

**Deconstructing Transitional Justice in Croatia:
Understanding Peacebuilding Developments in the Context of Conflicting Discourses and
Competing Truths**

by

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A Thesis submitted to the Faculty of Graduate Studies of
The University of Manitoba
in partial fulfillment of the requirements of the degree of

Master of Arts

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ACKNOWLEDGMENTS

Firstly, I would like to express my sincere gratitude to my advisor Dr. Russell Smandych for the continuous support throughout the course of this work, for his motivation and encouragement. Your caring attitude, excellent teaching practices, and passion for criminology have been the source of inspiration for me throughout my undergraduate and graduate studies. I would like to thank you for introducing me to the concept of transitional justice in your course *Global Criminology and Criminal Justice*, and for the wealth of knowledge you shared with me as my professor and advisor. I would also like to thank you for your interest to learn about my culture and home country, and for motivating me to pursue this research in order to answer the question that has bothered me since moving to Canada - will there ever be peace in the Balkans?

I would also like to express my sincere appreciation to my master committee members, Dr. Sean Byrne and Dr. Jeremy Patzer for the insights and knowledge you shared with me, and for the thought-provoking questions that helped me organize my ideas and clarify topic.

I must thank the Department of Sociology, the professors, staff and fellow students who were always there to encourage me. I would especially like to thank Dr. Susan Prentice for her kindness, wisdom, sincere support, and academic and professional knowledge that I gained as her teaching and research assistant.

I would like to acknowledge my husband Bojan who has been a constant source of support during the challenges of graduate school and life. I am truly thankful for having you in my life. I am also thankful to my parents for their love and encouragement. Finally, this work is dedicated to my son Luka. Dear son, I hope that one day you will get to know our home country, Croatia, as a peaceful and inclusive society.

ABSTRACT

Ever since the violent conflicts that followed the breakup of Yugoslavia in the early 1990s were ended with the signing of peace agreements in 1995, powerful international and national actors have been involved in attempts to transform societies of the Western Balkans through retributive and restorative mechanisms of transitional justice. These ongoing efforts have been undertaken through the reconstruction of legal, governmental and non-governmental institutions, as well as civil society building through financial and non-financial support and the training of local NGOs and grassroots activities. However, twenty years after peace has nominally been established people of the Balkans still live in a condition of ‘no war, no peace’ that is characterized by deep divisions between ethnic and religious groups, but also between extremely conservative, right-wing and left-leaning groups.

This study examines the current state of transitional justice in Croatia through a critical discourse analysis of five conflicting discourses, which include international actors, legal, local government, local peacebuilders and media discourses. A critical analysis of identified discourses was conducted in order to explore how different actors have collectively shaped transitional justice in the Balkans. Overall, the results of my research indicate that policies and practices imposed by powerful international and national actors have obstructed peace developments in the region because they were not implemented in order to initiate a deeper socio-political change and social transformation, but rather to serve the interests of powerful groups and maintain existing social hierarchies. Social consequences of such discourse control are unsustainable peace, social polarization and ethnic divisions that can easily provoke another violent conflict.

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Chapter 1

INTRODUCTION

Introduction

Dissolution of the Socialist Federal Republic of Yugoslavia in the early 1990s was accompanied by three major armed conflicts in Croatia (1991-1995), Bosnia and Herzegovina (1992-1995) and Kosovo (1998-1999). Today, despite both international and national efforts to come to terms with the past, the entire region still suffers from the consequences and has to deal with the legacies of violence and human rights violations. The prospect for sustainable peace, democracy, and reconciliation within and among countries in the Balkans will depend to a large extent on their ability to confront the violent past and actively engage in the rebuilding of social, political and economic relations. However, years after the war ended, people of the Balkans are still stuck in mutually exclusive narratives of war, blame and victimization, which signal that despite years of peacebuilding efforts sustainable peace has not yet been achieved.

While peace agreements succeeded in establishing negative peace, which Galtung (1964) calls the mere absence of war, the situation on the ground suggests that positive peace, which is human integration, social justice, and reconciliation, remains incomplete. Marijan (2015) describes this condition as “liminal” and explains that “through everyday practices and cultural expressions of division, ordinary individuals continue to build walls, both mental and physical, between each other” (2015:4). People of the Balkans have not yet reached the kind of peace that Lederach explains as “both ending something that is destructive, painful, and inhumane and building something that is dynamic, feeding people and their relationships” (2001:853).

The purpose of the research I undertake for my MA thesis is to provide a comprehensive account of the current state of peace in Croatia and the Balkans. I conducted a critical analysis of

conflicting discourses in order to gain an understanding on how they directly and indirectly shaped peacebuilding developments in the Balkans by enacting, confirming, legitimating, reproducing, or challenging existing narratives, practices and relations of power and dominance in society. From my personal experience and observations, as well as through a detailed review of existing literature, I have identified five competing discourses that currently shape the peacebuilding process in Croatia: 1) **international actors**, which is a discourse promoted by international transitional justice and peacebuilding NGOs, European Union, USA and other foreign governments, policy-makers and actors, 2) **legal**, refers to discourse promoted by international and national courts, namely the ICTY and domestic trials; 3) **local government**, which is the discourse advocated by political elites through public policies including laws, declarations, parliamentary discussions and communication with the public through the media; 4) **local peacebuilders**, which is a discourse advocated by local non-profit organizations and non-governmental peacebuilding actors, and finally 5) **media discourse**, which includes all written or spoken material through which the media communicates information on transitional justice and peacebuilding to the public.

The five discourses will be analyzed using the critical discourse analysis method. Discourse analysis can simply be described as “a methodology for analyzing social phenomena that is qualitative, interpretative and constructionist” (Hardy, Harley and Phillips 2004:19). It refers to an approach that aims at exploring socially constructed ideas about the world through the analysis of the language in both written, spoken and visual form (Hardy, Harley and Phillips 2004; Keller 2013). Discourse analysis is founded on a social constructivist epistemology because it presumes that reality is not something that we uncover, but rather create through social interactions. Therefore, discourses do not have inherit meaning, but their meanings are “created,

supported, and contested through the production, dissemination, and consumption of texts; and emanate from interactions between the social groups and the complex societal structures in which the discourse is embedded” (Hardy, Harley and Phillips 2004:20).

I expect that the critical discourse analysis of the above mentioned discourses (international actors, legal, local government, local peacebuilders and media discourse) can provide a detailed account of the post-war situation in Croatia and the region and also address the following questions:

1. How do powerful groups (international actors, legal actors, government, peacebuilding actors and the media) shape the transitional justice discourse in Croatia?
2. How does such discourse control influence peacebuilding developments in Croatia, and what are the social consequences of such control, such as the absence of true reconciliation in the region?

Thesis Structure

My thesis is organized into nine chapters, including this introductory chapter. Chapter two provides an overview of the relevant literature in the areas of transitional justice in order to demonstrate how transitional justice developed as a discipline and grew to become perceived as a prerequisite for dealing with past atrocities, followed by a review of research studies that discuss how conflicting war narratives influence the process of reconciliation between the countries of the former Yugoslavia. In chapter three I provide an outline of the methodology that was used to answer the research questions, including a detailed description of a critical discourse analysis method and the process of data collection and analysis. Chapters four, five, six, seven and eight provide the results of the critical discourse analysis of five discourses, which include international actors, legal, local government, local peacebuilders and media discourses. Finally,

in chapter nine I briefly discuss how these discourses collectively shaped transitional justice in the Balkans and affected the current state of peace. I now provide a description of conflicting discourses surrounding the military Operation Storm, which will illustrate the type of conflicting discourses that I plan to analyze in this study.

Competing Discourses on Operation Storm

When I was visiting Croatia in the summer of 2015 I had an extraordinary opportunity to observe commemorative events that were held in memory of the military's Operation Storm - the last major battle that freed the occupied territory and resulted in decisive victory for the Croatian army. On August 5, 2015 tens of thousands of Croats, among whom were many war veterans, prominent military generals, officers, soldiers and high-ranking politicians, proudly celebrated the twentieth anniversary of the Croatian military's victorious Operation Storm in Knin. Shouts like: "Victory! Victory!" and "For Home - Ready!" could be heard on the streets of Knin - the first Croatian town seized back from rebel Croatian Serbs during the military offensive in August 1995 (Milekic and Nikolic 2015). Charged with patriotism, Croats waved flags and sang warrior songs in remembrance of the last major battle of the War of Independence. During the celebration, Croatian President Kolinda Grabar-Kitarović delivered a passionate speech in which she stated that

We know what blood-acquired freedom is, because the war was here and not far away. From this place my message is: this gathering is not directed against anyone, and so not against Serbia. Today we celebrate victory and unity, we celebrate the return to constitutional order of 10 400 km² of our occupied territory. With the greatest appreciation we remember over 200 Croatian soldiers who lost their lives during the Storm, 2 missing, and 200 000 Croatian daughters and sons who, led by commander-in-chief and first Croatian president Dr. Franjo Tuđman, defeated invading politics of the Greater Serbia of Slobodan Milošević and his supporters in Croatia ("Kolinda Grabar-Kitarović Speech in Knin." 2015).

This heated speech, which was the climax of events that were held in honour of Operation Storm, serves as an example of the dominant discourse of the 1990s war and current social and political climate in Croatia. This speech supports narratives of victory, blame and victimization that people in the Balkans have been dwelling on for years. Like others held previously, this commemoration was not used as an opportunity to engage in mutually respectful and constructive dialogue about the past, but rather to promote narratives that reproduced nationalism and ethnic animosity.

Problematically, during my 2015 visit, I also noticed that while Croatian victims were remembered with dignity, Serbian civilian victims who were also exiled or killed during Operation Storm were rarely mentioned or completely ignored during the official commemoration. However, on August 2, a few days before the official celebration in Knin, human rights activists led by *Documenta*, a local peacebuilding NGO that deals with the past, did hold a commemoration for civilians who were killed or went missing during Operation Storm. They gathered in a village close to Knin to honour Serbian civilian victims and criticize the government for not prosecuting people who are responsible for war crimes (“In the Honour of Missing and Killed in the Storm.” 2015). While this was potentially an important opportunity for showing respect to all victims and contributing to reconciliation between Croats and Serbs, the majority of the public and political leaders did not support this commemoration. Instead, the human rights activists who participated in it, and especially representatives from *Documenta*, were accused of promoting an anti-Croat narrative that was Yugo-nostalgia.

Traditionally, Operation Storm was not only remembered in Croatia, but also in Serbia and Bosnia’s Serb-led entity, the Republika Srpska, where thousands of Serbs gathered in order to remember 200,000 Croatian Serbs who fled Croatia after the Operation and a few hundred

mostly elder victims who remained and were killed in the aftermath. A few days before this official commemoration in Croatia, Serbia's Prime Minister Aleksandar Vučić said that Operation Storm "was the biggest ethnic cleansing since World War II" (Nikolic 2015). Although exaggerated, the statement made by the Serbian Prime Minister illustrates that the Serbian understanding of the nature and purpose of the military's Operation Storm differs greatly from the official Croatian narrative. For Serbs, the Storm represents suffering and loss because many Serbs were exiled after the Croatian military regained control over the occupied territory. However, this statement also signals that Serbs, like Croats, are focused on fostering inaccurate and incomplete versions of history because Prime Minister Vučić did not mention Serbia's role in instigating and arming Croatian Serbs. Instead, by dwelling on Serbian victimization, he is only encouraging animosity between neighbours.

In Croatia, August 5 is celebrated as the Day of Victory and Homeland Thanksgiving, as well as Croatian War Veteran's Day. Many Croats believe that Operation Storm enabled the liberation of the self-proclaimed para-state of the Serbian Krajina, and its reunification with Croatian territory (Clark 2012). According to the official narrative, the Operation helped Croats realize "the thousand-year long dream for independence" and establish a state of Croatia. It is well known that the result of Storm ensured that as many as 200,000 Serbs fled Croatia, while many elderly were killed. However, this is often perceived as a natural consequence of the war or is justified as necessary to achieve greater goals - independence and sovereignty. On the other hand, Serbia is not willing to accept this justification and continues to advocate for justice for the victims of crimes committed in the aftermath of the Storm.

It is important to mention that the celebration of Operation Storm was always controversial and has created deep political tensions between Croatia and Serbia. For example,

when in 2006 Serbia's Prime Minister Vojislav Kostunica stated that Operation Storm was a big crime that went unpunished, Croatian Prime Minister Ivo Sanader responded by saying that "Operation Storm was not a crime, but it defeated a crime" (Banjevlav 2012:24). Disagreements over the Storm erupted again in 2008 when Serbian President Boris Tadic said that he "expected from Croatia an apology for crimes committed against members of the Serb nation" and that "this day is mourned by the Serb people as a day of great sorrow and tragedy, since some 1,600 Serbs were either killed or went missing" (Banjevlav 2012:24). Yet, instead of apologizing or taking necessary steps to prosecute war criminals, the Croats responded with accusations against the Serbs and reminded them of all crimes that Serbs committed against Croats. Thus, it is clearly evident that conflicting narratives of the same event contribute to tensions between Croatia and Serbia and obstruct reconciliation in the region.

In addition to the Serbian counter-narrative, the international legal community also questioned the legitimacy of the Storm in 2001 when the International Criminal Tribunal for the Former Yugoslavia (ICTY) charged Ante Gotovina, a Croatian lieutenant general who led the Operation, for war crimes and crimes against humanity. The ICTY alleged that Operation Storm was part of the Joint Criminal Enterprise (JCE) whose goal was to permanently remove Serbs from the Krajina region of Croatia (Clark 2012). Not surprisingly, instead of seeing the judgment as an opportunity to confront war crimes committed on one's own side, the Croatian government decided to further institutionalize its narrative in the *Declaration on Operation Storm* adopted in 2006. In the Declaration it is stated that "it is an obligation of the Croatian Parliament, Croatian expert public, Croatian scientific and educational institutions, as well as the media, to transform, over time, Operation Storm into a battle that cannot and will not be forgotten: into a decisive,

glorious, and victorious battle of the Homeland War that will become part of Croatia's useful past for future generations" ("Declaration on Operation Storm." 2006).

On April 15, 2011 the Trial Chamber sentenced Ante Gotovina to 24 years imprisonment because he failed to "make a serious effort to prevent and follow up on crimes reported to have been committed in light of Gotovina's order to unlawfully attack civilians and civilian objects" (Clark 2012:416). Mladen Markač, the commander of the Special Police of the Ministry of the Interior of the Republic of Croatia, was also found to be part of the JCE and charged with 18 years imprisonment for crimes against humanity and violations of the customs of war (Clark 2012). In order to show their dissatisfaction with the ICTY's verdicts, tens of thousands of Croats gathered on the streets of Zagreb to express their support for generals Gotovina and Markač whom they saw as national heroes rather than as war criminals. Instead of discouraging protests, Croatian politicians were supporting and fueling public dissatisfaction. For instance, during the celebration of the Storm on August 5, 2011 Prime Minister Jadranka Kosor said that without the Storm "we would not be here today and we would have nothing to celebrate" (Clark 2012:417). This clearly reinforced the official Croat narrative of the Homeland War as legitimate, just and purely defensive, while failing to recognize that crimes were committed on both sides.

Nevertheless, on November 16, 2012 the Appeal Chamber of the Hague Tribunal overturned verdicts against generals Ante Gotovina and Mladen Markač and ruled that there was not any evidence proving the prosecution's claims that attacks on Serbian Krajina were illegal and intended to target civilians ("ICTY Appeals Judgment Summary for Ante Gotovina and Mladen Markač." 2012). For many Croats, this acquittal only further confirmed the official narrative and proved that Croatia's involvement in the war was purely defensive and fought in an

honourable way. However, many Serbs saw then, and still see today, the Storm as anti-Serb operation that forced many into exile and resulted in the deaths of hundreds who remained behind. This counter narrative continues to challenge the official Croatian narrative and represents a major obstacle toward reconciliation between both countries.

The brief description of events surrounding Operation Storm provides a snapshot of the current state of transitional justice in the Balkans. In Croatia and the other republics that emerged from the former Yugoslavia, reconciliation, which can be viewed as “a process that spans from bare existence to forgiveness” (Grotsky 2014:1) that has not yet been accomplished.

Reconciliation is a complex process that requires mutual efforts to come to terms with the past in order to heal wounds and restore relationships, but it also requires legal reforms and a pluralistic public discourse, which embrace a strong focus on the rights of victims of war crimes.

Unfortunately, rather than being engaged in activities that will nurture reconciliation, the Balkan countries are still stuck in mutually conflicting narratives that only contribute to the reproduction of incompatible versions of the past and deepen divisions between people.

Conclusion

The lack of peacebuilding progress that I observed during my visit to Croatia in the summer of 2015 have motivated me to want to further explore how conflicting discourses shape transitional justice in Croatia and affect peacebuilding in the region. It appears that conflicting narratives of war represent an obstacle to peacebuilding developments because they contribute to a cycle of mistrust and injustice rather than constructive dialogue on peacebuilding. Through the research I undertake for my MA thesis, I analyze in detail the link between conflicting discourses and lack of peacebuilding developments in the region. I used a critical discourse analysis method to examine five conflicting discourses, which include international actors, legal, local

government, local peacebuilders and media discourses, and explore how different actors have collectively shaped transitional justice in the Balkans. However, before discussing the results of my critical discourse analysis of the above mentioned discourses, I first provide an overview of the relevant literature in the areas of transitional justice and peacebuilding, followed by a detailed description of my methodology.

Chapter 2

LITERATURE REVIEW

Introduction

In this chapter I provide an overview of the relevant literature in the field of transitional justice in order to demonstrate how transitional justice developed as a discipline and grew to become perceived as a prerequisite for dealing with past atrocities. This historical overview is followed by a review of research studies that focus on transitional justice in the former Yugoslavia. More specifically, I summarize the literature that analyzes how conflicting war narratives influence the process of reconciliation between the countries of the former Yugoslavia. This literature review will help situate my research in the larger context of what other critical scholars have already found on the issues related to transitional justice and demonstrate why this study is necessary to gain a more comprehensive understanding of the current state of peace in the Balkans.

The Origins and Development of Transitional Justice and Peacebuilding

Despite being a relatively new phenomenon, transitional justice has become a leading mechanism for dealing with crimes of the past. Fisher argues that during its early stages of development, transitional justice “referred to the judicial process of addressing human rights violations committed by dictatorial or repressive regimes in the course of democratic transition” (2011:407). Later on, the term also came to be used for processing war crimes and massive human rights abuses committed in violent conflicts. Turner explains that “central to this evolution has been a resurgence of the idea of international human rights law and belief in the capacity of law to transcend partisan politics and therefore mediate social change” (2013:194).

Moreover, a large number of violent conflicts that occurred during the last two decades of the twentieth century prompted international actors to “expend a tremendous amount of energy and effort in developing an increasingly elaborate system of transitional justice - systematic addressing of crimes of the past - to deal with the atrocities” (Subotic 2009:3).

Although the early origins of transitional justice can be traced back to the post World War II period and prosecutions of political, military and economic leaders of Nazi Germany and Japan before the international criminal court, the term itself did not exist until the beginning of the 1990s. Nevertheless, the World War II trials represent an onset of the period in which the notion of collective responsibility was replaced with the idea of individual accountability. Teitel explains that, “while the asserted aim of the transitional justice norm in this first phase was accountability, a striking innovation at the time was the turn to international criminal law and the extension of its applicability beyond the state to the individual” (2008:73).

The field of transitional justice further developed throughout the 1980s as the idea of universal human rights started to dominate public discourses and prompted the international community to become even more involved in the social and political affairs of countries transitioning to democracy. Claiming that their goal was to help transitioning countries deal with the past and protect human rights, international community actors had become highly involved in documenting and prosecuting abuses committed by past military regimes in countries throughout Latin America and Africa. Increasingly, it was believed that without the proper investigation of the violent past and prosecution of individuals responsible for atrocities, democratization and social change cannot be achieved. Similarly, Balasco argues that it was assumed that “the restoration of the relationship between the individual and the state and reforming the state so that

it recognized the dignity and quality of life of individuals who suffered under the former regime” would satisfy victims’ needs for justice and lead to democratization (2013:200).

During the 1990s, the transitional justice agenda expanded beyond “regulating international conflict to regulate intra-state conflict as well as peacetime regulations, comprising a threshold rule of law in globalizing politics” (Teitel 2008:74). Major political, economic and social changes, such as the collapse of the Soviet Union, the end of the Cold War, and the transition of Eastern European countries from socialism to a market economy, represented the triumph of liberalism and enabled the expansion of Western notions of democracy and justice. Increasingly, transitional justice expanded beyond the legal context, and became perceived as a comprehensive mechanism for transforming political and social aspects of post-war societies. Truth commissions, which became a symbol of transitional justice, were a new model adopted during this period. Teitel describes a truth commission as “an official body, often created by a national government, to investigate document, and report upon human rights abuses within a country over a specified period of time” (2008:78). The notion of truth-seeking marks a major turning point in the field of transitional justice because it was based on the assumption that unlike criminal prosecutions, which can only satisfy victims’ needs for justice, truth-seeking empowers victims because it enables them to ‘tell their story’.

It is believed that truth seeking through story sharing can contribute to social reconstruction of the entire society because it helps victims and perpetrators sympathize with each other and construct a shared truth. Unfortunately, storytelling does not always generate peaceful relationships (Senehi 2002). Senehi argues that storytelling can intensify divisions and violence when storytellers, who are “in a position of relative control in the process of the social construction of meaning”, use their power to promote exclusionary practices (2002:45). Senehi

called this type of storytelling *destructive storytelling* because its narratives produce authoritative discourses and only serve the interest of powerful actors. On the other hand, Senehi explains that *constructive storytelling*, which is inclusive and fosters collaborative power, allows everybody in the community to have access to knowledge production (2002).

Problematically, despite the claims that truth commissions empower victims through a community based approach, members of the community have little control over design, character and outcomes of the process. Therefore, despite the belief that truth commissions are able to deliver restorative justice and empower victims through storytelling, some critics point out that this is hard to achieve since truth commissions operate at the ‘top-down’ level and only address certain issues. For instance, ‘truth’ that emerges out of truth commissions is limited to individual violations, while social, economic and political injustices that are often the root cause of those violations are rarely discussed (Lundy and McGovern 2008). Yet, a large number of truth commissions established around the world, but mainly in South America and Africa, indicate that they became an essential part of the transitional justice ‘toolkit’.

As the result of globalization, which enables the fast spread of Western ideology that promotes liberal notions of ‘human rights’ and ‘democracy’, transitional justice mechanisms quickly became perceived as the most appropriate way to deal with the past. While both legal and non-legal mechanisms of transitional justice were once applied only in exceptional circumstances, they are now used as a ‘toolkit’ after almost every period of repression or civil violence (Balasco 2013). For instance, Balasco argues that it is estimated that “there was a total of 267 trials, 68 truth commissions, 424 amnesties, 35 reparation mechanisms, and 54 lustration policies worldwide between 1970 and 2004” (2013:201). This growth of transitional justice around the world provoked many critical scholars to question its ability to benefit affected

communities, restore relationships and establish lasting peace (Mac Ginty 2006; Lundy and McGovern 2008; Nagy 2008; Mutua 2015; Stanley 2010).

Should ‘One Size-Fit All’? A Critique of Transitional Justice

Lundy and McGregor explain that “transition, as normally conceived within transitional justice theory, tends to involve a particular and limited conception of democratization and democracy based on liberal and essentially Western formulations of democracy” (2008:273). In other words, transitional justice mechanisms are often narrowly focused on the legal sphere, while ignoring to address culturally specific needs, such as structural inequalities and poverty that were often the root cause of violence and human rights abuses. Turner further argues that “transitional justice, despite attempts to introduce greater interdisciplinarity into the field, remains a resolutely legal field, resting on a number of core assumptions surrounding the capacity of law to mediate social change” (2013:199). Retributive justice mechanisms are often perceived as the most appropriate ways to deal with the past in transitional societies because of the assumption that the rule of law is neutral and just. However, for McEvoy, the tendency to perceive the rule of law as a universal, objective and rational means for dealing with the past during profound political and social changes, indicates “the seductive qualities of legalistic analysis” (2007:417).

McEvoy suggests that although it is necessary to establish the rule of law to deal with injustices committed during a dictatorial regime or conflicts, a legal approach is not sufficient for addressing specific needs of the affected communities. In other words, the ‘one-size-fits-all’ method that the legal approach assumes fails to “take sufficient account of local customs and practical knowledge and to engage properly with community and civil society structures” (McEvoy 2007:424). Lundy and McGovern also note that by promoting “one-size-fits-all”

approaches “‘peacebuilders’ fail to recognize and respond to the complexities and restoring the multi-faceted dimensions of justice in low-income, war-torn societies” (2008:274). Further, Lundy and McGovern claim that the main issue with internationally driven peacebuilding, state development and democratization initiatives is the unequal power relations between donor and recipient countries (2008). They explain that “what is essentially at issue is the question of agency of who engenders and controls change, within what has been termed the post-conflict agenda” (2007:275).

Many critics point out that transitional justice and peacebuilding grew into an industry with a set rules, standards and principles that must be followed by states involved in the process. As a result, dealing with the past has become part of international politics and empowered the international community, which consists of leading states, mainly the United States and Western European countries, international organizations like the United Nations, European Union and NATO, and the major international financial institutions, to take a leading role in defining and prescribing appropriate responses to violent conflicts. Yet, international interventions and peace accords have more than often failed to deliver a durable peace and instead left post-conflict societies in a state that Mac Ginty calls a ‘no war, no peace’ condition (2006). Mac Ginty further explains that after the initial interest, many post-conflict societies “have slipped into situations of a grudging acceptance of the need for a co-existence with traditional enemies, but little enthusiasm for a truly transformative peace” (2006:3).

Problematically, while the Western version of peace, which Mac Ginty calls liberal democratic peace, often delivers a deeply flawed peace and has little effect on reconstructing post-conflict societies, this model of peace has now been routinely implemented and promoted as a ‘true peace’(2006). The notion that the liberal democratic peace can be applied outside of

Western societies is based on the belief that free market economy and democracy are universal values that can foster individual human rights and freedoms, and enable economic growth.

However, Mac Ginty argues that the liberal democratic peace has very little effect on restoring broken relationships and building sustainable peace in non-Western societies because it narrows the range of peace-supporting responses to Western values, while at the same time ignores to take into account specific social, cultural, historical, religious and economic contexts of post-conflict societies.

The spread of Western notions of justice through various peacebuilding, reconciliation, nation-building and law initiatives, enabled the international community to become involved in the political, economic and social affairs of transitioning countries. Besides promoting human rights and legal projects through transitional justice mechanisms, it is also involved in economic development through financial institutions such as the World Bank and the International Monetary Fund. Since the majority of post-conflict countries tend to be poor and economically backward, they rely on international donations and funds. Lundy and McGregor point out that such strategies often promote Western patterns of development and the ideology of neo-liberal economies. They argue that “wider geo-political and economic interests too often shape what tend to be represented as politically and economically neutral post-conflict and transitional justice initiatives” (2008:276). The international interventionism, based on Western notions of justice, are sometimes referred to as a form of neo-colonialism because the non-Western countries who receive legal, economic, political and social support tend to have little power over how the projects are being implemented.

For example, the United States played a major role in ending the war in Bosnia and Herzegovina. After a few days of NATO bombing, the Serbian side was finally ready to

negotiate the peace. In November 1995 the United States brought the warring parties together in Dayton, Ohio, where they signed the Dayton Peace Agreement, which put an end to the war and prevented potential massacres. Szewczyk explains that, “in addition to a general cessation of hostilities, regional stability and arms control measures, and internationally-recognized borders, the peace settlement established a unique political order in Bosnia” (2010:23). The Dayton Agreement, that was formulated by the United States, divided Bosnia and Herzegovina into two entities: the Federation of Bosnia and Herzegovina, with a predominantly Muslim and Croat population, and the Republika Srpska with Serbs as the majority, in order to prevent further ethnic conflicts. The Dayton Agreement was a complex document that formed a multilayered government with overlapping jurisdictions and “established a central government with a bicameral legislature, a three-member rotating presidency (consisting of a Bosniak, a Croat, and a Serb), a council of ministers, a two-house legislature, and a constitutional court” (Subotic 2009:125). Further, two sub-entities, the Republika Srpska and the Federation, were given their own parliaments, prime ministers, and ten regional authorities, each with its own police force and education, health, and judicial authorities (Subotic 2009).

Importantly, the Dayton Agreement established the Office of the High Representative (OHR), which is an international body that oversees the affairs of local governments and protects peace and stability. Subotic explains that the OHR has almost limitless executive powers because it “was granted intrusive oversight into almost all aspects of the Bosnian states—organizing elections, appointing and approving local officials, supervising local public administration, human rights monitoring, arms control, composition of the police and the judiciary, and even such mundane tasks as street naming, flag layout, and license plate design” (2009:125). Although the United States remains somewhat involved in the work of the OHR, the US participates in

nominating and choosing the appointees for instance, the European Union has the majority of power over the OHR. The EU is the leading international actor in Bosnia and Herzegovina because of the “direct aid provided by the European Commission, the military presence of EUFOR, trade and investment from the EU to Bosnia, advice and training provided by the EU Police Mission, and the ultimate prospect of Bosnian accession into the EU with its associated source of benefits in the form of enhanced power, wealth, security, and other interests” (Szewczyk 2010:29).

Consequently, local authorities have very little power over their political, economic and social affairs, which probably fostered a sense of “political irresponsibility” among the Bosnian elites and discouraged them from actively engaging in peacebuilding and reconciliation processes. Unfortunately, today’s state of Bosnia and Herzegovina feels more like a geopolitical construct of the international community than an independent and sovereign country. As the result of international involvement, the country is even more divided, unstable and decentralized since each entity now has its own government that competes for power, in addition to the EU and US political and economic experts who oversee local affairs and make the important decisions about state building and development.

