THE PROBLEMS OF PEACEBUILDING IN THE AFTERMATH OF WAR AND THE POSITION OF THE INTERNATIONAL CRIMINAL TRIBUNAL FOR FORMER YUGOSLAVIAN COUNTRIES IN BOSNIA AND HERZEGOVINA

A THESIS SUBMITTED TO
THE GRADUATE SCHOOL OF SOCIAL SCIENCES
OF
İSTANBUL ŞEHİR UNIVERSITY

BY

FARUK TEKŞEN

IN PARTIAL FULFILLMENT OF THE REQUIREMENTS
FOR
THE DEGREE OF MASTER OF ARTS
IN
POLITICAL SCIENCE AND INTERNATIONAL RELATIONS

SEPTEMBER 2015

This is to certify that we have read this thesis and that in our opinion it is fully adequate, in scope and quality, as a thesis for the degree of Master of Arts in Political Science and International Relations.

Examining Committee Members:

Assist. Prof. Talha Köse
(Thesis Advisor)

Prof. Berdal Aral

Assist. Prof. Halil Rahman Başaran

This is to confirm that this thesis complies with all the standards set by the Graduate School of Social Sciences of İstanbul Şehir University.

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First Name, Last Name: Faruk Tekşen

Signature:

ABSTRACT

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Tekşen, Faruk.

MA, Department of Political Science and International Relations

Supervisor: Assist. Prof. Talha Köse

September 2015, 108 pages

The post-conflict peace-building initiatives have been playing a crucial role in the establishment of peace and in determining reconciliation in different parts of the World since the end of World War II. However, the responses of conflicting societies to the peace building initiatives have shown difference from one to another. Bosnia and Herzegovina have been the places where post-conflict peace-building initiatives in the conception of transitional justice mechanisms such as the establishment of justice, providing reparations of war victims, truth and reconciliation attempts and institutional reform process have been tried to be applied. The lack and problems faced during the practice of the abovementioned mechanisms directed the local and international societies' attention towards the International Criminal Tribunal for Former Yugoslavian Countries (ICTY) that became the most significant triggering force of justice and reconciliation process even though "reconciliation" was not legally mentioned by the ICTY. Twenty-two years have passed since the establishment of the ICTY, but unlike the other examples of internationally established courts, the prosecution process has not come to an end. In this study, the relationship between the ICTY and the three ethnic identities, Bosnian Muslims, the Serbian Orthodox, and the Croatian Catholics are examined through critical discourse analysis under three pillars, justice, peace, and the position of international order, by taking into consideration discussions that take place in publications of the newspapers, and magazines that belong to the Bosniaks, Bosnian Croats, or Bosnian Serbs, published in Bosnia and Herzegovina.

Key Words: Post-Conflict Peace-Building, Transitional Justice, International Criminal Tribunal for Former Yugoslavian Countries, Bosnia and Herzegovina.

ÖZ

BOSNA HERSEK'TE SAVAŞ SONRASI BARIŞ İNŞASINDA KARŞILAŞILAN PROBLEMLER VE ESKİ YUGOSLAVYA ULUSLARARASI CEZA MAHKEMESİNİN POZİSYONU

Tekşen, Faruk.

MA, Siyaset Bilimi ve Uluslararası İlişkiler Bölümü

Danışman: Yrd. Doç. Dr. Talha Köse

Eylül 2015, 108 sayfa

İkinci Dünya Savaşının sona ermesinden itibaren, dünyanın farklı yerlerinde toplumsal uzlaşının temin edilmesi hususunda savaş sonrası barış inşası girişimleri kritik bir rol oynamaktadır. Ancak, birbirleri arasında savaşan toplulukların barış inşası girişimlerine vermiş olduğu tepkiler farklılık göstermektedir. Bu noktada Bosna Hersek, adaletin sağlanması, savaş mağdurlarının zararının karşılanması, hakikat komisyonları girişimleri ve anayasal reform süreçleri geçiş dönemi adalet mekanizmaları kapsamında uygulandığı bir yer özelliği taşımaktadır. Yukarıda bahsedilen mekanizmaların uygulanmasında karşılaşılan problem ve aksaklıklar, hem yerel hem de uluslararası toplumun dikkatinin adalet ve her ne kadar mahkemenin kuruluş amaçlarından bir tanesi toplumsal uzlaşıyı sağlamak olmasa da, toplumsal uzlaşısının sağlanması için Eski Yugoslavya Uluslararası Ceza Mahkemesine yönelmesine sebep olmuştur. Kuruluşundan itibaren on dokuz yıl geçmiş olmasına rağmen, diğer Uluslararası Ceza Mahkemelerinin aksine, Eski Yugoslavya Uluslararası Ceza Mahkemesi yargı sürecine devam etmektedir. Bu çalışmada, Eski Yugoslavya Uluslararası Ceza Mahkemesi ile Bosna Hersek'te yaşamakta olan Boşnaklar, Bosna Hırvatları ve Bosna Sırplarının ilişkisi adalet, barış ve uluslararası düzen başlıkları altında, eleştirel söylem analizi yöntemi ile üç etnik yapıya ait gazete ve dergilerde yer alan haberler üzerinden incelenecektir.

Anahtar Kelimeler: Savaş Sonrası Barış İnşası, Geçiş Dönemi Adaleti, Eski Yugoslavya Uluslararası Ceza Mahkemesi, Bosna Hersek.

ACKNOWLEDGEMENT

First and foremost my utmost gratitude to Assist. Prof. Talha Köse whose sincerity, encouragement and help I will never forget. I cannot find words to express my gratitude to my wife and family members as well.

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INTRODUCTION

Bosnia and Herzegovina is the country which has three different constitutive ethnic identities legally recognized in its constitution. However unification of three different ethnic identities under an umbrella was the result of outside enforcement via Dayton Peace Agreement. The parties having war had to come together, but it created problems in the transition period from war to the normalization of relations. Regarding the transitional justice mechanisms applied in Bosnia and Herzegovina should be said they have been partly successful. The establishment of the ICTY here plays significant position. It has been one and only running mechanism in order to bring justice for atrocities and crimes committed during the time of the war. However, starting from the last ten years, especially with the establishment of the ICTY Outreach Programme, the position of the tribunal matched with the discussions of reconciliation and expectations from the ICTY began to run higher than it was before. The longevity of prosecution process, ambiguity about reconciliation discussions in the ICTY and questions whether the ICTY did contribute to peace are the dilemmas which the tribunal has faced. Therefore it is essential to look at how Bosniaks[1], Croats and Serbs see the position of the ICTY. In this sense, there are three pillars of the study. The first one is regarding the issue of justice with the retrospective perspective since the creation of the ICTY corresponds to establishment of justice in the aftermath of the war. The second dimension is about the issue of peace. It is important to study how three ethnic identities relates the issue of peace and the position of the tribunal is taken into consideration with prospective point of view. Lastly but not less importantly the existence of international order is examined throughout the position of the ICTY. To test the aspect of three ethnic identities in Bosnia and Herzegovina, three different newspapers belong to different ethnic identities and news published in these are going to be analyzed with the method of critical discourse analyses of Norman Fairclough.

[1] The term Bosniak emerged during the war took place from 1992 – 1995 in BiH, to illustrate the difference Muslims, Roman Catholic Croats and Orthodox Serbs. The term Bosnian refers to all citizens of the state of Bosnia and Herzegovina.

CHAPTER 1
THE DEVELOPMENT OF THE THEORY OF TRANSITIONAL JUSTICE AND ITS MECHANISMS

The idea of transitional justice emerged in the early 1990s to respond to the political changes taking place in Latin America and Eastern Europe, and the demands for justice in these regions.[2] At that time, there were problems about the regimes, which acted against their own societies, and once these regimes came to an end, the transition happened not only in the governments, but also in the institutions, and the social, economic, and political areas. The transition started towards the democratization of the countries. Thus, the democratization process in various levels of the society started to be called "transitional justice" in the following process. It would be a mistake to limit the issue of transitional justice merely to the fall of the brutal or undemocratic heads of states or governments and regimes. Additionally, Transitional Justice refers to bring justice to those who suffered under the conditions of war. Prevalent and systematic human rights' violations are the main areas that transitional justice takes into consideration in the first account. It is necessary to know that transitional justice aims to transform societies by judging those who committed crime, creating courts of justice not only on the national level but also on the international level, by constituting truth commissions, organizing reparation programs, establishing equality of gender among the suffered population, re-organizing security systems in the country and making practical and applicable security reforms, and by organizing commemoration and apology activities in the societies where human rights' violations and crimes towards certain country and population as well. In this context, transitional justice in the post-war processes and after widespread violations of human rights is going to be examined and analyzed. There is a reality which should be mentioned here at this point. Even though early examples of transitional justice attempts and practices illustrate a struggle against authoritarian regimes, especially during the last two decades, it became obvious that the source of the conflict and oppressive politics with human right violations did not merely occur because of the existence of authoritarian practices in the conflicting

[2] International Center for Transitional Justice, *ICTJ, "What is Transitional Justice*?", 2008, p.1.

societies. In addition, there has been a deep seated and sharp division in the body politics, whether on ethnic, racial, religious, class or ideological grounds.[3] The abovementioned distinction among two different political or social circumstances related to the type of conflict caused changes in the implementation of transitional justice instruments. While in the early stages there was a struggle against the oppressive regime and its regulations, in the last two decades the focus point of the arguments became more complicated with the conflict that emerged mainly because of ethnic, racial, religious, class or ideological reasons.

