal Courts are established to pursue universal justice (United Nations 1999). Many lawyers and journalist claim that the Tribunal is legitimate and one of the main arguments is because it was established by outside powers that were not involved in the conflict. Those powers that supported the creation of the ICTY had already chosen “their” side in the Yugoslav wars and were later involved. The involvement of the West is not just

much on the surface. The question of whether the current international justice system is a favorable environment for International Court remains unchallenged. The balance of power is in favor of the U.S. (Johnstone 2002). There is not a single state in this world that is a moral institution, particularly not a superpower when it is trying to accomplishment its foreign policy.

When certain crises appear around the world, they receive significant attention in the media and within certain parts of society, and governments try to respond to them – particularly the superpowers (Peterson and Herman 2002).

Yugoslavia suffered a great civil war in the 1990s, and although the media misrepresented the war, it was prejudicial. While the destruction of the SFRY took place, it was easy to perceive the external causes, since Western powers had masked their political interest and ideology by providing the world with a view of Serbian nationalism and their idea of “Greater Serbia” as the main cause for the Yugoslav collapse. The *New York Times* narrative of the indictments at the ICTY, as well as the BBC documentary about the collapse of the SFRY, were biased, and based their argument on believing everything that comes from the West.

5.5 Geopolitics and Nationalism

The reason for the formation of a single Yugoslav state was so that the Slavs could have their own freedom, as well as independent politics. That discussion was very much ignored when the SFRY problem was presented. Rather, Yugoslav state was represented as tenuous, (Herman and Peterson 2007) which resulted in a bloody war that emerged in the three most ethnically mixed regions: Croatia, Bosnia-Herzegovina and Kosovo (Serbia) (Cohen and Warwick 1983). The real problem of the SFRY was a geopolitical question, not a national one. With Tito’s death in 1986, and the collapse of the USSR in 1991, the SFRY was no longer needed by the U.S. As the U.S. ambassador to Yugoslavia, Warren Zimmermann argued in 1989 that Yugoslavia no longer served the same geopolitical importance as it had done at the time of the Cold War (Zimmermann 1995). The best way to destroy a country is to weaken its economy, and that was exactly the first step by the Reagan administration after Tito’s death. There is a lot of evidence for the involvement of the IMF, World Bank, and the National Endowment For Democracy (NED) in the destruction of the Yugoslav economy (The Weight of Chains 2010). This might not be the right place for such a discussion, but the economic accomplishments of the West had serious consequences. Citizens of the SFRY lost

their belief in the federal system, which resulted in a rise of republicanism and nationalism (Cushman and Hayden 2001).

6.0 International Tribunal for former Yugoslavia

Chapter 6 is a discussion about the historical background of the ICTY, namely that it was established to bring “justice”. There are however evidence supporting that it has done the opposite, as the Tribunal is biased and unsupported by arguments. Throughout its existence, it has mostly resulted in indictments of Serbs, while releasing major war criminals at the same time. This chapter will argue that the Tribunal is indeed a political one.

6.1 Framing

“It is very common for something like a party line to emerge in U.S. mainstream media when they deal with a demonized targeted accused of misbehavior. In such cases, the media quickly jump onto a bandwagon that takes the official and politically convenient view as obvious truth, and they then devote their efforts to elaborating on that truth “ (Peterson and Herman 2004).

It was no different for the Balkan conflicts in the 1990s; for the SFRY, there was a Communist who was the “bad guy”, a dictator that abused his power and used nationalism to mobilize his citizens (Suvillian 1999). There was an evil man who wanted to establish “Greater Serbia” and committed great crimes, ethnic cleansing and genocide, mainly carried out by his (Serbian) forces. The West, led by the U.S., entered the war by bombing the evil forces in Bosnia-Herzegovina, and forcing the peaceful Dayton Agreement. The West also had to jump in to prevent additional ethnic cleansing of Kosovo Albanians. The ICTY was organized to bring justice to the people that he and his forces had committed, as well as other crimes; cooperation was forced from the West so that they could bring further justice and reconciliation (Peterson and Herman 2004).

The story of the “bad communist”, which is contestable on each side of the claim, entered the realm of the journalists and editors at the *New York Times*. Marlise Simons was tasked to cover the ICTY for the *Times* from 1994-2003. The most obvious evidence in Simons’ report is that she never refers to a single independent expert, many of whom have questioned the Tribunal’s purpose, methods, or evidence. Among these critics have been: Professor David Chandler, General Lewis Mackenzie, lawyer Michael Mandel, anthropologist Robert Hayden and others (Peterson and Herman 2004).