Although it seems astonishing that states are willing to freely transfer power over their political and social affairs to international actors, Subotic explains that, “states are now expected, encouraged, or even coerced by other states, by international organizations, and by the growing international justice expert industry—an active group of institutions and individuals with expert authority and policy objectives in the international justice issue area—to conduct transitional justice projects as one of the first steps in post-conflict rebuilding” (2009:29). Thus, dealing with the past has become a global norm that is now imposed on most countries recovering from

conflicts and a violent history. Problematically, failing to comply with international demands can result in economic and political isolation or sanctions.

Analyzing Public Memories and Conflicting Narratives

Recently, scholars that have been engaged in discussions on transitional justice developments in the Balkans have been pointing out that analyzing public memories and conflicting narratives can contribute to a deeper understanding of peacebuilding progress because the content of memories and narratives can tell us how people understand their past. Ross defines collective memories as “emotionally salient events and persons in the past that have particular relevance to how a group understands itself and the challenges it faces in the present and future” (2013:92). Thus, collective memories do not represent ‘objective’ historical accounts, but rather consist of subjective and selective narratives with a social, political and moral purpose. In other words, collective memories are socially constructed accounts of the past that can change in response to contemporary social or political needs (Ross 2013). Similarly, Arthur warns us that “memory is multifaceted and manipulative. It is traumatic and capable of political appropriation” (2009:375). What this means is that memory can be appropriated for political purposes and promotion of certain versions of the past that are compatible with dominant discourses. This is particularly be evident in the following sections where I describe how collective memories and narratives are being manipulated and appropriated for political purposes in the countries of the former Yugoslavia.

Subotic, is a leading scholar in analyzing how official memories affect peacebuilding in the Western Balkans, and has predominately dealt with issues of justice and remembrance of the past through the analysis of collective memories and states’ remembrance initiatives. Subotic believes that public remembrances are an important mechanism for reconciliation and argues

that, “public remembrance that produces a new, authoritative historical record of past violence can help create a new, shared history of groups in conflict, which then opens up the possibility for group reconciliation and more peaceful coexistence in the future” (2015:143). However, while public education and memory sharing can be an important step toward social recovery, they are often the source of conflict exacerbation rather than co-operation.

Remembering the past in the Balkans is difficult because of multiple and contradictory histories that have been part of public discourses for generations. Subotic points out that, “far from being a tool for social cohesion and healing, they continue to be instruments of political othering, alienation, and further injustice” (2015:144). In order to analyze how history is being remembered in the Balkans Subotic examined the content of history textbooks from Serbia, Croatia and Bosnia and Herzegovina. She found that in Serbia, although slightly revised after Slobodan Milošević, the former president of Serbia and indicted war criminal, was removed from power, history textbooks continue to be biased and represent Serbia as a victim, rather than as the perpetrator, of the war in Croatia and Bosnia and Herzegovina. In Serbian textbooks it is written that Yugoslavia was destroyed by separatists in Slovenia, Croatia, and Bosnia and Herzegovina who worked against the interests of the Serbian people. Subotic explains that, “Serbian regional aspirations, therefore, are interpreted not just as defensive, but also as preventive, to stop the inevitable crimes against the Serbian people” (2015:145).

Public surveys consistently show that people in Serbia have inaccurate knowledge of war related facts and in most cases do not want to admit Serbia’s role in initiating the war in Croatia and Bosnia and Herzegovina. For example, in a large survey “on popular knowledge about Serbian history, only 34 percent of the respondents correctly identified the victims of Srebrenica as Bosniaks, and only 10 percent responded that Croats, not Serbs, were killed in a mass atrocity

in Ovčara, outside Vukovar, Croatia in 1991” (2015: 145). Another example of the purposive denial of historical facts is the adoption of the *Declaration on Srebrenica* by the Serbian Parliament in 2010. In the Declaration, it is stated that Serbian military generals and the Serbian army committed the massacre of Bosniaks, yet, the term “genocide” was never mentioned. It is even more concerning that the number of victims was lowered, which indicates that the Serbian state is intentionally trying to undermine victims’ suffering and minimize its own responsibility for the genocide. Subotic argues that, “Serbia’s remembrance is not inclusive of the memory of others”, but instead thrives on the notion of Serbian victimization (2015:146).

In Croatia, the state of public education is similar to that in Serbia because the curriculum of history education has mostly been shaped by political interests and used for the promotion of a ‘proper’ version of contemporary history. That there is little room for multiple perspectives in Croatian history education can best be observed from public disputes that occurred when in 2005 the HDZ-led Ministry of Education appointed a group of Croatian historians to write a *Supplement to Textbooks on Current Croatian History* for Serb pupils living in the Podunavlje region of Croatia, the easternmost part of Croatia and one of the most ethnically heterogeneous areas. The supplement offered a multi-perspective approach and presented a critical analysis of the 1990s war in Croatia that included some information on crimes against Serb civilians during and after Operation Storm in 1995 (Koren 2015). However, the content of the supplement led to heated discussions between politicians, academics and ordinary citizens who perceived the educational supplement as an ‘attack’ on core Croatian values and beliefs regarding the Homeland War. The Croatian government, the public, the Catholic church as well as some other historians, responded with harsh criticism and accused the authors of national betrayal because they believed that the authors overemphasized the suffering of Serbs and did not present

Operation Storm in a positive light. Due to the public pressure, the Ministry of Education gave up on the project and the supplement was never used in Croatian schools.

However, in 2007 history education came into the public spotlight yet again after the Ministry of Education appointed a textbook commission to choose new history textbooks to be used in Croatian schools. Some of the textbooks that were submitted came under attack from right-wing politicians, war veterans, historians and the public because they were yet again perceived as an attempt to distort the historical ‘truth’ about the Homeland War and equate Croatian victims with Serbian aggressors (Koren 2015). A group of Croatian academics wrote an open letter to the Parliament and Ministry of Education in which they criticized the authors for not putting enough emphasis on the fact that Croatia was the victim of the 1990s conflict, while at the same time including unnecessary details on crimes committed against Serbian civilians and stated that, “history textbooks must take into consideration not only scientific and pedagogic standards, but also national and state criteria” (Subotic 2015:147). Yet, while the authors of the letter did not object to the facts on crimes against Serbian civilians they did not agree with the way that facts were presented because they, “wanted more emphasis on the securing of the survival of Croatia and the Croatian people” in order to preserve the image of Croats as victims and Serbs as aggressors at all times (European Stability Initiative 2015). According to this view, instead of representing accurate facts, history must “satisfy” national interests. Finally, the Ministry of Education accepted all proposed textbooks after they were modified to ensure that the official memory of the war is preserved.

In Croatia, the memories of the war and Croatia’s role are institutionalized in the government’s *Declaration on Homeland War* and *Declaration on Storm*, in which it is clearly stated that Croatia waged a just and liberatory war, and that Storm was a legitimate military

operation that liberated Croatian territory from Serbian occupation. Problematically, and similar to what happens in Serbia, when non-Croat victims are remembered, their suffering is underestimated and the number of victims is downplayed. An example of this revisionist history is the statement made by the former Prime Minister Ivo Sanader in 2005 at the commemoration held for victims killed during the World War II fascist Ustaše-era in Croatia at the Jasenovac, concentration camp memorial site. Subotic notes that Sanader used the occasion of the Holocaust commemoration at Jasenovac, “to make a remarkable equivalency claim between Croatian suffering during the Homeland War of the 1990s and the Holocaust”. He stated that, “We should not forget the aggression that Croatia endured because we too were victims of a terrible madness of Nazism and fascism, Croatian citizens, Croats, know the best what it is like to suffer from aggression” (Subotic 2015:148).

This quote illustrates how the position of the Croatian political elite in relation to historical interpretations of WWII changed drastically since Croatia gained its independence. The new historical paradigm was different from the communist interpretation of WWII because it focused less on the common history of South Slavs and instead centered on presenting Croatian history, “based on national self-containment, while relations with neighboring peoples are presented primarily through conflicts, resistance to aggression, and attempts to destroy the Croatian national identity (‘us’ being victims of the ‘others’)” (Koren 2001:183). The relativization of a Croatian fascist past and crimes committed by Ustaše during WWII were especially dominant in early 1990s when the every idea of Croatian statehood, including the Nazi puppet state NDH (Independent State of Croatia), was presented in a positive light. Atrocities committed by Ustaše were not completely neglected, but they were given less attention than crimes committed against Croats. For example, “the history textbook for the 8th grade of

elementary school from 1998 dedicates only a quarter of a page to crimes against civilians in the Independent State of Croatia, arguing: ‘Ustašas followed the example of Nazi Germany and started a campaign of terror against Jews, gypsies and Serbs, against those Croats who were opposed to their politics, and against communists and anti-fascists’” (Cvijic 2008:717). On the other hand, communist crimes against Croats, such as the Bleiburg massacre and imprisonment and liquidation of political opponents were given much greater attention (Cvijic 2008).

The reconstruction of WWII memories was important during the early 1990s because it enabled the new Croatian political elite, together with the President Franjo Tuđman, to advance their political ambitions. While much effort has been invested into reforming public education and updating the curriculum since that time, the legacies of the 1990s continue to interfere with the efforts to offer a multi-perspective approach to history and allow diverse interpretations of the past. Today, the manipulation of historical facts, and contradictory narratives of WWII and the 1990s conflicts, continue to be used for political purposes with the similar goal of promoting a single and ‘proper’ interpretation of the past, while silencing counter-narratives. The following statement made by Tomislav Karamarko in 2013, the leader of the HDZ and one of the two presidents of the Croatian parliament, best describes the current state of affairs in Croatia:

I always emphasize that the modern Croatian state was created on the foundations of the Homeland War and the political doctrine of Dr. Tuđman [...] Enough with insulting the Homeland War, enough with underestimating, relativization and ideological fog [...] If you do not agree with the Croatian state, if you think that we should forget all crimes committed against Croats, attempts to destroy the Croatian state and seize its territory – okay [...] think what you want, but not in public [...] All of you who want to forget – who want to equate the victim with the aggressor – you can do that in your own home, but in the public arena, in textbooks, in newspapers, please do not poison us with that (Ciglenecki 2014).

Dealing with past conflicts in Bosnia and Herzegovina is even more complicated due to its ethnic and political divisions. The administrative partition of Bosnia into two entities after the 1995 Dayton Agreement not only resulted in political decentralization, it also created ethnicized

histories that are incompatible with each other. Subotic explains that because history has been put in the hands of local authorities, “education has come to represent ethnic politics of the majority population in a particular region” (2015:149). As a result, there is no integrated history, and three different textbooks are still being used to narrate conflicting accounts of the past history of Bosniaks, Croats and Serbs. Subotic argues that history education, “follows larger patterns of ethnic segregation in postwar Bosnia, and manifests itself in various models of physical segregation - demographic segregation that is the result of wartime ethnic cleansing and population displacement” (2015:150). This means that schools are also ethnically segregated to ensure that children will learn history of “their own kind”. Schools that are ethnically mixed function as ‘two schools under one roof’, which means that ‘sensitive’ topics are studied differently. Moreover, language, which was once the unifying element between three ethnic groups, is now purposively being differentiated, while Bosniaks and Croats use the Latin alphabet, Bosnian Serbs use the Cyrillic alphabet.

However, education is not the only source of ethnic and political divisions in Bosnia and Herzegovina. Remembering the past in Bosnia is also problematic because it is used to achieve specific political goals, rather than reconciliation. Bosnian Serbs, for example, continue to promote the separate status of the Republika Srpska and advocate for even more autonomy, while Bosniaks thrive on their suffering, victimization and injustice and support the idea of a united Bosnia with Bosniaks as the majority ethnic community. Bosnian Croats, on the other hand, highlight their strong relationship with Croatia as the principal ‘homeland’. Thus, it is evident that conflicting narratives still represent a barrier toward reconciliation in Bosnia and Herzegovina, and also between all three countries in the Western Balkans. The current state of the educational system and remembrance practices indicate that comprehensive reforms are

needed. Subotic argues that states should implement educational reform, “which includes textbook and curriculum reform that clearly presents evidence of crimes committed, the nature of the conflict, and the political environment that made the atrocities possible - even popular - among wide segments of society” (2015:154).

Banjeglav, who explored the relationship between commemorative practices, official narratives and justice developments in Croatia, claims that existing official commemorative practices affect Croatian-Serbian bilateral relations and obstruct reconciliation in the region (2012). Although commemorations are important practices that help society remember and honour its past, they are often abused for specific political goals and used for the promotion of ethnonationalist ideologies. Even though the majority of commemorations held in Croatia are used to reinforce the dominant narrative of the 1990s war, Banjeglav argues that, “the official, state narrative on the 1990s war is being deconstructed and contested by oppositional, sectional narratives, which can be discerned from unofficial, counter-commemorations and celebrations of war events” (2012:7). Banjeglav uses Ashplant, Dawson and Roper’s theory (2000), which states that the dominant national narrative is always contested by oppositional counter narratives, to illustrate how counter narratives create internal conflicts in Croatia and the region. Thus, Banjeglav explains that the politics of war memory and commemorations represent a, “struggle of different groups to give public articulation to and, hence, gain recognition for, certain memories and the narratives within which they are structured” (2012:7). Therefore, an ‘official memory’ represents a selective account of past events from a standpoint of those who have power to influence public discourses. The notion that ‘official narratives’ are not ‘collective memories’, but rather subjective accounts of the past that are socially constructed, is evident

when in the process of deconstruction and construction of narratives after the breakup of Yugoslavia is examined.

Banjeglav explains that, “after the Croatian Democratic Union (HDZ) won the first multi-party elections in Croatia and came to power in 1990, its president Franjo Tuđman tried to construct a new narrative of the past with the goal of achieving national reconciliation” (2012:8). To achieve this goal, it was necessary to erase memories that were created during socialist Yugoslavia, and which involved memories of a joint antifascist struggle of all nations during World War II. Instead, it was essential to convince people that living in a joint state did not benefit Croats and remind them that they could have their own state in which they would be free from the oppression of other nations. In order to awaken the people’s desire for independence it was necessary to remind them that the independent state of Croatia once existed but was destroyed by ‘enemies’ at the end of World War II. President Franjo Tuđman kept reminding Croats of the Independent State of Croatia (NDH), which briefly existed as a puppet-state of Nazi-Germany, in order to restore the idea of the ‘centuries old dream’ of forming an independent Croatian state that would unite all Croats. Banjeglav explains that in Croatia, “memories of unresolved conflict during the Second World War were employed by the new political elites in the 1990s to explain and justify new war” (2012:11). For instance, when Germany lost the war in 1945, the Independent State of Croatia (NDH) also ceased to exist, and the Ustaše were now perceived as enemies of the newly formed Yugoslavia. As a result, the Ustaše, accompanied by Serbian Chetniks, a Serbian nationalist movement who fought against German occupation and later against Communist partisans with a desire to establish an ethnically pure Greater Serbia, and Slovenian White Guards, a military anti-partisan movement, had to surrender to the Allies in the town of Bleiburg in Austria. The Allies then turned them over to the

new Yugoslav government who executed a large number of captives and the rest were forced to undertake a long march through northern Yugoslavia. “It is estimated that up to 55,000 Ustaše, Home Guards and mainly Croat and Bosnian Muslim civilians, up to 10,000 Slovene White Guards and Home Guards, and approximately 2,000 Serb and Montenegrin Chetniks, perished in Bleiburg or in its aftermaths” (Magas 2007:578). The massacre that occurred in Bleiburg was later used by Croatian political elites to recreate a memory of victimization of the Croatian people. In Croatia, Serbia and Bosnia and Herzegovina, pre-existing memories of WWII became a framework through which the 1990s conflicts were created and interpreted.

Memories of the recent conflict in the region are held alive through current commemoration practices. For example, commemorations of events that happened in and around the town of Vukovar plays a crucial role in the construction of official national memory of war and victimization, as well as the construction of national identity (Banjeglav 2012). “At the very beginning of the war, Vukovar symbolized heroic resistance to the aggression, but soon after the town fell in November 1991, it became a symbol of mass suffering and victimization” (Banjeglav 2012:13). Banjeglav explains that after the re-integration of Vukovar into Croatia’s political and legal order, the narrative of a victim-hero town was created and secured through commemorative practices (2012). Thus, Vukovar is not only perceived as a symbol of resistance to Serbian aggression, it is also seen as a victim that suffered in order for Croatia to gain its freedom. Keeping this memory alive is crucial for state-building and in the construction of national identity.

Jovic explains that, “what we remember and what we forget—at least within the field of ‘collective’ memories—is a matter of enormous importance for ‘collective’ (‘national’, ‘class’, ‘political’) identities. These identities are constructed, developed and preserved through myths

and selective memories, as well as through ‘collective amnesia’ of certain events, periods and personalities” (2004:97). Those who have power over public discourses, mainly political, economic and military elites, also have control over ‘collective’ memories and practices that help integrate memories into official discourses. To show disrespect to the official memory or to promote an alternative narrative is perceived as an act of rebellion and opposition to ‘collective’ welfare (Jovic 2004). An example of this factor was a counter narrative promoted by human rights organizations in Croatia during the official commemoration of Operation Storm in 2015. The narrative promoted by local peacebuilding NGOs, led by *Documenta*, challenges the official narrative of the Homeland War and Storm as a legitimate operation because it includes memories of Serbian civilian victims who were exiled or died as a result. However, this narrative was labelled as anti-Croat and excluded from the official memory.

Analyzing the media discourse can also often reveal which memories are acceptable at that specific historical moment because powerful elites, especially in transitioning countries, often use the media to promote their narratives and official memory. However, the media can also be used to ‘erase’ inconvenient memories, like those of Serbian civilian victims in Croatia, by not reporting on events that challenge official memory or presenting them in a biased way. Price and Stremlau, who explored the role of the media in transitional justice processes, argue that, “media—where they are pervasive and absorbed—can exploit transitional justice measures to deepen divides and reinforce the persistence of divisional identities, even where there are efforts to deploy ideology to surmount existing settlements of identity politics” (2012:1080). In the former Yugoslavia, the media was both a weapon and a mirror of violence. Before the war even started the media was used by nationalist leaders to promote identity divisions and hatred between Croats, Serbs and Bosniaks. For instance, at the very beginning of the conflict, in April

1992, Serb forces began broadcasting their own television channel, Serb Radio and Television through which they screened, “falsified reports of Serbs being slaughtered by Islamic fundamentalists and Croatian fascists (Ustaše), as were false reports about Western conspiracies against the Serb nation” (Price and Stremlau 2012:1086). In my thesis research the media’s role in affecting transitional justice processes in the post-war period in Croatia is further explored through a discourse analysis of the media discourse.

Conclusion

The overview of transitional justice literature demonstrates that the scope of international peacebuilding advocacy and interventions has expanded greatly since the 1980s. Since then, dealing with the past through internationally prescribed transitional justice mechanisms has become a norm that post-conflict states now routinely adopt as part of their international relations policy. Unfortunately, as argued by Mac Ginty, and other critical scholars, the adoption of a traditional justice ‘toolkit’ often delivers a deeply flawed peace and has little effect on reconstructing post-conflict societies (2006).

It appears that one of the reasons why international mechanisms of transitional justice do not always deliver a lasting peace and reconciliation is because they interplay with specific social, cultural, historical, religious and economic contexts of post-conflict societies. For example, in Croatia, Bosnia and Herzegovina and Serbia, conflicting discourses based on historical distortion interplay with transitional justice mechanisms and represent an obstacle to social transformation and reconciliation because they create divisions within each society and between countries of the former Yugoslavia. Although some scholars have recognized the need to examine conflicting discourses in order to understand how they influence transitional justice in the Balkans, the literature review reveals that to date they have focused mainly on analyzing

official discourse by examining remembrance practices such as commemorations or history textbooks. However, in order to gain a more comprehensive understanding of how various conflicting discourses collectively shape transitional justice in the Balkans it is necessary to analyze official governmental/state discourse along with other discourses, including those linked to legal institutions like the ICTY and domestic courts, discourses promoted by powerful international actors like the United States and European Union, regional and international human rights and peacebuilding organizations, and local peacebuilders and the media. The purpose of my study is to fill this gap by conducting a detailed and critical examination of this broader range of identified transitional justice discourses in the Balkans region, with a particular focus on Croatia. However, before I discuss the results of my study, I provide a detail description of the method of critical discourses analysis.

Chapter 3

METHODOLOGY

Introduction

This chapter describes the ideological assumptions, theories and methodological procedures of the critical discourse analysis method. In brief, the critical discourse analysis method is founded on a social constructivist epistemology and is particularly concerned with understanding the relationship between power and language. As such, critical discourse analysis is an appropriate method to use in order to examine how different actors, including international actors, legal, local government, local peacebuilders, and the media, have exercised their power to shape transitional justice discourse in Croatia and the social consequences of such discourse control. In this chapter I also explain how I gathered and analyzed relevant textual data in order to gain a comprehensive understanding of the current state of peace in the Balkans.

Methods: Critical Discourse Analysis

I chose to use the discourse analysis method, rather than a content analysis method for instance, because I believe that the transitional justice and peacebuilding discourses are socially constructed and shaped by structures of power. Although both discourse analysis and content analysis are concerned with analyzing the text, they come from different philosophical bases. That is, content analysis adopts a positivistic approach with a goal of being objective systematic and quantitative (Hardy, Harley and Phillips 2004). Hardy, Harley and Phillips explain that at the practical level content analysis, “involves the development of analytical categories that are used to construct a coding frame that is then applied to textual data” (2004:20). Thus, the difference between discourse and content analysis is that discourse analysis focuses more on understanding

the relationship between the text and context and it is concerned with understanding how the meaning of language changes, while content analysis focuses on the consistency of its meaning that allows for applying categories and counting.

While there are different ways of doing the discourse analysis, I use the critical discourse analysis method because its main focus is on analyzing the relationship between discourses and power. I believe that using the critical discourse analysis method allows me to access underlying meanings, assumptions and uncover the relations of power that currently shape transitional justice and peacebuilding developments in Croatia and the Balkans. Moreover, critical discourse analysis enables me to identify themes, ideologies, symbols and beliefs that exist in the language of conflicting narratives, and allow me to understand how different actors socially construct transitional justice. In addition, this analysis examines the consequences that these conflicting discourses have on transitional justice developments in Croatia as well as peacebuilding and reconciliation in the region.

In general, the term ‘discourse’ stands for an, “idea that language is structured according to different patterns that people’s utterances follow when they take part in different domains of social life”, or simply, discourse is a particular way of talking about and understanding the world (Phillips and Jorgensen 2002: 1). Thus, discourse analysis can be defined as, “an approach which aims - across disciplinary boundaries - at analyzing language use in speaking or writing as a factual process happening in a social context: text and talk in action” (Keller 2013:13). This notion is rooted in Habermas’s idea of ‘communicative action’, which he defines as interaction, typical by using the language, between at least two subjects who seek to reach common understanding and coordinate actions by reasoned argument, consensus, and cooperation rather than strategic action strictly in pursuit of their own goals (Habermas, 1984:86). Communicative

action takes place in a social context which he calls the 'life-world'. The life-world consists of three components: *culture*, or the cultural tradition that represents a stock of knowledge that participants draw on when they communicate with each in order to reach a common understanding; *society*, which is the institutional order, and *personality*, which are competences that make participants capable of speech and action in different situations (Baxter 1987). Thus, the three components of the life-world represent a social background that allow participants to communicate and understand each other.

The main assumption behind discourse analysis is, "that our ways of talking do not neutrally reflect our world, identities and social relations but, rather, play an active role in creating and changing them" (Phillips and Jorgensen 2002: 1). Although discourse analysis and theories include a series of interdisciplinary approaches, the following premises are common to most: a critical approach to taken-for-granted knowledge, historical and cultural specificity, the link between knowledge and social process, and the link between knowledge and social action (Phillips and Jorgensen 2002). A critical approach to taken-for-granted knowledge refers to the belief that knowledge is not a reflection of the "reality", but rather a product of our discourses. The historical and cultural specificity premise implies that our knowledge and views are products of, "historically situated interchanges among people" and that, "the ways in which we understand and represent the world are historically and culturally specific and contingent" (Phillips and Jorgensen 2002:5). Furthermore, discourse analysis approaches assume that there is a link between knowledge and social processes because knowledge is created through social interactions in which we construct truths and compete over which discourse should be considered the common truth. Finally, there is a link between knowledge and social action

because a different understanding of the world leads to different actions, which then have specific social consequences.

Discourse analysis assumes that language is our access to the social world. Yet, language is not just a channel through which information about the world is shared, but it is a machine that creates the social world. Phillips and Jorgens further explain that language does not reflect a pre-existing reality because meanings that are communicated through language change from discourse to discourse (2002). Discourse approaches differ as to the degree of emphasis given to subjects' freedom to use language to create and appropriate discourses. For example, according to Foucault, "discourse is not the majestically unfolding manifestation of a thinking, knowing, speaking subject" (Foucault 1972:55). Instead, subjects are created in discourses because individuals become a medium for the culture and its language.

Foucault's view that subjects are created in discourses, was influenced by Althusser's (1971) structural Marxist approach. Like Marx, Althusser believed that society consisted of two levels, the economic base and superstructure. However, Althusser divided the superstructure into two two levels: "the repressive state apparatus" (e.g. the police) and "the ideological state apparatus" (e.g. the media). While "the repressive state apparatus" functions mainly through repression and maintains power through violence, "the ideological state apparatus" functions primary through ideology. Althusser holds that an individual becomes an ideological subject through a process of interpellation, which is "the process through which language constructs a social position for the individual and thereby makes him or her an ideological subject" (Phillips and Jorgensen 2002:15). In other words, individuals recognize themselves as subjects through ideology and they freely accept ideology and act according to the ideology they adopt. Althusser assumes that individuals always accept the ideology and their position as subjects.

However, many critics have since rejected the notion that one ideology controls all discourses and instead claimed that individuals do not become interpellated in just one subject position, but that different discourses give “the subjects different, and possibly contradictory positions from which to speak” (Phillips and Jorgensen 2002:17). Moreover, approaches also differ as to their position on a subject’s agency and ability to resist social structures. Critical discourse analysis, which I use in this study, “is a type of discourse analytical research that primarily studies the way social power abuse, dominance, and inequality are enacted, reproduced, and resisted by text and talk in the social and political context” (Van Dijk 2001:352). Although this approach does not hold that subjects are completely determined by structures, and stresses the subjects role in social change, it still deems that discourses provide frameworks that limit the subjects’ agency. However, critical discourse analysis is not concerned with language per se, but with the linguistic character of social and cultural processes and structures. Thus, “it is partly through discursive practice in everyday life (processes of text production and consumption) that social and cultural reproduction and change take place” (Phillips and Jorgensen 2002:61).

In critical discourse analysis, discourse is seen as a social practice that both shapes social structures and is shaped by them. For instance, when analyzing how discursive practices in the media shape transitional justice in Croatia I also have to take into account that these discursive practices are influenced by social forces that do not have a solely discursive character, such as the structure of political systems and institutional organization of the media. Moreover, I need to take into account that transitional justice in Croatia is also shaped by larger global trends in transitional justice practices and current debates among international actors, such as the United States, European Union and international transitional justice and peacebuilding NGOs who have

power to influence transitional justice discourse. Thus, discourse can both be a, “form of action through which people can change the world, and a form of action which is socially and historically situated and in a dialectical relationship with other aspects of social” (Phillips and Jorgensen 2002:62).

An important aspect of critical discourse analysis is that it holds that discursive practices contribute to the creation and reproduction of unequal power relations between social groups. Van Dijk explains that this means that critical discourse analysis has to bridge the “gap” between micro, meso and macro levels of analysis. Language use, discourse and communication typically belong to micro level of the social order, while power, dominance and inequality between groups belong to macro level analysis, and they are mediated through the meso level, such as state institutions and organizations (Van Dijk 2001). To illustrate, a speech in parliament that promotes nationalism and ethnic animosity is a discourse at the micro level, yet if this discourse is institutionalized at the meso level through legislation and laws then it becomes part of a macro level, or structural inequality. Critical discourse analysis thus aims to reveal the role of discursive practices in creating and maintaining unequal power relations.

Van Dijk further argues that, “among many other resources that define the power base of a group or institution, *access to or control over* public discourse and communication is an important “symbolic” resource, as is the case for knowledge and information” (Van Dijk 2001:355). Unlike ordinary people who only have control over everyday talk, members of more powerful social groups have access over public discourse, which enables them to shape its contexts. Controlling discourses further leads to what Van Dijk calls “mind control”, because “recipients tend to accept beliefs, knowledge, and opinions through discourse from what they see as an authoritative, trustworthy, or credible source, such as scholars, experts, professionals, or

reliable media” (Van Dijk 2001:357). Thus, the purpose of doing critical discourse analysis is to analyze this complex relationship between power and discourse, and gain an understanding of how specific discourses shape social relations and actions.

I expect that the critical discourse analysis of five conflicting discourses, which include international actors, legal, local government, local peacebuilders and the media discourses can not only provide a detailed account of the post-war situation in Croatia and the region, but also answer the following questions:

1. How do powerful groups (international actors, legal actors, government, peacebuilding actors and the media) shape the transitional justice discourse in Croatia?
2. How does such discourse control influence peacebuilding developments in Croatia, and what are the social consequences of such control, such as the absence of true reconciliation in the region?