As it was mentioned above, transitional justice aims to transform the society by using tools of democracy and democratic institutions in the post-war societies. Surely, from one society to another, tools, initiatives, procedures and methods might differ and the time of the establishment of justice in the post-war process correspondingly changes. The theoretical background of transitional justice includes more systematic and complex arguments. Therefore, in the following pages transitional justice theories are going to be explained, identified and studied in order to understand the main essence and pillars of transitional justice from past to the future in a comprehensive way.

As it is illustrated in table 1.1., there were problems that caused conflicts and there are aims to be reached during the transitional justice period. Regarding the characteristics of the pre-transition period through the instruments of transitional justice, the justice, reparation, truth, and institutional reform processes should be followed to be able to reach post-conflict peace-building in a particular place.

Table: 1.1. Unpacking Paradigmatic Transition

Pre-Transition	Post-Transition
Non-democratic	Democratic
Regime illegitimacy	Governmental legitimacy
Rule of law absent or degraded	Rule of law respected
Denial of human rights violations	Acknowledgement of human rights violations
Repressive institutions	Transformed institutions

[3] Aoláin, Fionnuala Ní and Campbell Colm, "*The Paradox of Transition in Conflicted Democracies*", Human Rights Quarterly, Vol.27, No.1, 2005, p.174.

Table: 1.1. (continued)

Violent conflict	Political contestation
Armament	Disarmament/weapons decommissioning

[4]

Regarding to the arguments related to the birth of transitional justice, by some of the scholars such as John Elster, it is believed that the emergence of transitional justice started in ancient times in Athens with the establishment of basic democratic concepts, but the modern understanding of transitional justice was developed once inter-state relations became stronger in the aftermath of the Second World War.[5] It is difficult to talk about whether fundamental elements of transitional justice were established in the early times of the creation of the first democratic elements mainly because of the difficulty of discovering the results and reflections related to transitional justice. In the following years of the Second World War, peace agreements among different states from different continents started to be signed and starting with the Euro-Atlantic region, it was not a rational alternative to insist on disagreements among them and wars in terms of economic, social and political development. Therefore with the establishment of various conventions, rules, and regulations such as the Genocide Convention in 1948, the Universal Declaration of Human Rights in 1948 and the Geneva Convention on Laws of War in 1949 and war trials held in Nuremberg and Tokyo according to Teitel, the issue of transitional justice became one of the most discussed topics of international relations and conflict resolution.[6] This was a level, which was never reached by the states, in order to achieve and ensure justice in the post-conflict periods. However, while it was believed that these steps could be adequate or at least could help decrease or stop the human rights' violations and crimes in the periods of war, after a certain time, the area of transitional justice had to be transformed to a broader context and it became one the main pillars of world politics with the establishment of the growing United Nations charter such as International Court of Justice and institutions and surely with the unavoidable effects of globalization. The employment of the transitional justice discourses and mechanisms in the post-conflict cases mostly ended with the

[4] Aoláin, Fionnuala Ní and Campbell Colm, "*The Paradox of Transition in Conflicted Democracies*", Human Rights Quarterly, Vol.27, No.1, 2005, p.184.
[5] John Elster, "*Closing the Books: Transitional Justice in Historical Perspective*", 2014, p.69.
[6] Ruti.G. Teitel, "*Transitional Justice*", 2000, p.12.

involvement of the United Nations as a result of Security Council resolutions. The statement of former Secretary General of the United Nations Kofi Annan in the Security Council Report of 2004 illustrates how mechanisms and models of transitional justice were implemented by the United Nations and used in order to establish peace in the post-conflict societies. Annan states the increased focus by United Nations, on questions of justice, transitional justice and the rule of law in post-conflict societies, and direct involvement of UN in the areas of administration of judiciary, police and prison services in post-conflict societies, have been characterized by the importation of the transitional justice apparatus such as in Kosovo and Timor.[7] Even though this might be discussed, despite the success of these interventions of the UN, it is still a reality that instruments of transitional justice were implemented and practiced in different points of various interventions.

The flows of transitional justice can be examined in two different phases. The first phase began with the end of the Second World War. The first phase is associated with interstate cooperation, war crime trials and sanctions that ended soon after the war, but these years were followed by a bipolar structure of world politics that were not as bright for the development of the theory and practice of transitional justice.[8] The bipolar structure of world politics' frozen problems for a while shaped the future of international developments in a negative way, except its power to stabilize relations among two great powers without going to a nuclear war. In this particular period, developments related to transitional justice based on receiving broader attention to carry out superiority of rule of law on international stage. When it comes to the second phase of transitional justice, it might be identified as the acceleration of democratization on one hand, and on the other hand with the collapse of Soviet Union in different parts of the world, from Asia to Balkans, and from Central America to Africa people began to fight in order to declare independence.[9] In such a period, there had been massive killings, genocide attempts and variations of human rights' violations. Therefore if there is a need to draw a comparison between the first and second phases of transitional justice, it might be said, there was stability and less development towards the last two decades of the Cold War period in the first phase,

[7] Patricia Lundy, and Mark McGovern, "*Whose Justice? Rethinking Transitional Justice from the Bottom Up*", Journal of Law and Society , Volume 35, Number 2, June 2008, p.269.
[8] Ruti.G. Teitel, "*Transitional Justice Genealogy*", Harvard Human Rights Journal, Vol. 16, 2003 p.70.
[9] Ibid. p.71.

but in the second phase transitional justice was associated with the rise of the nation building process in the aftermath of collapse of Soviet Union. As a last phase, the third phase, it can be said it is characterized by the acceleration of transitional justice associated with globalization under serious political instability and violence. After having provided a short and brief description of the three phases of transitional justice, I will examine them further in the following parts.

1.1. 1st Phase of Transitional Justice

At this stage, the main aim is to picture the unjust war and parameters of the justifiable punishment by the international community.[10] In the aftermath of the Second World War, there was a replacement of national law with international law. Transitional justice instruments were mainly based on judicial practices and processes. In this case Germany was the example; punishing Germans for their aggression was an issue, but the question was how to do so? How would justice be taken into account, whether national, international, collective or individual? Under this hesitant environment how to provide justice, it became clear that neither national trials would be able to obtain justice, nor would national trials be able to stop future unrest in the international stage. The first attempts in the modern understanding of transitional justice partially were not successful. It is necessary to underline that in the first phase of transitional justice, the primary aim was not to promote superiority of human rights but it was rather punishment of war criminals by the winning parties of the war.[11] It might be argued that the conditions and structure of world politics were very limited and insufficient for the implementation and practice of transitional justice forms and its different instruments. However, as it happens in most of the areas of science, the transformation of transitional justice faced trial and error methods on various levels. Accordingly, there was need for progress in the area of transitional justice by ensuring the superiority of international criminal law and its applicability on the international level. As Teitel argues, the period immediately following World War II was the heyday of international justice mainly because of the critical turn far from prior nationalist transitional responses and towards an

[10] Ruti.G. Teitel, "*Transitional Justice Genealogy*", Harvard Human Rights Journal, Vol. 16, 2003 p.72.
[11] Marek M. Kamisnki, Monika Nalepa and Barry O'Neill, "*Normative and Strategic Aspects of Transitional Justice, Journal of Conflict Resolution*", Vol. 50, 2006, p. 298.

internationalist policy that was thought to guarantee rule of law.[12] Thus, looking for international accountability of transitional justice forms especially about crimes and abuse during the times of the war was two of the foremost aims in the first step. The foundation of the Genocide Convention was one of the most important outcomes of transitional justice. Towards the end of first phase, transitional justice started to represent itself and address a limited to broad community by taking active roles over states and actors on the individual level and it became clearer that the instruments of transitional justice were necessary to use in regulating interstate conflicts and peace time relations in places where unjust events took place.

1.2. 2nd Phase of Transitional Justice

The structure of the cold war period created bipolar world politics and it expended almost all around the world. Mainly because of the US skepticism regarding the expansion of Soviet ideology in the region of Latin America caused fall of leftist heads of the states throughout political and economic pressures or coup d'états organized by US administration. Newly established military or oppressive governments fought against groups who were the parts of opposite standpoint against existence of the oppressive regimes.[13] Therefore the struggle between regimes taking place in Latin America and groups which resisted against oppressive regimes and military leaders of the states can be seen as an important element regarding the issue of transition from oppression to the democratic ruling. The years between 1970 and 1990 can be considered dynamic in terms of political and social developments in different places of the world. During these periods of time, regime changes took place particularly in the Latin American region on one hand, and on the other hand a longstanding bipolar structure of the international politics came to an end with the collapse of the Soviet Union and world politics paved the way to rapid democratization processes. The significance of these so called dynamic political and social developments in relation to transitional justice comes from the replacement of old oppressive regimes from military to democratically elected ones and to decide how to deal with the ensuring transitional justice. Hence, the question to be raised here is how does one deal with the past? After the failed experience of the transitional justice practice and implementation in the following years of the Second

[12] Ruti.G. Teitel, "*Transitional Justice Genealogy*", Harvard Human Rights Journal, Vol. 16, 2003 p.73.
[13] Sait Yilmaz, "*Latin Amerika'da Neler Oldu*?", USAM Analiz, 2012, p.8.