Overall, for Marlise Simons, her coverage of the ICTY is described as moral and independent from any political bias. The main role of the ICTY is to seek justice with respect to Western judicial standards.

That was Marlise Simons' frame, and she never questioned the ICTY or contested it. However, Simons contested certain claims about the post-Balkan history as unarguable truths (Cohen 2001) (Johnstone 2002). The Tribunal has violated many Western judicial rules in order to achieve its political goal. The alternative frames have been criticized by almost 20 independent experts, some of whom were named above and ignored by Simons and the *Times*. Given the example, the alternative frames were only accepted in the arguments of Slobodan Milošević, who condemned his incarceration and trial, arguing that the ICTY was generally political and unjust (Peterson and Herman 2004).

6.2 U.S. and fear of International Criminal Court

Certain arguments support the hypothesis made, beginning with the idea that the ICTY is truly under U.S. control. The United States had refused cooperation with the widely legitimate International Criminal Court based on arguments of it being politically biased, but had no trouble supporting the ICTY. The U.S. refuses to cooperate with the ICC because of their interests (Scheffer 1999). The U.S. and its allies, Germany and Britain, were the founders of the ICTY under UN Security Council Resolution 827, (SC. Res 827). Besides taking on a huge role in establishing the court, the U.S. has also sought to staff it, analyze the performance of its judges and prosecutors, as well as serve as its main contributor of data and information, thus providing it with political support. The U.S. has never refused any cooperation with the ICTY, as it has no fear of the ICTY, because the U.S. plays such a big role in the ICTY itself (Gow 2010).

6.3 Tribunal and relationship with NATO

In 1999, NATO bombed the Federal Republic of Yugoslavia (Serbia and Montenegro) in order to prevent the ethnic cleansing of Kosovo Albanians (Russia Today 2014). Dissident legal experts and others tried to challenge the Tribunal to begin an investigation of NATO related to their crimes in the Balkans (Peterson and Herman 2004). NATO Spokesman at the time, Jamie Shea, reacted to the challenge: "I believe that when Justice Arbour starts her investigation, she will because we will allow her to. It's not Milošević that has allowed Justice Arbour her visa to go to Kosovo to carry out her investigations. If her court, as we want, is to be allowed access, it will be because of NATO so NATO is the friend of the Tribunal," (Shea 1999).

What is interesting when looking at Simons' report is that neither the *Times* nor Simons mention Shea's words, which is an obvious statement about NATO control over

ICTY; instead, what Shea is claiming is that “he who pays the piper calls the tune” (Sellars 2002). What Shea points out will surely exclude NATO and their officials from prosecution.

Simons and the *Times* also never mentioned the link to the NATO website, which was placed on the ICTY home page the entire time that it was “considering” the request of charging NATO with war crimes (Mandel 2001).

American political writer, Diana Johnstone, held that the Tribunal had become a NATO police force on May 9, 1996, when a Tribunal prosecutor signed a “memorandum of understanding”. Essentially, it was named a police force that assists and delivers material evidence. Therefore, the ICTY is *dependent* on NATO, a western military alliance (Johnstone 2002), and as the organization funding the tribunal, NATO certainly has an impact on the policy of ICTY (Peterson and Herman 2004). Article 16 of the ICTY charter states that a prosecutor must act *independently* and is not allowed to seek or receive any information from any governments (United Nations 2009). How can a prosecutor act independently if it depends on certain governments for funding, data, staff, and police services? Michael Scharf, who wrote the ICTY charter for Secretary of State Madeleine Albright, argued in 1999 that the Tribunal’s mandate is a policy tool, indictments would be unfair and isolate leaders diplomatically (Scharf 1999).

On the other hand, the Tribunal’s prosecutors say that they are completely independent, and insist that their jobs are not based on anyone's agenda besides the pursuit of justice. As for Simons and the *Times*, they have not have questioned any of the things mentioned below, they see the ICTY as a tool to bring justice, so when it enters the “news”, it is therefore “truth” (Peterson and Herman 2004).

The former prosecutor of the Tribunal, Arbour, went on a trip to all the NATO countries, where her entire trip seemed to be about showing everyone the great things that the ICTY had accomplished; in other words, the former prosecutor was only getting support for one side of the Yugoslav wars. Arbour then went to a press conference with Robin Cook, a British Labor Party politician and chief of staff General Sir Charlie Guthrie. Answering at the press conference when asked about the skepticism of the Tribunal, she stated that it was impossible for the Tribunal to be serving as a political tool (Peterson and Herman 2004).