Data Collection and Analysis

I used a purposive sampling strategy to collect data in textual form available on the internet, including legal texts, laws, declarations, parliamentary speeches, reports and studies published by international and local non-profit organizations, online newspaper articles and reports of interviews. The rationale for employing a purposive strategy, which is a non-random sampling of key texts based on *a-priori* knowledge of the topic being studied, was to create a corpus of documents that will only include data relevant to the study and avoid collecting a large number of irrelevant data (Mason 2002). To illustrate, when compiling the media texts for the analysis of the media discourse I used the key words to search through online newspaper sites and generate articles relevant to specific transitional justice issues that I decided to closely examine, such as particular ICTY trials and war related events like the military’s Operation

Storm. This allowed me to compile appropriate texts based on previously defined criteria and select data relevant to research questions that I wish to answer in this study.

Using a purposive sampling strategy was especially important since I chose to analyze relevant documents produced between a long time period - between 2000 and 2016. However, choosing this time period was important because the year 2000 represents a new era in Croatian history because that was a year in which a new democratic government was constituted from a coalition of six political parties and the first time since Croatia's independence that Tuđman's HDZ lost power. The year 2016 is also significant because this was a year in which Bosnian Serb Radovan Karadžić was found guilty of genocide for the Srebrenica massacre and sentenced to 40 years in prison.

The critical discourse analysis of the international actors discourse was conducted through a comprehensive analysis of narratives that the international transitional justice and peacebuilding NGOs, the European Union, United States and other foreign governments, policy-makers and actors promoted in their policies, laws, agreements, declarations, reports, publications, as well as statements in the media and information on the official websites. The majority of these documents were obtained from the official websites of the European Union, the Government of the Republic of Croatia, the United States, and organizations like the United Nations, Human Rights Watch and the International Centre for Transitional Justice (ICTJ). The search through these websites using key words provided a large number of legal documents and reports on the relationship between Croatia and the EU, laws and declarations on policies that the EU adopted toward Croatia, reports published by the European Commission on Croatia's progress during the EU accession negotiation period, meeting minutes from the EU- Croatia Joint Parliamentary Committee meetings, reports on the General Affairs Council meetings during

which issues relevant to the Balkan region were discussed, as well as relevant studies and reports published by international NGOs on Croatia's progress in dealing with issues of refugees and stateless persons, human rights and war crimes.

The legal discourse was analyzed through a detailed inspection of documents related to the work of the ICTY and domestic courts, such as trial reports, hearings, sentences, and other relevant documents. A detailed search through the ICTY website provided a number of legal documents relevant to the ICTY's work, including ICTY Annual and Completion Strategy reports, which provide a comprehensive overview of completed cases, as well as information on ongoing trials and appeals, and progress toward the completion of the court's work. Through the ICTY's website I also accessed Outreach Program reports, additional documents on selected cases, as well as indictments, trial judgments, Appeal Chamber judgments, and statements and speeches made by prosecutors and judges in the press release archive. Data on the work of domestic courts was accessed through the website of the Ministry of Justice of the Republic of Croatia, the Supreme Court of the Republic of Croatia and the County Courts websites. I also used reports on Monitoring War Crimes Trials available on the Documenta' website, as well as the Organization for Security and Co-operation in Europe Mission's to Croatia (OSCE)'s reports on domestic war crimes proceedings.

The analysis of the local government discourse was conducted through a critical examination of parliamentary debates, laws and declarations, as well as public speeches, debates or statements available on the internet and online newspapers. Parliamentary debates and sessions were accessed through the Government of the Republic of Croatia website, while declarations and laws were accessed through online newspaper *Narodne Novine*, the official gazette of the Republic of Croatia which publishes laws, regulations, appointments and official

decisions and releases them in the public domain. Public statements and speeches of local politicians and authorities related to transitional justice issues were accessed on online media sites.

Discourse of local peacebuilders was mainly examined through the work of Documenta - the Center for Dealing with the Past, the most influential NGO in Croatia that is involved in transitional justice and peacebuilding activities and advocacy in Croatia and the region. I used Documenta's website to access information on its programmes and activities, annual reports, publications, including handbooks, studies and reports on transitional justice, dealing with the past, war crimes, victim rights and the Initiative for RECOM. Moreover, since Documenta's representatives are also visible in the media, I was able to include online media sources that specifically deal with Documenta. Additionally, I searched through the websites of other human rights organizations in Croatia and the region, including the Centre for Women War Victims - ROSA, the Organization for Support to Victims and Witnesses, the Civic Committee for Human Rights, the Coalition for Protection and Promotion of Human Rights, Human Rights House, the Youth Initiative for Human Rights from Croatia, the Helsinki Committee for Human Rights in Croatia and Serbia, and Women in Black from Serbia, in order to gain information on their activities and narratives that they promote.

Finally, the local media discourse was mainly investigated through the critical analysis of the following newspapers: *Al Jazeera Balkans*, which is an international news television station headquartered in Sarajevo, Bosnia and Herzegovina aimed at the media markets of the countries that used to be constituent units of Yugoslavia; *Večernji list*, which is a daily newspaper published in Zagreb, Croatia; and *B92*, which is an online news site from Serbia. In addition to those three online newspapers that constituted the main focus of my analysis, I looked at news

reports and articles published by other online newspapers in the region in order to get a better understanding of how local media framed and discussed transitional justice issues.

Once the data collection process was completed I imported all the relevant documents into NVivo software in order to prepare and organize the data for analysis. Prior to reading all of the documents I created concepts and categories based on my knowledge of transitional justice in the Balkans. These preliminary developed codes were used during the initial coding and further developed and changed as new concepts and categories emerged. The initial coding allowed me to break down the data into segments and, “look for and note signs that may reveal implied meanings, cultural values, and linkages to other concepts and contexts” (Morse 1999:29). As I tried to make sense of the coded sections and statements, and searched for relationships between different concepts, I thought about historical, social, institutional and situative contexts in which they were produced. I posed questions such as: in what historical and social context were the statements made or the text produced? In what institutional field and organizational setting did the data arise? From what institutional, organizational and situative position was the text conceived? These questions allowed me to be mindful of the impact of specific contexts, as well as power relationships, institutional settings and their rules, on the textual data that I analyzed.

Limitations of the Study

A lengthy time period and a large number of textual data that I decided to analyze in order to provide a complete account of how different actors shaped transitional justice developments in Croatia yielded a substantial amount of information on many important historical events, policies and practices. In my opinion, having a large number of documents to analyze was one of the main limitations of this research because it was difficult to conduct a thorough discourse analysis. Consequently, it is possible that I failed to take into account subtle

messages and meanings that could provide a different perspective on the impact of a particular discourse on transitional justice developments. Another possible limitation is that by relying on the internet to obtain my data, I may have missed capturing broader perspectives and narratives that could only be observed through different data formats, such as social practices like participating in demonstrations or peacebuilding activities. Thus, the findings of this research study may be subjected to the interpretation of the researcher as the value of one discourse may be interpreted to outweigh another.

While I think that subjectivity on the part of a researcher is something that cannot be avoided, it is still important to constantly question one's own standpoint in order to better understand one's own position and those of others. Therefore, as I was analyzing and interpreting transitional justice discourses I needed to be aware of my own role in maintaining and reproducing social inequality. Importantly, I also believe that one of the strengths of this study is my knowledge of the language and culture that I am studying. As an 'insider', I had an opportunity to access information and data in my native language, which often loses its meaning once translated into English or other languages. Further, this gave me access to the underlying meanings and ideologies that are hidden in the language of these conflicting narratives, and which may not be understandable to a non-Croat.

Conclusion

This chapter described theories and perspectives behind the critical discourse analysis method. Fundamentally, the critical discourse analysis method is interested in analyzing "structural relationships of dominance, discrimination, power and control as manifested in language" (Wodak and Meyer 2008:10). In my study this method was used to analyze the complex relationship between power and transitional justice discourses in order to gain an

understanding of how different actors shaped transitional justice and peacebuilding developments in Croatia. The results of the critical discourse analysis of five conflicting discourses, international actors, legal, local government, local peacebuilders and the media, are discussed in more detail in the following chapters.

Chapter 4

INTERNATIONAL ACTORS DISCOURSE

Introduction

In this chapter I describe how international actors' discourses, policies and actions directed at assisting Croatia to recover from the war affected the transitional justice process and reconciliation in the region. After bringing the warring parties together in 1995 to sign the Peace Agreements and bring an end to the war, international actors, mainly the European Union and prominent international organizations, were highly involved in defining and prescribing appropriate responses to violent conflicts and human rights violations. However, instead of developing a comprehensive transitional justice approach sensitive to specific political, social, historical and cultural characteristics of the Western Balkans, the international actors applied a dominant transitional justice 'toolkit' that included prosecutions through international and domestic courts in order to seek justice for victims and establish individual accountability, and victim centred initiatives to promote human rights discourse.

International actors have insisted that peace in the region cannot be achieved without addressing the issues of justice and establishing individual accountability for war crimes and human rights violations. It was assumed that prosecuting individuals through the International Criminal Tribunal for the former Yugoslavia (ICTY) and domestic courts would free the general population from collective guilt and stop victimization and blaming on all three sides. Contrary to these expectations, prosecutions of military and political officials accused of war crimes were often perceived as attacks on core national values and identities because local people often see them as national heroes and not criminals. However, instead of taking into account local issues and adopting appropriate measures, international actors simply pressured countries of the former

Yugoslavia to adopt Western ideas and practices by using the conditionality strategy. The European Union, as a leading actor in the region, had a critical role in advancing international discourses and policies by offering (or threatening to withdraw) incentives such as financial aid, close political and economic ties with Western Europe, and potential EU membership. Yet, while the strict EU conditionality ultimately led to prosecutions of high ranked war officials responsible for the most horrific atrocities, this same policy sometimes undermined peace in the region and intensified hostility between the three ethnic groups.

In addition to promoting the idea that peace cannot be achieved without justice, international actors have also advocated and funded initiatives aimed at advancing human rights and democracy, such as victim and refugee protection programmes, institutional reforms and truth seeking initiatives. The EU closely monitored Croatia's progress in implementing programmes aimed at providing material and symbolic satisfaction to all victims affected by the war, such as the reparation of property, the return of land and property rights, monetary compensations, as well as efforts to protect victims against discrimination by adopting necessary laws and reforms. In order to promote reconciliation and establish common truth about the war, local civil society organizations, supported mainly by the International Centre for Transitional Justice (ICTJ) and financed through EU funds, advocated for the establishment of a regional truth telling commission. However, up to this time, due to the lack of public and political support, attempts to establish an official truth telling mechanism have failed.

In the following sections I describe in more detail how international actors' discourses, policies and actions shaped transitional justice in Croatia. I argue that international actors have failed to contribute to reconciliation on the ground because they ignored local needs and enforced dominant Western values and practices. Transitional justice in the Balkans was only a

part of the broader European integration approach through which the EU wanted to transform countries in the region into modern Western European democracies. As a result, local people often perceived these transitional justice mechanisms, especially the ICTY prosecutions, as necessary preconditions to fulfill in order to achieve other goals, such as EU membership and financial aid, rather than an opportunity to establish lasting peace and reconciliation.

Peace with Justice? The ICTY Conditionality and Croatia's Road to Europe

After the war ended, the EU adopted a number of different policies toward countries of the former Yugoslavia in order to enable societies to recover from the war, address issues of justice and truth, and transform them into modern democracies. Since neither country in the region initiated a national transitional justice strategy, the EU took a leading role in prescribing appropriate responses to war crimes and human rights violations. Under the close supervision of the EU, countries were obligated to address the issues of justice through the ICTY and domestic courts, strengthen the rule of law, adopt necessary laws and practices to transform institutions, and promote human rights and democracy.

During the General Affairs Council meeting, held on February 26, 1996, the EU expressed, “its full commitment to and support for the peace process in former Yugoslavia, both politically and in the context of international efforts to achieve economic rehabilitation” (General Affairs Council Conclusions, 1996:1). As part of this commitment, the EU adopted the **Regional Approach** policy, designed to re-establish social, political and economic relations in the region through closer economic ties and cooperation regarding crucial national issues, such as the issues of refugees, internally displaced persons (ITDs), as well as international obligations under peace agreements. This policy was based on the belief that closer social, political and economic ties between countries of the former Yugoslavia can contribute to stability and prevent

future wars. The idea that closer cooperation can maintain peace was one of the main justifications for the formation of the European Union after World War II, and was also the underlying discourse promoted through the EU policies toward the former Yugoslavia.

This idea was soon reinforced through a more defined policy called a **Conditionality Strategy** (General Affairs Council Conclusions, 1997). The Conditionality Strategy consisted of specific conditions that countries were required to fulfill in order to qualify for financial aid, as well as closer social, political and economic ties with the European community. The Strategy had three levels of relations and cooperation: Autonomous Trade Preference, PHARE: Implementation of the Programme, and Contractual Relations. Autonomous Trade Preference was linked to the respect for fundamental principles of democracy and human rights and to the readiness of the countries concerned to allow the development of economic relations between themselves. Implementation of the PHARE Programme, which is a program that serves as a pre-accession instrument and the main channel for financial and technical cooperation, required compliance with obligations under peace agreements, including those relating to cooperation with the Tribunal in bringing war criminals to justice. Contractual Relations included a number of different conditions that countries had to fulfill in order to qualify for the EU membership accession negotiations. The goal of these conditions was to transform former socialist countries into modern democracies through political and economic reforms, and encourage them to develop good relationships in order to maintain peace and stability in the region. The EU closely monitored their progress and evaluated each country's readiness to comply with these conditions. Importantly, failure to adhere to conditions under the Conditionality Strategy could result in the loss of financial aid or the prospect of integration within the EU.

Early conditionality progress reports indicated that Croatia, still under the rule of President Tuđman, was not willing to comply with all conditions. In the first Conditionality Progress report on October 3, 1997, the European Commission stated that,

Croatia has not cooperated fully with the ICTY in bringing known indicted war criminals to justice. Official statements pledging cooperation are not followed up in practice. Specifically, Croatia has not cooperated in the case of General Blaskic, where they are challenging the ICTY subpoena (on the grounds of national security). Nor is there sufficient evidence of Croatia using its influence to bring Bosnian Croat indictees before the ICTY.

Croatia has not fully complied with its obligations under the Erdut Agreement, as evidenced by the recent visit of the Erdut Article 11 Commission, which expressed concern over the lack of progress and cooperation by the Croatian authorities with regard to a number of benchmarks identified in Resolution 1120. (European Commission Conditionality Report 1997:11).

Problematically, in the following year reports were even less optimistic. On April 27, 1998 during the General Affairs Council's meeting, the European Council expressed its concerns that,

Croatia has consistently stated its wish for integration into European structures (in particular inclusion in the PHARE programme and the negotiation of a cooperation agreement): the Council welcomes this. But Croatia has failed to translate this stated wish into progress in meeting EU conditionality criteria. **Indeed indications so far in 1998 are that Croatia is moving away from EU criteria. Recent developments on ethnic reconciliation and refugee return have been in the wrong direction: at a time when fostering of confidence of the Serb minority is crucial for the regional return process. Unless recent trends are reversed, and there is a clear improvement in Croatian performance, the Council believes that the removal of Croatia from the autonomous trade preferences system should be seriously considered,** at the latest by the next review in October (General Affairs Council Conclusions 1998:9).

Similar observations were made in the second Conditionality Progress report published by the European Commission in October 1998. This time the Commission expressed a concern regarding the lack of compliance with obligations under the Dayton and Erdut Agreements and observed that these issues continue to undermine transitional justice and peacebuilding efforts.

At these early stages of transitional justice, the EU had to use the ‘carrot and stick’ approach to foster compliance with internationally set conditions because Croatian government was often not willing to comply with imposed obligations. At the time, the Croatian government was reluctant to restore relationships in the region and strongly believed that the ICTY should only prosecute Serbs accused of war crimes against Croatian civilians. In 1999, the Croatian Parliament issued a ‘*Resolution on Cooperation with the International Criminal Tribunal in the Hague*’ in which it condemned and rejected accusations against legitimate military actions Storm and Flash that freed occupied territories and prevented further Serbian aggression. In the Resolution, it also stated that the international community and the Tribunal had betrayed Croatia’s expectations that the ICTY will try, prosecute and punish crimes committed against Croatian civilians, and urged it to work more efficiently in fulfilling its mandate.

While the regional approach and conditionality strategy represented early efforts to restore relationships in the region and promote peace, countries were still not ready to confront the past and dominant narratives of the war. In 1999 the EU stated that the Balkan region is at the turning point in which a new approach to peace and stability is urgently needed (Communication by the European Commission on the SAP, 1999). In the report, the European Commission voiced a concern that despite social, political and economic support from the international community, the region continued to suffer from inter-ethnic tension and conflict, and lacked political and economic development. The Commission also explained that,

The European Union has a **particular interest in the region**, because of its geographic proximity to Member States and candidate countries. This interest will be even higher following the future enlargements of the European Union, which will bring these countries even closer to the our borders. **Stabilization of the region would bring real benefits both to the region and to the EU. Instability is very costly for all concerned.** The EU has spent enormous sums on repairing the results of instability - over 7 billion since 1991, without counting the cost of refugees within EU Member States or of other operations (UN, OSCE, NATO) - a bill which is

continuing to rise in the present circumstances. **It is clearly more in the interest of the countries of the region, and of the European Union to which they will ultimately belong, that even a fraction of these sums should be spent instead on their political and economic development** (Communication by the European Commission on the SAP, 1999:16).

Even though the EU observed that ethnic tensions and hostilities represent an obstacle to reconciliation and development, it did not try to develop more appropriate responses to these issues. Instead, regardless of circumstances on the ground, the EU insisted on democratization and marketization of the region. As it was clearly stated, the EU's commitment to and support for peace and stability is based on its interest in the region and intention to incorporate the Western Balkans into the European Union. However, because these efforts are very costly, the EU proposed that these sums should instead be used for political and economic development. Hence, indicating that if countries in the region wish to become part of the European community they should focus on adopting Western values and practices rather than be fixed on 'ancient ethnic hatred'.

The EU's goal to transform the countries of the former Yugoslavia into neoliberal democracies, similar to the Western European countries, was confirmed again when the EU proposed a new policy and offered closer ties with the European Union and prospect of the EU membership. The new policy, called **Stabilization and Association Process (SAP)**, was developed on the existing Regional Approach and Conditionality Strategy, but was designed to further strengthen the relationship between the EU and the Western Balkans. Most importantly, the goal of the new policy was to draw countries closer to the perspective of full integration into EU structures. While the EU offered higher incentives than before, it also clearly stated that, "these stronger incentives would, of course, require compliance with more demanding conditions, both political and economic as well as increased emphasis on the need for regional

cooperation” (1999:3). The main objectives of the SAP were to support regional cooperation and dialogue, political and economic development, strengthen democracy and the rule of law, and prepare countries for future EU membership. Thus, economic and political development, and the promotion of Western values and practices, remained the dominant discourse that the EU advocated for as part of both transitional justice and development strategy.

The year 2000 represented the turning point in relations between the EU and Croatia. During the European Council meeting at Santa Maria Da Feira on June 19/20 2000, the Council stated for the first time that, “all the countries concerned are potential candidates for EU membership” (Santa Maria Da Feira European Council Conclusions 2000:12). The Council was especially pleased with Croatia’s progress and expressed satisfaction with the newly elected government and its readiness to start early negotiations on the Stabilization and Association Agreement, its willingness to adopt economic and democratic reforms, as well as to comply with international obligations. The new government demonstrated its readiness to more actively deal with war crimes and cooperate with the ICTY on April 2000 when the Croatian Parliament adopted a ‘*Resolution on the Cooperation with the International Criminal Court in the Hague*’. In the Resolution, it was stated that Croatia holds a belief that all perpetrators of war crimes must be prosecuted, regardless of their nationality. Also, it was declared that Croatia will not question the legitimacy and decisions of the ICTY to prosecute perpetrators from the Croatian side. The Croatian government promised to take all the necessary steps and measures to collect required evidence and documents, and help with the investigation and prosecution of war crimes. The international community rewarded actions of the new Croatian government with membership in the NATO Partnership for Peace and to the World Trade Organization, as well as financial

assistance to promote economic development and to support initiatives such as programmes for refugee return.

Negotiations on the SAP were opened on November 24, 2000 during the Zagreb Summit. The Zagreb Summit was a historical meeting because it was the first time in the history of the EU that the Council met outside EU territories, and especially because only a year ago, during the HDZ government, Croatia was isolated from Western Europe and its neighbours. Therefore, the Zagreb Summit symbolized closer co-operation with the EU and further stressed the importance of the Stabilization and Association Process, regional co-operation and reforms. During the Summit the EU reaffirmed the European perspective of the countries participating in the SAP and their status as potential candidates for membership. While it was clearly stated that each country's European prospects will be individually assessed, regional cooperation was still at the heart of the EU policy toward the Balkans. Besides the importance of political and economic cooperation, the EU also highlighted that regional cooperation should be based on the respect for the rights of minorities, respect for international obligations, including cooperation with the ICTY, the problems of refugees and displaced persons, and respect for states' international borders.

After these promising signals, Croatia applied for EU membership in February 2003. The European prospect of the Western Balkan countries was confirmed again at the Thessaloniki Summit on June 21, 2003. The EU and Western Balkan countries' representatives reached an agreement known as the '*Thessaloniki Declaration*' in which it was stated that, "the future of the Balkans is within the European Union" (EU-Western Balkan Summit Declaration, 2003:2). However, it was also explained that despite the EU's full commitment to support the Western Balkans on their path to European integration, the European perspective of each country will

largely depend on its willingness to adopt European standards and implement necessary conditions. In addition to political, economic and institutional criteria for EU membership that was established by the Copenhagen European Council in 1993, the Western Balkan countries were required to continue to implement the existing SAP policy. The specific European integration framework and criteria for the Western Balkans was defined in the European Council's '*Thessaloniki Agenda for the Western Balkans*'.

On June 16, 2003 the European Council adopted '*The Thessaloniki Agenda for the Western Balkans – Moving towards European Integration*', a document which defined the EU agenda and policies toward the Western Balkans. In addition to accepting existing principles, the former Yugoslavian countries were required to deal with issues of justice through full cooperation with the ICTY in order to qualify for EU membership. The Council clearly stated that "respect for international law is an essential element of the SAP, the EU reiterates that full cooperation with ICTY, in particular with regard to the transfer to the Hague of all indictees and full access to documents and witnesses, is vital for further movement towards the EU" (Thessaloniki European Council Conclusions 2003:12). Yet, despite the apparent commitment of the Croatian government to assist in the prosecution of war crimes, cooperation with the ICTY had often been the most difficult criteria to satisfy and it has interfered with Croatia's progress toward EU membership.

On April 2004, the European Commission issued a document titled '*Opinion on Croatia's Application for Membership of the European Union*', in which Croatia's readiness to start membership negotiations was assessed based on a number of political and economic criteria, as well as compliance with international obligations, especially cooperation with the ICTY. Overall, the European Commission's opinion on Croatia's progress was positive and

satisfactory. In the report it was stated that although Croatia is still struggling with a number of political, economic and social issues which interfere with its transition to a modern democracy, the government is increasingly taking the necessary steps to transform institutions and implement policies and laws to allow for a full transition. The European Commission also concluded that Croatia's cooperation with the ICTY improved significantly and that the Croatian government had made an effort to provide access to internal documents and allowed interviews with witnesses (Opinion on Croatia's Application for Membership of the European Union, 2004). Based on these evaluations and recommendations, the Commission proposed that accession negotiations with Croatia should be opened on March 17, 2005.

Yet, contrary to positive expectations, negotiations and future membership in the EU suddenly came into question when Croatia failed to capture and transfer missing General Ante Gotovina. General Gotovina was accused of ordering the killing and expulsion of ethnic Serbs after Operation Storm in 1995, and his transfer to the ICTY was the final criteria that Croatia had to fulfill in order to start negotiations. The EU Enlargement Commissioner Olli Rehn expressed his concern with Croatia's failure to deliver the indicted General to the Hague and said:

I am convinced that if the Croatian government had the political will to locate and transfer General Gotovina, it could do so. Let me also say very clearly that, without full co-operation with the ICTY, the negotiations cannot start ("EU Warns Croatia about Fugitive" 2005).

As a result, the EU decided to postpone entry negotiations with Croatia until General Gotovina was transferred and full cooperation with the ICTY was established again. This decision came as a shock and a reminder to Croatia, and other countries in the region, that the EU rigorously monitors their progress and compliance with international obligations.

Fortunately, when on October 3, 2005 the ICTY's Chief Prosecutor Carla Del Ponte reported that Croatia is fully cooperating with the Tribunal, negotiations resumed on the same day. The EU then adopted the '*Negotiation Framework*', in which it was written that, "the Union expects Croatia to continue to fulfill the political criteria and to work towards further improvement in respect of the principles of liberty, democracy, respect for human rights and fundamental freedoms and the rule of law; to cooperate fully with the International Criminal Tribunal for the former Yugoslavia; and to make further progress in relation to minority rights, the return of refugees, judiciary reform, regional cooperation and the fight against corruption" (Negotiation Framework 2005:1). The progress in these areas was closely monitored by the European Commission and it was highlighted that failure to comply with these conditions could result in the suspension of further negotiations.

The positive report and opening of negotiations were followed with the arrest of General Gotovina in the Spanish Canary Islands in early December 2005. General Gotovina was accused of war crimes and crimes against humanity committed after Operation Storm and his transfer to the Hague was perceived as a significant step forward in regional reconciliation. The EU Enlargement Commissioner Olli Rehn was pleased with the arrest of General Gotovina and stated that,

the arrest of Ante Gotovina is very good news. For reconciliation in the region of the western Balkans and for ICTY to successfully accomplish its work, it is fundamentally important that all indictees are brought to justice ("In quotes: Gotovina's arrest welcomed." 2005).

With the arrest of General Gotovina, Croatia overcame all the major obstacles to its EU membership. Yet, as many critical scholars have argued before, his arrest did not contribute to true reconciliation because it was mainly perceived as a necessary condition to fulfill in order for

Croatia to be rewarded with EU membership (Banjeglav 2012; Clark 2012; Subotic 2009). At the same time, indictments against Croatian war generals were still perceived as international attacks on the legitimacy of the Homeland War and core national values. Problematically, instead of condemning such views, the government has often reinforced these narratives through public statements or policies. For instance, in 2006, soon after the transfer of Gotovina to the Tribunal, the Croatian Parliament adopted a '*Declaration on Operation Storm*'. The Declaration states that, "it is an obligation of the Croatian Parliament, Croatian expert public, Croatian scientific and educational institutions, as well as the media, to transform, over time, Operation Storm into a battle that cannot and will not be forgotten: into a decisive, glorious, and victorious battle of the Homeland War that will become part of Croatia's useful past for future generations" (Declaration on Operation Storm 2006). Thus, instead of openly discussing and condemning war crimes committed on its own side, which could actually contribute to reconciliation in the region, the government brought forward a declaration that only reinforced the dominant narrative of the Homeland War and undermined international transitional justice efforts.

In the following years, the European Council and Commission published a number of reports and documents on Croatia's EU accession progress in order to monitor political and economic criteria for membership, as well as whether Croatia is in fact complying with international obligations - full cooperation with the ICTY, improvement of the rule of law and domestic courts, and protection of human and minority rights. These obligations were strictly monitored because they were perceived as crucial for peace and stability in the region. Since the arrest of General Gotovina in 2005, the Commission was mostly satisfied with Croatian progress in these areas. In 2006, the Commission reported that the government is cooperating with the ICTY on ongoing cases and providing access to internal documentation and potential witnesses.

However, the Commission was concerned that the government does not take more effort to discuss war crimes and trials with the general public. The Commission pointed out that, “as elsewhere in the region, the general public does not have easy access to objective information about the work of the ICTY” (Croatia Progress Report 2006:14).

The Chief Prosecutor was also concerned that Croatian authorities have not been conducive to the efforts to create a climate in Croatia more fertile for reconciliation and dealing with the legacy of the 1990s (Croatia Progress Report 2011:13). In his address to the United Nations in December 2011, Chief Prosecutor of the ICTY, Serge Brammertz, stated that,

During my last address to the Security Council, I mentioned our concern over statements from high-level Croatian authorities that question the validity of the ICTY’s work. Our concerns have been reinforced in the present reporting period. State officials at the highest level in Croatia continue to glorify illegal war-time conduct and question the impartiality of the ICTY’s judgements (“Completion Strategy: Prosecutor Brammertz’s Address before the Security Council.” 2011).

Therefore, it appears that the EU pressure and the prospect of EU membership were the main factors contributing to Croatia’s cooperation with the ICTY. Former Chief Prosecutor Carla Del Ponte explained, just before ending her eight year mandate, that while the full consent of various players to work with the Hague remains “a dream”, the EU membership conditionality requirement was proving, “successful and absolutely crucial. Ninety percent of those accused in custody now are direct results of EU conditionality. It is a unique incentive. Both a carrot and a stick” (“Del Ponte: EU Enlargement Bringing Justice to Balkans” 2007). Obvious contradictions often existed between messages that Croatian leaders were sending to the public, and what they were doing to fulfill the EU conditions. From the outside it appeared that the government was taking all the necessary steps to deal with the past and transform the society, but the situation on

the ground often suggested that political leaders were not ready to deal with biased historical narratives of the war and lacked a sincere commitment to build peace and stability in the region.

Regardless, because of the apparent progress in fulfilling international obligations, Croatia was rewarded with the closure of EU membership accession negotiations in June 2011. In the 2011 Progress report, the Commission confirmed that Croatia will become a Member of the European Union on July 1, 2013 because it successfully made progress in all areas, including democracy and rule of law, human rights and protection of minorities, development of a market economy, as well as regional issues and international obligations regarding cooperation with the ICTY and the prosecution of war crimes in domestic courts. Thus, while Croatia succeeded in its desire to become part of the European community and transform its society into a modern neoliberal democracy, the unresolved issues from the past continue to be part of the public discourse. The EU's insistence on justice and individual accountability as the most appropriate paths to stability and peace have produced little impact on reconciliation on the ground because these mechanisms were often not seen as legitimate by local people. Unfortunately, Croatia's cooperation with the ICTY would never be possible without the EU's pressure and conditionality strategy.