World War, it was crucial and irrevocable for transitional justice forms to be successful and prevent future tensions. Oppressive state politics towards citizens of Brazil, Peru, Colombia Cuba and other countries in the region of Latin America, how the rule of law can be systematically undermined by private and transnational displacement of power, with as well as incomplete democratization of state institutions.[14]

Therefore, Southern Europe during the 1970s, Latin America during the I980s, and Eastern Europe beginning with 1989 were the regions and times where sharp political changes and transitions took place. These changes were not gradual but rather rapid ones, therefore they created a sharp division between the old regimes and new ones. For a newly established regime, it was necessary to bring members of the old regime to justice. Because these transitions were not the direct results of foreign influence on a defeated regime or intervention against an aggressor, there is relatively little confusion about whether transitional justice reflected the needs of the local population or the interests of a foreign occupier.[15] In terms of transitional justice in these countries, it was not clear how the criminals would be judged and whether the structure of the Nuremberg Trials could be followed or not. While the Nuremberg Trials symbolized the universality of rule of law, they later became the standard in the following debates related to transitional justice.

If the fall of the Soviet Union is taken into account, it might be seen that communism was entrenched for forty-five years in East Germany, seventy years in Russia, so long that many generations did not know any other way of life. Though the most horrific and large-scale abuse of the Stalinist period had yielded to milder forms of repression in later years, the entire culture and fabric of societies had been decimated during these decades; in dealing with the legacy of the old system; those in the former Soviet bloc had to reconstruct both government and the private sector almost trom scratcn. Additionally, when it comes to Latin America, military dictatorships which broadened power in Argentina, Uruguay, Chile ruled for shorter periods of time, the brutality with which they systematically tortured, killed, and caused large numbers of their citizens to disappear numbs in its detail. Numerous other contrasts exist between the legacy problems of Latin America and post-

[14] Alison Brysk, "D*emocratic Reform and Injustice in Latin America: The Citizenship Gap Between Law and Society*", The Whitehead Journal of Diplomacy and International Relations, Winter/Spring 2008, p.55.
[15] Eric A. Posner and Adrian Vermelue, "*Transitional Justice as Ordinary Justice*", 2004, p.771.

communist Europe.[16] The abovementioned oppressive policies, crimes and human rights' violations all need to be taken into consideration in terms of transitional justice with its instruments.

Regarding the end of second phase, it might be argued that transitional justice was more concededly contextual, limited, and provisional. The primary focus on local responsibility in post–Cold War transitions offered a partial, lacking perspective of the historically broader bipolar conflict.[17] Once the way and characteristics of world politics started to alter towards a more connected and globalized structure, the methods followed by instruments of transitional justice expanded in place in world politics to a more effective position.

1.3. 3rd Phase of Transitional Justice

The place of transitional justice moved from periphery to the center, so it is considered as an expansion and normalization of transitional justice.[18] Different from earlier periods instead of judging oppressive junta regimes, their crimes, and human rights' violations, in the current case, transitional justice discussions have continued around war in the peace time, as well as political fragmentation, weaker states, small wars, different types of conflicts ethnic, economic, and territorial problems. Different types of violence took place such as authoritarian regimes, ethnic based conflicts supported with the political, economic and social instability in this period.

The International Criminal Court (ICC), governed by the Rome Statute, is the first permanent, treaty based, international criminal court established to help end impunity for the perpetrators of the most serious crimes of concern to the international community.[19] The international community has long aspired to the creation of a permanent international court, and, in the 20th century, it reached consensus on issues of genocide, crimes against humanity and war crimes.[20] On the other hand, particularly in the end of Second World War it was necessary to establish trials in order to respond crimes committed during the time of the war. The establishment of the Nuremberg and Tokyo corresponded to the crimes committed in

[16] Neil J. Kritz, "*The Dilemmas of Transitional Justice*," in *Transitional Justice,* Neil J. Kritz, ed. Washington, D.C.: United States Institute of Peace Press, 1995, pp. 19-30.
[17] Ruti.G. Teitel, "*Transitional Justice Genealogy*", Harvard Human Rights Journal, Vol. 16, 2003 p.78.
[18] Ibid. p.90.
[19] International Criminal Court, http://www.icc-cpi.int/en_menus/icc/about%20the%20court/Pages/about%20the%20court.aspx (accessed September 29, 2015)
[20] Ibid.

the time of Second World War. In the following time frame, particularly after the end of the Cold War period, tribunals such as the International Criminal Tribunal for the former Yugoslavia (ICTY) and for Rwanda were established as a result of consensus that impunity is not acceptable anymore. Therefore ad hoc tribunals established to respond and try crimes committed only within a specific time-frame and in a specific conflict. Starting from this point it would be useful to discuss whether the forms of transitional justice that have been used particularly in the last two decades of world politics are applicable to the conflicting cases or has there been any shortcomings related to the implementation of the transitional justice forms. On the other hand, regarding the third phase of transitional justice there is another key development different from earlier examples of judicial establishments and practices. The establishment of Truth and Reconciliation Commission in South Africa should be considered as a turning point in the area of transitional justice. The peculiarity of TRC in South Africa comes from its non-judicial characteristic unlike previously established ad hoc tribunals, courts and trials. In order to examine transitional justice by dividing it into four parts is essential at this point. The first one of the four processes is the judicial process, where criminals are taken to the court, the second one is the reparation process, which is more about the social transformation of the conflicting parties, the third one is the truth process that consists of exploring what happened during the time of the conflict, and the last one is the institutional reform process in which state centered developments and initiatives take place.

1.4. The Judicial Process

One of the main aims of transitional justice is to find and judge people who have committed crimes, genocide, or various types of war crimes, and those who violated human rights in order to provide justice and to prevent future atrocities that may occur. Three main arguments support this point of view. These are: first, "international law paradigm obligates states to investigate, prosecute and punish abovementioned crimes", second, "adequate reparation under international law includes bringing perpetrators to account", and "accountability for past crimes is crucial in order to prevent such atrocities in the future".[21] The relationship between national and international courts and, third, trials has been interconnected since certain conventions and trials were announced. Argentina, Chile, and Colombia were

[21] Clara Sandoval Villalba, "*Transitional Justice: Key Concepts, Processes and Challenges*", Institute for Democracy & Conflict Resolution – Briefing Paper, 2011, p.4.

the countries where domestic trials took part particularly by considering international rules and regulations. Another instrument of ensuring justice is related and connected with the implementation of international criminal law to be able to judge those who committed crimes.

Tribunals were established for a particular purpose such as the ICTY and International Criminal Tribunal for Rwanda (ICTR) to deal with the atrocities committed, to investigate war crimes, genocide and aggression. In both, former Yugoslavian countries and Rwanda might be considered as successful to gather attention of politicians, judges and international society as well in both positive and negative ways. In the following chapters, ICTY and equal establishments and instruments are going to be deeply analyzed. In addition to ad hoc tribunals, there were also so called Hybrid Tribunals such as the War Crimes Chamber in the State Court of Bosnia and Herzegovina, Special Court for Sierra Leone, the Crime Panels of the District Court of Dili in East Timor and in the end Extraordinary Chambers in the Courts of Cambodia established with the expectation of solving problems and judging criminals.[22] As it might be predicted, there have been ongoing discussions over the position of the abovementioned courts and trials whether they are applicable instruments to consolidate justice and peace or they are the tools which postpone the establishment of peace and justice in a particular country.

By the people who consider courts and trials in order to provide justice necessary, it is believed that criminal trials prove the generality of law through procedural guarantees and the application of justice to those in power.[23] It is important to get superiority and the applicability of the rule of law to make the judicial system more powerful and accountable in the conflicting society. On the other hand, the existence of local or internationally established and driven courts and trials are also considered as significant to be able to have civic trust among those who were victims, injured, who lost his/her property and relatives. However, when it comes to people who do not regard the existence of local or national courts and trials, they have various reasons to reject the implementation of the instruments of transitional justice. One of them is about the spirit of vengeance. It is believed that prosecutions are mainly driven by vengeance; therefore courts or trials whether

[22] Clara Sandoval Villalba, "*Transitional Justice: Key Concepts, Processes and Challenges*", Institute for Democracy & Conflict Resolution – Briefing Paper, 2011, p.5.
[23] Pablo De Greiff, "*Theorizing Transitional Justice*" in *Transitional Justice*, NOMOS, vol. LI, Melissa Williams, Rosemary Nagy, and Jon Elster, eds. NYU Press, 2012, p.53.

intentionally or not postpone or extend the time of establishment of peace and peaceful coexistence in the country or in a particular region.