6.4 Milošević

Milošević was sold to the Tribunal by the Serbian government in 2001, in hopes of getting international investment in Serbia in return. Instead, they got a gift from the ICTY: Serbia was blamed for all the wars of Yugoslav disintegration in the Western media, which

made it easier to plan a conviction against Milošević and the rest of the Serbian leaders by the Tribunal (Johnstone 2002).

As mentioned before, The Federal Republic of Yugoslavia was bombed in 1999, without any permission from the UN Security Council, and as the bombing continued, civilians were increasingly targeted by NATO. In 1999, numerous lawyers from Canada and Europe challenged the ICTY prosecutor Louise Arbour. They were applying to her, accusing the U.S and NATO officials of war crimes. Michael Mandel, a lawyer, and a professor of Osgoode Hall Law School of York University in Toronto, where Arbour was also once a teacher, claimed that it would be a victory for the law, if this time, the winners of the war were also charged. This is one of many examples where international juries have criticized illegal acts of NATO, while simultaneously being ignored by the mainstream media. Instead, Arbour charged Milošević and others officials from the Yugoslav government as being responsible for crimes against humanity and war crimes committed in the former Serbian province of Kosovo (Johnstone 2002). In that case, Serbia had not attacked anyone, unless there is a new concept integrated with moral principles where a country can invade itself (The Weight of Chains 2010).

Arbour was provided with material by the U.S *government*, only a day before her indictment took place. The ICTY was provided with evidence from a special U.S intelligence unit, the “Interagency Balkan Task Force”, hosted by the CIA, with input from the Defense Intelligence Agency, the National Security Agency and the State Department. The U.S government’s self-interest played a key role in obtaining this indictment as a justification for NATO’s aggression, which on the other hand, had caused major civilian casualties. “The indictment confirms that our war is just” Clinton stated.

The NATO bombing in 1999 elicited major criticism even in many NATO countries. Arbour once again made her relationship to NATO obvious, as she rushed into action with an indictment of Milošević (and four of his closest aides), arguing about crimes against humanity and violations of law, based once again on unverified data (CNN 1999) that she was provided with by U.S. and British officials, U.S. Secretary of State Albright and James Rubis of the State Department, arguing the indictment as a justification for the bombing. This clearly indicates the Tribunal serving as a front for NATO’s interests – just as a realist argument would suggest, in defense of NATO’s aggression (Peterson and Herman 2004), which was nothing short of a war crime (Human Rights Watch 2000). Arbour’s actions made the argument for the U.S. more justifiable; the justification was provided, as the *Times* stated, by “strong evidence” against Milošević (New York Times 1999).

The information that Arbour received was unverified by the ICTY, and Dr. Hans Koehler called her a “surrogate politician” for ruling Milošević out of any agreement (as a negotiator) (Koechler 2001). On behalf of The Federal Republic of Yugoslavia, Milošević had to depend on the Russian negotiator to end the NATO bombing. Bosnian Serb leaders Radovan Karadžić and Ratko Mladić were also excluded from any negotiation process in Bosnia-Herzegovina due to indictments by former president of the ICTY, Antonio Cassese (Peterson and Herman 2004). This made it easier for the ICTY to rule those leaders out, as they had been effectively demonized before the trials and convictions took place. The same was true for the justification of NATO’s war crimes; it was justified in the media and the public accepted as being evidenced by the ICTY indictments (Peterson and Herman 2004).

6.4.1 Not on the “right side of the war”

To further demonstrate the political nature of the ICTY, one might compare the case of Milošević, Karadžić and Mladić to the Croatian leaders – former Croatian president Franjo Tudjman and General Ante Gotovina (Koechler 2001). The two latter were leaders who got away without conviction for crimes they were widely reported to have committed, namely the ethnic cleansing of Serbian minorities from Croatia in 1995 (Malić 2015). Actually, Gotovina was indicted and convicted by a judge for 23 years for crimes against humanity. However, the case went to the appeal process, the previous sentence was overturned, and Gotovina was immediately released in 2012 (International Criminal Tribunal for the former Yugoslavia 2012). They were both supported by the West, as they were helping the west in getting what they wanted (The Weight of Chains 2014). The focus was rather on Milošević’s case while he was still alive, both at the Tribunal and by the media. Tudjman’s “diplomacy” was in reality a massive war crime. However, being on the right side of the war, he walked out as a winner (Peterson and Herman 2004). Arkan, a Serbian leader mainly in Bosnia-Herzegovina, the Serbs’ populated area during the wars, was indicted in 1999, which made it into the public eye. On the other hand, Bosnian Muslim leader Naser Orić, who was not hiding his killing of Serb civilians and wanted the media to report his killings, was not indicted until 2003. He was convicted of modest charges (Robertson 2000).