The Right to Peace: Promotion of Human Rights Principles and Victims' Rights

In addition to addressing the issues of justice through retributive justice mechanisms, international actors also aimed at transforming societies of the Western Balkans by promoting human rights discourse and initiatives such as victim reparations and truth seeking. In the only EU evaluation report on transitional justice developments in the former Yugoslavia, published in 2012 by the Council of Europe, it is stated that,

Genuine inter-ethnic reconciliation and durable peace in the region of the former Yugoslavia cannot be achieved without justice. Post-war justice is not only judicial and retributive, aimed at punishing those who have committed crimes through fair proceedings. It is above all restorative and preventive, aiming to provide redress to victims and to eliminate impunity and ensure that all people in the region come to terms with the past, and live in peace and security in cohesive, pluralist democratic societies (Council of Europe 2012:9).

Therefore, while the report highlights the predominant idea that peace cannot be achieved without justice, it also states that in addition to retributive justice, post-war justice must be restorative and include mechanisms such as truth seeking processes, victim reparations and institutional reforms. Thus, in addition to prosecutions, which can only satisfy victims' needs for justice for the atrocities committed, these victim centred mechanisms are aimed at empowering victims, and compensating them for their losses in order to help them build a better future and to restore their dignity.

The recognition of victim rights is part of the human rights discourse that has intensively developed since World War II as a result of major political, economic and social changes. Since then transitional justice has expanded beyond the legal context and increasingly became perceived as a comprehensive mechanism for transforming political and social aspects of post-war societies. As a result, states recovering from the war are now obligated to adopt measures to protect victims' rights and restore their dignity through material and symbolic reparations. Therefore, in addition to legal justice, social justice through the protection of human rights is now perceived as a necessary precondition for peace. For instance, in the Resolution on the *'Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations'*, adopted by the UN's General Assembly in 2005 it is declared that, "adequate, effective and prompt reparation is intended to promote justice by redressing gross violations of international human rights law or serious violations of international humanitarian law.

Reparation should be proportional to the gravity of the violations and the harm suffered” (2005:5). Victims’ rights to reparations are also recognized in Article 75 of the International Criminal Court. Importantly, unlike the UN Resolution, the International Criminal Court’s statute is legally binding for all signatories.

While the primary duty to deal with issues of war victims lies with the states concerned, due to the lack of national initiatives, the international community played the main role in promoting adequate reparations for victims in the former Yugoslavia. The international community, and mainly the Office of the United Nations High Commissioner for Refugees (UNHCR) and the Organization for Security and Cooperation in Europe (OSCE), played a leading role in funding and initiating programmes for reparation and assistance to refugees, internally displaced persons (IDPs) and other victims of war, like women who were victims of wartime sexual violence, war veterans and their family members.

According to the UNHCR report, “the number of persons in need of durable solutions (refugees and internally displaced) in the former Yugoslavia, which peaked at over two million during the Bosnian crisis in 1992-95 and the Kosovo crisis in 1999, decreased to less than one million by the end of 2003 and to approximately 560,000 by mid-2006” (2006:1). However, while the local government, supported mainly by the funding from the EU, UNHCR and the OSCE, made some steady progress in allowing refugees to return home by repairing destroyed homes and adopting necessary laws to protect human and minority rights, such as the European Convention on Human Rights and Fundamental Freedoms, the Framework Convention for the Protection of National Minorities, the European Charter for Regional and Minority Languages, and the UN Convention on Civil and Political Rights, many refugees and victims of war still deal with a number of issues.

The most important regional initiative to deal with issues of refugees and displaced persons, the so-called '*Sarajevo Process*', was launched in 2005 by UNHCR, the European Commission (EC) and the Organization for Security and Cooperation in Europe (OSCE), together with the Governments of Bosnia and Herzegovina (BiH), Croatia, and Serbia and Montenegro (SCG). The aim of this initiative was to bring about lasting solutions for the remaining refugees in the Western Balkans. On the basis of the principles expressed in the '*Sarajevo Declaration*', each Government agreed to prepare an action plan to find housing solutions for an estimated 74,000 wartime refugees, internally displaced persons (IDPs) and returnees in BiH, Croatia, Montenegro and Serbia (Sarajevo Declaration 2005). In the following years, the governments, under the guidance of the EU, adopted necessary laws aimed at protecting refugee and minority rights, and started reparations programmes to rebuild public infrastructure and private houses. However, despite steady progress, returning refugees continued to face a number of issues, including lack of employment opportunities, denial of compensation claims of those who lost occupancy and tenancy rights, as well as discrimination and lack of proper social integration. Also, the governments were often criticized for not cooperating on core refugee issues, which slowed down the return process.

In an effort to finalize the *Sarajevo Process*, the governments signed the '*Joint Declaration*' in November 2011, and agreed to establish the Regional Housing Programme (RHP) to contribute to the resolution of the protracted displacement situation of the most vulnerable refugees and displaced persons following the 1991-1995 conflicts on the territory of former Yugoslavia (Regional Housing Programme Website, Mission and History). The initiative was supported by the international community who gathered in Sarajevo, BiH, at the international Donors' Conference on April 24, 2012 to raise funds for the RHP. Out of the total

amount, EUR 230 million were pledged by the European Commission and EUR 31 million by other Donors. In addition to being the main funders of the RHP, the EU, human rights organizations, the U.S. and some other European countries, also have had a key role in overseeing the progress. The RHP consists of four Country Housing Projects and while each of the four partner countries are responsible for overseeing its Country Housing Project, international donors and organizations have control over funds and get to decide how they will be used. For instance, “the UNHCR and OSCE have been tasked with helping to identify eligible beneficiaries of the program, monitoring their selection and monitoring that they receive adequate protection. As such, these institutions play a crucial role in ensuring that the RHP effectively provides sustainable housing solutions to those refugees and displaced persons most in need” (RHP Website, Stakeholders). The Council of the Europe Development Bank (CEB) is responsible for managing funds, disbursing grants as well as monitoring the project implementation.

Without doubt, the international community played a crucial role in initiating and funding victim reparation programmes that helped refugees and displaced persons to return to their homes and obtain legal rights. The EU was especially involved in monitoring to ensure that programmes are being implemented and that human and minority rights are respected. Croatia’s progress in taking the necessary steps to solve the issues of refugees had been assessed in the yearly progress reports published by the European Commission. For instance, in the 2011 Progress Report, the Commission was pleased that,

there has been good progress on refugee return issues. Refugees continued to return to Croatia, with the Croatian authorities having registered over 132,872 returnees in total belonging to the Serb minority, which corresponds to approximately half of those who fled the country up until 1995. Progress was made with regard to housing issues. Housing care programmes (HCP) for returnees are being implemented. Croatia has largely implemented its Action Plan on the HCP for returning

refugees/former occupancy and tenancy rights holders (Croatia Progress Report 2011:52).

In general, the Commission had been satisfied with Croatia's continuous and steady implementation of the programmes for returning refugees. However, the Commission has remained concerned that anti-discrimination and international human rights laws are not implemented in practice. In 2008 Croatia adopted an Anti-Discrimination law that provides for the protection of equality, and creates prerequisites for the realisation of equal opportunities and regulates protection against discrimination. While the Anti-Discrimination law should offer legal protection to victims of all forms of discrimination, in the 2010 report the European Commission stated that some minorities, especially Serb and Roma, continue to face discrimination and difficulties in the area of employment, in terms of under-representation in the State administration, the judiciary and the police, and in the wider public sector (Croatia Progress Report 2010). It was also explained that although the reports of ethnically motivated attacks had decreased, cases of vandalism against monuments for war victims have continued. Problematically, even though police investigations into such incidents have improved, few cases have ended in a prosecution and many cases remain unreported due to lack of confidence in the authorities.

Since Croatia got accepted into the EU, the UNHCR has taken a leading role in overseeing the implementation of the *Sarajevo Process*. In the latest report from 2016, the UNHCR reported that while the majority of persons from Croatia, displaced by the conflict in the 1990s, had either returned to their country of origin or acquired the nationality of their country of asylum, there were still 49,055 persons from Croatia registered as refugees in the region, of which 41,724 were in Serbia; 6,726 in Bosnia and Herzegovina; 567 in Montenegro; and 38 in

Kosovo (UNHCR Third Process Report 2016). However, while the internationally funded programmes for reparations empowered the majority of refugees to return to Croatia, refugees still face a number of issues upon their return. In the same Report on the Implementation of the *Sarajevo Process*, the UNHCR expressed a concern that according to various sources, “intolerance towards members of the Serb national minority is on the rise, as reflected in threats, hate speech and destruction of property. Amongst others, the Serbian National Council (SNC), a UNHCR implementing partner, in its annual report on hate speech and violence against Serbs, highlighted a number of ethnically motivated incidents, predominantly hate speech and a few security incidents that took place in 2015” (2016:13).

Thus, as many critics have argued, problems with internationally driven peacebuilding, development and democratization efforts include that such initiatives can rarely change deep rooted and complex issues that caused conflicts in the first place. Just like the ICTY prosecutions did not eliminate ethnonationalist ideologies and biased narratives that shape people’s perceptions of justice, reparations of homes and restoration of legal rights did not end intolerance and segregation that still exist on the ground. Communities with an ethnically diverse population are still deeply divided. In the city of Vukovar, Croatia, the division between Croats and Serbs remain in all aspects of social life, such as education, friendship and housing. For example, children in Vukovar attend separate classes, have different curriculums in either Croatian or in the Serbian language, and learn two different histories of the war. Thus, while internationally driven initiatives to promote human rights, as well as nationally adopted laws and initiatives, are pivotal to ensure people’s basic protection, it is important to remember that removing institutional barriers does not guarantee that people’s values and practices will change.

Therefore, while legal protection is necessary to promote equality and offer protection, it is not sufficient to restore and normalize inter-ethnic relations.

That is why local and international civil society organizations, as well as some critical scholars from the region, have been arguing that in order to promote reconciliation it is necessary to confront conflicting narratives of the past and develop a common narrative through truth seeking mechanisms. In the field of transitional justice, the idea of truth seeking has also been seen as an important component of the post-war justice (Teitel 2008). The rationale for initiating truth telling mechanisms, primarily truth commissions, comes from a notion that, “the creation of a reliable record of past events offers a platform for victims to tell their stories and restore dignity to victims, while also integrating perpetrators back into society, which is a goal of restorative justice” (Subotic 2013). In the report on “Post-war justice and durable peace in the former Yugoslavia”, the Council of Europe explained that,

Genuine knowledge of history facilitates understanding, tolerance and trust between individuals, especially the younger generation, and peoples. All countries concerned should realise the vital need to teach history without resorting to one single interpretation of events. It is only through an open dialogue, knowledge of the truth and deep reflection that members of post-conflict democracies in Europe may attain social cohesion and preserve their inherent, valuable pluralism (2012:41).

In the former Yugoslavia, despite a large number of documents and reports on the 1990s events collected and published by international and national NGOs, multiple conflicting truths, the denial of war crimes and manipulation with victims of the war, continue to dominate public discourses. Despite available historical records, lack of genuine interest by powerful groups in the region, mainly the politicians, to confront conflicting truths and work toward creating a common narrative of the past have undermined reconciliation in the Western Balkans. For that

reason, a regional approach to truth seeking seems necessary to restore relationships between countries and different national groups within each country.

Recent Efforts of the Coalition for RECOM

The recent attempt to establish an official truth telling body for the former Yugoslavia was a response of local NGOs to critiques that retributive justice mechanisms, including ICTY and domestic courts, have not contributed to reconciliation in the region and provided only partial satisfaction to victims of war crimes. In 2008, three non-profit organizations in the region - the Humanitarian Law Centre in Serbia, Documenta Center for Dealing with the past (Documenta) in Croatia, and the Research and Documentation Centre in BiH, launched the initiative to establish a Regional Truth Commission (RECOM). The International Centre for Transitional Justice (ICTJ) played an important role at the early stages by advising the process and drafting the RECOM's mandate. The aim of the RECOM was to provide an extra-legal platform that could enable all victims of the war to tell their story and establish facts about war crimes and human rights abuses. The coalition members believed that this would help create a collective memory and end the perpetual politicization of the war.

In 2009, the members of the Coalition for RECOM published a document in which they openly asked the European Union to support the initiative beyond funding. The Coalition explained that,

The RECOM initiative promotes the European integration project for the Balkans as a peace project and directly strengthens the rule of law in the region. It embodies regional cooperation, one of the EU's key policies in the region, while building solidarity and compassion towards victims across the conflict divide, but also trust between communities and state institutions. The Coalition for RECOM needs European support beyond funding and short of new conditionalities. The European Union can enhance the RECOM initiative's visibility through existing policy instruments for the Western Balkans, which, in turn, will give the RECOM initiative greater leverage towards national political elites ultimately contributing to a

transition from conflict to sustainable peace in the Western Balkans (Coalition for RECOM, The RECOM Initiative - The Case for Support of the European Union 2009).

Despite an attempt to convince the EU to assist with the creation of RECOM because of its compatibility with European goals and values, the EU has only offered a limited support to the initiative. For instance, in 2011 the Council of Europe Parliamentary Assembly (CoE) adopted the Resolution on reconciliation and political dialogue between the countries of the former Yugoslavia in which it welcomes the regional initiative to create RECOM to document all crimes committed during the wars in order to honour and acknowledge all the victims. However, the Assembly also explained that

In the Assembly's view, renewed efforts are needed by all the governments in the region to achieve full reconciliation and Euro-Atlantic integration. It therefore calls on the countries of the former Yugoslavia concerned to:

- ensure that the issue of missing persons remains a priority, open their archives and provide appropriate funding for civil society initiatives which seek to create records of victims of the conflicts in order to address the legacy of the past;
- ensure full co-operation with the ICTY on war crimes prosecution, give priority to tracking down and arresting the remaining fugitives, and ensure the full protection of witnesses;

Therefore, even though the Assembly supported the RECOM initiative, it also urged countries in the region to stay committed to full cooperation with the ICTY and provide support to refugees. Thus, this statement reaffirms the power and domination that international actors have had over transitional justice in the Balkans, and sends a message that local actors' main responsibility is to comply with international obligations. Similarly, in the Progress Report from 2011 the Council of Europe recognized Croatia's participation in regional initiatives and in only one sentence expressed satisfaction with Croatia's support for the RECOM initiative. Despite limited political support, international actors were the main funders of the initiative. The EU,

precisely, the European Instrument for Democracy and Human Rights (EIDHR) and the Dutch Embassy account for 80 percent of RECOM's budget in 2011. Apart from funding and official approval, international actors have not done enough to support the initiative and have failed to put pressure on national governments to approve the RECOM statute.

Unfortunately, the initiative to establish a regional truth telling mechanism has not yet been realized due to the lack of support from leading politicians and the public. Even though truth seeking may now be seen as a universal and critical approach in the field of transitional justice, this mechanism is not easily applicable in all social contexts. Countries in the Western Balkan region lack a 'culture of transitional justice' and their failure to address human rights violations and crimes from the 1990s conflicts is rooted in their failure to deal with issues from the more distant past. For example, atrocities from World War II were never properly addressed during the socialist Yugoslavia, but these 'forgotten' memories came to life in the 1990s and were reincarnated by certain political actors in order to support their nationalist rhetoric and agenda. Therefore, while truth seeking mechanisms may be recommended and initiated by international actors, they will never have real effects on reconciliation unless they are also collectively supported by political elites, civil society and the general public.

Conclusion

Evidently, transitional justice processes in the former Yugoslavia have mainly been initiated by external actors whose principal goal was to reconstruct these societies into Western neoliberal democracies. International actors' policies and initiatives were based on Western notions of justice and human rights, and as such failed to produce true changes in specific social, historical and political contexts of the Balkan region. While compliance with internationally imposed conditions proved to be beneficial to political and economic development of Croatia,

and resulted in membership in prestigious international organizations, reconciliation and lasting peace have not yet been achieved. The EU's insistence on full cooperation with the ICTY, under any circumstances, often complicated the situation on the ground since each ethnic group interpreted verdicts through the prism of their own dominant narrative of the war (this issue is discussed in more detail in the following chapters on legal and local government discourse).

However, it is important to note that EU pressure sometimes proved beneficial to post-war justice in the Balkans because the ICTY, despite its shortcomings, succeeded in bringing the most notorious perpetrators to justice and forced countries of the former Yugoslavia to confront the wrongdoings committed on all three sides. Importantly, without international actors' insistence on prosecutions these people would never face justice because they were often perceived as national heroes in Croatia, Serbia and BiH. In that sense, the international community played a major role in initiating transitional justice processes in the former Yugoslavia. Yet, besides pressuring countries to cooperate with the ICTY, the EU has failed to deal with issues of transitional justice in a more comprehensive way, and to develop culturally sensitive strategies that would have real effects on reconciliation on the ground and produce lasting peace. Problematically, Kisić explains that, "the international community focused on the reform of institutions rather than on a change in the system of values, cultural models and the creation of a common narrative on the causes of the dissolution of the former Yugoslavia and the character or nature of the war" (2013:55). As a result, financial aid and integration into the prestigious European community, rather than a sincere desire to promote peace and reconciliation, were the main motives that encouraged Croatia to comply with internationally imposed obligations. Consequently, even after the adoption of EU laws and standards, the past continues to live on in politics and in public opinion. Unfortunately, international efforts to help

the countries of the former Yugoslavia to address its violent past and transform societies into modern liberal democracies produced little impact on the everyday lives of people who still continue to live along ethnic lines.

Chapter 5

LEGAL DISCOURSE

Introduction

This chapter captures narratives promoted by the International Criminal Tribunal for the Former Yugoslavia (ICTY) and domestic courts. The results of a close examination of legal documents and reports published by the ICTY and domestic courts, as well as evaluation reports issued by international organizations, revealed that the main narrative promoted by international and national supporters of legalism was the notion that there is ‘no peace without justice’. Contrary to this expectation, research studies and opinion polls have continuously reported that retributive justice mechanisms had little impact on peace and reconciliation, and have even contributed to instability in the region. Therefore, the main question that this chapter raises is why have these legal practices continuously been promoted despite obvious signs that they are contributing little to peace and reconciliation? Based on my observations, I argue that these legal discourses and practices last because they benefit powerful international and national actors, rather than ordinary people.

The Rationale for the ICTY Establishment: Justice, Deterrence and Peace

In 1993 the UN Security Council decided to establish the International Criminal Tribunal for the Former Yugoslavia (ICTY) to deal with widespread and flagrant violations of international humanitarian law occurring within the territory of the former Yugoslavia (UN Security Council, Resolution 827/1993 1993). A decision to establish an ad hoc tribunal was based on perceptions that the situation in the former Yugoslavia, “continues to constitute a threat to international peace and security” and that it was necessary to, “put an end to such crimes and

to take effective measures to bring to justice the persons who are responsible for them” (Resolution 827/1993 1993). In addition to establishing individual accountability for crimes, it was also believed that the ICTY can transform the societies of the Western Balkans and, “contribute to the restoration and maintenance of peace” (Resolution 827/1993 1993).

Through a detailed inspection of the ICTY trial reports and verdicts, as well as statements made by prosecutors and other actors involved in the process, I found that the main ideas advocated by the ICTY were Western notions of justice, deterrence and peace. Trials were described as the most appropriate and civilized method to end hostilities, prevent future conflicts and maintain peace. This is how the UN’s Security Council justifies the need to establish justice through trials,

How could one hope to restore the rule of law and the development of stable, constructive and healthy relations among ethnic groups, within or between independent States, if the culprits are allowed to go unpunished? Those who have suffered, directly or indirectly, from their crimes are unlikely to forgive or set aside their deep resentment. How could a woman who had been raped by servicemen from a different ethnic group or a civilian whose parents or children had been killed in cold blood quell their desire for vengeance if they knew that the authors of these crimes were left unpunished and allowed to move around freely, possibly in the same town where their appalling actions had been perpetrated? **The only civilized alternative to this desire for revenge is to render justice: to conduct a fair trial by a truly independent and impartial tribunal and to punish those found guilty.** If no fair trial is held, feelings of hatred and resentment seething below the surface will, sooner or later, erupt and lead to renewed violence (UN Security Council, ICTY Annual Report 1994:12; emphasis added).

The dominant idea that there is ‘no peace without justice’ can also be observed in the ICTY’s Annual Report from 2000 where it was explained that,

To achieve a lasting peace and bring an end to the cycles of violence in the Balkans, it will be essential for the ordinary citizens of the region of the former Yugoslavia to be satisfied that justice has been achieved. History has sadly taught that unless a reasonable level of such satisfaction is achieved ordinary citizens will feel obliged to take justice into their own hands. They will seek justice not otherwise achieved. What is more, any sense of injustice is likely to be transmitted to the next

generation and it is possible that the injustices of today could be the cause of future conflicts in the Balkans (ICTY Annual Report 2000:31; emphasis added).

Here the notion has been supported by ‘historical evidence’ that unless justice is being satisfied ordinary citizens will turn to violence and take justice into their own hands. The oversimplified idea that ordinary citizens will take justice into their own hands is equivalent to a popular theory that ‘ancient hatred’ between three ethnic groups caused the 1990s war. In the same way as the theory of ‘ancient hatred’, this idea portrays people of the Western Balkans as barbaric and uncivilized nations who cannot control their ferocious impulses and will again turn to violence unless their desire for justice is satisfied through fair trials. However, the truth is that ethnic groups did not turn to violence against each other because they suddenly decided to seek revenge against past injustices, but because powerful elites purposefully re-introduced the ‘forgotten’ memories of past hostilities and conflicts to justify their nationalist claims and the 1990s war. Therefore, powerful elites deliberately deconstructed the narrative of the ‘brotherhood and unity’ that kept different ethnic groups united in order to promote ethnic divisions that led to violence.

Problematically, the same discourses that legitimized violence during the war continue to nurture mutually exclusive narratives that exist today. In my view, the existence of conflicting truths about the past is one of the main reasons why international transitional justice mechanisms failed to bring lasting peace and reconciliation in the region. In the environment of multiple social realities, the ICTY can only contribute to peace and reconciliation if it can create a common truth that will be accepted by all ethnic groups. Indeed, the ICTY was founded on the ambitious idea that these conflicting truths can be eliminated once true facts about the war are established through prosecutions of individuals responsible for war crimes. For example, it claimed:

The Tribunal can play an important part in ending such cycles of violence. **It is the Prosecutor's firm belief that the conflict in the territory of the former Yugoslavia was sparked and fuelled by greedy and power-hungry politicians who used propaganda and nationalistic sentiments to create an atmosphere of fear and terror, which was then used to motivate ordinary citizens to commit atrocious crimes against their neighbours. If ordinary citizens can accept that this was the root cause of the conflict, and that they were led into this terrible conflict by deceit and fear, they may be more likely to accept a meaningful reconciliation with their neighbours, who were also led in the same way into the conflict.** By prosecuting the leaders, even down to the municipal level, the Tribunal can lay this foundation for reconciliation. A lasting and stable peace, however, cannot be achieved unless the Tribunal plays the important role of prosecuting the leaders of all sides to the conflict who were responsible for the commission of crimes failing within its jurisdiction (ICTY Annual Report 2000:31; emphasis added).

From this excerpt it is evident that the ICTY believed it assumed a leading role in ending cycles of violence in the Balkans, caused by power-hungry politicians, based on the presumption that prosecutions of individuals can help ordinary citizens understand how individual acts caused suffering to all three ethnic groups.

The recent high-profile case through which the ICTY wanted to send this message was that of the Bosnian Serb, Radovan Karadžić. On March 24, 2016 the ICTY sentenced Radovan Karadžić to a single sentence of 40 years of imprisonment because he was found guilty of genocide in Srebrenica, five counts of crimes against humanity and four counts of violations of the laws or customs of war (ICTY, Trial Judgement Summary for Radovan Karadžić 2016). The UN Secretary General Ban Ki-moon's deputy spokesman, Fanhan Haq, said that this judgment, "sends a strong signal to all who are in positions of responsibility that they will be held accountable for their actions and shows once again that fugitives cannot outrun the international community's collective resolve to make sure that they face justice according to the law" ("Radovan Karadzic sentenced to 40 years in prison for Bosnian war crimes" 2016). This statement supports the idea that punishing individuals responsible for crimes against humanity,

such as Radovan Karadžić, can contribute to justice, deterrence, and also enable societies in the Balkans to construct a new social reality that would allow them to live in peace with each other.

However, it is important to note that prosecutions and individual punishments will not lead to the creation of a new social reality unless ordinary citizens accept them as legitimate. For example, while Karadžić's judgment brought some satisfaction to Bosnian Muslims and families of victims from the Srebrenica massacre, many Serbs from the BiH's Republika Srpska and Serbia still see Karadžić as their national hero and perceived the verdict as an attack on their national values. Serbian Prime Minister Aleksandar Vučić reinforced the Serbian narrative of victimization and warned against using the court's decision, "as an excuse for political or other attacks against the Republika Srpska", and proclaimed that Serbia, "will stand with our people; we will protect the right to survive and exist in Republika Srpska" ("Former Bosnia Serb leader Karadzic found guilty of genocide, sentenced to 40 years." 2016). Therefore, contrary to oversimplified assumptions, verdicts against high profile war criminals like Karadžić may not have any effects on peace and reconciliation if local people do not perceive them as just and legitimate.

Existing power structures shape how verdicts are being interpreted on the ground and whether they will be perceived as legitimate by ordinary people. Van Dijk explains that, "among many other resources that define the power base of a group or institution, *access to or control over public discourse and communication* is an important "symbolic" resource, as is the case for knowledge and information" (2001:355). This means that discursive practices, or the process through which a dominant reality comes into being, are shaped by power relations in the society. In other words, groups who have access to power are able to control public discourses. In the former Yugoslavia, political elites continue to hold the most powerful place in the society, and as

such they are able to produce hegemonic narratives that are perceived as legitimate by the majority. Therefore, new narratives that the ICTY is hoping to establish exist next to official narratives and within power structures of the Balkan societies. In that environment, the ICTY cannot simply enforce a new reality. In fact, the attempt to create a new reality may even strengthen the existing narratives and be perceived as an attack on core national values.

Still, the idea that there will be no peace in the Balkans until justice is established has continuously been promoted by the international community. For example, in 2013, the UN's General Assembly gathered prominent international organizations and State Members on the thematic debate on '*The Role of International Criminal Justice in Reconciliation*' in order to encourage them to share experiences and lessons learned since the establishment of the ICC and Tribunals for Rwanda and Yugoslavia. In the opening speech, former Secretary-General H.E. Mr. Ban Ki-moon argued that, "deepening the system of international criminal justice is the most positive development in international relations of the past generation", as well that, "the new institutions of international criminal justice have ushered in a new age of accountability and succeeded in giving voice to the victims and witnesses of crimes" (2013:3). Similarly, Ioannis Vrailas, Deputy Head of Delegation, stated on behalf of the EU and its Member States that the EU expresses, "a very strong support for international criminal justice, which is key to ending impunity, to assist with building peace and reconciliation, and to bringing justice to, and rehabilitation for, victims of mass atrocities" (Vrailas 2013:1).

However, some speakers opposed this view and were highly critical of the ICC, and especially the ICTY. For instance, retired Canadian General Lewis Mackenzie said that, "fairness and objectivity are important and because proceedings did not appear to be fair and objective, justice was counterproductive to reconciliation" (2013:12). General Mackenzie was

referring to victims' perceptions of justice and arguing that the ICTY contributed little to reconciliation between victims and perpetrators because prosecutions were not always perceived as fair and just. Mr. Strbac, a representative from Serbia, agreed with this observation and further added that in the period of 20 years, from its founding to the day of the thematic debate, a total of 161 persons had been indicted, and 82 of the accused were convicted. Of the accused, 110 people (68 percent of the total) were Serbs, 34 were Croats, 9 were Bosniaks, 7 were ethnic-Albanians and one was Macedonian. Of all the convictions pronounced, 80 percent were against Serbs, as well as all five life sentences pronounced by the ICTY (UN Thematic debate 2013). Mr. Strbac asserted that, "the vast majority of his countrymen from Serbia had been 'quite right' in their assertion that the Tribunal would be guided by selective, politicized justice. The ICTY evidently failed to hold any parties accountable for the expulsion of almost a quarter of million Serbs from Croatia during Operation Storm in August 1995. Thus, the Tribunal had not fulfilled any of the goals for which it was founded, in particular reconciliation" (2013:14).

Likewise, public opinion polls on attitudes toward the ICTY in Croatia, Serbia and BiH have indicated that the ICTY has not been very popular and trusted in the region. The opinion poll from 2002 found that in Serbia only 8 percent express trust in the Hague Tribunal (ICTY), 21 percent in Croatia, while in BiH the ICTY was trusted by 4 percent in the Serbian part but 51 percent in the Croat-Muslim part (Thompson 2002). Another opinion poll survey conducted in Serbia in 2011 by the OSCE and Belgrade Centre for Human Rights found that 40 percent of respondents believe that the purpose of the ICTY is to put the blame for war sufferings on Serbs, 17 percent believe that its purpose is to meet the demand of international community, 17 percent believe that its primary purpose is to show that war crimes cannot go unpunished, thus spreading the idea of peace and tolerance among people, while only 7 percent think that its goal is to

punish war criminals (to ascertain individual criminal responsibility) and 9 percent think that the purpose is to prevent war crimes being committed in future (OSCE 2011).