As Etelle R. Higonnet believes, local courts and governance structures in most post-conflict contexts are too flawed and face too many financial and logistical limitations to cope effectively with massive war crimes trials. In the immediate aftermath of conflict, the inability of many post-atrocity local courts to cope with war crimes trials is often due, at the most basic level, to crippling damage sustained by physical infrastructure by bombing, shelling, arson, looting, or neglect.[24] This criticism towards local courts should not be underestimated and the shortcomings mostly take place in the local courts and trials. Different types of limitations block and create obstacles over the justice and peace implementation process besides postponing the political, economic and social normalization of citizens. Additionally, one of the main criticisms towards internationally established courts is on the longevity of prosecution process, which would be considered a result of limitations about the scope and logistical inabilities. There is also the ethical dimension in the background of the longevity of the prosecution process. Even though there has been uncertainty over the real owner of the saying of "justice delayed is justice denied", whether it be said by the former British Parliamentarians William Ewart Gladstone or Martin Luther King Jr., it is obvious that if the rights of the victims could not be repaired on the grounds of justice in a certain period of time, it might damage the resolution process. This was a criticism towards the local British courts of the time of William Gladstone; but this particular saying has kept its validity over courts such as ICTY.

There have been serious criticisms towards the relationship between justice and prevention. Although by different branches of the United Nations most of the abovementioned trials, courts, and chambers were taken into account as instruments and tools of transitional justice, on the other side, there have been people who believe such institutions divide and not unite conflicting sides. Thereby, the relationship between justice and prevention is going to be deeply studied in the following chapters.

[24] Muna B. Ndulo, and Duthie Roger, "The *Role of Judicial Reform in Development and Transitional Justice*", Transitional Justice and Development – Making Connections, Edited Book, 2009, p.263.

1.5. The Process of Reparation

One of the most important aims of transitional justice is the reparation of victims who faced atrocities and crimes during the time of oppression or war. There is an obvious need for compensation and reparation of the violated rights of the victimized population. At this stage the responsible authority is the state in which there has been a binding of international law. As in the examples of Argentine and Chile in the times of oppressive regimes, these states were responsible under international law to produce reparations for its victims. On the other hand, individual criminal responsibility for crimes of war, genocide or aggression has been recognized by international law. Therefore, those who committed crimes are supposed to repair the damage and harm caused to the victims.[25] Reparation has been a significant tool to be used in order to meet the rights and needs of victim population. In this sense, there are numerous forms of reparation that emerge in the aftermath of conflicts related to the circumstances. Those forms might show differences among one another in terms of the characteristics of the conflict and the clash of opposite sides of the society. In his study, Van Boven categorizes the forms of reparation into four parts:

- **Restitution,** designed to re-establish the situation after war, which would have existed, had the wrongful act not occurred. This might include the restoration of liberty, family life, citizenship, the return to one's place of residence, and the restoration of employment or property.
- **Compensation** ought to be provided for any economically assessable damage, which results from the act (physical or mental harm, pain, suffering, lost opportunities, loss of earnings, medical and other expenses of rehabilitation, legal fees, etc.).
- **Rehabilitation** - to include medical, psychological and other care and services, as well as measures to restore dignity and reputation.
- **Satisfaction and guarantees of non-repetition** - including verification of facts and full public disclosure of the truth, a declaratory judgment (as to the illegality of the act), an apology, judicial or administrative sanctions against the perpetrator(s), commemorations, prevention of recurrence.[26]

Additionally, there is a reality about reparation process that should not be underestimated. The issue of reparation has strong connection with the judicial

[25] Clara Sandoval Villalba, "*Transitional Justice: Key Concepts, Processes and Challenges*", Institute for Democracy & Conflict Resolution – Briefing Paper, 2011, p.6.
[26] UNHCHR, Sub-Commission on Prevention of Discrimination and Protection of Minorities Forty-fifth session, Final Report, 1993, http://www.unhchr.ch/Huridocda/Huridoca.nsf/0/e1b5e2c6a294f7bec1256a5b00361173/$FILE/G9314158.pdf (accessed October 6, 2015)

process. If the justice process somehow cannot be completed and cannot come to an end mainly because of the disabilities and limitations or the process is interrupted by the external factors, the reparation process substantially might lose its grounds at both the political and social levels. The reparation process is the area where most of the developments and policies have direct reflection over the societies. Whether by the instruments of the state or by non-state actor driven projects and programs, it includes the social practices of commemoration, healing, education programs, apologies, acknowledgement, and restitution.[27] In the process of implementing these instruments deciding which tools are more effective and applicable to a particular society should be taken into account. The timing of an apology, the structure of books used particularly in primary or high schools, acknowledgements in commemorates, and ceremonials all should be well calculated later to be practiced.

There are two main goals of the reparation programs. The first one is providing recognition for victims as reparations are explicitly and primarily carried out, on behalf of the victims, and the second one is encouraging trust among citizens and the state to demonstrate past abuse and crimes regarded serious by the government.[28]

Although, in theory the reparation process seems well working and organized, in practice its implementation success might differ from one case to another. One of the problematic issues related to the reparation process is about its applicability particularly during times of transition. Mainly because of the obscure structure of the transition periods until the implementation of peace and stability, the foremost aim of the reparation process is to offer things as they are before the war. On the other hand, the reparation process should not be limited to the investigation and prosecution of the people who committed crimes.[29] It is surely important at least to make the process of reparation begin. However, the process takes too much time, might not give visible and tangible results, and it might start to lose its sustainability and loss of mutual trust among victims and damages future of the peace establishment process by locking the progress. As it is known, one of the most significant aims of

[27] Rama Mani, "*Does Power Trump Morality? Reconciliation or Transitional Justice?"*, 2007, p.39. In E. Hughes, W.A. Schabas and R. Thakur, eds, Atrocities and International Accountability: Beyond Transitional Justice, Tokyo, United Nations University Press.

[28] Sara Julica, "*The Social Reintegration of Ex-combatants in Post Conflict Societies*", International Journal of Rule of Law, Transitional Justice and Human Rights, Vol. 3, 2013, p 121.

[29] Clara Sandoval Villalba, "*Transitional Justice: Key Concepts, Processes and Challenges*", Institute for Democracy & Conflict Resolution – Briefing Paper, 2011, p.7.

reparation is providing the status quo ante especially for the victimized population, but if the reparation process somehow is limited by merely obtaining the status quo ante and let the work finish, it arguably turns into an inadequate attempt in order to establish a full understanding of the reparation of the victim population. Therefore, there is need to go beyond and organize the reparation programs to develop the society. If restitution, compensation, rehabilitation and satisfaction and guarantees of non-repetition as forms of reparation process are not supported by further initiatives and attempts, the establishment of the peace and prevention of future atrocities might re-occur.

1.6. The Process of Truth

One of the main obstacles of normalizing relations among conflicting sides in a particular place is the lack of truth in most cases. In the absence of truth related to past atrocities, crimes, brutal policies and such violent policies block and postpone the peace establishment process. Political, economic and social reflections over the victimized population of past violations are also taken into account by the truth observers. Truth-seeking and fact-finding forms of transitional justice are aimed to bring to light what happened in the past for those who are victims or relatives of the victims.

As it is discussed by Roht Arriaza, the crimes during the suppressive regime or war are mostly done in secrecy and most of them are denied in the following process by instigators or those who committed crimes against international humanitarian law.[30] Unfortunately the truth in most cases is buried by oppressive regimes or by war criminals to be able to protect and guarantee their power and to hide their brutal actions merely to make political, economic or social profit. As much as people who suffer from crime, the truth also has been victimized. Therefore it is crucial and essential to find the responsible people and bring to the open what kind of actions they attempted. At this particular point, "Truth and Reconciliation Commissions" (TRC) emerge in both national and international levels. Since the early 1970s there has been a proliferation of truth commissions varying in remit and style in countries as diverse as Uganda, Argentina, Guatemala South Africa, East

[30] Clara Sandoval Villalba, "*Transitional Justice: Key Concepts, Processes and Challenges*", Institute for Democracy & Conflict Resolution – Briefing Paper, 2011, p.8.

Timor and Morocco.[31] TRCs aim is neither to prosecute the responsible people of atrocities nor to look for reparation for the victimized population. However the TRC's main goal is to uncover the truth in the hope that the exposure of past crimes might prevent their recurrence in the following process.[32] The creation of political and societal circumstances to be able to deter any possible future atrocities has been an important element of truth commissions. In this sense, victims tell their stories and in the TRC mechanism past violations, crimes and such atrocities are categorized and announced. By doing so, the past is confronted with the aim of how to go beyond in order not to face similar problems in the future. Truth commissions have focused on whether in the times of war or oppressive regime human rights violations emerge or not. In such circumstances lost people, torture and torture attempts, murder, sexual abuse and a displaced population emerge. Truth commissions use different approaches varying from one particular place or conflict to another. Such as taking statements from witnesses, analyzing reports created by various human rights foundations or organizations, the investigation of formal documents in which permission, attitude and the will of the state or current government is significant, and the investigation of the places where abuse took place. Here the purpose is to expose and detect the how and why of past atrocities and, what might be done and what type of policies should be implemented in order not to face again same or similar problems in the future process by states or state centered institutions. The unique characteristics of truth commissions might be ordered as follows. The procedures followed by truth commissions are informal unlike ad hoc courts whether national or international, inclusion of different elements which do not take place in the courts such as measures to support victims and allow them to declare their stories fully, investigations into systematic abuse, the consideration of amnesty and structured opportunities for confrontation.[33] Although there are positive impacts and intentions behind the idea of the truth commissions in terms of promoting peace and preventing future abuse, nolens volens there are also negative impacts and side effects that occur with the implementation of truth initiatives.