Carla Del Ponte, Arbours successor needed an argument that she was not only indicting Serbs (Peterson and Herman 2004), so she indicted General Ante Gotovina (ICTY, Prosecutor v. Gotovina IT-01-45-I) and General Rahim Ademi (ethnic Albanian), who served the Croatian Military in the 1990s. Ademi’s case was built on evidence that he was one of those individuals responsible for the slaughter of Serbs in Croatia in 1993 (International

Criminal Tribunal 2005). Before 2001, no indictments were made for ethnic cleansing in the Serbian Krajina region of Croatia; only Serbs from that region had been indicted. In addition, the only ones who were charged with genocide – the elimination of another ethnic group – were the Serbian leaders, namely those who were on Milošević's side and supported his policy of "ethnically cleansing non-Serbs from the newly independent state of Croatia and Bosnia-Herzegovina.

There was massive killing by Bosnian Muslims, including the help that they received from the Mujahedin, who beheaded Serbs (Wiebes 2003) and any Croatian leader responsible for crimes against Serbs in Croatia, and they were never convicted at the ICTY of genocide. Neither Tudjman, nor Bosnian Muslim Izetbegović, were convicted. Del Ponte said that she would have indicted Tudjman if he had not died in 1999 (Bachmann and Fatić 2015). According to Graham Blewitt, a senior prosecutor, there was enough evidence to indict Tudjman (Radio Free Europe 2000). Izetbegović also died as a free man in 2003 (Binder 2003).

The former President of the Serbian region in Bosnia-Herzegovina, Milan Martić, was indicted in 1995 (Hayden 2003). One argument that was made for his indictment was the "rocket-launched cluster bomb attack on military targets in Zagreb in 1995". The argument was made that the action was not intended for military targets, but rather to specifically terrorize the citizens of Zagreb. ICTY opened an investigation into the character of cluster bombs and its conclusion was that those types of bombs are anti-human weapons, specifically designed to kill people (ICTY, Prosecutor v. Martić. IT-95-11,2007). However, NATO's 78-day bombing of the Federal Republic of Yugoslavia was a "humanitarian" action; this suggests that NATO bombs were inspired by cosmopolitan ideology, and were therefore protecting people (Held 2002).

6.4.2 The Double Standards

Simons and the *Times* did not mention anything about the absence of any indictment of Bosnian Muslim Naser Orić, summon her attention the entire time she was writing for the *Times* (Peterson and Herman 2004). In Simons articles there is a lot written about Arkans indictment in 1999,(Simons 1999). In addition, Simons does mention the ICTY's failure to indict Milošević from 1994-1995, and she only once mentioned a NATO action, how it unwillingly hit the Chinese Embassy, a few bridges, a train with civilians and a TV station (Simons 2003). There were no reports about marketplaces, hospitals or schools, nor how many civilians were killed during the entirety of the NATO bombing in Simons' coverage

(Peterson and Herman 2004).

6.5 (Non) NATO War crimes

Arbour and Del Ponte, gave NATO an exemption from all criminal charges. The UN Security Council is excluded from any war crimes that included jurisdiction (Laughland 2002). Article 5 of the ICTY statute argues about “crimes against humanity” (murder, and other inhumane acts). Article 3 argues that “The International Tribunal shall have the power to prosecute persons violating the laws or customs of war. Such violations shall include, but not be limited to: employment of poisonous weapons or other weapons calculated to cause unnecessary suffering; wanton destruction of cities, towns or villages, or devastation not justified by military necessity; attack, or bombardment, by whatever means, of undefended towns, villages, dwellings, or buildings”. Article 1 and 16 of the ICTY statute say that any illegal actions should be prosecuted (United Nations 2009). Arbour and Del Ponte ruled out an investigation of any NATO war crimes, but Michael Mandel, a law professor, along with a group of other lawyers, compiled a document that included all NATO war crimes against 68 NATO leaders. They even traveled to Hague to show their documents to Arbour and Del Ponte. They did their best to convince the prosecutors to enforce the law against NATO, but it was impossible, and Mandel was left with no choice but to give up, since it became crystal clear, as he said, that “the tribunal was a hoax” (Mandel 2001).