Similarly, Clark conducted interviews with Croats from Vukovar in order to get a sense of their perceptions of the ICTY and its effect on justice and found that anti-ICTY feelings and the sense of injustice prevail (2012). The majority of interviewees insisted that there is no justice at the ICTY when Croatian generals are being tried and punished for defending their country (Clark 2012). In 2015 Banjeglav conducted a similar study in order to analyze the impact of the ICTY on reconciliation between Croats and Serbs in the Croatian town of Vukovar. Banjeglav conducted semi-structured interviews with both ethnic groups and asked people to comment on trials for crimes committed in Vukovar. The study revealed that, “both Croat and Serb interviewees generally agreed that justice was ‘too slow’ and that too much time had passed since the war, so that they did not really have the feeling that justice had been served” (2015:106). The interviewees were also disappointed with the ICTY’s sentences, and both Croats and Serbs believed that members of their own ethnic group were given greater sentences (2015). Thus, based on these findings it appears that the ICTY, contrary to its expectations, did not fulfill its objective and failed to bring much satisfaction to victims who still see the court as unfair and unjust. Klarin made a similar observation and said that, “if the impact of the ICTY in the countries of the former Yugoslavia were to be measured exclusively by the poor perception of the Tribunal that prevails, perhaps the best course of action would be to shut its doors without waiting for the end of its mandate” (2009:89).

The analysis of the situation on the ground, which will be discussed more in chapters on local government and peacebuilders, indicates that, regardless of all the documentations laid forth by the Tribunal, people of the Balkans continue to dismiss evidence that their own side

committed war crimes and justify such acts as necessary to protect their own existence. In order to explain why verdicts against individual acts of crime were commonly perceived as anti-Croat, or anti-Serb/anti-Bosniak, the ICTY blamed the effect of ‘distant justice’. The idea that distant trials, in a foreign language, far from local communities, produced these negative sentiments led to the creation of an Outreach Programme in 1999, with offices in three capital cities Zagreb, Sarajevo and Belgrade. The purpose of the Outreach Programme was to inform and educate the local population about the ICTY’s work through activities such as capacity building for national judiciaries; work with the younger generation, grassroots communities, and the media; visits to the ICTY; and the production of a variety of information materials, multi-media website features and social media outputs (Outreach Programme, ICTY Website). The ICTY also argues that the main aim of the Outreach Programme is to listen to and encourage dialogue because, “the shape and success of the Tribunal’s legacy in the fight against impunity and efforts to deal with the past will be determined by the local communities themselves” (Outreach Programme, ICTY Website).

The establishment of the Outreach Programme is fundamental in the sense that it recognizes that the Tribunal’s success in bringing peace through justice largely depends on how ordinary people perceive its work. One of the most substantive engagements with local communities was the ‘Bridging the Gap’ initiative held in BiH in 2004 and 2005. The one-day events were held in the towns where some of the most horrific crimes were committed and in relation to which the ICTY conducted a large number of trials. The events consisted of presentations from panels of Tribunal staff who were directly involved in the investigation, prosecution and adjudication of alleged crimes. This provided the Tribunal with an opportunity to present an account of its activities directly to audiences most affected by the crimes at the

heart of the Tribunal's work ('Bridging the Gap', ICTY Website). During these events, local communities, including victims, journalists, scholars and local leaders had a chance to learn about the relevant cases and judgments, but also ask questions and share their expectations and suggestions. While 'Bridging the Gap' events were successful in reaching out to ordinary citizens and contributed somewhat to building relations between the region and the Tribunal, other initiatives often failed due to the lack of public interest to participate and low turnout rates.

A growing realization that the Tribunal is still mistrusted by local populations led to the creation of a new strategy in 2011. The new strategy is aimed at reaching out to young people with a hope that, "new generations will shape the future of the region and decide if it will take the road towards reconciliation or foster denial of crimes" (ICTY, Annual Outreach Report 2011). Youth activities have included working visits of students and young professionals to the Tribunal, lectures about the ICTY's work in high schools, and an internship programme for young professionals from the Balkans. As part of the new strategy, the ICTY has also been engaged with the local media in order to support and influence objective and responsible journalism when it comes to reporting on war crimes accountability. Because the local media is still the main source of information for the majority of citizens in the Balkans, it is very important that local journalists report about the ICTY's work in an objective and unbiased way, which is believed to contribute to inter-ethnic reconciliation.

However, with proceedings concluded for 154 accused and only one case at trial left, against Ratko Mladić, Commander of the Bosnian Serb Army, who is indicted for two counts of genocide, five counts of crimes against humanity, and four counts of violations of the laws or customs of war, the Tribunal stands firm in its commitment to close its doors by the end of 2017 (ICTY, Completion Strategy Report 2016). With the Tribunal's mandate coming to an end, it is

important to critically examine how international prosecutions impacted peace and stability in the former Yugoslavia. While the international community has firmly believed that there will be no peace without justice, the latest statement made by the ICTY's Prosecutor Serge Brammertz undermines this claim. In a recent address to the UN's Security Council, Prosecutor Brammertz expressed a concern that,

the political situation throughout the region is moving in the opposite direction. Too many politicians and public figures are denying well-established truths, enflaming ethnic tensions and repeating nationalistic slogans of the past. What would have been difficult to imagine just a few years ago is sadly commonplace today. As a result, the positive trend in regional cooperation in war crimes justice appears to be reversing (ICTY, Address of Serge Brammertz 2016:2).

Problematically, ethnic tensions and denial of established truths that can be observed on the ground also challenge the founding idea of the ICTY that prosecutions will lead to peace and reconciliation. Several research studies also came to conclusions that the ICTY contributed little to reconciliation, and in fact only intensified hostilities between and within countries (David 2014; Clark 2012; Hayden 2011; Subotic 2009; Stover and Weinstein 2004). For example, in the book *My Neighbour, My Enemy*, Stover and Weinstein use case studies from BiH, Croatia and Rwanda to explore how international courts and criminal trials impacted reconciliation on the ground (2004). Their study found no direct link between criminal trials and reconciliation and highlighted that, "justice is most effective when it works in consort with other processes of social reconstruction and reflects the needs and wishes of those most affected by violence" (2004:11).

Therefore, if the ICTY did not satisfy the needs of victims, which is claimed to be one of its main objectives, then it is important to ask why is this mechanism being persistently promoted and used as the most appropriate and universal method to restore societies after violent conflicts? If the ICTY does not benefit victims, who actually does benefit from the ICTY? It can only be concluded that powerful international and national actors, including political elites, civil society

organizations, scholars, and ICTY's employees, rather than ordinary citizens and victims, were the ones who really benefited the most. Local political leaders, although lacking a genuine will to contribute to reconciliation in the region, benefited from the cooperation with the ICTY because it allowed them to secure political and financial support, as well as membership in prestigious international organizations. As will be more evident in the following chapter on local government discourse, local politicians also managed to use the ICTY to fulfill their national strategies and protect dominant narratives that only deepen ethnic animosity.

Many other actors have also benefited from the ICTY, including international and local civil society organizations, scholars and its employees. In the former Yugoslavia, NGOs engaged in the transitional justice process have mainly been funded to participate in the legal initiatives, including trial monitoring and victim protection programmes. Also, as of March 2015, the ICTY employed 425 staff members and its budget for 2014-2015 was \$179,998,600, considerably less than its budget for 2010-2011 which was \$286,012,600 (ICTY Website). It is estimated that by the time the ICTY closes its doors it will spend \$2.3 billion (Hayden 2011). On the ICTY's Website, under the item *The Cost of Justice*, it is explained that,

this budget is not small; however, the expense of bringing to justice those most responsible for war crimes and helping strengthen the rule of law in the former Yugoslavia pales in comparison to the cost of the crimes. The lives lost, the communities devastated, the private property ransacked and the cultural monuments and buildings destroyed, as well as the peace-keeping efforts by the international community are incomparably more expensive. Bringing justice and accountability to the former Yugoslavia is an investment in the peace and future of southeastern Europe.

However, as findings of many research studies suggest, there is little evidence that the high cost of justice actually benefited victims and fostered reconciliation. In spite of these findings, powerful international and national actors, including academics and NGOs who receive

grants and funds to promote the ICTY's mandate, have continuously supported the ICTY and its role in bringing peace and reconciliation to the countries of the former Yugoslavia. Therefore, what is essentially at stake here is the question of agency and who has the power to determine appropriate and necessary responses to local problems. While legal mechanisms of transitional justice tend to be portrayed as neutral and universal ways to help post-conflict societies, they seem to bring little benefit to ordinary people who often live in completely different environments from those in which these practices and policies were developed. Thus, as Hayden argues, it seems, "that the utility of the ICTY to those who pay for them [tribunals] is primarily as a tool of politics" (2011:325). In other words, the ICTY can be perceived as an instrument for maintaining power and control over Western Europe's 'Others' because legal discourses that the ICTY promotes only reflect dominant Western values and practices. Problematically, these practices often have very little impact on changing economic, social and cultural issues that led to the conflicts in the first place.

Domestic Courts

In order to strengthen judicial systems in the region and encourage countries to take some jurisdiction over a large number of cases that could not be prosecuted through the ICTY alone, the UN Security Council helped Croatia establish local courts for war crimes. In 2003, the Croatian Parliament passed a '*Law on the Application of the Statute of the International Criminal Court and the Prosecution of Criminal Acts against the International Law of War and International Humanitarian Law*' that has provided for the establishment of four new chambers within the County Courts in Zagreb, Osijek, Rijeka and Split that would deal specifically with war crimes cases (Development of the Local Judiciaries, ICTY Website). However, as will be evident in the following sections, it is questionable whether domestic courts had any effects on

establishing facts about the past and promoting justice in the region because trials were often criticized for unprofessional proceedings, ethnic bias, trials *in absentia*, as well as the lack of witnesses and victim protection.

Despite claiming that domestic courts were established to allow countries in the region to take some authority over war crimes, the international community still had a dominant role in overseeing the work of domestic courts and closely monitored the implementation of necessary laws and reforms. For instance, the European Commission was responsible for observing criminal proceedings and evaluating cases that were tried. The Commission often expressed a concern that domestic courts in Croatia did not apply common standards of criminal accountability irrespective of ethnicity and warned that there remains a widespread impunity for war crimes committed against ethnic Serbs. I observed that the most common issue raised by the Commission in the yearly progress reports was the need to establish accountability for crimes committed by members of the Croatian armed forces. For instance, the Commission warned that many crimes against Croatian perpetrators remain unprosecuted, often due to a combination of a lack of evidence, the unwillingness of witnesses to come forward, and a less than proactive approach of police and prosecutors to hold perpetrators accountable for their actions (Croatia Progress Report 2007).

In addition to monitoring trials, the European Commission evaluated the efforts of Croatian authorities to adopt international standards and laws to tackle the weaknesses of its judicial system. During the early stages, the Commission was mainly focused on improving the efficiency of the judicial system and paid particular attention to reducing the case backlog, ensuring the proper enforcement of judgements, and introducing transparent procedures. In December 2010, the Croatian Parliament adopted the Judicial Reform Strategy, aimed at

strengthening the independence, accountability, impartiality, and professionalism of the judiciary. The European Council was appointed to monitor the implementation of necessary laws and practices in respective areas. As part of the strategy, the procedure for the selection of new judges and prosecutors, as well as independence and accountability in decisions on cases, were revised in order to ensure that the work of judges and prosecutors is independent from political influence and corruption.

On the other hand, Human Rights Watch and Amnesty International have carried out a more extensive monitoring of issues related to ethnic bias, victim rights and witness protection. In 2010, Amnesty International published a detailed report based on three years of investigation. It explained how authorities in Croatia failed to provide the victims of war crimes and their families with access to truth, justice and reparations for human rights violations. It also showed how authorities did not adhere to international criminal law and international fair trial standards, and how the courts managed to prosecute only a limited number of war crime cases (2010). Of particular concern to Amnesty International were one-sided and selective prosecutions that manifested in an ethnic bias against Croatian Serbs as well as a lack of desire to prosecute Croatian perpetrators. For example, based on statistics provided by the government, Amnesty International found, “that the prosecution of war crimes cases in Croatia in the period from 2005 to 2009 has been disproportionately targeted against Croatian Serbs who were the accused in nearly 76 percent of all cases” (2010:6).

Even though the Parliament, pressured by the international community, adopted a number of reforms in order to strengthen the rule of law, these reforms have not always resulted in palpable changes in the proceedings due to a hostile political climate. International NGOs have continuously drawn attention to issues related to unprofessional court proceedings and the lack

of witness protection. A well known example of the poor witness protection program was the killing of Milan Levar related to the Norac case. Milan Levar, a potential witness against a General of the Croatian Army, Mirko Norac, was accused of killing of Croatian Serb civilians and supporting crimes against humanity in the Medak Pocket, was killed in 2000 by an explosive device placed under his car after he made statements in the media alleging General Norac and some other high profile Croatian politicians were responsible for these war crimes. While this incident received a lot of media attention, no one has ever been brought to justice for Milan Levar's death. However, after his death, other potential witnesses in the Norac case were reluctant to testify. Amnesty International found that, "30 out of 74 of prosecution witnesses who testified did so through a video link. One third of them were 'endangered' witnesses residing in Croatia; video links were used with the aim of protecting their identities from public disclosure" (2010:43).

The controversial Norac case was also known because of the major protests that were organized after the ICTY issued an arrest warrant against Norac in 2001. Protests supporting for Norac were organized by war veterans' groups and backed by right-wing political parties, including the powerful Tuđman's HDZ. Regarding these events, the HDZ leader Ivo Sanader said that, "Mirko Norac is a hero. I do not know of another case in which a state is ashamed of its generals" ("Croats Turn on Leaders for Hunting War Criminals" 2001). Thus, protests were not only organized to express anger over Norac's arrest warrant, but also to criticize the newly elected government for willingly cooperating with the ICTY. The protesters saw this behaviour as an unscrupulous act through which Croatian authorities betrayed national heroes and allowed the international community to attack core national values and question the legitimacy of the Homeland War.

Influenced by the public outcry, the government agreed to transfer General Norac to the Hague under the condition that he can be tried in a domestic court. The international community allowed Norac to be tried at Rijeka's County Court in 2003 where he was sentenced to 12 years in prison in connection with the murders of dozens of Serb civilians in Gospic in 1991. After this, Norac was transferred to the Hague for further investigation of other war crimes. However, after he pleaded not guilty to all charges he was transferred back to Zagreb County Court in 2005. After a lengthy trial, Zagreb Court found Norac guilty of some of the charges and sentenced him to 7 years imprisonment. Croatia's Supreme Court then consolidated the two sentences of 12 and 7 years into a unified sentence of 15 years. However, in March 2010, the Supreme Court reduced the Mirko Norac's sentence to 6 years' imprisonment and he was soon released from prison on parole in 2011.

While the early release was welcomed by political elites and ordinary citizens who still see Norac as a war hero, this act also undermined justice for his victims and showed the government's lack of will to take responsibility for war crimes committed on the Croatian side. While the authorities have been very active in prosecuting war crime cases committed by Croatian Serbs against ethnic Croats, they often failed to equally investigate and prosecute war crimes committed by members of the Croatian army and police. It has been observed, by both international and national NGOs, that domestic trials in Croatia have occurred in adverse political and social contexts and often served to promote political agendas and dominant narratives, rather than seeking social justice. In the social context where the narrative of the Homeland War dominates public discourses, perpetrators continue to be sympathized with just because they belong to 'our' ethnic group, while little attention is given to the war victims 'of the other side'.

Thus, despite international efforts to promote international legal standards and practices, domestic war crimes prosecutions contributed little to reconciliation in the region because they were used as a mechanism to further promote official narratives of the 1990s war. Unfortunately, Croatian authorities failed to address and condemn crimes committed on the Croatian side. Instead of promoting truth and justice, they often supported and protected well known war criminals. For example, in 2015, Documenta, a local NGO that monitored domestic war crimes trials and proceedings, reported that among the invited guests at the inauguration ceremony of the new Croatian President, Kolinda Grabar Kitarovic in 2015, was Tomislav Mercep, who was at that moment on trial for war crimes against civilians (Monitoring War Crimes Trials 2016). This and similar acts only legitimize the war crimes committed by the Croatian military against ethnic minorities and disregards the suffering of all Croatian citizens, regardless of their political affiliation, national or ethnic identity.

Conclusion

The social and political climate in the region indicates that retributive justice mechanisms achieved little to restore relationships between ordinary people, and it failed to contribute to the creation of a common truth about the past. Results from public opinion polls support this claim because they indicate that victims of war crimes often perceive the ICTY's verdicts as unjust and unfair. These observations undermine the founding idea of the ICTY that punishing perpetrators will bring satisfaction to victims and restore peace. Problematically, domestic war crimes courts brought even less satisfaction to victims because they often served as a tool to further promote official narratives and political agendas, rather than confront myths from the past and punish horrific acts of violence carried out by the Croatian military and police against civilians.

However, while these retributive justice mechanisms contributed little to reconciliation between victims, they were successfully used by political elites to serve the interests of the state. As will be more evident in the following chapter, cooperation with the ICTY and the establishment of domestic war crimes courts allowed Croatia to fulfill its national strategy and join the EU, while at the same time preserving the official narratives of victimization and the Homeland War. Thus, instead of establishing a lasting peace, the ICTY and domestic courts only benefited international and national actors who obtained financial profits and maintained their power by promoting legal discourses. Therefore, in the following years, in order to prevent future conflicts and create a reconciliation process, it is necessary to develop alternative initiatives that will actually reflect the needs of people living in the Balkan region.

Chapter 6

LOCAL GOVERNMENT DISCOURSE

Introduction

The analysis of declarations, acts, parliamentary discussions and statements in the media indicates that domestic leaders often lacked a genuine will to deal with the legacies of the war and instead chose a political strategy that allowed them to protect official narratives of the past. When pressured to comply with internationally imposed transitional justice mechanisms, political elites often justified their compliance as part of their unavoidable obligation toward the international community. By avoiding taking responsibility and confronting crimes committed on their own side, Croatian leaders undermined the opportunity to engage in a dialogue about the nature of the 1990s war. Problematically, the consequences of this ambivalent politics were manifest through existing ethnic animosity, segregation and mutual blaming for atrocities. Recent incidents, such as the destruction of bilingual signs in Vukovar (“Cyrillic bilingual signs from the police station building in Vukovar destroyed again” 2016), the chanting of Ustaše slogans at soccer matches (“Croatia’s ‘banal’ fascism on display at Israel match” 2016), the use of insulting graffiti against ethnic minorities (“New insulting and inappropriate graffiti in Vukovar” 2015), show that Croatia, despite becoming a member of the prestigious EU community, still has not dealt with the ghosts from its past. Political elites carry the blame for the present situation because they failed to condemn all forms of discrimination and fuelled nationalist sentiments by promoting biased narratives.

New Government: Caught Between Local Nationalists and International Demands

The early post-Yugoslav period, from 1992, when the international community recognized Croatia’s independence until 2000, when the HDZ lost its power in parliamentary

elections, is often described as an authoritarian period with President Franjo Tuđman as a leading political figure (Jovic and Lamont 2010). President Tuđman and the HDZ maintained their political hegemony for almost a decade by firmly controlling all social institutions and organizations, including civil society and the media. In the report on Parliamentary Elections in Croatia, the Organization for Security and Cooperation in Europe (OSCE) explained that, “throughout this period, Croatia’s ruling party developed authoritarian tendencies at home, converting nationalist sentiments into political support and restricting democratic development” (OSCE 2000:2). At the time, the international community was not satisfied with the situation on the ground and continuously warned Croatia that unless it adopted democratic and human rights principles, the progress toward European integration, as well as the provision of financial and political assistance, could be stalled (European Commission, Conditionality Report 1998).

Yet, international pressure to adopt democratic principles and international laws were strongly opposed by President Tuđman who interpreted these efforts as attempts to undermine Croatia’s sovereignty and the legitimacy of the Homeland War. The following excerpt from Tuđman’s speech on the Seventh Anniversary of the First General Assembly of the HDZ illustrates this point.

The Croatian public rightfully asks itself what are the reasons and goals of international and national enemies of HDZ? What can explain that, even in countries with whom Croatia officially has good, even friendly, relationships, not only non-governmental, seemingly independent institutions, but also official state representatives, support and encourage activities of all opponents to overthrow the democratically elected power of the HDZ in Croatia? By doing this, these bearers of great ideas of democracy do not hesitate, in their attacks against the HDZ and the independent state of Croatia, to recruit mainly ideological and political supporters of the old totalitarian communist regime. For that purpose, foreign centers encourage the creation of the anti-HDZ organizations internationally, while locally they offer political and financial support to anti-HDZ activities in the media and allow the strongest opponents to unite. Where and why is that disrespectful and inconsiderate bias toward the HDZ and open intention to destabilize the independent, democratic state of Croatia coming from? It comes, first of all, from international circles that

cannot be reconciled with an idea that Yugoslavia no longer exists (Tuđman, Speech at the Seventh Anniversary of the First General Assembly of the Croatian Democratic Union (HDZ) 1997) .

The dominant idea promoted by President Tuđman and political elites at the time was that supporters of communism and Yugoslavia are trying to undermine the sovereignty of the newly established state of Croatia. Blaming communists, and pro-Yugoslavs and Serbs, who were perceived as responsible for the war in the first place, was used to strengthen narratives of victimization and the Homeland War. These narratives have been the founding ideas of Croatian national identity and allowed the HDZ, as the party that started the process of securing independence for Croatia, to maintain its power. President Tuđman also fiercely opposed the EU's Regional Strategy. In the same speech he stated that,

The EU gives political ultimatums to mentioned countries [Croatia, BiH, SFR Yugoslavia (Serbia and Montenegro)] - to adhere to universal democratic principles, human and minority rights, rights of refugees and exiled persons to return, cooperation with the Hague Tribunal - demanding gradually “the improvement of cooperation”, including “political and economic relations”, to a degree of free movement of ideas, people and goods. Economic and financial aid from the international community to mentioned countries will be conditioned by their individual situation, but also expected cooperation. The explanation for this regional approach is: economic benefits for all countries, and political stability of the international system. Regarding these plans, which would for Croatia mean closer cooperation with the Balkan region, I am confident that the HDZ and the majority of Croatian people perceive them not only as unacceptable, but also as ill-starred considering the impossibility of such regional integrations. Our public has a right, based on these same democratic principles that are the basis for the regional plans, to ask why is Croatia forced to comply with the regional frameworks to which it does not, neither geopolitically, nor historically, or culturally, belong? Croatia does not want to repeat historical “integrational” mistakes, especially war evils (Tuđman, Speech at the Seventh Anniversary of the First General Assembly of the Croatian Democratic Union (HDZ) 1997) .

President Tuđman presented the EU's Regional Strategy as yet another attempt to undermine Croatia's independence and force it to cooperate with neighbours in the region - from whom

Croatia wanted more distance in the first place. Similar public statements made by President Tuđman and members of the HDZ in this early period of transitional justice indicate that international policies and practices were mainly interpreted as unfavourable for Croatia. Cooperation with the ICTY was especially problematic because the HDZ and its supporters believed that Croatian generals and soldiers cannot be held responsible for any acts that they committed during the libratory war. This notion was officially institutionalized in 1999 when the Croatian Parliament issued a '*Resolution on Cooperation with the International Criminal Tribunal in the Hague*' in which it strongly opposed investigations of Croatia's military operations and expressed disappointment with the Tribunal for failing to try, prosecute and punish crimes committed against Croatian civilians.

The death of President Tuđman in 1999, and elections in 2000, brought about a desperately needed change and optimism within Croatian society. The new Croatian government, consisting of a coalition of center-left opposition parties, with Iвица Račan, the head of the Social Democratic Party (SDP), as a Prime Minister, and Stjepan Mesić of the Croatian People's Party (HNS) as President, was willing to adopt reforms in the realm of human rights, democracy and transitional justice. The international community welcomed this shift and perceived it as the first step in bringing about a decisive break from Croatia's nationalist authoritarian past. However, so called 'de-Tuđmanisation', or the process through which the new government wanted to break from its authoritarian past by adopting a number of internationally approved reforms and policies, was not an easy task to achieve because, "Croatia's post-Tuđman elites were confronted with the monumental task of dealing with the legacy of ethnonationalist mobilisation, violent conflict, authoritarian governance and the penetration of state institutions by organised crime" (Jovic 2010:9). Despite losing the elections, the HDZ and other right wing parties, nationalist

groups and supporters of Tuđman's politics, undermined this process by nurturing narratives of victimization, and constantly attacking transitional justice policies and practices of the new government. Often, these nationalists groups equated cooperation with the ICTY with the betrayal of the Homeland War, war heroes and victims who gave their lives for Croatia's independence. When framed this way, indictments of Croatian generals were perceived as attacks on the entire nation. Not surprisingly, in the environment where the war for Croatia's independence is understood as part of national identity, it can be expected that policies and practices that question this narrative will be strongly opposed by the public.

Initially, the new government was determined to improve Croatia's relationship with the international community and embraced cooperation with the ICTY. This was confirmed when in 2000 the Parliament brought a '*Declaration on Cooperation with the International Criminal Tribunal in The Hague*' in which it was stated that Croatian authorities will make a greater effort to comply with international obligations and speed up investigations and prosecutions of war crimes. In the same Declaration it was explained that these actions are in the best interest of Croatia because they will improve its position within the international community and contribute to peace and stability in the region. The readiness of the new government to prosecute all perpetrators of war crimes and confront Croatia's past was soon put to the test.

In March 2000, the ICTY sentenced Bosnian Croat Tihomir Blaškić to 45 years in prison after being found guilty of committing, ordering, planning, or otherwise aiding and abetting, between May 1, 1992 and January 31, 1994, various crimes against the Bosnian Muslim population in central Bosnia and Herzegovina (ICTY Website, Blaškić Case Information Sheet). The harsh sentence shocked the Croatian public because it portrayed Croatia as an aggressor party in the Bosnian war and brought into question the dominant narrative that Croats only

waged a libratory and defensive war. The majority of politicians, both ruling and those in opposition, expressed their dissatisfaction with the verdict and claimed that General Blaškić was not aware of the mass murders of Muslim civilians committed by his soldiers. Dražen Budiša, leader of the Croatian Social Liberal Party (HSL), and part of the ruling coalition said that, “after this verdict against Blaškić, Croatia’s cooperation with the ICTY will become more difficult” (“Draconian Sentence: Tihomir Blaškić Gets 45 Years’ in Prison” 2000). However, Prime Minister Ivica Račan was more reserved and just commented that,

Without a doubt, this is a harsh sentence that needs to be reinvestigated in the appeal process. Croatia has a responsibility to cooperate with the Hague Tribunal and this government respects that obligation. In the cooperation with the Hague Tribunal in the following weeks and months we will have to address all disputable questions (“Draconian Sentence: Tihomir Blaškić Gets 45 Years’ in Prison” 2000).

Problematically, instead of making an effort to educate the Croatian public about events that occurred in central Bosnia and crimes against Muslim civilians that were committed under Blaškić’s command, the government justified its cooperation with the ICTY as an international obligation, rather than as a moral responsibility. By doing this, the government sided with perpetrators in order to protect the official narrative, but failed to acknowledge the suffering of Muslim victims and their families, which could actually contribute to truth telling and reconciliation. The effort to protect the official narrative of the Homeland War was also evident in October 2000 when the Croatian Parliament adopted a “*Declaration on the Homeland War*”. The Declaration stated that between 1991 and 1995 Croatia had, “waged a just and legitimate, defensive and emancipating, and not aggressive and conquering war in order to defend its internationally recognized borders against Greater Serbia’s aggression” (2000). It also proclaimed that the Homeland War represents the most important values on which Croatia’s peace, prosperity and development must be founded.

Nevertheless, the new government was faced with a serious political crisis in 2001 when the ICTY issued an arrest warrant against General Mirko Norac. General Norac was accused of planning, instigating, ordering, committing or otherwise aiding and abetting in the planning, preparation or execution of persecutions of Serb civilians of the Medak Pocket on racial, political or religious grounds (ICTY Website, Ademi and Norac ICTY Case Information). However, General Norac soon went into hiding and the government was forced to find a solution that would satisfy both international and national demands. To make the situation worse, the right wing nationalist groups, supported by the HDZ, organized major demonstrations across Croatia in order to express their support for Norac and anger with the government for failing to protect national heroes and Croatia's interests. The largest demonstration occurred on February 11, 2001 in the city of Split where some 150,000 people gathered to express their disagreement with the government's new policy of cooperation with the ICTY. Slogans and signs that could be seen at demonstrations, such as "We are all Mirko Norac" and "Hands off our Holy War", clearly illustrated that the indictment against Norac was perceived as an attack on the entire nation as well as the values of the Homeland War. The politicians in opposition, led by the HDZ, as well as veteran organizations, only supported this narrative. For instance, the leader of the HDZ, Ivo Sanader, delivered a passionate speech in which he stated that,

The shameful politics of this government forces our generals, our Croatian officers, into hiding; they are forcing them to be ashamed of themselves and of what they did for Croatia... Here is our message to that government: we are proud of our Croatian generals, we are proud of our Croatian officers, we are proud of all those who defended the homeland, and we are proud of our noble Mirko Norac (Jovic 2009:15).

Regardless, leaders of the ruling government were firm in their decision to send Norac for trial in the Hague. In a broadcast on Croatian television Croatian President Mesić said that "although General Norac had won great credit as a soldier, he must hand himself in for trial on

the charges of killing Serb civilians” (“Croats rally to War Crime Suspects” 2001). Regarding the demonstrations in Split, Prime Minister Račan said that,

We are clearly faced with attempts to resort to pressure and even violence in order to change court decisions in this country. We refuse to have anyone control the courts by political means, and we reject populist methods of pressure and violence directed against the judiciary. Croatia is a law-governed state and the democratically elected authority wants to prove it (“Croats rally to War Crime Suspects” 2001).