[31] Patricia Lundy, and Mark McGovern "*Whose Justice? Rethinking Transitional Justice from the Bottom Up*", Journal of Law and Society, Vol. 35, No.2, 2008, p.270.
[32] Jeremy Weber, "*Forms of Transitional Justice*", NOMOS LI: Transitional Justice, 2012 *Edited by Melissa S. Williams, Rosemary Nagy, and Jon Elster* p.104.
[33] Ibid, p.119.

One of the criticisms towards truth commissions is that they reopen old wounds and may generate further polarization.[34] Even though it is also plausible to face the polarization of conflicting sides, truth commissions are believed in that once the victim population starts to talk about past atrocities and to be part of truth process, they would remember what happened in the past, which might divide more than re-unite. Another criticism towards truth commissions is that the truth process may marginalize victims. The marginalization of victims is a problem faced in the ICTY. Prosecutors at the tribunal call witnesses, victims or their families in order to bring into light regarding the crimes committed during the time of the war. However, according to victims, there have been no satisfactory return from the tribunal, once witnesses, victims or their families were listened. Thereby, there is a possibility of marginalization of witnesses, victims or their families in also truth process. But here, at his point, it should be argued whether crimes committed are going to be underground or even partial truth is never going to be learnt by the other segments of the society. The abovementioned two negative victim centered approaches contain concrete arguments; however it should not be undermined that the importance of the existence of the truth still keeps its significance. When it comes to the relationship between trials, courts and truth commissions, it might be argued that it is not always compatible with one another. For example, in the cases of the Sierra Leone TRC and the Special Court of Sierra Leone were established to deal with the legacy of mass atrocities, but tensions between those two bodies were visible. The problems about exchanging information among them and the plausibility that alleged perpetrators who were prosecuted by the special court would seem before the TRC at a public hearing occurred.[35] Therefore in the existence of those two transitional justice forms, it is necessary to own a compatible relationship. Otherwise conflict between the two same tasked bodies would not be able to stop the conflict among different segments of the society. The emergence of truth commissions also should be compatible with the characteristics of the conflict. The emergence and implementation of truth commissions can also be doubtful in a case that there are multiple truths. The ethnic conflict that took place in Bosnia and Herzegovina included three distinct ethnic identities. Each one of the groups suggested a version of history carrying a distinct

[34] Patricia Lundy and Mark McGovern, "*Whose Justice? Rethinking Transitional Justice from the Bottom Up*", Journal of Law and Society, Vol. 35, No. 2, 2008, p.271.
[35] Clara Sandoval Villalba, "*Transitional Justice: Key Concepts, Processes and Challenges*", Institute for Democracy & Conflict Resolution – Briefing Paper, 2011, p.9.

ethnic bias in its own favor where the other groups were the triggered factors in the background of the conflict. In such a case, three separate war crime commissions were formed by the Bosnians, Croatians, and Serbs, respectively.' When the commissions met in 1997, one of them noted that they "were 'in the process of creating three conflicting versions of the truth, and if they kept going along this path, fifty years from now their grandchildren would fight again over which one is correct.[36] Therefore if the existence of truth commissions cannot be controlled under a certain authority, it would create division rather than the re-unification of the conflicting parties.

On the other hand, efforts of truth commissions should not be considered as direct and warranted ways to reach reconciliation, which are approved by different segments of the society.[37] For some, acceptance of the denied truth surely contributes to the well-being of the society however experiences of the past illustrate that to reach peace and compensate damages to the victim population, more than the contribution of truth commissions is required. Reconciliation is a wide term and a gradual process therefore truth commissions should not be considered as the only way to reach the truth, but rather it should be considered as one of the tools which might prove to be successful in few, but not in all cases.

1.7. Institutional Reform Process

Institutional reform process has significant place in the post-conflict peace-building agenda. The crimes or atrocities committed in the time of previous oppressive regime or violent conflict among different ethnic or religious identities might be corrected with the constitutional amendment and reforming different state institutions. At this stage, it is expected that the institutions which were inadequate in putting a stop to past crimes, human right violations and such atrocities are all ought to be redefined, reorganized and restructured by the hands of the state. It is believed if the reforming state institutions cannot be achieved in the post-conflict or post-authoritarian period; it is highly possible to face a similar type of conflict in the following term. Therefore, the essentiality of reforming state institutions refers to the prevention of the re-emergence of atrocities that took place in the past. It is significant to be able to alter the structure of the previous conflict as much as to be

[36] Kristin Bohl, "*Breaking the Rules of Transitional Justice*", Wisconsin International Law Journal, Vol. 24, No. 2, p.572.
[37] Birleşmiş Milletler İnsan Hakları Yüksek Komiserliği, "*Çatışma Sonrası Toplumlarda Hukukun Üstünlüğünü Sağlama Araçları – Hakikat Komisyonları*", 2011, p.2.

able to judge people who committed crimes and violated human rights. Structural change might be possible by reforming security and justice instruments and institutions of the state because during the time of war or conflict, reforming security and justice institutions are insufficient to put a stop over brutality of conflicting sides. However it should be noted that there are two distinct approaches regarding how the transformation of institutions might be done. The first one represents the gradual restructuring of continuously existing institutions and the second one is the disbandment of the abusive or corrupted institution and the establishment of a renewed institution.[38] In the first approach the abusive or corrupted institution consisting of its officers remains in place but is transformed by means of targeted reform interventions. The second approach takes place as the screening of candidates for appointment in the public service. The main difference among these two is the employees in various institutions. On one hand officials stay in the same position or place, but there is a process of serious vetting and investigation over them. On the other hand, in the second approach, there is a reform process of the institution including new appointments surely after a deliberate investigation over the candidates. If the practices of institutional reform are examined, the case of South Africa where transition after apartheid regime took place can be taken as an example. The creation of a new court with constitutional jurisdiction with newly appointed judges can be seen as a motivation in large part to make a decisive break with the past.[39] Although there was acceptance and trust of the society towards new constitution and jurisdiction of South Africa in the aftermath of apartheid regime, it is difficult to talk about a sharp shortcut with the previous officials of the former regime. Accordingly, this could cause mistrust towards the jurisdiction that took place in the country. To be able to realize a healthy transformation of institutions of the state, there are four areas critical to prevent the recurrence of abuse by law enforcement agencies in the following settings: providing accountability, building independence, ensuring representation, and increasing responsiveness.[40] Providing accountability is significant in the sense of the answerability of actions. In the

[38] Reickh – Alexander Mayer, "*On Preventing Abuse: Vetting and Other Transitional Reforms*", 2007, p.487. In Justice as Prevention: Vetting Public Employees in Transitional Justice, ed. by Alexander Mayer-Rieckh and Pablo de Greiff, New York, NY: Social Science Research Council, pp. 483-520.
[39] Jonathan Klaaren, "*Institutional Transformation and the Choice Against Vetting in South Africa's Transition*", ed. by Alexander Mayer-Rieckh and Pablo de Greiff, New York, NY: Social Science Research Council, 2007, p.159.
[40] Reickh – Alexander Mayer, "*On Preventing Abuse: Vetting and Other Transitional Reforms*", 2007, p.496.

absence of accountability, it would be difficult to gain tangible results over the actions of state institutions. On the other hand, building independence of newly established or reformed institutions remains as one of the foremost preconditions. If building independence fails because of a close relationship with a particular political party or any other outside connection, the problems that caused conflict in the past might not lose vitality in the period after the transformation process. Ensuring representation is the one that various segments of the society ought to be represented in the reformed institutions. Under authoritarian rules, one particular group of a society takes certain amount of power under their responsibility. It is important to provide the sharing of power in state institutions also in the post-conflict or post-authoritarian context. Last, the issue of responsiveness is the standpoint of the state towards its citizens. The people who suffer under an oppressive regime or in the era of war would not receive very much attention and care for the state in terms of providing services. Therefore, once the transition process starts with different reformed institutions, the state ought to carry out its services irrespective of the identity or partiality of its population.

Even though the abovementioned issues related to institutional reform process are applicable, in the absence of certain criteria, the reform process might not reach its purpose. One of them is the lack of political will to practice the political and structural reforms. Another one is the involvement of internationally established institutions Office of High Representatives (OHR) and this intensive involvement into the domestic affairs of Bosnia and Herzegovina might cut the applicability of reforms in the level of society.[41] The importance of political will should not be underestimated. To this, one can give the example of Bosnia and Herzegovina during the aftermath of conflict about police reform process. In Bosnia and Herzegovina, at the end of the conflict, the number of active police officers increased to an estimated 44.750, which was a threefold increase of the prewar size. On the other hand, instead of upholding the rule of law and human rights, the post-Dayton police continued to support nationalist and separatist tendencies, and to serve as ethnically separate forces, while each of them were under the control of three distinct ethnic based

[41] Clara Sandoval Villalba, "*Transitional Justice: Key Concepts, Processes and Challenges*", Institute for Democracy & Conflict Resolution – Briefing Paper, 2011, p.10.

political parties.[42] As it is plausible to notice from the previous example, if the political will does not intend to solve problems and reduce differences and not unify different segments in the society in the context of reform of state institutions, the possibility of peace might be missed.