In 2000, a year after the NATO bombing, Del Ponte finally admitted that NATO had committed no war crimes; therefore, since NATO was not guilty, there was no need for any investigation to be opened *at all*. Instead, she released a pre-investigation report from her Office of the Prosecutor (OTP); the report included the *justification* for the NATO bombing, essentially giving a justifiable explanation for the war. She argued that NATO’s explanations were logical and honest. The report is contrary to itself, as Del Ponte admits that NATO refused to answer many questions because they *did not have to* – or as the report states, “failed to address the specific incidents”. The case against NATO was simply dropped; this is nothing but an illogical and biased judicial evaluation/assessment (Del Ponte 2000).

A closer look at Milošević’s indictment for the charge of “crimes against humanity” and the rejection to open an investigation about NATO is very surprising in many ways. Milošević was charged with the killing of 385 people (Peterson and Herman 2004), but 500 deaths by NATO were not enough. There was simply *not enough evidence* to open an investigation – or even charge NATO for genocide or crimes against humanity (Del Ponte

2000). This is not speculation or outside analysis; this is the argument made by the International Court.

Del Ponte took over from Arbour in September 1999 (International Tribunal for the former Yugoslavia), and the 4,000 bodies found in Kosovo were victims from *all sides* (International Tribunal for the former Yugoslavia 2000), problem for the claim, made by the West of genocide by Milošević by the West. Again, this was a charge supported by evidence that, as has been argued in this dissertation, one might doubt was completely unbiased. After Milošević was transported to Hague in 2001, the case made against him by Del Ponte was that he was responsible for crimes in Croatia and Bosnia-Herzegovina. The investigation started, and its goal was to find evidence of deaths – proof of Milošević’s plan for “Greater Serbia” (Moser 1992). In addition, this was the most obvious evidence supporting the idea of Serbia being a target of NATO and the ICTY. If we look at the arguments, they are an accumulation of double standards (Peterson and Herman 2004).

6.6 Violations of law and ethnics

In 1999, the Kosovo War was at its highest point, with the media immediately escalating the claim that Serbian Forces were massacring Albanians in Račak, Kosovo (Strauss 2001). Louise Arbour, the former prosecutor at the ICTY (International Tribunal for the former Yugoslavia) declared that the event was, on the basis of unverified data given to her by a U.S. official, William Walker, an unacceptable massacre that fell under the mandate of the ICTY (Peterson and Herman 2004). Arbour also manipulated publicity, as she rushed to the scene of a certain crime, supervised by Western cameramen. Such claims made it easier for NATO to justify their bombing.

After Walker’s allegations about the massacre in Račak, *The Washington Post* reported that U.S. Secretary of State Madeleine Albright had phoned National Security Advisor, Sandy Berger, saying that, “Spring has come early to Kosovo” (Gellman 1999). However, what Arbour did was a serious violation of prosecutorial ethics (Brown et al. 2004).

The ICTY was established by the Security Council in 1993, under Security Council Resolution 827 (SC. Res 827), under Chapter VIII of the UN Charter (Koechler 2001). Alternatively, Chapter VII of the UN Charter gives the Security Council authority only on the question of security (Chapter VII | United Nations). The argument was made that a violation of humanitarian law was enough justification for the Security Council to take action, since it threatened international peace and security (Koechler 2001). It does not provide a legally defensible basis for taking on judicial function (Peterson and Herman 2004). In addition,

Chapter VII states that all countries must cooperate if any decision is made under it (Chapter VII United Nations), which was not the case. It was only voted on by the countries on the Security Council. At the same time, the U.S. Congress was discussing why they did not want to cooperate with the International Criminal Court (Szamely 2002). The U.S. saw no problem in cooperating with the ICTY, since it was effectively under its control. In addition, Simons did not report any of these issues (Peterson and Herman 2004). In 1993, when the ICTY was established, Lawrence Eagleburger, an American statesman and diplomat, publicly commented on the “destruction of every single chance of peace, from the Vance-Owen in Bosnia, to the face of Rambouillet to the bombing campaign itself” (Boyd 1999).

Another interesting argument concerns the year that the Tribunal was established, 1993, yet the bloodiest conflicts that took place in the former Yugoslavia (Bosnia, Croatia and Kosovo) occurred *after* 1993, and after the discussion of justice was made. Hayden argued that the Tribunal was a tool, designed to remind everyone who was the victor of the war (Hayden 2003).