Unlike President Mesić, who recognized the murders of civilians, Račan failed to acknowledge crimes committed on the Croatian side and accused parties in opposition of undermining the rule of law. Yet, the crisis could not be resolved easily because Norac refused to surrender to Croatian authorities and promised to do so only if he could be guaranteed a trial in Croatia. Fortunately, the ICTY Prosecutor Carla Del Ponte agreed to transfer the Norac case to the Croatian court and helped to settle the crisis. Nonetheless, this was followed by more indictments against Croatian war generals.

One of the most controversial indictments was against Ante Gotovina, who was an operational commander of the military in Operation Storm - the last major battle that liberated occupied Croatian territory, proclaimed by rebel Croatian Serbs as the Republic of Serbian Krajina. The ICTY accused Gotovina of failing to make a serious effort to prevent and follow up on crimes reported to have been committed by his subordinates against Krajina Serbs (Gotovina ICTY Facts Sheet, Website). This indictment represented the greatest attack on the Homeland War because Operation Storm is perceived as the most important battle that made the independent state of Croatia. It also put the government in an uneasy position to decide between complying with international obligations that were important for political and economic integration into Western Europe, vis-a-vis local demands to protect the national values of the Homeland War.

After meeting with Prosecutor Carla Del Ponte, Prime Minister Račan decided to arrest and surrender Gotovina to the Hague. Račan's decision caused a major split within the ruling government and created yet another political and social crisis. To justify his decision, Račan said that his government had, "preferred to choose the way of co-operation to that of confrontation. To turn down the request from the Hague would be to plunge Croatia into the abysses of the Balkans conflict" ("Croatian President Backs Extradition" 2001). While Račan, supported by President Mesić, claimed that his decision was necessary for Croatia's future membership of the EU, others in the coalition perceived it as a betrayal of the Homeland War. To make the situation worse, veteran groups threatened to hold street demonstrations once again in order to prevent the extraditions of Croatian war generals.

However, because Gotovina went into hiding, Račan was not able to fulfill the promise he made to the Hague. The search for Gotovina became known as one of the major obstacles that Croatia had to overcome in order to open EU accession negotiations. Račan's initial desire to promote transitional justice also failed because he soon sided with the nationalists' critique of the ICTY. His position on the ICTY's indictments was made clear in the letter he sent to Prosecutor Carla Del Ponte and in which he wrote that the indictment against Gotovina represents, "criminalization and indirect denial of the Storm operation's legitimacy" (Peskin and Boduszynski 2010:1130). Račan soon became even more reluctant to unconditionally cooperate with the ICTY. When the Hague issued an indictment against the elderly General Janko Bobetko in September 2002 for crimes against Serbian civilians during the Croatian operation in the Medak Pocket, Račan firmly stated that,

The fight against the aggressor and for (territorial) integrity cannot be criminalised by anybody, including the court in The Hague. The way things are now, we are not going to hand over General Bobetko, but we are seeking advice from relevant institutions. We will not budge from this position and we will pursue all means at our

disposal - legal, political and diplomatic. This is not going to be a fast and easy battle and we cannot foresee the consequences, but I hope we shall not plunge into international conflict, isolation and sanctions (“Croatia Defiant Over Arrest Warrant” 2002).

Evidently, the efforts of Račan’s government to transform Croatia into a modern democracy were only marginally successful. The ruling government was caught between international actors who demanded cooperation with the ICTY, as part of the EU and NATO accession conditions, and oppositional political elites and nationalist groups who perceived every new indictment against Croatian war generals as direct attacks on the legitimacy and sovereignty of the Homeland War. Problematically, in order to prevent a political and social crisis, Račan’s government failed to take moral responsibility for war crimes committed on the Croatian side and only acted on the ICTY’s indictments when pressured by the international community.

Clearly, the prospect of EU membership was the main motive behind the government’s cooperation with the ICTY. This was also confirmed on December 2002 when the Croatian Parliament adopted a “*Declaration on the accession of the Republic of Croatia to the European Union*” in which it was stated that, “the strategic foreign policy priority of the Republic of Croatia is a full-fledged membership in the European Union, which has proved to be a nucleus and area of stable peace, freedom, democratic values and high standards of living” (2002:1). Unfortunately, Račan’s government failed to make significant contributions to peace and reconciliation in the region because its transitional justice policy was only part of the broader EU membership strategy. Their indecisiveness and attempt to please both the international community and the public only strengthened the power of nationalist political elites and helped to nurture existing narratives of victimization and the Homeland War.

EU Membership as a National Strategy

The political climate in Croatia changed once again after the November 2003 parliamentary elections when the HDZ, with Ivo Sanader as Prime Minister, came to power. The expectation that Sanader's government would be even more reluctant to cooperate with the ICTY, based on its rhetoric while in opposition, proved to be wrong. Prime Minister Sanader adopted a close cooperation strategy that improved Croatia relationship with the international community, and proved to be very beneficial during the critical stages of the EU membership negotiations. When in February 2004 the ICTY issued the indictment against Croatian generals Ivan Čermak and Mladen Markač for crimes against Croatian Serbs committed during Operation Storm, Sanader's government did not hesitate to transfer both generals to the Hague and provided all of the documents needed for the trial. This act was praised by the international community and moved Croatia one step closer to the EU. For example, in April 2004 the European Commission published a document titled '*Opinion on Croatia's Application for Membership of the European Union*' in which it recognized the HDZ's strong determination to transform itself into a democratic party with a pro-European vocation and praised the recent arrests of Croat indictees. In her address to the UN Security Council in June 2004, Prosecutor Carla Del Ponte also announced that, "Croatia is now cooperating fully with the Tribunal" (ICTY, Carla Del Ponte's Address to the UN Security Council 2004).

However, Sanader's politics of close cooperation did not cause a political and social crises, like it did during the era of Račan's government, because Sanader justified his policies and practices as part of the strategy to promote the truth about the Homeland War and help the indicted generals. On July 2, 2004, during the parliamentary debate regarding the indictments against Ivan Čermak and Mladen Markač Prime Minister Sanader said that,

Some were saying that this government transferred Croatian generals [to the Hague] very easily. But I want to say very clearly that each of them came to us, seeking help from the government and saying that they are ready to go, but they need help from the government. That was their decisions. Like a Prime Minister, and an ordinary Croat, I applaud their decision, because they showed that, like in the Homeland War where they defended Croatia as heroes and freed Croatia, they are ready to sacrifice for Croatia even in this difficult situation. Croatia will return the favour. The goal is to help them and do everything that is in our power to enable them to defend themselves while on bail. But I need to also say that the truth about the Homeland War is above everything. That is why I did not put their individual destinies in the first plan. The truth about the Homeland War is the foundation of the sovereign state of Croatia. We will do everything that we can to achieve our four goals: protecting the truth about the Homeland War, helping suspects, third, allow suspects to defend themselves while on bail, and finally transferring ICTY cases to Croatian courts (Croatian Parliament, “Political Aspect of Incriminating Acts in the Indictments against Generals Ivan Čermak and Mladen Markač” July 2004).

Problematically, while framing the policy of cooperation as the national strategy helped Sanader to satisfy both national and international demands, it did not contribute to peace and reconciliation in the region because it only preserved biased narratives of the past.

Moreover, after Gotovina’s arrest in December 2005 Croatia removed the last obstacle on its path to the EU. Yet, this arrest did not have an impact on peace and stability in the region because Sanader’s government managed to use Gotovina’s arrest to reinforce dominant narratives of victimization and the legitimacy of the Homeland War. This was evident during the parliamentary debate on December 8, 2005 when Prime Minister Sanader explained that,

The arrest of Gotovina in Spain confirmed what we have been saying all the time - that General Gotovina is not located on the territory of Croatia, like some international actors have been claiming. Thus, to all those who believed in us in the past and offered their support, while others questioned our efforts, I want to say that the case of Ante Gotovina only confirmed the strength of the rule of law in Croatia. Of course, this is also part of our international obligation, in accordance with resolutions of the Security Council, as a member of the United Nations. Therefore, according to the rule of law, nobody is above the law and everybody should be responsible and confront their own charges. But the presumption of innocence also applies to everyone, including General Gotovina. To us in Croatia, the complete truth is of the greatest interest. But the truth for us is that the Homeland War was defensive, libratory, legitimate and just. Croatia was the victim of the Greater

Serbian aggression, Croatia had the right to defend itself, offer resistance and it had the right to liberate its territory. And those are the unquestionable truths that nobody will be able to contest. On the other hand, Croatia will help all Croatian citizens who are accused by the Hague Tribunal, by all available means, in order to ensure that the truth about the Homeland War is protected (Croatian Parliament, “Information regarding the Arrest of Ante Gotovina” December 2005).

From this statement it is evident that Sanader’s goal was to promote the official truth about the Homeland War by highlighting, yet again, that Croats waged a liberatory and just war in order to defend them from the Greater Serbian aggression. Despite willingly sending Croatian generals to the Hague, the government managed to shift all the responsibility to the international community by explaining that the government is only fulfilling its obligations as a sovereign state founded on the rule of law, but promising at the same time that Croatian authorities will use all of the available means at its disposal to help and protect indictees.

Problematically, Sanader failed to mention the most important thing - the innocent victims who died during those liberatory operations. The focus on perpetrators, rather than victims, is still very common and represents a serious obstacle to peace in the region. Contrary to the expectations of the ICTY, local actors rarely condemn war crimes committed by perpetrators from their own national group because this would also force them to change their official narratives. The objective to protect official narratives of the past, was demonstrated again in June 2006 when the Parliament adopted a “*Declaration on Operation Storm*” in which it was written that,

It is the duty of the Croatian Parliament, Croatian expert community, Croatian scientific and educational institutions and media to over time turn Operation Storm into a battle that must not and will not be forgotten: into a decisive, glorious, victorious battle of the Homeland War, that will become part of Croatia’s useful past for future generations. Preserving the memory of Operation Storm should also include the right of all scientists, journalists, human rights activists and others to substantively and freely investigate the dark side of this and all other operations: violations of war and humanitarian law, crimes, human casualties and sufferings...

Operation Storm should be remembered in history not only as victorious and decisive, but also the last Croatian battle.

Interestingly, this Declaration also left open the possibility that war crimes were committed in the aftermath of Operation Storm. However, this recognition would have more effect on reconciliation if political elites actually took concrete actions to acknowledge these crimes.

The lack of a true desire to recognize the suffering of victims can best be observed during commemorative events. For instance, every year commemorative events held in the memory of Operation Storm spark verbal conflicts in the region because political elites use them to promote their own narratives of the past. In 2007, for example, Serbian President Boris Tadić and Prime Minister Vojislav Koštunica said that Operation Storm was a “criminal enterprise in which 250,000 Serbs were exiled and some 2,500 killed” (“Mesić: Those who chose Milosevic also have to deal with the consequences” 2007). Croatian President Mesić responded by stating that, “it would be good if people in Serbia could realize that Milošević was the one who imposed the war... Croatia is prosecuting those who conducted prohibited actions, but Serbia needs to say it clearly, for itself and its citizens, where the aggression started and who imposed the Greater Serbia to Croatia and Bosnia and Herzegovina” (“Mesić: Those who chose Milosevic also have to deal with the consequences.” 2007). Clearly, instead of being used to openly discuss the past, commemorative events are used to manipulate the number of victims and to provide an opportunity for mutual accusations for different war crimes. On the other hand, civil victims from all sides, seem less important because their stories, destinies and issues get less public attention.

Contrary to expectations, the ICTY’ verdicts did not help settle these disputes but only aggravated an already tense situation. This was evident in 2011 when the ICTY sentenced

Generals Ante Gotovina and Mladen Markač to 24 and 18 years in prison for crimes against humanity and violations of the customs of war during Operation Storm. Again, instead of openly discussing how these crimes affected victims, political leaders from Croatia responded by blaming the Serbian side for initiating the conflicts in the first place. For example, during the celebration of Operation Storm in August 2011, Prime Minister Jadranka Kosor said that,

Operation Storm was the battle for freedom and justice... the Homeland War was just, a criminal enterprise was committed by Milošević and his assistants. I am very proud that I can congratulate the Day of Victory and Homeland Thanksgiving Day to all Croatian war veterans and generals from our royal town of Knin, and I especially congratulate and thank generals Mladenu Markač and Anti Gotovina. We will never accept that others blame us for our victories. Those were victories of democracy and freedom over Milošević's Greater Serbian politics of aggression, destruction and hatred ("Josipović: We celebrate victory with pride and dignity. We condemn every crime." 2011).

While the majority of political leaders in the region usually choose a nationalist rhetoric, Croatian President Ivo Josipović was one of the few politicians who was willing to sincerely engage in the process of transitional justice. Ivo Josipović, a third Croatian President elected in January 2010, and also a Zagreb University law professor with the expertise in the field of international law, was willing to use his position and knowledge to contribute to reconciliation in the region. For instance, during the same commemoration he stated that,

We do not celebrate Operation Storm in order to celebrate the war, but to celebrate freedom, because that was the bloody battle for independence. We celebrate this victory with pride and dignity while also grieving over all victims. A glorious Croatian operation cannot be questioned just because of shameful actions committed by individuals who are responsible for crimes against fellow-citizens of Serbian nationality. Crime is a crime and it should be punished ("Josipović: We celebrate victory with pride and dignity. We condemn every crime." 2011).

By condemning crimes that occurred during the victorious Operation Storm operation, President Josipović showed empathy toward all victims and sent a strong message that no crime should go unpunished.

Josipović's desire to deal with ghosts of the past was evident again during his visit to Ahmići village in BiH in April 2010 where he expressed a deep regret for atrocities committed by Croatian military forces against Muslim civilians in 1993. The President of the War Victims of Ahmići Organization responded to this act by saying that, "no apology in Ahmići can bring back our victims, but we see your visit as a form of apology and a desire that this evil that happened in Ahmići never happens again" ("Ivo Josipović in Ahmići and Križančev Village: that this crimes never happen again." 2010). In order to promote peace and stability in the region, President Josipović was also willing to engage in a dialogue with Serbian President Boris Tadić. During Josipović's first official visit to Serbia in July 2010, the two presidents concluded that good neighbourly relationships should be based on joint efforts to prosecute war criminals, to help locate missing persons, to provide necessary resources to allow refugees to return, and to promote the politics of peace and reconciliation ("Josipović visitis Tadić: A step closer to revoking genocide accusation" 2010).

The two presidents confirmed their willingness to contribute to reconciliation between Croats and Serbs when they met again in Vukovar in November 2010. During this meeting Tadić apologized for crimes committed by Serbs in the Ovčare camp, a war prison where almost 300 Croats were murdered and a few thousand tortured. This gesture was well received by Croatian Prime Minister Kosor and other politicians who stated that this apology was a historical moment in the post-war relationship between Serbia and Croatia. However, not everyone in Croatia was pleased with Tadić's visit. In order to show their disagreement, right-wing and nationalist-

inclined parties organized protests that cast a shadow over the moment that could have served as a starting point of true reconciliation in the region.

In 2010, President Josipović also supported the Coalition for Regional Truth Commission (RECOM) and stated that he agreed with the idea that reconciliation in the region will not be possible until victims's need for justice was satisfied. Josipović said that,

I advocate politics of reconciliation, politics that will send messages of peace and respect. The attention of the public is often directed at perpetrators, and not enough on their victims. A victim needs to be given a place it deserves (“Josipović at the RECOM: Crimes need to be investigated and perpetrators punished.” 2010).

Unfortunately, apart from these exceptional acts, Croatian political leaders were less interested in dealing with the past and were mainly focused on fulfilling political and economic accession criteria needed to realize their national strategy of joining the EU. Transitional justice issues received even less attention after November 2012 when the Appeals Chamber of the ICTY found Generals Ante Gotovina and Mladen Markač not guilty of crimes against humanity committed in the aftermath of Operation Storm (ICTY Website, Appeals Judgment Summary for Ante Gotovina and Mladen Markač). Even though the Appeals Chamber didn't determine that no crimes were committed against civilians, but only that specific charges couldn't be proven against both Croatian generals, the majority of politicians immediately interpreted the judgment as proof that Operation Storm was legal and that no crimes against humanity occurred in its aftermath (Subotic 2014).

The acquittal of both generals represented an important moment in Croatia's history because, “as Croatians saw it, the ICTY has confirmed, once and for all, that Croatia did not become an independent state on the heels of ethnic cleansing of its minorities, and that whatever attacks by the Croatian army on majority Serbian cities occurred were within the legal

parameters of defense against armed Serb rebels and broader Serbian aggression” (Subotic 2014:173). Among the few who still acknowledged crimes that were committed in the aftermath of Operation Storm was President Josipović who urged that Croatia, “had to do everything to prosecute those crimes” and highlighted that, “acquittal of two generals only implies that they are not guilty of criminal acts that they were accused of” (“Josipović: Croatia is not denying war crimes” 2012). On the other hand, Tomislav Karamarko, a new president of HDZ, commented that,

we hoped for, and prayed for this to happen. We knew they were innocent. This is a an important day, as important as was the day of Operation Storm, because Croatia finally ended the war as a winner and without a single flaw in the Homeland War (“Pupovac: if Gotovina and Markač aren’t, who is responsible for crimes?” 2012).

The majority of politicians gave similar statements in the media and for many, this verdict only confirmed the dominant narrative of the Homeland War.

Conclusion: Transitional Justice in Croatia after Accession to the EU

For the majority of politicians the international obligation to adopt transitional justice mechanisms ended once Croatia fulfilled its national strategy and became a member of the EU on July 1, 2013. Problematically, once the ICTY mandate ends, there will be no official transitional justice mechanism in the region because national governments didn’t make an effort to initiate other restorative and reparative justice mechanisms. Although civil society organizations advocated the establishment of extra-legal mechanisms, such as a regional truth commission, educational workshops and counter-commemorations, political leaders rarely supported these initiatives. Yet, recent ethnically motivated incidents suggests that urgent actions are needed to address the legacies of the war.

For instance, the presence of ethnic animosity and segregation was evident in 2013 when the Croatian government decided to introduce signs in both Latin and Cyrillic scripts in order to respect Serb rights in the town of Vukovar (“Croatia plans Cyrillic signs for Serbs in Vukovar” 2013). This decision provoked negative reactions from the public and right-wing political parties who organized demonstrations in which bilingual signs were destroyed. Since 2013, there were several attempts made to include bilingual signs on state institutions in Vukovar, and other places with a Serb minority, but the signs were often destroyed very soon after they were hung up, and the captured perpetrators were released on bail. One of the accused explained his act of destroying the sign by stating that,

Neither I, nor other accused, think that we are guilty of acts that we are being accused of... It is important to know that in 1991 this building was burning and that people were burnt to death in it. That is why bilingual signs do not belong here or on other buildings in Vukovar (“In 1991 this building was burning and people burnt to death in it” 2014).

Not surprisingly, dealing with the past in war torn towns like Vukovar is extremely difficult because war wounds have not yet healed and horrific memories of atrocities continue to live in the present. Problematically, instead of promoting initiatives that could contribute to reconciliation between people, political leaders, and some right-wing civil society organizations, create even deeper divisions between ethnic groups by constantly fostering narratives of victimization and blame.

To make the situation worse, countries in the region have not yet come to terms with the events from World War II. For example, in 2016 veterans of Croatian defensive forces (HOS) put up a plaque in Jasenovac in the memory of members of HOS who died during the Homeland War. The plaque is controversial because it includes a slogan “for home ready”- used by the World War II Croatian fascist Ustaše movement who established a concentration camp in

Jasenovac during the Independent State of Croatia (NDH) in 1941, where they executed thousands of Serbs, Jews, Roma, other minorities and political opponents. Thus, erecting a plaque with a salute used by the Ustaše regime in Jasenovac is extremely inappropriate and should be condemned by the public and the authorities. However, Croatian Prime Minister Andrej Plenković stated that, “the plaque in Jasenovac does not glorify some people from World War II but war veterans who died during the Homeland War” (“Prime Minister Plenković: plaque in Jasenovac was put up for fallen war veterans” 2017). Because the salute is also written on the HOS’s statute, the government was not sure whether the controversial plaque should be removed, and it established a committee that was responsible for investigating laws and legal procedures regarding the salute “for home ready”. Even though the committee decided that the plaque should be removed because the engraved salute belongs to a totalitarian regime and insults all its victims, the plaque has still not been removed.

Disappointed by the government’s indifference, the Jewish community in Croatia announced that they will not be present at the commemoration in Jasenovac on April 22, 2017 because the Croatian government continues to play down crimes perpetrated under the Nazi-backed Ustaše regime, and remains indifferent toward the sporadic resurfacings of Ustaše extremism, including the chanting of Ustaše slogans by ultra-nationalist soccer fans. Representatives of the Jewish community said that its decision to boycott the commemoration is based on, “reactions by the government, parliament and the president. The problem is not (just) a plaque in Jasenovac including the Ustaše salute, but the relativization of everything to do with the Holocaust” (“Croatian Jews to boycott Holocaust remembrance event over ‘relativization’ of crimes” 2017).

Unfortunately, instead of addressing the concerns raised by ethnic minority groups and civil society organizations, state authorities and political elites have ignored these accusations or defended their position by stating that they are only protecting Croatian national values and interests. For example, President Kolinda Grabar-Kitarović said that acts like the chanting of Ustaše slogans by soccer fans do not represent an, “increase of fascism of Croatian society, but individual acts that occur everywhere. Serbia is the one that continuously emphasizes the Ustaše regime in Croatia” (“Interview with President: There is no fascism in Croatia, Serbia emphasizes Ustaša regime. We should not kneel in front of anyone” 2017).

While leaders in Croatia continue to ignore ethnically motivated incidents, the rise of nationalist and pro-Ustaše sentiments in Croatia has been observed by international human rights organizations. The US State Department published a report on the state of human rights in Croatia in which it expressed a concern that, “the most important human rights problems in the country were social discrimination and instances of violence directed against members of ethnic minorities, including ethnic Serbs and Roma, women, and children” (United States Department of State, Croatia 2016 Human Rights Report 2016:1). Unfortunately, acts of discrimination can be observed almost weekly. The most recent example was the placement of graffiti with pro-Ustaše symbols, and the salute “for home ready” written on a Serbian Orthodox church in the Croatian town of Sinj on March 7, 2017 (“Salute “for home ready” and Ustaše symbols at the Orthodox church in Sinj” 2017). These incidents show that Croatia, despite being accepted into the EU community, has not yet been transformed into a modern democracy where human rights abuses, intolerance toward minorities, racism, sexism and all other forms of discrimination will not be tolerated and ignored. Demonization of the enemy, mutual accusations of atrocities and the downgrading of those crimes committed by one’s own forces, as well as insufficient political

and social support for initiatives aimed at promoting human rights, peace and dialogue, continue to undermine peace and stability in the region. With the ICTY's mandate coming to an end soon, the future of transitional justice in the Western Balkans will largely depend on how political leaders, civil society organizations and ordinary people in the society respond to horrific legacies of the past.

Chapter 7

LOCAL PEACEBUILDERS DISCOURSE

Introduction

In this chapter I explore the role that local peacebuilders played in shaping the transitional justice processes in the Balkans. The analysis of programmes and activities of local human rights non-governmental organizations (NGOs) indicates that local peacebuilders have mostly engaged in initiatives aimed at supporting dominant and internationally-driven retributive and restorative justice mechanisms, such as trial monitoring, witness protection, and victim centred truth telling initiatives. The lack of culturally sensitive grassroots initiatives can be explained by the adverse social and political climate in which local human rights NGOs were often unsupported by political leaders, mistrusted by the local population, and even labelled as traitors. The lack of support forced local peacebuilders to turn to Western donors and adopt the dominant transitional justice discourse in order to find resources for their activities.

Consequently, local peacebuilders became even more alienated from the local population because their activities and discourse spoke more to international actors than ordinary people. Therefore, it can be concluded that local peacebuilders have had little power to initiate broader socio-political change that can contribute to reconciliation and sustainable peace in the region.

Retributive Justice and Victim Centred Initiatives

With the ICTY acting as the key transitional justice mechanism in the region, local peacebuilders have mainly been involved in activities related to the Tribunal's work, such as trial monitoring, witness protection, public campaigns and education. In addition, local NGOs have also participated in monitoring domestic war crimes trials and various victim and witness support

initiatives. Since 2005, three human rights organizations from Croatia, Documenta - Centre for Dealing with the Past; the Centre for Peace, Non-violence and Human Rights Osijek; and the Civic Committee for Human Rights have monitored domestic war crimes trials in order to contribute to strengthening the rule of law in the area of war crimes proceedings and to improve the status of victims (Documenta Website, Programs). The project team has issued yearly reports with comprehensive descriptions of current developments in the areas of judicial reforms, regional cooperation, respect for international standards for a fair trial, as well as statistical analysis of internationally and nationally prosecuted cases. Importantly, these yearly reports also included detailed accounts of existing problems, such as ethnic bias in sentencing, trials *in absentia* and lack of witness and victim protection.

In addition, the monitoring team has shared its perspective on the existing socio-political climate and discussed its impact on the transitional justice processes. It often warned that the lack of accountability for war crimes has obstructed reconciliation processes and insisted that in order to achieve justice, bring satisfaction to victims, promote deterrence and establish peace, all crimes need to be recognized and all perpetrators punished. For example, in the 2008 report it was stated that,

by their nature, war crime trials should not only function as an instrument of general and special prevention, but also be the first step towards post-war justice and reconstruction of trust. Additionally, they should be a process which is the reverse to that of a crime, contributing to the reaffirmation of the values violated by a crime, the elimination of the atmosphere favourable to crime, and re-examination of the political context in which a crime took place (Monitoring War Crimes Trials 2008:5).

Similarly, in the last report from 2015, it was explained that,

the interest of the domestic and international public in war crimes issues is declining. Therefore, we express our fear that the perpetrators and the persons responsible on the basis of command responsibility, especially in the highest echelons, will remain unpunished. In spite of that, we are again pointing to the necessity of unveiling the circumstances of all the war crimes and punishing the perpetrators. Only in that way

can we secure justice for the victims and prevent the recurrence of similar cruel conflicts in the future (Monitoring War Crimes Trials 2015:11).

However, while the adoption of a dominant legal discourse and the promotion of the idea of individual accountability brought local peacebuilders international recognition and funds, this support for international and national prosecutions of all war crimes partly explains why these NGOs are unpopular and are often labeled as traitors by local political leaders and ordinary citizens who still mainly reject the idea that Croats should be prosecuted for crimes committed during the liberatory war.

In addition to trial monitoring, local NGOs have also participated in internationally supported strategies aimed at assisting witnesses and victims of war crimes. For example, in 2008, after assessing that the Croatian legal system doesn't provide sufficient support to witnesses and victims, the United Nations Development Programme (UNDP) initiated a project called *Assistance to the Development of a Witness and Victim Support System in Croatia* in order to improve witness and victim's rights regulations, treatment during and after criminal proceedings, and to establish support offices at the local courts (Lowery 2010). In addition to cooperating with the Ministry of Justice, the UNDP funded and trained a few local NGOs whose role in this project was to enhance their service capacities to support witnesses and victims, and to raise public awareness about their unique needs (Lowery 2010:25). Support offices that were established at the local courts were responsible in providing witnesses and victims with basic practical assistance to inform them about their rights and legal procedures, and local NGOs were required to coordinate more specialized support and assistance, such as psychological, legal and all other forms of support.

However, years after this project was implemented, the trial monitoring team observed that the support for victims continues to be centralized and institutionalized in the system while, “the process of lifelong support has not come to life” (Monitoring War Crimes Trials 2015:31). This means that once the case has been closed victims and defendants do not get additional support and rehabilitation in the community. In the same report it was also pointed out that ethnic bias still exists despite the obligation to treat all victims and defendants equally. To be specific, Croatian nationality and participation in the Homeland War are still treated as alleviating circumstances during trial proceedings. Therefore, the adoption of international acts and the implementation of strategies doesn’t necessarily change the social and political climate, practices and values that could truly improve the position and treatment of all victims.

The rights of civilian war victims has been one of the main focuses of Documenta’s work. In the last few years the organization has documented judicial procedures and the treatment of victims during trials; participated in activities aimed at empowering the victims; analyzed the needs, problems and status of victims; and provided advocacy and support for survivors during court proceedings. For instance, between 2011 and 2012, Documenta conducted a study on the position and rights of victims of the war with the aim of identifying rights granted to victims through international and national laws. The study, which consisted of interviews with victims and a comprehensive analysis of international and national laws regarding victims’ rights to reparation, found that a large number of victims lack knowledge of their legal rights and how to obtain symbolic and material compensations (Research report Civilian War Victims in Croatia 2012:47). Based on these observations, Documenta also published a document, which includes an overview of international and national laws on victims’ rights to reparations and detailed instructions on how to obtain those rights (Calic-Jelic and Terselic 2012).

Many other NGOs in Croatia and the region are focused on providing support and assistance to civilian victims of war. For example, the Centre for Women War Victims - ROSA provides counselling, education and support to women who were victims of war violence. The Organization for Support to Victims and Witnesses is another organization whose work concentrates on providing victims with legal information and emotional support during trials, as well as in-person and over the phone counselling to inform victims about their rights. Many other organizations, including the Civic Committee for Human Rights, the Croatian Helsinki Committee for Human Rights, the Coalition for Protection and Promotion of Human Rights, and Human Rights House, are focused on building democracy and maintaining peace through their advocacy for individual human rights and civic freedoms.

However, lack of financial and moral support from the government and local funders has forced these peacebuilders to look outwards toward Western donors in order to secure funding for their activities. As a result, the activities of these local human rights NGOs are largely funded by European Union funds, UNDP, USAID, and other international organizations and foundations that promote Western notions of justice, human rights and democracy. Inevitably, this has created a dependency on international resources and further alienated these NGOs from the local population. Problematically, Grodsky explains that as a result of this alienation from the local population, “organizations that purport to represent society at large take on the character of small, elite units more focused on writing applications for Western grants, which in turn requires tailoring their activities to an external audience and away from the internal one” (2014:4). Hence, these activities do not necessary fulfill the needs of the local population and do not contribute to building sustainable peace and reconciliation.