Transitional justice phenomena and its instruments have been on the agenda of international politics. Different methods and practices of transitional justice strategies were experienced by numerous states in the aftermath of authoritarian regime or violent ethnic conflicts. Transitional justice forms and its instruments have emerged in various forms since the end of the Second World War. Accordingly, the characteristics and effectiveness of transitional justice showed variations from one case to another. By taking into consideration time and the status quo of the time, the development of transitional justice theory and practice in international politics is visibly requested. Especially with the establishment of UN institutions, charters and progress in the area of international law, the superiority of the rule of law in both domestic and international levels assisted the theory and practice of transitional justice to be more preferred. The goals of Transitional Justice are fundamentally tied to the aspiration of transition, both towards justice for past violations and towards the cementing of a new political order that will prevent the old order, ensuring that the reoccurrence of the violation of human rights will not take place.[43] In the early stages of transitional justice it was more likely that a struggle against post-authoritarian and oppressive regimes would happen. Managing the transition from a suppressive regime to a more democratic one in terms of finding the responsible people who committed crimes during the time of the oppressive regime, to be able to prevent the reoccurrence of similar types of human right violations and restoring both financial and inner losses of victimized population are the main goals in the context of the transitional justice understanding. However in the following process, particularly during the last two decades, the transitional justice approach has been started to be shaped by the discussions of ethnic divisions, political instabilities, economic fragmentation and ideological based problems among the same or different oriented groups of people.

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[42] Reickh – Alexander Mayer, "*On Preventing Abuse: Vetting and Other Transitional Reforms*", 2007, p.497.

[43] Jens Iverson, "*Transitional Justice, Jus Post Bellum and International Criminal Law: Differentiating the Usages, History and Dynamics*", 2013, The International Journal of Transitional Justice p.13.

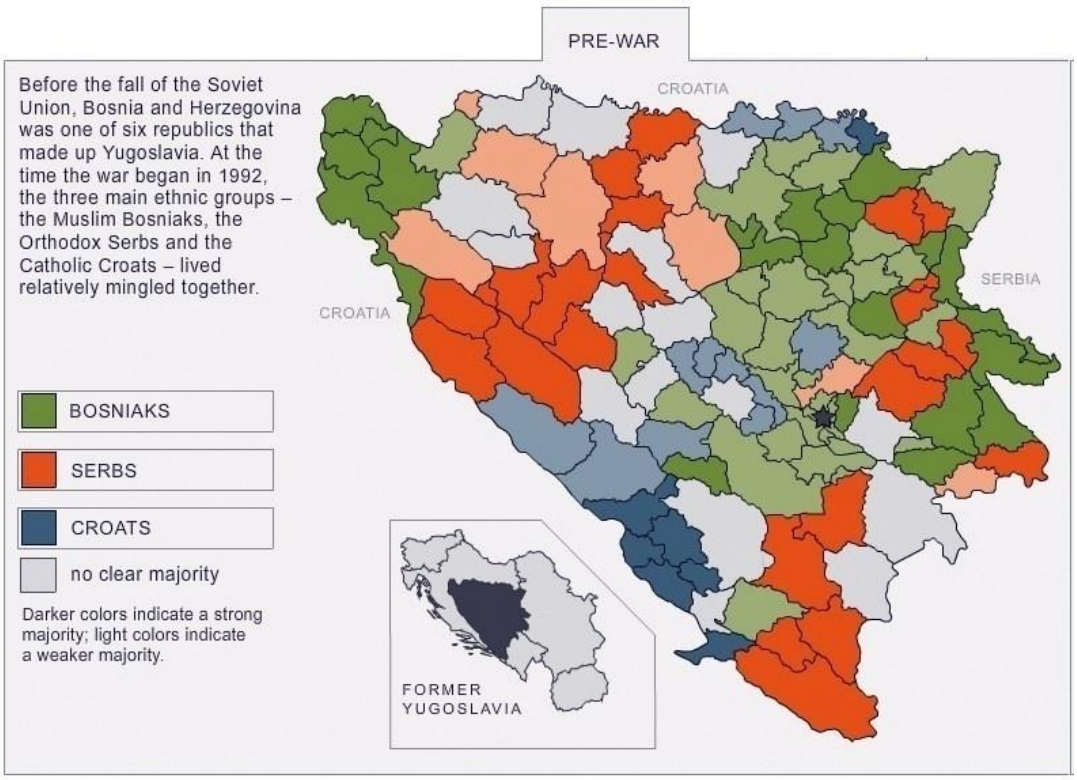
Even though in theory, everything looks applicable and makes sense, the core of the arguments and doubts related to transitional justice theory begins with the emergence of mechanisms established in order to restore the needs of victim population and the aim of turning society to the status quo ante. The core of those mechanisms can be divided into two, as retributive and restorative justice approaches. While the retributive justice refers to the establishment of national or international ad hoc courts, trials and legal prosecutions, there have been ongoing discussions over the success and operational position of those. On the other hand, once restorative justice is mentioned, it is mainly focused on the distribution of justice at the level of the society, regarding psychological restoration of victim population and it cares basically about societal development via truth commissions, suggesting amendments in the constitution and similar other social based reforms.

It is also under the responsibility of the transitional justice approach not only to observe where, why, and how human right violations take place, but also rather to take out and investigate the social and political with structural reasons. Thus the transition of post-war or post-authoritarian status quo has been mostly driven by transitional justice mechanisms, and success in its implementation has differed from one case to another.

CHAPTER 2
COMPARISON OF JUDICIAL, TRUTH, REPARATION AND INSTITUTIONAL REFORM INITIATIVES IN BOSNIA AND HERZEGOVINA

2.1. Background of the Bosnian Conflict

In the aftermath of the dissolution of the Soviet Union, there were seven different ethnic identities that declared independence in the region of Balkans and there was conflict among the Bosnian Muslims (Bosniaks), Croatian Catholics, and the Serbian Orthodox population in the case of Bosnia and Herzegovina.

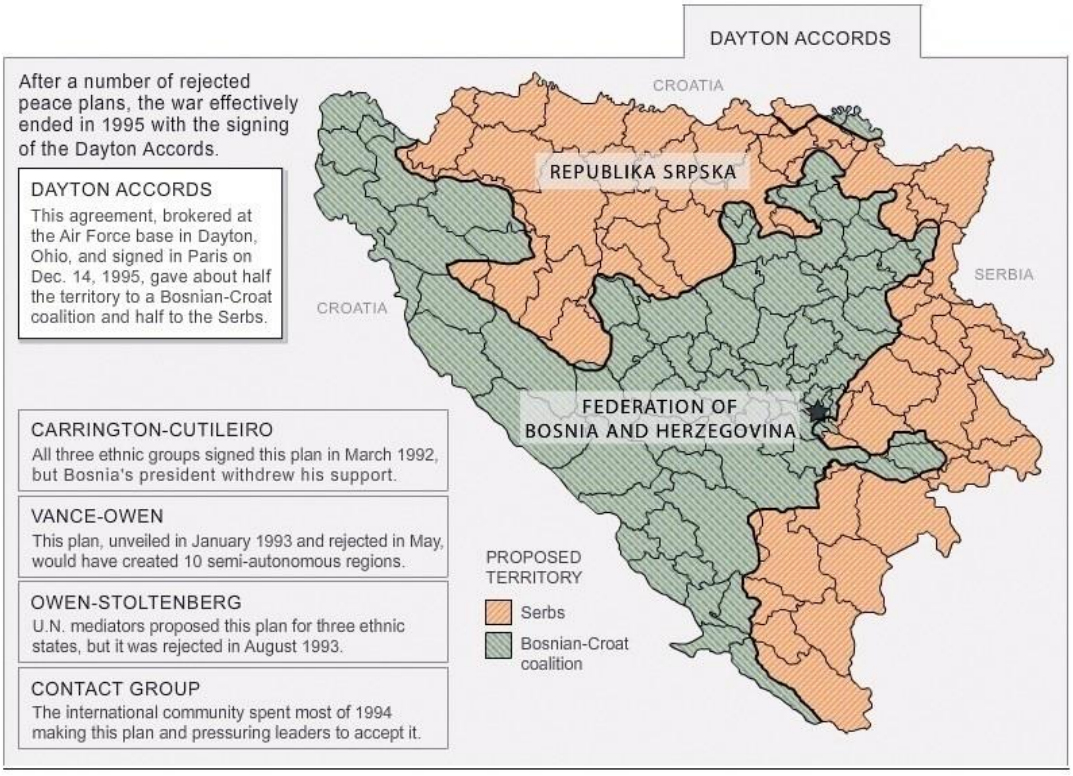


Map: 2.1. Ethnic distributions in Bosnia and Herzegovina in the pre-war period [44]

The result was the worst conflict in Europe since the Second World War, described in detail elsewhere. Between 1992 and 1995, thousands of people were killed, including children and serious number of people has been missing. The

[44] Public Broadcasting Service, "*Interactive Map: Understanding the Dayton Accords*", 2011, http://www.pbs.org/wnet/women-war-and-peace/features/interactive-map-understanding-the-dayton-accords/ (accessed September 15, 2015)

conflict was characterized by the appalling atrocities, massacres, widespread rape, imprisonment in concentration camps, and brutal ethnic cleansing.[45] The term "genocide" was used for the first time in the aftermath of the Second World War for the conflict that took place in Bosnia and Herzegovina. Therefore, the dimension of the conflict that emerged at that time among different ethnic and religious identities was difficult to contextualize, manage, control and govern in the post-conflict process. Dayton Peace Agreement brought an end to the violent conflict, but created political and systematic problems in both state and societal levels. It should be known that in the aftermath of the war many people were displaced and became refugees.