Simons never bothered to mention Eagleburger’s words from 1993; she was mostly concerned about bringing justice to the victims. She cannot be blamed for that sentiment (Boyd 1999), but she was not concerned with bringing justice to other places that were not aligned with NATO interests, such as ethnically cleansed Serbs from both Croatia and Bosnia-Herzegovina, or ethnically cleansed Serbs and Roma from Kosovo, controlled by NATO, or even the refugee population in Serbia, which was much higher than in any of the former Yugoslav states.

When it came to deciding the prosecutors and judges, most came from NATO countries, and were carefully investigated by U.S. officials (Mandel 2004). This raises serious questions about the neutrality of the judicial structure of the ICTY, since NATO itself participated in the war and committed war crimes. Koechler argued that, “If the ‘Tribunal’ would have taken general legal standards of impartiality seriously, it would have been obliged to determine that there is a conflict of interest for ‘judges’ from countries waging an undeclared war against Yugoslavia to sit on such a panel initiating ‘judicial’ action against the Head of State of the country under attack.” Koechler was warning that this is a provocation for international anarchy, which may result in major future wars (Burdman 1999).

Not surprisingly, Simons never considered this issue to be a problem (Sellars 2002). The problem with the judicial process is that the Tribunal was free to create its own rules, which is a clear *violation of Western judicial standards* on a massive scale (Peterson and Herman 2004). The 1994 Yearbook of the ICTY states that, “The Tribunal does not need to

shackle itself with restrictive rules which have been developed out of the ancient trial-by-jury system.” The “restrictive practices” referred to here are none other than those that are internationally recognized as being the preconditions for receiving a fair trial and due legal process (Robson 2001).

John Laughland, academic and author, argued that, “the procedural shortcomings of the ICTY are becoming a by-word for unfairness, as the Tribunal picks and chooses from legal systems around the world to find excuses for its actions. In one case, the Prosecutor defended itself against charges that it had illegally seized documents from the Bosnian government by saying that the seizure had been compatible with the law in Paraguay”. The legitimacy of the ICTY itself still remains a challenge, since it was not established by law, but rather by going against the UN Charter, and was founded only by the Security Council. Being funded by Western governments and institutions might explain why it refuses to investigate NATO in any way. Shea stated in 1999 that the international justice system had to thank NATO, and NATO countries, for establishing ICTY, and thus support its legitimacy (Laughland 2005). Laughland structured a list of the “delusional court”: (1) no right to bail or speedy trial, (2) defendants may be tried twice for the same crime (Article 25 of the Tribunal’s statute), (3) no right to a jury trial, (4) no independent appeal body; (5) admission of hearsay evidence; (6) confessions to be presumed free and voluntary unless the contrary is established by the prisoner (Article 92), and (7) no definition of the burden of proof needed for a conviction, such as “beyond reasonable doubt” (Brown et al. 2004). In addition, Simons did not question this as a violation of the principles of Western jurisprudence. The most important practice that the ICTY has carried out is the abuse of indictments as a political tool (Robertson 2000). Peterson and Herman noted in their study of the ICTY that in the “ancient trial-by-jury” and due process systems of the West, an indicted person is not by that fact a criminal, but rather one for whom the evidence seems to justify a trial to determine guilt or innocence (Peterson and Herman 2002).

The ICTY abused the indictments by criminalizing without a trial those who were not on the right side of the war. Arbour used this tool many times, despite it being nothing but a political tool to subvert justice, even though she had said before that a person is innocent until proven guilty. Geoffrey Roberts, a strong NATO supporter of the 1999 Kosovo war and the humanitarian intervention, argued that in a war, obviously, there has to be a criminal (Milošević), so Arbour “was summoned to London to be handed by UK Foreign Secretary Robin Cook some NSA/GCHQ intercepts she had long requested” (Robertson 2000). This type of advanced criminalization was used on Karadžić and Mladić as well; they were

indicted, so it was out of the question for them to participate in the Dayton peace agreement in Bosnia–Herzegovina (Goldstone 2000). It did not even come to Simons’ mind that the ICTY’s could politicalized of indictments and criminalization, her focus was rather on guilty Serbs (Simons 2001) (Cohen and Simons 2001).