Lundy and McGovern also asserted that the problem with internationally driven funding is that it imposes, “hegemonic international approaches to ‘democracy promotion’”, which puts local peacebuilders in a subordinate position with little agency to control a post-conflict agenda and develop programmes that could reflect the needs of local people (2008:275). However, as Mac Ginty explains, “this is not a vast Machiavellian conspiracy through which the agents conspire to deliver a poor quality peace yet maintain the verbiage of a liberal democratic peace” (2006:53). Instead, local tendencies to engage in dominant transitional justice activities, like prosecutions through international and domestic courts, and various victim centred initiatives to promote a human rights discourse, also result from the normalization of Western human rights ideas, democracy and liberalism through which they become perceived as the best route to peace. Thus, dependence on international donations, as well as the adoption of a transitional justice ‘toolkit’ are probably some of the reasons why local peacebuilders narrowed the scope of their work to activities such as trial monitoring and various victim support programmes. Yet, by limiting their work to the legal sphere that focuses on establishing individual criminal accountability in order to satisfy the individual rights of victims, local NGOs have failed to respond to complex and multi-dimensional historical, social, political and economical issues that led to conflicts in the first place.

Problematically, because these internationally funded initiatives promote Western notions of human rights that advocate for individual rights to reparations and satisfaction through the prosecutions of perpetrators they do not necessarily fulfill the unique needs of victims living in the Balkan region. Studies that looked at victims’ satisfaction with these transitional justice mechanisms indicate that victims are often unsatisfied with the work of courts and the effects they have on reconciliation (Clark 2012; Hayden 2011; Subotic 2009; Stover and Weinstein

2004). Therefore, it is important to remember that because, “justice is a highly subjective concept, it is essential that justice is seen to be done from the perspective of those on the ground” (Clark 2012:404). As Di Lellio and McCurn found through interviews with victims from Kosovo, many times the only thing that victims need is recognition for their suffering and official acknowledgment by political leaders and authorities (2013).

Truth Seeking Initiatives

a) The RECOM

The local response to internationally-driven retributive and restorative justice mechanisms was the initiative to establish a regional truth commission. During the regional discussion meeting held in Belgrade in 2005 leading human rights NGOs from the region, and representatives from the International Center for Transitional Justice (ICTJ), came to the conclusion that although war crimes trials are “the most important legal instrument for the determination of individual criminal responsibility for crimes”, they are “not sufficient to build a historical record of the past” (Coalition for RECOM, RECOM Development Process 2012:1).

In 2008, after several regional and national consultations to address the needs and expectations of victims, three non-profit organizations from the region - the Humanitarian Law Centre in Serbia, Documenta - Center for Dealing with the Past in Croatia, and the Research and Documentation Centre in BiH, launched the Initiative for a Regional Truth Commission (RECOM). After intensive discussions on the objectives of RECOM, it was concluded that its primary task should be to, “contribute to the process of dealing with the past by helping citizens accept the facts about war crimes and other gross violations of human rights committed against all victims and restore confidence between individuals, people, and states in the region”

(Coalition for RECOM, RECOM Statute 2011:4). It was agreed that in order to achieve these objectives the RECOM will collect information on war crimes and other gross violations of human rights, as well as information pertaining to the fate of missing persons. Moreover, it will compile registers of human losses, collect information on places of confinement connected to the war, research the political and societal circumstances that contributed to the outbreak of wars, hold public hearings of victims, recommend measures to prevent the recurrence of human rights abuses, ensure reparations to the victims and finally, publish the final report based on these findings (Coalition for RECOM, RECOM Statute 2011). However, its principal objective was to integrate victims of the conflict into the process of dealing with the past through public hearings of their narratives and stories. The Coalition believed that this would help create a culture of solidarity and promote reconciliation (Coalition for RECOM, RECOM Statute 2011).

After the first media campaign, initiated in order to inform the public about RECOM, the Coalition conducted a public opinion survey with financial support from the OAK Foundation, which is an international foundation that supports initiatives aimed at developing international human rights. The opinion survey results revealed that the majority of respondents believed that there is a need to establish the facts about crimes and victims of the wars in the former Yugoslavia. The poll showed that the greatest support for RECOM was in Kosovo, where 95 percent of respondents said that they would be willing to sign the petition, followed by 86 percent of Montenegrins, 85 percent of respondents from the Federation of BiH, 75 percent of Macedonians, 63 percent of Serbians, and significantly fewer than 50 percent in Croatia and the Republika Srpska. In the summer of 2011, hoping that the public will recognize and support the Initiative, the Coalition started collecting one million signatures needed for the establishment of RECOM. Unfortunately, only 543,870 signatures were collected, from which 254,625 were

collected in Serbia, 122,540 in BiH, 100,566 in Kosovo, 31,060 in Montenegro and only 19,674 in Croatia, 10,059 in Macedonia and 5,346 in Slovenia (Coalition for RECOM, RECOM Development Process 2012:9).

Leading politicians, academics and representatives of veteran groups in Croatia have strongly opposed the Initiative for RECOM and claimed that its main objective is to equate victims and perpetrators and undermine the dignity of the Homeland War. For example, Croatian historian and politician Josip Jurčević said that the goal of the organizations involved in the process is, “not to establish facts, but to create false information according to the Hague model of ‘even out the guilt’” (Dujmovic 2011). Jurčević further claimed that the goal of this project is to force Croatia into the “Yugosphere” and regional cooperation that does not contribute to the social, cultural and economic development of the country. Similarly, Dr. Ante Nazor, director of the Croatian Memorial and Documentation Center of the Homeland War, said that, “the Commission is not needed in Croatia because Croatia is a sovereign state with institutions who already perform the same work and have already completed the majority of that work” (Despot 2010).

In addition to intense political and media propaganda directed against RECOM, it is possible that the Initiative failed to gain support from victims and ordinary citizens because its objectives and proposed activities do not respond to the needs of local communities. Furthermore, while the Coalition claimed that the main intention of the Initiative is to empower and include victims in the transitional justice process, these victims were excluded from the most important stages of RECOM’s developments. After holding discussions on perceived issues and the needs of victims of the war with different organizations and groups of civil society, the Groups of Experts of the Coalition for RECOM, including dominant NGOs and lawyers from the

region, and professionals from the International Centre for Transitional Justice (ICTJ), wrote RECOM's Statute in which they described its main objectives and activities (Coalition for RECOM, RECOM Development Process 2012). Therefore, it appears that 'experts' from the legal and transitional justice field, rather than victims who are supposed to benefit from the Initiative, had the leading role in formulating RECOM's objectives and tasks.

The exclusion of victims raises questions about RECOM's legitimacy, local ownership and victim participation. Thus, it seems like the Initiative did not come from local people at all. Instead, it was a result of the cooperation between local human rights NGOs and the ICTJ. Di Lellio and McCurn further explain that, "RECOM is both a bottom-up initiative and one that fits the contemporary institutionalized vision of transitional justice as a 'normal' form of intervention after a conflict" (2013:131). With its aim to "strengthen democracy, the rule of law and a culture of respect for human rights", RECOM perfectly embodies a dominant transitional justice discourse and supports the idea that transitional justice mechanisms can be used to transform political and social aspects of post-war societies (Coalition for RECOM, RECOM Statute 2011:3). In the letter that the Coalition for RECOM sent to the European Union it was explained that,

The RECOM initiative does not offer an alternative to war crime trials conducted at the International Criminal Tribunal for the former Yugoslavia (ICTY) or by local judiciaries in the Balkans, but addresses the limitations of a perpetrator-oriented approach to the truth about a conflict-ridden past. The trials have not resulted in a broader public debate about war crimes inside the countries or between the countries in the region, nor are they perceived as a legitimate mechanism for establishing the truth about what happened in the past. The RECOM initiative is a local response to a local demand to face the past. Its legitimacy derives from a strong sense of ownership among various groups of civil society across the former Yugoslavia who share the goal of establishing the truth about the past based on the facts of war crimes and other serious violations of human rights. Such a truth is owed to the victims and their families throughout the former Yugoslavia. It is also a necessary protection against any future abuse of past crimes for political purposes that may plunge the

region into a new cycle of conflict (Coalition for RECOM, The RECOM Initiative - The Case for Support of the European Union 2009).

Here the Initiative is described as a restorative justice mechanism that does not offer an alternative to retributive justice, but represents a locally based mechanism to address the past from victims' perspective. As such, the Initiative is consistent with current trends in the field of transitional justice that aim to restore the dignity of victims, provide social and political reconciliation and re-constitute the past on the basis of a shared narrative. However, as previously argued, it is questionable whether the Initiative represents the voices and needs of local people because they were not included in all stages of its development and did not have complete control over decision-making regarding its objectives and activities.

b) Public Acknowledgments and Commemorations

Public acknowledgments and commemorations can be powerful mechanisms of peacebuilding through which a society can acknowledge the suffering of victims and the bravery of those who lost their lives during the war. However, Banjevlav explains that in the former Yugoslavia, “these commemorations also serve as platforms for politicians to pursue their political goals and ensure that their narrative of the past becomes recorded and recognized as ‘those events that actually happened’” (2012:8). In Croatia commemorative events are mainly used to reinforce narratives of the victimization of Croatian people who defended the country from Greater Serbian aggression. For example, commemorative events held in honour of the fall of the town of Vukovar, which is a symbol of destruction and ethnic cleansing, are important rituals that shape how Vukovar is collectively remembered. Vukovar, as a symbol of suffering of the Croatian people, helps to reinforce the victimization narrative that is an integral part of Croatian national identity.

On the other hand, the celebration of Operation Storm is an event that represents the heroism and bravery of Croatian people and reinforces the narrative of Homeland War as a decisive, glorious and victorious war. The analysis of narratives and practices surrounding both of these events suggests that they do not simply represent memory-making ceremonies, but also reflect the lack of progress in building sustainable peace and reconciliation in the region. Sadly, commemorative events for Croatian victims are rarely attended by representatives of Croatian Serbs or political leaders from Serbia, while Croatian politicians do not participate in commemorations for Serbian victims. On the other hand, many local human rights NGOs attend commemorations for all victims in order to bring the memories of victims from all sides of the war to the public eye. For instance, every year three NGOs from Belgrade, Women in Black, the Humanitarian Law Centre and the Youth Initiative for Human Rights, attend commemorative events for Croatian victims in Vukovar. In addition to paying tribute to Croatian victims, these organizations also try to raise awareness among Serbian citizens and remind authorities that they should punish perpetrators responsible for atrocities committed in Vukovar. For example, in November 2016, representatives from the Women in Black organization assembled in the centre of Belgrade on the 25th anniversary of the fall of Vukovar in order to express their solidarity with citizens of Vukovar. They lit candles and held banners that said, “We will never forget atrocities committed in Vukovar”. A representative from the organization explained that,

we wanted to send a message of solidarity and responsibility because 25 years has passed since the fall of Vukovar, a symbol of barbaric destruction, not just in the territory of the former Yugoslavia, but in the entire world. Unfortunately, no one has been held responsible for crimes of ‘urbicide’ and ‘culturcide’, and the mass destruction of cultural heritage of Vukovar, neither in front of the national court in Serbia nor in front of the Hague Tribunal (“Women in Black: the Fall of Vukovar is a Symbol of Barbaric Destruction of the Town.” 2016).

Similarly, representatives from Documenta and other human rights organizations from Croatia also acknowledge the suffering of Serbian civilian victims. For example, they are always present at commemorations for Croatian Serbs who were killed during, and in the aftermath of Operation Storm. With this act they wish to remind the public that in addition to celebrating victory it is also necessary to recognize crimes committed against innocent people. In August 2015, during the commemoration for Serbian civilian victims, Vesna Teršelič from Documenta stated that,

this year the institutions of the Republic of Croatia will celebrate the anniversary of Operation Storm with a military parade in Zagreb and manifestation in Knin, while the true support for all victims of the war is missing again. From this place we invite state institutions to a dialogue about the appropriate way to commemorate because all victims should be part of the Homeland thanksgiving. It is unacceptable that 20 years after these atrocities, death and disappearance, families are left alone to search and remember their victims (“Commemoration for Civilian Victims of Operation Storm in Pješčanica.” 2015).

Moreover, in 2016 activists from Croatia’s Youth Initiative for Human Rights initiated an apology petition for crimes committed during, and in the aftermath of Operation Storm. The purpose of this petition is to collect signatures of all Croatian citizens who agree that these crimes should not be ignored and denied. Youth activists who started the petition explained that,

with this apology we want to build a different Croatia. We want Croatia to be a community founded on the rule of law, legal security, truth, equality, democracy and human rights. We want Croatia to be a society of reconciliation that is not afraid of its past, but rather learns lessons for the future (YIHR Apology Petition 2016).

However, only 420 people have even signed the petition. This lack of interest signals that a large number of Croatian citizens are still not ready to adopt a culture of peace in which they would be able to celebrate their own victory and acknowledge crimes against victims from the ‘other side’ at the same time. Unfortunately, the efforts of local peacebuilders to introduce conflicting

memories into the public space often get interpreted as anti-Croatian and pro-Serbian. Consequently, these efforts have very little impact on deep peace and reconciliation among the broader population because they are only recognized within the community of individuals involved in the work of human rights organizations.

c) Other Truth Seeking Initiatives

Documenta explains that, “systematic teaching about twentieth century conflicts, forms of political repression and propaganda, war suffering, war heritage and war narratives should be part of peace education and sustainable peace developments” (Documenta Website, History and Civic Education). However, the inability of political elites, leading scholars, experts, as well as ordinary citizens, to move beyond simple interpretations of the past and binary classifications of individuals into victims vs. perpetrators, have prevented efforts to build a common narrative of the 1990s war. This was evident when in 2005 the HDZ-led Ministry of Education appointed a group of Croatian historians to write a *Supplement to Textbooks on Current Croatian History* for Serb pupils living in the Podunavlje region of Croatia, the easternmost part of Croatia and one of the most ethnically heterogeneous areas. The supplement, which offered a critical perspective on the 1990s war was different from the official narrative, sparked fierce reactions from political leaders, veteran groups and the media who believed that the supplement distorts the historical truth about Serb aggression and represents an attempt to equate Croatian victims with Serbian perpetrators. As a result, the supplement never found its way into the history textbooks. However, it became available to the public in 2007 when Documenta published the supplement under the title “*One History, Many Histories*” (Terselic 2007).

Since 2010 Documenta has also been involved in a project called *Unveiling Personal Memories on War and Detention*, intended to create a collection of video-recorded testimonies

and personal memories of past traumatic events. The goal of this project is to, “support and strengthen personal and social processes of dealing with the past” and raise awareness among the general population about individual suffering in order to contribute to the development of a culture of peace and to facilitate and engender empathy with all victims (Documenta Website, Recording of Personal Memories). The idea that storytelling can foster peace is based on the notion that language is a means through which people construct their worldview. Therefore, personal and group memories and stories encode the knowledge, identity, power, history and values of a particular community (Senehi 2002). Senehi argues that the social process of constructing meaning is critical to peacemaking and peacebuilding because conflict “becomes encoded in each communities’ cultural knowledge, involving understanding of self and other” (2002:47). However, Senehi makes a difference between *constructive* and *destructive storytelling*. According to Senehi, constructive storytelling is a form of storytelling that fosters “mutual recognition; creates opportunities for openness, dialogue, and insight; a means to bring issues to consciousness; and a means of resistance” (2002:45). On the other hand, destructive storytelling is associated with unequal power relations (Senehi 2002:47). In other words, destructive storytelling produces social knowledge that reflects interests of the most powerful groups.

Personal narratives recorded by Documenta can be seen as constructive storytelling narratives because they help build understanding and awareness, and give voice to marginalized and less powerful groups. They are accessible on the internet platform www.croatianmemories.org and are available to a wide ranging of audience. These personal stories serve as proof of individual suffering that can promote critical discussions about the past. This is especially important in the climate where political leaders continue to use dominant

interpretations of the key events in order to protect the oppressive culture of thinking in which there is little room for different explanations of the past. For instance, in January 2015, during the celebration of her election victory with the war veterans, Kolinda Grabar-Kitarović, the fourth President of Croatia since its independence, said that,

nobody will underplay our defensive Homeland War and call it some kind of a civil war; this I solemnly swear here tonight... I will continue where our first Croatian president, Dr. Franjo Tuđman, left off. This is my first working visit; let us celebrate a little tonight, and then we will immediately go to work together for a better Croatia! For too long you have made sacrifices, I understand you; I know what you want and what you are looking for - above all, respect and the war as the foundations of Croatia (“New Croatia President Celebrates with Protesting Veterans.” 2015).

Similarly, in 2014 Tomislav Karamarko, the leader of the HDZ, asserted that,

everybody can think what he or she wants, but only in his or her own room, courtyard or house – certainly not in the public arena. Everyone will have to respect values that are [embedded] in the very foundations of the Croatian state – these are the Homeland War, our defenders, our dead, the political doctrine of Dr. Franjo Tuđman (Koren 2015).

These statements only remind us that dealing with the past at all social levels, including individual, family, community and state, is necessary to address the culture of denial that has been promoted by powerful political elites. Thus, instead of turning a blind eye to statements, policies and practices that promote animosity, segregation and discrimination, ordinary citizens and local peacebuilders should take every opportunity to publically question and condemn such acts. For example, after the controversial plaque with the slogan “for home ready” was put in Jasenovac, activists from the Youth Initiative for Human Rights from Croatia covered the plaque with a note in which they stated that,

with this plaque, that is by accentuating symbols of hatred, you stood against fundamental principles of our common state. Furthermore, maybe not intentionally, you took advantage of your deceased [soldiers] and used their death for the promotion of views that go against the Constitution of the Republic of Croatia. And you did this in a way that diminishes [suffering] and actually mocks victims of the

Ustaše fascist terror who saturated this land with their blood. It is shameful and discouraging that the ruling leaders and institutions, who are responsible to defend the Constitution, failed to adequately sanction actions like yours. If you really care the national interests of Croatia, about democracy, peace, stability and security, remove from this, and other places, symbols of fascism and hatred (“Youth Initiative for Human Rights Covered the Plaque with the Message for HOS.” 2016).

While these type of activities are still very rare because the majority of citizens continue to simply observe the current situation, they are important because they contribute to truth telling and counter the culture of denial. Activities that publicly condemn nationalist rhetoric and discrimination are powerful peacebuilding mechanisms because they open up critical discussions about the past and question myths and biased narratives that obstruct peace and reconciliation developments.

Conclusion

It appears that local peacebuilders, despite being engaged in various transitional justice initiatives, have failed to spark broader socio-political change that could contribute to reconciliation in the region. While their well-intended initiatives were often praised by international transitional justice actors, they were frequently unnoticed or strongly opposed by the majority of ordinary citizens. Problematically, it seems that these initiatives mainly reflected a dominant transitional justice discourse, rather than responding to the needs of local people. As Di Lellio and McCurn suggest, “giving priority to the local implies more than adapting the received professional toolkit: it might require abandoning it” (2013:129). In other words, instead of simply importing Western processes, policies and practices, local peacebuilders should try to develop approaches that reflect the specific historical, social, cultural, political and economic contexts of the Balkan region. Thus, instead of treating local people as passive and homogenous objects, local peacebuilders should find ways to engage them during all stages of planning and

the development of new initiatives in order to truly empower and allow local communities to define their needs and choose how they want to deal with the past.

Chapter 8

THE MEDIA DISCOURSE

Introduction

The media has the power to influence transitional justice processes because of its ability to reach a large number of people. However, the media can either play an important role in initiating critical discussions about the past that promote truth telling and reconciliation, or it can hinder these processes by deepening divides and reinforcing animosity. In order to illustrate how the media shaped transitional justice processes in the Balkans I first provide a brief account of the issues related to the lack of media freedom in Croatia, followed by a description of the local media coverage of key events during the 1990s war. My observations are mainly based on the analysis of online newspaper articles published by Croatia's *Večernji list*, Serbia's *B92* and by regional *Al Jazeera*. Through a critical discourse analysis of these online newspaper articles I found that local media rarely engaged in critical discussions regarding issues of truth, accountability for war crimes, and victims' rights. Instead, the media reports on transitional justice issues were often superficial, sensationalist, tabloid-style and copy/paste stories that mainly supported dominant narratives and the interests of powerful political elites.

Freedom of Expression and Media During the Transitional Justice Period

Until 2000 President Tuđman and his Croatian Democratic Union party (HDZ) almost completely controlled the media discourse and used measures such as pressure, harassment, economic extortion and the arbitrary prosecutions of journalists who dared to question their policies and practices. For example, in 1998 the EU observed that,

the influence of the ruling party (HDZ) goes beyond the political, and is reinforced by state control over the (outrageously) pro-government electronic media, in

particular TV. Freedom of expression, particularly freedom of the press continues to be infringed, with courts and administrative bodies used to selectively shut down or muzzle print and electronic media which criticises the Government. Criticisms in previous HRT reports, of the harassment and intimidation of journalists, particularly by the use of provisions of the already-criticised civil and criminal laws; of difficulties for print media in collecting distribution-revenue from distribution companies with close ties with HDZ remain valid. HDZ still controls the only national state-wide electronic media (HRT) and also many local stations, thus controlling the main information source in the country, and continuing to stir up public opinion on sensitive issues (European Commission, Conditionality Report 1998:9).

Although the state of media freedom improved significantly once the new government came to power in 2000 powerful actors continue to control the media discourse in Croatia. For instance, while a few foreign owned for-profit channels were launched after 2000, including *Nova TV* and *RTL*, the state-owned *Croatian Radio and Television (HRT)* has continued to be the most influential broadcasting media in Croatia even in the post-Tudman period. On the other hand, privately owned Croatian Europapress Holding (as of July 1, 2016 renamed Hanza Media d.o.o) and Austrian Styria Media Group have a monopoly over the print media market. Two large corporations own the most popular and widely read daily newspapers - *Jutarnji list*, *Večernji list* and *24sata*. Problematically, this concentration of power in broadcasting and print media allows individuals or large corporations to protect their interests and control the media discourse. Concerns about political and economic interference in the media have continuously been raised by international organizations like Human Rights Watch, Reporters Without Borders and Freedom House. For example, in 2014 Freedom House stressed that, “many private media owners hold interests in non-media businesses, creating commercial and political pressure that can reduce critical news coverage of the government and influential companies” (Croatia: Freedom of the Press 2014).

Croatia's efforts to enhance the freedom of media expression have mainly been initiated by the European Union. During the accession negotiations, the EU put pressure on the government to harmonize media policies and practices with the European standards and create conditions for an independent media to flourish. As a result, the Croatian government passed several important laws, including the *Law on Croatian Radio and Television (HRT)* (2001), aimed at regulating the legal status, ownership, management and program content of the state broadcaster *HRT*. The main goal of the law was to transform the broadcaster into a public service corporation, with its director and editor-in-chief to be chosen in an open competition. However, soon after the law was passed the Council of Europe raised a concern that the law did not transform the state-administered broadcaster *HRT* into a fully independent public service broadcaster (Council of Europe, SAP 2002). The Council observed that political control over *HRT*'s governing bodies still existed because the Parliament, which was responsible in appointing members of the *HRT* management bodies, often chose members based on political preferences rather than competence. As part of the EU negotiations framework, the government had to revise the law several times in order to enhance the ownership transparency and ensure a clear procedure for the election of members to a particular *HRT* body (*Law on the Croatian Radio-Television (HRT): Amendments 2010; 2012*).

In 2003 the Croatian Parliament also adopted the *Law on the Media* and the *Law on the Electronic Media*, intended to prevent the concentration of ownership in the media. For example, the *Law on Media* regulates the basic principles of the work of non-electronic media, such as freedom of expression, the right to information, protection of privacy, and media ownership. According to the *Law on Media*, the publisher of one or more newspapers with the number of sold copies accounting for more than 40 percent of the total number of newspapers sold on the

market, cannot own another general newspaper (Article 33, *Law on Media* 2003). The *Law on Electronic Media*, governs electronic radio and TV broadcasts, as well as electronic publications, and outlines procedures for the allocation of licences for public and private radio and TV broadcasters. The *Law on Electronic Media* also regulates cross ownership and prevents owners of the broadcast media from owning both a national broadcasting licence and a daily newspaper. In order to bring the regulations in line with European standards, new amendments to both the *Media and Electronic Media* laws were adopted in 2011. New amendments adopted policies aimed at enhancing freedom of expression and enabling the privatization of the media sector in order to subject the media to free market rules.

Over the years the Croatian government adopted a number of laws with the intention to improve policies and practices of the local media. However, it can be observed that numerous issues related to media freedom still exist. International and national NGOs, including Human Rights Watch, Reporters Without Borders, Freedom House, and the Croatian Helsinki Committee, have reported that powerful political elites continue to exercise control over the media discourse and intimidate journalists who question their narratives.

In 2010 Human Rights Watch issued a report in which it was stated that, “media freedom was under sustained pressure during 2009: journalists investigating corruption and sensitive subjects were subject to threats, removal from their posts, or court action” (Croatia Events of 2009). For example, in 2008, Ivo Pukanic, a journalist covering organised crime, intelligence and war profiteering, was killed by a car bomb outside his office. One year earlier, journalist Zalko Peratovic was detained and his house was searched for violating state secrets after publishing a story on war crimes on his blog (Knezic 2013). Drago Hedl, a journalist for the weekly *Feral Tribune* (a political weekly magazine that ceased publication in 2008 due to financial issues), has

also been physically attacked, targeted by lawsuits, and repeatedly threatened with death due to his investigations into war crimes committed during the 1990s (Freedom House, Croatia: Freedom of the Press 2012).

Even though physical attacks on journalists have decreased over the last few years, the silencing of critical journalists still continue. In 2012 *HRT* journalist Elizabeta Gojan was subjected to disciplinary proceedings and possible dismissal after she gave an interview to German broadcaster *Deutsche Welle* criticizing the state of media freedom in Croatia. The OSCE Representative on Freedom of the Media, Dunja Mijatović responded to this shocking practice by stating that, “it is more than alarming that the public service broadcaster is using this draconian practice in order to silence journalists. It should be a public service broadcaster’s role to highlight topics of public interest, and declining press freedom is undoubtedly a very important issue, key to any democracy and certainly key to any independent public service media” (OSCE, “OSCE Media Freedom Representative Concerned by Croatian Public Broadcaster HRT Practice to Silence Critical Journalists.” 2012).

Since 2002 Freedom House, an independent watchdog organization dedicated to the promotion of freedom and democracy around the world, has also monitored Croatia’s progress in expanding the boundaries of media freedom. Although Freedom House recognized efforts to adopt important legal changes in order to provide favourable conditions for independent media, the organization has consistently criticized the authorities for tolerating the harassment of journalists and political censorship. For example, in 2008 Freedom House reported that, “journalists are subject to occasional harassment by the authorities, physical threats, and violence, particularly when their reporting touches on Croatia’s role in the 1991–95 Balkan conflict” (Freedom House, Croatia: Freedom of the Press 2008). Moreover, Freedom House also

observed that *HRT* openly censors its television programs to prevent critical reporting on societal problems in order to protect political interests.

Interestingly, Reporters Without Borders (RWB) reported that until 2015 media freedom in Croatia was slowly, but consistently, increasing. Yet, according to its 2016 report Croatia deteriorated its position by five ranks and was ranked at 63rd place (out of 180 countries) in terms of media freedom (World Press Freedom Index 2016). In the last report from 2017, Croatia ranked even lower and is currently in 74th place (World Press Freedom Index 2017). In the 2016 report, IREX, a non-profit organization committed to international education and development, made a shocking observation that,

during the EU accession, Croatia at least tried to show its polite face in aligning its legal framework with the EU requirements and standards, including the media sector. Post-accession, there's no more leverage from Brussels, and no need to pretend that we are better than we actually are. The government will bitterly oppose any allegations on restricting freedom of speech. But it doesn't take necessarily any proactive measures for that. It is enough to turn a blind eye [to] breaches of transparency of media ownership and to tolerate draconian fines in libel cases to encourage the culture of self-censorship, with its devastating impact on media freedom (IREX Media Sustainability Index Report Croatia 2016:55).

Similarly, in 2016 the International Press Institute (IPS) published a report based on extensive research, including meetings with journalists, editors, government officials, and representatives from journalist organisations and civil society groups, to evaluate issues related to media freedom and media independence in Croatia. In the report it was explained that,

Within the context of the media, journalists and civil society groups describe an atmosphere in which certain politicians have deliberately fostered mistrust in critical media, regulatory bodies and human rights defenders so as to undercut the credibility of these institutions. Frequently, this is manifested in verbal attacks on "leftist media" that display insufficient "patriotism", with journalists smeared as "traitors", "anti-Croats" or equated with members of groups such as the Četniks (a Serbian paramilitary force accused of atrocities against Croats and other groups during World War II) (Griffen 2016:5).

Clearly, the ability of journalists to engage in critical discussions about the violent past is seriously undermined by adverse social and political climate. Problematically, the lack of desire to confront dominant narratives and myths is not surprising since journalists who dare to do so often face harassment and are easily labelled as ‘traitors’ and ‘anti-Croats’. In the same report, the International Press Institute (IPS) describes the recent example of such an attempt to discredit and silence critical voices in the following manner.