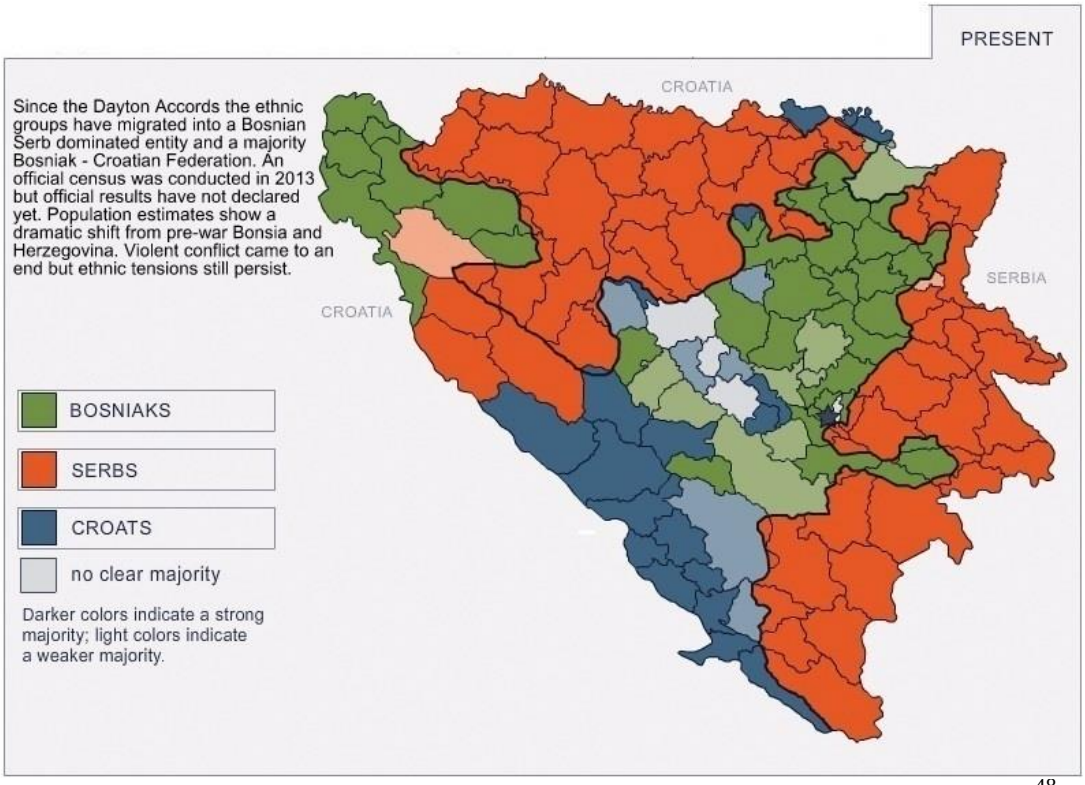
Map: 2.2. Ethnic distributions in Bosnia and Herzegovina with the Dayton Peace Agreement [46]

The violent conflict that lasted three years caused financial problems as well as loss of lives, and properties, and longstanding problems occurred in the people's mindsets. The demographic distribution is one of the most significant issues in the

[45] Bogdan Ivanišević, and International Center for Transitional Justice, "*The War Crimes Chamber in Bosnia and Herzegovina: From Hybrid to Domestic Court*", Prosecutions Case Studies Series, 2008, p.3.

[46] Public Broadcasting Service, "*Interactive Map: Understanding the Dayton Accords*", 2011, http://www.pbs.org/wnet/women-war-and-peace/features/interactive-map-understanding-the-dayton-accords/ (accessed September 15, 2015)

former Yugoslavian countries. In time of Soviet Union different ethnic and religious identities were living heterogeneously in different areas. However, heterogeneity of these areas decreased after the collapse of Soviet Union. In this sense, there was a population census in Bosnia and Herzegovina in 1991. As it is easy to expect 1991 census illustrated a composite ethnic distribution of Bosniaks, Serbs and Croats were concentrated in certain areas but mostly living in mixed places. According to the census population was less than 4.4 million constituted 43% Bosniaks, 31% Serbs and 17% Croats while around 8% considered themselves Yugoslavs or belonging to other minority groups in the country.[47] In the following period, mainly because of the war took place between 1992 and 1995 it was almost impossible to discover what kind of demographic changes happened in the borders of the country.



Map: 2.3. Ethnic distributions in Bosnia and Herzegovina in the post-Dayton Process [48]

The years followed by the end of the war were also occupied with political, social and economic tides and instabilities. Therefore, to conduct a census would not give healthy results under abovementioned inabilities. But it was decided to conduct

[47] European Parliamentary Research Service, "*Bosnia 2013 Census*", 2014, http://epthinktank.eu/2014/01/27/bosnia-2013-census/ (accessed September 15, 2015)

[48] Public Broadcasting Service, "*Interactive Map: Understanding the Dayton Accords*", 2011, http://www.pbs.org/wnet/women-war-and-peace/features/interactive-map-understanding-the-dayton-accords/ (accessed September 15, 2015)

a census in 2013. The unofficial results were illustrating total population as 3.791.662, means 585,411 less than in the 1991 census, distributed as follows: 62.55% in the Federation, 35 % in Republika Srpska and 2.45 % in Brčko. At the same time, the Sarajevo newspaper Dnevni Avaz in January 2014 published preliminary but unofficial results on the ethnic composition: 48.4 % Bosniaks, 32.7 % Serbs and 14.6 % Croats.[49] Even though it was first declared the results to be announced in the midst of 2014, mainly because of the disagreements between Federation of Bosnia and Herzegovina and Republika Srpska regarding declaration of the official results has not published yet.

Thereby, in this chapter conflict resolution processes mentioned in the first chapter such as justice, truth, reparation and institutional reform are going to be analyzed in the context of Bosnia and Herzegovina; besides, the method that should have been implemented will be determined, and whether the applied methods have functioned as previously planned will be debated. This chapter will give a brief outlook about the comparison of peace establishment efforts in Bosnia and Herzegovina together with the pros and cons.

2.2 The National and International Initiatives in Promoting Justice in the Post-War Bosnia and Herzegovina

Since the International Criminal Tribunal for the Former Yugoslavia is the main area of interest in this thesis, the background, its theory and its establishment purpose, its role in practice and results along with its shortcomings and achievements are going to be compared and studied in the following chapter. The position of ICTY in the post-war context of Bosnia and Herzegovina in this section is going to be slightly examined. However, the main focus point will be the role of national courts in providing justice in the post-war status quo in the country.

By taking into consideration the shortcomings and limitations of internationally established courts, different segments of the democratic societies such as policymakers, multilateral and nongovernmental organizations, it is seen there is need to help build justice at national levels. At this stage, it is important to have the political will to complete the justice process at the national level. The task of the national level justice is not only limited with fulfilling gaps left by international

[49] European Parliamentary Research Service, "*Bosnia 2013 Census*", 2014, http://epthinktank.eu/2014/01/27/bosnia-2013-census/ (accessed September 15, 2015)

courts or tribunals, but also penalizing those who committed crimes and atrocities with systematic abuse from civilians and the government – military officials at the same time. Achieving justice for war crimes and atrocities can also help restore the political and economic stability in post-conflict societies as in the case of Bosnia and Herzegovina.[50] The significance of national courts is theoretically undeniable if their possible contributions are taken into account; but the contribution in the practice of national courts to the establishment of peace by prosecuting war criminals is still debated and questioned. Additionally, the dilemma related to national courts depends on the issue of whether or not political and financial support, which may have had direct impact on public confidence, came from the state and the government.

The first and foremost attempt to investigate, prosecute and judge criminals of war took place between 1992 – 1995, at the state level that started with the establishment of the War Crimes Chamber within the Court of Bosnia and Herzegovina, on the 9th of March 2005. The War Crimes Chamber has provided the legal community with useful experience with a hybrid court in which international and national judges serve together.[51] It should be mentioned that the inauguration of the War Crimes Chamber at the state level and the Special Department for War Crimes within the Prosecutor's Office of Bosnia and Herzegovina were the results and products of a regulation of the re-organization of the justice system under the name of National Strategy for War Crimes Processing in Bosnia and Herzegovina, starting from 2005, with the enforcement and the support of the Office of High Representative (OHR) and Organization for Security and Co-operation in Europe (OSCE) Mission to Bosnia and Herzegovina.[52] The political structure of the country that was constituted in the Dayton Peace Agreement relied on the normalization of the country via internationally established institutions; however, it is necessary to know that one of the aims of establishing the National Strategy for War Crimes was the abolishment of the OHR in the following years.

[50] David Kaye, "*Justice Beyond the Hague – Supporting the Prosecution of International Crimes in National Courts*", Council Special Report No.61, 2011, p.3.
[51] Bogdan Ivanišević, and International Center for Transitional Justice, "*The War Crimes Chamber in Bosnia and Herzegovina: From Hybrid to Domestic Court*, 2008, International Center for Transitional Justice, p.5.
[52] Although the term "War Crimes Chamber" refers to the institution that hands war crimes cases at the level of state, the other options to be used can also be the Court of Bosnia and Herzegovina and Bosnia and Herzegovina Prosecutor's Office.