6.7 Duško Tadić

The first case that took place in the ICTY was the case of Duško Tadić, a Bosnian Serb, and it provided a clear example of ICTY’s judicial practices, as well as Simons’ biased study. Only one witness, a Bosnian Serb, testified to having seen Tadić commit any cruelty. The defense caught the witness lying, and he confessed that he had no other choice but to lie, admitting that he had been trained on what to say in his testimony by Bosnian Muslims who had captured him. The witness’ testimony was discounted, driven away by the prosecutor, but the Trial Chamber never asked why the prosecutor did not make any further investigation to ascertain facts about the witness. Robert Hayden, who was a specialist witness for this situation, argued that some part of the witness’ story seemed to be trying to indict the ICTY, and the prosecutor’s office might also be involved in the false testimony. The witness appeal for escape was later denied by the ICTY, and the witness was sent back to the Bosnian Muslim government. The Bosnian Serb witness received a trial and was given a ten-year sentence for “genocide” based on his confession, because he was tortured.

Going back to Tadić, his charges involved Article 2 of the ICTY statute, which is applicable only to someone who is “caught up in an international armed conflict” (Hayden 2003). ICTY argued that, “if it was found to be solely “international” (i.e., external), an “absurd” conclusion would follow” (Peterson and Herman 2004). While the preparatory hearing was taking place, the ICTY Appeals Chamber analyzed the Bosnian war, and their conclusion was that the war was both internal and external, and for that matter, only Bosnian Muslims could be protected by the statute, not Bosnian Serbs. The Trial Chamber used the same argument as the International Court of Justice in 1986, in its decision on Nicaragua and the U.S. The conclusion was that Serbs from Bosnia-Herzegovina were not de facto organs or representatives of Belgrade. The decision was appealed by the prosecutor, and with the acceptance of the Appeals Chamber conclusion, what he thought before was “absurd”, now was not. This is a clear case of re-writing the rules, and also indicates, as Hayden concluded, that the ICTY is not particularly concerned with the fairness of the proceedings for defendants (Hayden 2003). Simons’ account of the Tadić case involved her summarizing the prosecution's charges (Simons 1996), but she never mentioned his 20 sentences, even though

he was acquitted of any murders. She does not mention the one witness' story, or that he was withdrawn from the Court after being found to be "set up" with evidence after admitting to having been captured and trained by Bosnian Muslims. The narratives that Simons ignored would not be very favorable to the ICTY and the public eye of the West. The Tadić question of whether his case should be under Article 2 for the conflict in Bosnia-Herzegovina was also not part of her summary (Peterson and Herman 2004).

6.8 Carla Del Ponte: "Me and the War Criminals"

In 2005, Del Ponte accused the Vatican of helping the most wanted war criminals of Croatia, who were acquitted of all charges by the ICTY (BBC 2005). In 2007, she resigned as a Chief Prosecutor at the ICTY (International Criminal Tribunal for the former Yugoslavia). In 2008, she published the book, *The Hunt*, which was about the Kosovo Albanians and the traffic of human organs of Serbs after the Kosovo war in 1999 (Rome 2008). The response from the ICTY after the publication of the book was, "The Tribunal is aware of very serious allegations of human organ trafficking raised by the former Prosecutor, Carla Del Ponte, in a book recently published in Italian under her name. No evidence in support of such allegations was ever brought before the Tribunal's judges" (Registry and Chambers 2008). In the same year, the *Human Rights Watch* requested the cooperation of Kosovar Prime Minister, Hashim Thaci, and the Albanian Prime Minister in order to open an investigation under international supervision. Both Prime Ministers ignored the request and publicly rejected Del Ponte's claims of 400 missing Serbs after the Kosovo war in 1999 as being unsupported by any evidence (BBC 2008).

"According to the journalist's information, the abducted individuals were held in warehouses and other buildings, including facilities in Kukes and Tropoje. In comparison to other captives, some of the sources said, some of the younger, healthier detainees were fed, examined by doctors, and never beaten. These abducted individuals – an unknown number – were allegedly transferred to a yellow house in or around the Albanian town of Burrel, where doctors extracted the captives' internal organs. These organs were then transported out of Albania via the airport near the capital Tirana. Most of the alleged victims were Serbs who went missing after the arrival of UN and NATO forces in Kosovo. But other captives were women from Kosovo, Albania, Russia, and other Slavic countries." (Human Rights Watch 2008).

In 2010, the Council of Europe released a provisional report that confirmed the allegations (Parliamentary Assembly). The butchering took place in a “Yellow House” in Northern Albania, near the town of Burrel (Lewis 2010).