Perhaps the most disturbing recent example of such discourse was a January 2016 protest directed against the Croatian Electronic Media Council (EMC) and its president, Mirjana Rakić, after the EMC temporarily banned a broadcaster for violating hate speech rules. The EMC issued the ban after the broadcaster, Z1, aired a programme in which the programme host signed off by warning viewers – especially “mothers with children” – to steer clear of a Serb Orthodox church in central Zagreb that the host said was run by “Četnik vicars”. In response to the EMC’s decision, some 5,000 to 7,000 Croatian nationalist protesters gathered in front of the EMC’s offices on January 26. Participants hurled hate-filled slogans and symbols alluding to Rakić’s Serbian ethnicity, including a “cardboard effigy of [Rakic] dressed in Partisan uniform and holding a machine-gun”. Reports indicate that some participants also shouted Ustaše-era salutes and that the leader of the protesters, Velimir Bujanec, presented a Četnik hat to Rakić as a “present”. Troublingly, the group of protesters included the deputy speaker of the Croatian Parliament, Ivan Tepeš, a member of the right-wing Croatian Party of Rights, part of HDZ’s “Patriotic Coalition” (Griffen 2016:6).

As evident from this example, social polarization and a dominant ‘us vs. them’ discourse seriously endanger freedom of expression in the media. Therefore, it can be expected that this adverse social and political climate will affect how the media reports on transitional justice processes in the region. Local journalists may intentionally avoid discussing topics that question dominant narratives and put them at risk of public and political attacks and harassment.

Local Media Coverage of Transitional Justice Processes in the Balkans

Despite its ability to foster public discussions about the past, the media in the former Yugoslavia has often been criticized for failing to contribute to truth-seeking and justice

processes (Council of Europe, “Post-war Justice and Durable Peace in the Former Yugoslavia.” 2012:37). Therefore, it appears that instead of using its potential to play a pivotal role in promoting inter-ethnic understanding and reconciliation, the media has only deepened political and social polarization in the already fractured societies of the former Yugoslavia. The critical discourse analysis of online newspaper articles published by Croatia’s *Večernji list*, Serbia’s *B92* and the regional *Al Jazeera* revealed that the media coverage of the 1990s war events and post-war transitional justice focused mostly on war crimes, ICTY verdicts, and to a lesser extent on local initiatives to promote victims’ rights and reconciliation.

When reporting about war crimes, the Croatian *Večernji list* and the Serbian *B92* have overwhelmingly used the ‘us vs. them’ bias in order to vilify the enemy and reinforce dominant narratives of the victimization of its own people. The use of a rigid dichotomy between victims and perpetrators was especially evident in the media coverage of events related to the trials of high profile military officials like Ante Gotovina and Radovan Karadžić. As it can be expected, the attitude of the Croatian and Serbian media toward the ICTY often depended on whether the Hague’s verdicts supported or challenged dominant narratives of the past.

To illustrate, after the acquittal of Croatian generals Gotovina and Markač in 2012, the Croatian *Večernji list* published a number of articles reporting celebrations that took place across Croatia, euphorically declared that justice and truth won, and shared statements from politicians, Catholic priests, family and friends of both generals. These are just some of the headlines from Croatian *Večernji list* published on November 16, 2012: “Justice exists! The Hague acquitted Gotovina and Markac! Generals are free!”; “Gotovina: The Homeland war is now intact and the foundation for the future.”; “Major of Gospić: The stigma of joint criminal enterprise is removed.”; “Bozanić [Catholic cardinal]: Thank you, Croatia needs you today as well.”; and

“Gotovina’s friends celebrated at Jarun [a lake and popular entertainment centre in Zagreb].” At the same time, Croatian newspapers also reported on the negative reactions from Serbia. In the article titled “Media in Serbia: Scandalous decision, like Storm never happened.” *Večernji list* provided a summary of online newspaper articles from Serbia that reported about the acquittal of two Croatian generals. The goal of this article was to highlight that the media in Serbia and the Republika Srpska reported about the verdict as shameful and insulting to Serbian victims. For example,

“Scandal in the Hague: Gotovina and Markač are free people.”, is a bombastic title of *Kurir*’s report [daily tabloid published in Belgrade, Serbia] in which it was mentioned that happiness and euphoria occurred on the streets of Ante Gotovina’s birthplace Pakostane.

In the aggression of Croatian military forces in the Northern Dalmatia, Lika, Kordun and Banija, which was named Operation “Storm”, around 230,000 Serbs were expelled from their ‘century-old hearths’. 230,000 Serbs lived on that territory, from which only around 30,000 were soldiers with whom 138.500 Croatian soldiers fought. During and after the operation 1,922 Serbs died or went missing, from which 62 percent were civilians, and half were older than 60 - claimed Republika Srpska’s newspaper *Nezavisne novine* in their report on “shocking verdict”.

Al Jazeera, which is aimed at the media markets in the entire region, also reported about conflicting reactions to the verdict and the tense relationship between Croatia and Serbia (“Glorious welcome for Croatian generals.” 2012; “Celebrations in Croatia after the acquittal of the generals.” 2012; “Serbia reduces the level of cooperation with the Hague [as a response to the acquittal of Croatian generals].” 2012; “Subotic about the protests [in Serbia] regarding the Hague verdict.”2012) In addition to reporting about these conflicting responses, *Al Jazeera* conducted interviews with Vesna Teršelič from Documenta - the Center for Dealing with the Past from Croatia (“Vesna Teršelič about the impact of the Gotovina and Markač verdict.” 2012) and Sonja Biserko from the Helsinki Committee for Human Rights from Serbia (“Biserko about

relationships between Serbia and Croatia.” 2012). When commenting on the negative reactions from Serbian politicians, Biserko said that right-wing political elites used this verdict to promote anti-EU sentiments and nationalist narratives. When asked how this verdict will affect reconciliation in the region, Biserko warned, just like Teršelič, that people in Serbia, just like people in Croatia, are still not ready to accept the new reality and confront the past. Teršelič said that for the process of reconciliation to occur it is important that people in Croatia accept two sides of Operation Storm and acknowledge the suffering of victims from both sides. Moreover, Teršelič claimed that future peace will depend on people’s ability to accept multilayered interpretations of the past. Unlike the one-sided reports published by Croatian and Serbian media, interviews with two leading peacebuilders in the region provided a more critical perspective on the verdict and opened up a discussion about how the verdict will affect peace and reconciliation processes.

The existence of conflicting narratives of events that occurred before, during and in the aftermath of the military’s Operation Storm is evident from the analysis of newspaper articles published by the Croatian and Serbian media during commemorative events held in honour of Operation Storm. Every year during these events the Serbian media publishes articles that focus on the killing and deportation of Serbs and highlights that nobody from Croatia has been held accountable for the suffering of Serbian victims. For example: “20 years from ‘Storm’: the world should know that the pain does not go away.”; “Storm: an example of silence about crimes.”; “Two decades from the exile of Serbs from Krajina [self-proclaimed Serb parastate within the territory of the Republic of Croatia].”; “Celebration of crime: 30 planes, 300 vehicles, 3,000 participants, 42 foreign delegations at the parade in Zagreb.”; “Storm - crime without punishment, crime that lasts: why we are wearing black, why are we sad, and who do we

mourn?” (2015). At the same time, the Serbian media fails to provide information on events that took place before the military intervention and does not mention that Operation Storm was conducted in order to free the occupied Croatian territory (proclaimed as the republic of Serbian Krajina) from which rebelled Serbs expelled Croatian population. For instance, in 2012 Serbian *B92* published an article titled “Storm: 18 years from annihilation of Serbs” in which it was stated that,

today we commemorate 18 years from the destruction of Serbs in Operation Storm, when Croatian forces killed at least 1,600 and expelled 250,000 people of Serbian nationality. Operation Storm represents one of the largest and cruelest ethnic cleansings carried out during the wars in the former Yugoslavia in which about 62 percent of victims were civilians. In Croatia nobody was held responsible for crimes committed during Operation Storm. Three Croatian generals - Ante Gotovina, Mladen Markač and Ivan Čermak, even though the first two were sentenced to 24 and 18 years in prison in the first degree verdict, in November last year they were released on all counts, which caused fierce reactions from Serbia, and enthusiasm in Croatia.

Problematically, I observed that *B92*'s reports on the number of people exiled and killed during Operation Storm aren't consistent. For example, in 2013 *B92* reported that 250,000 Serbs were exiled and 1,600 killed (“Storm: 18 years after the annihilation of Serbs.” 2013), in 2014 and 2015 it reported that 220,000 were exiled and 1,853 killed (“Storm: 19 years after the annihilation of Serbs.” 2014; “Storm: 20 years.” 2015), and in 2016 it stated that there were 200,000 exiled and 1,960 killed (“Storm: 21 years.” 2016). On the other hand, Documenta reports that, based on its research and contrary to previous research findings conducted by the Croatian Helsinki Committee, less than 677 Serbian civilians were killed during and in the aftermath of Operation Storm (“Documenta: the number of civilian victims during Operation Storm was less than HHO's [Croatian Helsinki Committee] 677.” 2016).

When reporting about Operation Storm the Serbian media also ignores facts established by the ICTY. The Serbian media consistently reports that the main goal of Operation Storm was ethnic cleansing and the purposeful deportation of Serbian people, even though the ICTY established that after the Croatian army freed the occupied territory the Serbian population left for different reasons, such as distrust in Croatian authorities and fear of reprisals (Appeals Chamber Judgement Gotovina and Markač 2012). In 2012 the Appeal Chamber freed generals Gotovina and Markač from liability for the deportation of Serbian civilians and participation in the Joint Criminal Enterprise (JPE) based on the grounds,

that in the context of the specific factual circumstances before it, including Croatian military operations against the Srpska Vojska Krajine (Serbian Army of Krajina or “SVK”), it would not characterise civilian departures from towns and villages subject to lawful artillery attacks as deportation, nor could it find that those involved in launching lawful artillery attacks had the intent to forcibly displace civilians (ICTY, Appeals Judgment 2012:39).

Moreover, the Appeal Chamber concluded that, “failure to take additional measures does not give rise to criminal liability” and found that Gotovina and Markač cannot be held liable for the deportation of the Serbian population (ICTY, Appeals Judgment 2012:47). The Appeals Chamber also decided that Gotovina and Markač cannot be held responsible under alternate modes of liability that they failed to make a serious effort to investigate the crimes and prevent future crimes because, “the evidence on the record does not prove beyond reasonable doubt that any failure to act was so extensive as to give rise to criminal liability pursuant to aiding and abetting or superior responsibility” (ICTY, Appeals Judgment Summary Gotovina and Markač 2012:5). Therefore, because the Appeal judges found that shelling was not unlawful, they also concluded that there was no planned deportation of the Serbian minority and no Joint Criminal

Enterprise (JPE) or political conspiracy by a leadership cold-bloodedly planning an ethnic cleansing.

While the Serbian media fails to inform the public about these facts and focuses on the suffering of Serbian victims that nurtures the victimization narrative, the Croatian media mainly highlights the victorious and glorious characteristic of Operation Storm that fosters the Homeland War narrative (“Croatian government tells Boris Tadić [Serbian President]: Operation Storm was legitimate! We won against the tyrant!” 2011; “Ante Gotovina: I am proud of Operation Storm, we fought with honor.” 2012; “Operation Storm details- this is how we freed our homeland.” 2013; “Operation Storm in numbers: 200,000 participants [soldiers], 10,000 km² freed, 196 dead...” 2014; “Operation that turned the Croatian army into the main player.” 2015). In the 2015 article titled “Never this many people on the streets of Knin celebrating 20th anniversary of Storm.”, *Večernji list* reported about the celebratory events that took place in Knin and shared public statements made by political leaders, including part of President Kolinda Grabar-Kitarović’s speech in which she declared that,

the war was here, and not somewhere far away. This celebration is not directed against Serbia. We celebrate the return of our territory and victory over the Greater Serbia politics of Milosevic. Operation Storm prevented new genocide. We will never allow anyone to equate victims and aggressors. Nobody is denying that crimes and killings occurred in the aftermath of Operation Storm, but Storm was a legitimate and recognized military action. I send this message to Serbian politicians: desist from myths and lies. Croatia is not an enemy of Serbia and do not plant a new seed of evil (“Never this many people on the streets of Knin celebrating 20th anniversary of Storm.” 2015).

However, despite claiming that crimes against Serbian civilians are not being denied, Croatian authorities continue to ignore demands by human rights organizations to establish an official commemoration for these victims and to punish perpetrators. The Croatian media rarely discusses and recognizes the suffering of Serbian victims. When it mentions Serbian victims of

Operation Storm the Croatian media usually reports about them in relation to commemorative events that take place in Serbia and shares statements made by Serbian politicians (“Serbia wants to ban celebration of Operation Storm, Šeks [Croatian politician] responds: That is a nonsense!” 2010; “Aleksandar Vučić: Today is a sad day for Serbia” 2013; “Serbian media about Storm and march past.” 2015; “Serbia observes the day of remembrance on the annihilation and expulsion of Serbs during Operation Storm” 2016). Yet, the goal of these articles is not to inform the public about war crimes that occurred in the aftermath of Operation Storm, but to present Serbs as enemies and further deepen animosity between Croats and Serbs. In an article titled, “Candle lighting in Serbia: Vučić turned the church mass into a war cry and a call for revenge!” *Dnevno.hr* shared a statement made by Serbian Prime Minister Vučić during the commemoration for Serbian victims of Operation Storm.

The only lesson that we can take is that we have to create a strong and powerful Serbia, because that is the only way that we can help our people wherever they are. Only strong, stable and powerful Serbia can help its people, wherever they live, and only that kind of Serbia can protect its people from events like Operation Storm, stated Vučić turning the church mass into a war cry and call for revenge. (“Candle lighting in Serbia: Vučić turned the church mass into a war cry and a call for revenge!” 2013).

Evidently, the Croatian and Serbian narratives about Operation Storm are very different because neither side is willing to accept facts that challenge their versions. Problematically, instead of using established facts to objectively report on these events, the media in both countries relies on myths that only foster these conflicting narratives.

Similar tendencies to nurture one-sided and biased narratives could also be observed in newspaper articles that reported about the Karadžić verdict. After the ICTY sentenced Bosnian Serb Radovan Karadžić to 40 years in prison for the Srebrenica genocide, Serbian *B92* published articles titled “Karadžić: The Hague verdict is monstrous.” April 2016; “Karadžić submitted an

appeal: faulty process, unfair judgment” May 2016; and “Karadžić: I shouldn’t have stopped the army...” September 2016, in which it highlighted that Karadžić believes that the verdict was based on “doubtful, unfounded and false conclusion that he participated in the execution of captive Muslims, which judges brought based on, as he claims, one telephone conversation” (“Karadžić submitted an appeal: faulty process, unfair judgment.” May 2016).

In addition to presenting the Hague Tribunal as unjust and anti-Serbian, the media in Serbia shared statements made by Prime Minister Vučić in which he downplayed the atrocities committed in Srebrenica by shifting the focus on to Serbian suffering. In the article titled, “Vučić about the verdict against Radovan Karadžić.” *B92* shared Prime Minister Vučić’s reaction to the verdict in which he explained that,

it is important that we show piety to all Srebrenica victims, that we know what kind of crime was committed, that we talk about it rather than hide it. However, we also have to talk about crimes committed against our people (“Vučić about the verdict against Radovan Karadžić.” 2016).

Similarly, in another article, *B92* also shared that Vučić stated that,

his country must not, cannot, and will not allow anyone to use the Karadžić verdict to attack the RS [Republika Srpska]. Serbia has an obligation to take care of its people outside the borders of Serbia. I am sending a warning to those who think of using today’s verdict against the former RS president to mount a political or any other kind of attack on the Serb Republic, that in line with the Dayton Agreement, Serbia must not, cannot, and will not allow it, Vučić said in Varvarin. As he stressed, Serbia will stand with its people and protects its right to survive, as well as the right of the RS - the Serb entity in Bosnia-Herzegovina - to exist and live. We are not endangering anyone, we will not threaten anyone, but we will not let anyone trample on Serbs because they are Serbs, he said, adding that Serbs are proud, unsubmissive, and unconquered people (“Vučić warns against using Karadžić verdict to attack RS.” 2016).

Problematically, these mutual accusations of war crimes obstruct any potential impact that the ICTY’s verdicts could have on reconciliation in the region. In the article titled, “The Radovan Karadžić verdict will change nothing.”, an *Al Jazeera*’s reporter made a similar

observation and declared that the Karadžić verdict will not contribute to reconciliation in the region because political elites will use it as tool for political manipulation (“The Radovan Karadžić verdict will change nothing.” 2016). In this powerful article, *Al Jazeera*’s reporter Nidzara Ahmetasevic perfectly captured the current state of peace in the Balkans and explained that,

in order to stop this war, we must make known the facts established about what happened in the Tribunal, as well as who is responsible. Afterwards, people have to find a way to talk about those facts, to face them, and to try, at least, to overcome the consequences. That is why this judgment is very important for the Balkans. It established the facts about the entire war in Bosnia, from its preparatory phase to the end, and touches upon all the crimes committed by Karadzic’s followers.

However, Ahmetasevic further proclaimed that the Karadžić verdict will not contribute to peacebuilding and reconciliation because,

They [political elites] will use the lack of translation and distance of the court for their own purposes. They will praise the court when it makes decisions they like and dismiss it when it is something they do not like. They will accept or reject decisions in accordance with their political goals. Most of the people living in the region will never know what is written in the verdict, as in all other judgments made by the tribunal. Their hopes to end the war are trapped in the walls of international bureaucracy while they are being once again exposed to political manipulation. It will hardly affect their lives, their reality or change anything in their perception of war events.

This tendency to perceive the ICTY in either a positive or negative light, depending on whether it questions or supports dominant discourses, can best be observed in the media coverage of the ICTY verdicts. For example, in articles “Verdict against Karadžić will be among the most important in the history of the ICTY,” and “Welcoming of war criminals like heroes or denying the genocide in Srebrenica has a negative impact on reconciliation.” Croatian *Večernji list* praised the ICTY’s Prosecutor, Serge Brammertz, because he condemned crimes committed in Srebrenica and expressed an opinion that Serbian politicians, if they wish to become part of

the EU, must respect the rule of law, and especially decisions made by the ICTY. On the other hand, the media in Croatia were less fond of the ICTY when it freed Vojislav Šešelj, alleged to have propagated a policy of uniting “all Serbian lands” in a homogeneous Serbian state, which he referred to as “Greater Serbia”, and participation in a Joint Criminal Enterprise (JCE) with the aim of permanent forcible removal of a majority of the Croat, Muslim and other non-Serb civilian populations from parts of Croatia, BiH and from the province of Vojvodina in the Republic of Serbia. In the article titled “Shock from the Hague court room: Vojislav Šešelj freed on all counts of the charge.” *Večernji list* provided details of the verdict and highlighted parts such as “there was no Joint Criminal Enterprise”, “Greater Serbia is a political idea, not a criminal enterprise” and “he is not guilty”. The article received 652 comments from readers, among which the majority were directed against the ICTY. For example, the following are some of the readers’ comments:

The Hague court will, based on everything we have seen, proclaim Šešelj a humanitarian! AWFUL! (olrajt)

The Hague Tribunal is a farce that should be terminated... if this is the case with Šešelj... then everybody should immediately be released and the court closed... because this is not a court but a circus (ForeignLegion1987)

Bring our generals back from the Hague as soon as possible, this court is comical!!! (Aderton)

Unbelievable, this is shameful!! Proof that crime pays off!!! (fenixem)

Similar negative sentiments toward the ICTY could be observed after the court issued the first instance judgment against Croatian generals Gotovina and Markača and sentenced them to 24 and 18 years in prison respectfully. When information about the verdict became public, the Croatian media reported that the generals were wrongfully convicted (“Defense: Generals

unfairly imprisoned.” 2010), that the verdict criminalized the entire Croatian nation (“Red ticket to the Hague. Bishop Bogović: Here we are wrongfully convicted as the entire nation.” 2011), that the judgment questions the legitimacy of the Homeland War (“The verdict against the generals is also a conviction of Tuđman and Šušak.” 2011), and that instead of punishing the Croatian generals who freed the country from Serbian aggression, the Hague Tribunal should focus on prosecuting crimes that the Serbs committed against Croats (“Protest in the Hague: We raise our voice against unfair decisions of the court.” 2011).

When reporting about the Gotovina and Markač verdict the media in Croatia overwhelmingly used the ‘us vs. them’ bias and failed to engage in a constructive dialogue about the potential impact of the verdict on reconciliation in the region. In the article “Josipović: the ICTY helped us realize that we committed war crimes” Croatian *Jutarnji list* reported that,

Josipović believes that the most important legacy of the ICTY is its impact on societies of the former Yugoslavia which [thanks to the ICTY] realized a historical truth that even ‘our people’ committed war crimes. “Here in Croatia we fought to defend our country, but that does not mean that crimes were not committed on our side. ICTY helped us realize this historic truth”, said Josipović. The Croatian President, who was, as he reminded us on his own, was accused of being an agent of the ICTY who wrote charges against Croats for a lot of money, said that in Croatia the establishment of the Tribunal was greeted with an “open heart”, but with an expectation that the ICTY is a court for others...(2011).

However, *Jutarnji list* simply shared the statement made by the Croatian President and did not provide any critical analysis of the importance of confronting war crimes committed on the Croatian side. A similar lack of interest to engage in a discussion about peacebuilding processes can also be observed when the media provides information on activities and perceptions of local human rights activists. In 2015 *Večernji list* reported that Documenta sent an open letter to the government in which it explained that the celebration of Operation Storm should also include a commemoration for Serbian civilian victims because all victims deserve to be remembered with

dignity (“Documenta suggests to the government that a commemoration for victims should be part of Operation Storm celebration.” 2015). In another article, *Večernji list* also briefly reported that Vesna Teršelič from Documenta and a member of the Independent Democratic Serb Party, Milorad Pupovac, attended a commemoration for Serbian civilian victims of Operation Storm (“This year Pupovac and Vesna Teršelič commemorate both Croatian and Serbian victims.” 2015). Nevertheless, besides merely reporting on these activities, the media has failed to engage in critical debates about issues of victim rights and war crimes that were raised by local peacebuilders.

Conclusion

The overall impression I got from analyzing a number of online newspaper articles is that the local media only contributed to public misperceptions about the past. When reporting about events from the 1990s war local journalists tend to support dominant narratives and rarely engage in critical discussion on the issues related to war crimes and victims. Instead of relying on established facts and reliable sources to provide authentic and well-founded information, local journalists often simply share statements made by political elites or copy information found on other sites without questioning their reliability. Dražen Klarić, managing director of one of the leading daily papers in Croatia made similar remarks regarding this problem and said that, “We call it ‘Google Journalism.’ But there is something even worse: younger journalists usually do not even ‘dig deeper’ than opening one or two Google pages” (IREX, Media Sustainability Index Croatia 2015:48). Similarly, findings from the opinion survey conducted by the Croatian Ministry of Culture in 2014 reveal that 47 percent of journalists in Croatia feel that media freedom is “in decline,” while an alarmingly high 76 percent reported that ethical standards are “less respected than before.” Moreover, 61 percent of journalists described the influence of big

advertisers as constantly rising; 86 percent see a direct link between media owners and certain business lobbies, while a staggering 90 percent admitted to facing pressure to ‘fabricate’ stories (IREX, Media Sustainability Index Croatia 2015:47).

Therefore, results of the critical discourse analysis of the media coverage of transitional justice processes, supported by similar observations made by international organizations, suggests that the local media has failed to actively engage in critical discussions about the past and predominately shared information that nurtured biased narratives and foster animosity between ethnic groups. The lack of desire to engage in critical discussions about the past should not come as a surprise if we take into account the adverse social and political climate in which dominant political elites continue to maintain control over public and media discourses. As discussed in the first section of this chapter, the lack of freedom of expression, evident from frequent intimidation and attacks on critical journalists, could be one of the reasons why more journalists do not dare to question the dominant narratives of the past.

Chapter 9

CONCLUSION

Introduction

In this concluding chapter I summarize the contributions of this thesis and important directions of future research. I first describe how my study contributes to understanding of the current state of peace in the Balkans and summarize the key findings of the critical discourse analysis of five conflicting discourses, which include international actors, legal, local government, local peacebuilders and the media discourses. This is followed by a discussion of recommendations for future research, and a concluding statement regarding how my research fits within and contributes to the wider international critical literature on transitional justice and peacebuilding.

Overall Key Findings

By conducting a critical discourse analysis of five competing discourses, international actors, legal, local governments, local peacebuilders and the media discourses, my thesis makes two essential contributions. First, it provides a critical overview of how different actors shaped the transitional justice processes in Croatia through the policies, practices and discourses that they promoted. Second, my study has drawn attention to the negative social consequences of these specific policies and practices, and has identified reasons for the lack of peacebuilding progress in the region.

Evidently, powerful international and national actors, including international governments, organizations and the ICTY, as well as local political elites, had the strongest impact on transitional justice developments in the former Yugoslavia. The majority of

transitional justice initiatives have been launched and funded by external actors whose principal goal was to establish peace by reconstructing these societies into Western neoliberal democracies. For example, when the ICTY was established in 1993, it was assumed that prosecuting and punishing war criminals can promote reconciliation and “contribute to the restoration and maintenance of peace” (Resolution 827/1993 1993). However, while it is now widely acknowledged that the ICTY played a crucial role in initiating transitional justice processes by bringing some war criminals to justice and made a significant contribution to establishing facts about atrocities, its impact on reconciliation is highly questionable (Irvine & McMahon 2013; Kurze & Vukusic 2013; Subotic 2009; Spoerri 2011; Hayden 2011; Clark 2012; David 2014). Hayden even argues that “the actions and activities of the ICTY have not been beneficial to achieving reconciliation or stability in the Balkans, but to the contrary are part of the reason that parts of the region have remained unstable” (2011:313).

The findings of my study offer insights into the complex dynamic between internationally imposed transitional justice mechanisms and specific social, historical, cultural and political circumstances of the Western Balkans societies. As explained in chapters on international actors and local government discourse, the ICTY was often misused by both powerful international actors (predominately the EU) and local leaders, as a tool to achieve other political goals and interests. For example, while the EU used it to pressure local governments to comply with its policies, local political elites manipulated their interpretations of the ICTY’s verdicts in order to preserve dominant narratives of the past and to maintain power over public discourses. Subotic has made similar observations that she described as “the process of hijacked justice—a domestic elite strategy of using the international norm of transitional justice for local political purposes” (2009:172).

The comprehensive analysis of the complex social and political circumstances that currently exist in the countries of the former Yugoslavia provide some explanation for the lack of deep reconciliation and lasting peace. In the adverse social and political climate in which political elites have almost complete control over public discourses, less powerful local actors, including peacebuilders and journalists, had very little power to shape transitional justice processes and spark broader socio-political change that may possibly contribute to peace and reconciliation in the region.

Thus, sustainable peace in the Balkans has not yet been achieved due to the strong influence of powerful actors over transitional justice processes and discourses. Local political elites, who have persistently promoted biased narratives of the past that only fuel ethnic animosity, and international actors, governments and organizations, who have advocated a dominant transitional justice agenda and ‘toolkit’, have only obstructed peace developments by ignoring the needs of diverse and historically antagonistic local populations in order to fulfill their own interests. The social consequences of these policies and practices manifest themselves through political and economic instability, the lack of educational and economic prospects, intolerance toward ethnic and religious minorities, social discrimination, the rise of nationalist sentiments and increased number of instances of violence directed against all those who dare to question dominant narratives and official truths.

Future Research

While the findings of my research offer a critical insight into the current state of peace in the Balkans, further research is necessary to address key issues and problems identified through this study. First of all, this study critiques the project of transitional justice by demonstrating that dominant transitional justice mechanisms have failed to produce deep reconciliation and lasting

peace in the Balkans. Therefore, future research studies should explore the prospects of transitional justice and whether its theory and praxis can be improved to meet the needs of societies recovering from violent conflicts. For example, based on limitations of legal approaches discussed in this study, future research could investigate how international courts and tribunals could improve their practices to take victims' concerns into consideration and reach out to the general population.

Moreover, future research should also explore alternative approaches for dealing with the past that go beyond war crimes prosecution and are based on a broader understanding of justice. However, when discussing the prospects for reconciliation it is important to remember that "reconciliation must be seen as a long-term process (rather than a state or outcome) that takes generations rather than decades" (Fisher 2016:280). Therefore, additional research is necessary to understand practices that can potentially be used to overcome the negative effects of conflicting narratives and foster long-term healing, trust and relationship building between people of the Balkans.

Conclusion

Finally, the results of my research show that years after the war ended, people of the Balkans are still stuck in mutually exclusive narratives of war, blame and victimization, which signals that despite years of peacebuilding efforts sustainable peace has not yet been achieved. Problematically, the narratives of victimization continue to dominate public discourses and "political and media debates on the question of who is the bigger, biggest, or sole victim still arouse strong emotions" (Fisher 2016:282). The evident state of fragile peace and the failure to make genuine progress toward peacebuilding revealed in this study points to the need for more critical discussion of problems linked with internationally imposed transitional justice policies

and practices. As already pointed out by other critical scholars, it appears that dominant mechanisms of transitional justice, that are continuously promoted as universal, failed to bring sustainable peace in the Balkans and even contributed to instability and social polarization of already fragmented societies (Banjeglav 2015; Di Lellio and McCurn 2013; Clark 2012; Subotic 2012; Hayden 2011; Lundy and McGovern 2008; McEvoy 2007; Mac Ginty 2006).

Thus, in order to move forward and develop practices that can empower local people to create deep social transformation and build sustainable peace it is important to reconsider our understanding of the basic concepts and ideas of transitional justice and peacebuilding. Most importantly, we have to start by asking ourselves what does reconciliation and peace actually mean and what kind of society do we wish to create after the conflict? In my opinion, the answers to these questions are different and should reflect specific social, historical, cultural and political contexts of each country recovering from war and violence.

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