Del Ponte has been criticized by the Swiss government for publishing her book as “promoting war crimes” (Schulman 2008). Del Ponte discussed her book and the case of a Kosovo Albanian, Ramush Haradinaj, in a documentary film, *The Weight of Chains 2* (Weight of Chains 2 2014). She openly said that UNMIK (United Nations Interim administration Mission in Kosovo) peacekeepers did not want to cooperate with the ICTY and provide evidence of organ trafficking in Kosovo. In her own words, “Unfortunately it was not possible to continue the investigation, because we had no cooperation. Albania was refusing to let us investigate the country because we had some indication that there was a mass grave there, and UNMIK was not in full cooperation with us so we had to suspend our investigation.” The head of UNMIK in 1999 was UN Representative Bernard Kouchner; when he asked by a reporter if he was a part of the organ trafficking, he laughed. We should not let the “UNMIK peacekeepers” name fool us (The Weight of Chains 2 2014). Dick Marty, a Swiss politician, discovered that Hashim Thaci was the head of a Mafia group responsible for trafficking weapons, drugs, and human organs through Europe. The report also claimed that the Kosovo Liberation Army (KLA) was responsible for kidnapping people, and the healthiest prisoners were transferred to a house called “Fuse Kruje”, where they were killed for their organs. The West did not react (Parliamentary Assembly).

Del Ponte gives the answer to this question: “Because KLA was supporting NATO during the conflict, they had some difficulties in cooperating with us against the people who helped them. It is political; if you are my associate in the conflict, I cannot act against my associate” (The Weight of Chains 2 2014). The ICTY, however, did indict some Kosovo Albanians who were committing crimes, like Ramush Haradinaj, a KLA militant in the 1990s accused of massacring Serbs, Roma, and even Albanians who did not agree with his actions (International Criminal Tribunal for the former Yugoslavia, 2007). Del Ponte argued “We had a lot of difficulties, to come to an end with the investigation against Haradinaj, but at the end we achieved it, so we could issue an indictment against him, and the indictment was confirmed by a judge. When the trial started, Haradinaj was freed of all charges because a lot of witnesses were killed “ (International Criminal Tribunal for the former Yugoslavia 2007). According to Del Ponte, from 2003-2007, 9 witnesses were killed. In that situation, living witnesses are afraid to give their testimony. Even UNMIK refused to send evidence against his war crimes (The Weight of Chains 2 2014). Since NATO and KLA were in cooperation

during the Kosovo War, it was impossible for NATO to speak out against their partners. Del Ponte openly admitted that Haradinaj was released because of U.S. pressure (Politika online 2015). The decision, Del Ponte argued, was a political one (Weight of Chains 2 2014).

7.0 Conclusion

There are multiple arguments that support the author's hypothesis that the ICTY is a political tool. Such an inclination on the Tribunal's behalf has been argued through the use of the realist and cosmopolitan theoretical perspectives at hand. The International Criminal Court has revealed itself more a political entity than an instrument of law and justice.

The author concludes and sides with realist approach that in the international arena, the law is barely a law, it is a political tool for actors to achieve their own agendas - the law is a disguise. Evidence, which would support the cosmopolitan hypothesis of law and justice, would not change the realist assumption, the fact that there is also evidence supporting its behavior being a political one. Despite all the historical records, international law pursuing justice, the law remain-causes dependent upon ad hoc enforcement measures taken by superpowers.

Arbour's narrative for the *Times* believed in the international law and justice, which International Criminal Courts should stand for, but only in a cosmopolitan world. The one-sidedness of those it has chosen to criminalize shows that it is not neutral, and furthermore, it appears to have an agenda based on political interests, rather than one rule that applies to everyone. The Tribunals behavior is the true face of realpolitik; international law and justice are buried behind political machinations and power struggles. The court is clear evidence of how the U.S. has used international structures such as ICTY and NATO to manipulate the world's political landscape for its own gain. With no one to oppose them since the end of the Cold War, the U.S. has created an enormous imbalance of power that is only growing larger and more unstoppable. Our conclusion is that we live in an anarchical international system, a world of realpolitik, and we conclude that justice, human rights, ethics, and morality are objectives that will continue to be virtually impossible to attain until something is done to address this issue. The ICTY is a mask for Western self-interests. The historical and empirical evidence provides the possibility of rejecting the cosmopolitan hypothesis and instead adopting a more realistic hypothesis. There is very little evidence supporting the cosmopolitan hypothesis, except Simons' narrative for the *Times*, and it is a weak defense. She ignored the political facts of the Tribunal, which would support the realistic hypothesis.

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