Again, when it comes to the role of the national courts in resolving justice problems related to war in the country, it can be said courts and prosecutor's offices in the Federation of Bosnia and Herzegovina and Republika Srpska together with the special case of Brčko District have played significant role in the investigation, prosecution, and adjudication of war crimes.[53] Even though Bosnia and Herzegovina showed some effort to set up judicial courts for war crimes at the national level, the complex state structure of the country unfortunately in many areas does not let the running mechanisms and institutions function, as they ought to in theory and practice. For example there are four prosecutor's offices in Bosnia and Herzegovina at the levels of the Federation of Bosnia and Herzegovina, Republika Srpska, Brčko District and Prosecutor's Office of Bosnia and Herzegovina.

It should not be forgotten that there has been an ongoing struggle between the Republika Srpska and the Federation at the state level. There are prosecutions and crimes conducted in the national courts of both entities, but reportedly these are often biased practices. The main problem related to this issue is about the separation of the two entities in which each has its own national court. This is problematic mainly because it creates divisions particularly regarding who should try whom and it is difficult to guarantee just and proper trials in an equal manner while the ethnic divisions still keep themselves alive in the formation of the country. It is often the case that witnesses will not cross the ethnic boundaries to testify at trials, and judges refuse as well to obtain the testimony of the witnesses. At this point, it is still unlikely that the Republika Srpska will take part in the prosecution of the Bosnian Serbs, and vice versa for the Federation.[54] This multidimensional understanding and structure of the judicial system causes deadlocks and shortcomings in the running mechanisms of the country in terms of bringing an end to the cases of war crimes.

If the relationship between national courts and ad hoc tribunal is examined, one will see there are tides and turns, especially in the cases to be transferred from ICTY to national courts. The establishment of the War Crimes Chamber was a demand, and support coming from ICTY would be able to shorten the longevity of the prosecution process and reduce the number of cases related to war crimes and criminals. The

[53] OSCE Report, "*Delivering Justice in BiH: An Overview of War Crimes Processing from 2005 to 2010*", Organization for Security and Co-operation in Europe · Mission to Bosnia and Herzegovina 2011, p.2.

[54] Corene Rathgeber, "*Truth and Reconciliation in Bosnia and Herzegovina", Faculty of Law, Katholieke Universiteit*, Leuven, 2011, p.23.

inauguration of national courts for war crimes and criminals corresponded to the ten years after the Dayton Peace Agreement where most of the atrocities and crimes of war could not be brought to light. It was essential to determine the areas of cooperation and how newly established state courts could benefit from the knowledge and experience of ICTY in the first run. Accordingly,

- The use of adjudicated facts established by the ICTY,
- Reliance on ICTY jurisprudence for issues of substantive law,
- Guidance from ICTY procedural decisions,
- The use of ICTY evidence,
- The transfer of knowledge.

Senior officials have acknowledged for some time that, "it was not under responsibility of the ICTY helping other institutions mainly because it was believed that such concerns may increase as the scheduled end of the ICTY mandate approaches in 2010". In this context the following issues may raise complications.[55]

- Access to ICTY Archives,
- Legal difficulties arising from shared evidence.

Moreover, the challenges that national courts face has not been limited to the ICTY, but there are other obstacles that war crimes processing in Bosnia and Herzegovina have been facing as listed below:

- Low public confidence in the judiciary;
- Political opposition from certain quarters to an integrated and cohesive judicial system able to tackle serious crimes;
- Judicial system's inability to tackle serious crimes;
- A fragmented legal and institutional framework applicable to war crimes cases;
- Poor investment in human and technical resources;
- Lack of availability of suspects, physical evidence, and witnesses willing to testify;

[55] Bogdan Ivanišević, and International Center for Transitional Justice, "*The War Crimes Chamber in Bosnia and Herzegovina: From Hybrid to Domestic Court*, 2008, International Center for Transitional Justice, p.26.

- A caseload of unknown size and scope scattered between prosecutor's offices around the country.[56]

In the end, it might be argued that the existence and continuation of national courts have to be considered as sine qua non. It is also obvious that the transitional justice process for the case of Bosnia and Herzegovina should be handled with all the components and mechanisms of transitional justice together with the elements of both national courts and international tribunal for war criminals. ICTY ought to be seen as a temporary solution to save the day even twenty years after the war as an international monitoring system for the establishment of justice after the war. Over time, and in a gradual manner, the place of ICTY should be given to the mandate of national courts. The temporary institutions of the country in the justice system should be politically and practically supported, and accordingly, it should be realized that the multiethnic identity and structure of the courts create deeper divisions rather than the implementation of justice after the war in the country. National courts under the shadow of ICTY cause loss of confidence in the eyes of the public.

2.3. Fact-Finding and Truth-Seeking Mechanisms and Initiatives in Promoting Justice in the Post-War Bosnia and Herzegovina

By taking into consideration the shortcomings of the justice system, retributive justice should also be theoretically and practically supported by restorative justice elements. One of the main mechanisms for restorative justice is the emergence of truth commissions in the aftermath of the war. It would be better to conceptualize the significance of truth commissions in the first place. Truth and reconciliation commissions mainly deal with the issue of "what happened in the past." Accordingly, truth and reconciliation commissions create documents regarding the cases of human rights violations and aim to observe view of a whole picture related to the committed war crimes unlike courts or trials in specific cases or events. Truth commissions complete their work in a determined or a limited point of the time and create a report for the sake of establishment of peace. Lastly, but not least importantly, truth commissions have a certain authority that has been granted by the political body that established it.[57] Therefore, the concept of truth and reconciliation

[56] OSCE Report, "*Delivering Justice in BiH: An Overview of War Crimes Processing from 2005 to 2010*", Organization for Security and Co-operation in Europe · Mission to Bosnia and Herzegovina 2011, p.14.

[57] Priscilla Hayner cited by N. Dimitrijevic, "*Justice beyond Blame: Moral Justification of (the idea of) a Truth Commission*", 50 *Journal of Conflict Resolution,* 2006, p.373.

commissions should be evaluated in the abovementioned context and the role of truth commissions should not be implicated with the position of domestic courts or international tribunals.

In the post-war circumstances of Bosnia and Herzegovina, there were initiatives to establish truth commissions for peace making and the implementation process. In this sense, one of the truth commissions emerged under the name "The Commission for the Investigation of the Events in and Around Srebrenica from 10 to 19 July 1995", which was established in December 2003.[58] It was an initiative of the National Assembly of Republika Srpska in accordance with the Office of the High Representative mandate. The purpose of the commission was to investigate crimes, to find perpetrators, to find missing persons with mass gravesites around Srebrenica, and to establish perpetual peace and build confidence among different ethnic identities in Bosnia and Herzegovina. The commission was active for six months from January to June 2004 and submitted its last report in June 2004.

Another commission was "The Commission for the Investigation of the Siege of Sarajevo", which was established in 2006. This was the decision of the Council of Ministers after longstanding political delays. It was also called the Commission for investigation of Sufferings of Serbians, Croatians, Bosnians, the Jewish, and others in Sarajevo during 1992 – 1995. The Commission's main focus was the issues of pursuing the truth concerning the killings, incarcerations, rapes, expulsions, and other violations of the Geneva Convention during the Siege of Sarajevo. While there were some tangible results in the first initiative, such as 32 mass graves and around 1.500 bodies were found as a result of the truth telling process in the Srebrenica region, the second truth telling initiative was far from the expected and it came to an end without any tangible results.[59] The commission was heavily criticized by the civil society, the media, political parties, as well as international actors. It can be argued that the idea behind the commission has been over-politicized, and because of this no result could have been achieved.[60] Despite these problems a third commission was created in the following years.

[58] Isabelle Delpla, Xavier Bougarel, and Jean Louis Fournel, "*Investigating Srebrenica – Institutions, Facts, Responsibilities*", Berghahn Books, 2012, p.147.
[59] Commissioner for Human Rights, "*Post War Justice and Durable Peace in the Former Yugoslavia*", Issue Paper by the Council of Europe Commissioner for Human Rights, 2012, p.34.
[60] Azra Somun, "*Report on the Transitional Justice Experience in Bosnia and Herzegovina*", International Journal of Rule of Law, Transitional Justice and Human Rights, Volume 1, December 2010, p.60.

The Bijeljina Commission was a failed one, which was established in 2007 with the decision of the municipality of the town of Bijeljina. The task of the commission was limited to the four-year term. It started its work and two public hearings were held in 2008. However, without being formally disbanded, the commission came to an end. The reasons behind the dysfunction of the commission were basically due to financial inadequacies, disagreements between the members of the commission and the presence in the commission of the commander of the notorious detention camp, Batković,[61] It was another unfortunate and unsuccessful attempt to reconcile the society. However, the third initiative was followed by a wider truth and reconciliation initiative, in the regional level.

The combination of three ethnic identities founded the basis of the truth seeking mechanism and of the Documenta Center (Zagreb), the Research and Documentation Centre (Sarajevo), and the Humanitarian Law Center (Belgrade), which decided to cooperate among each other in 2004. In the following two years, this particular cooperation left its place to a greater cooperation, which might be called a regional initiative for the former Yugoslavian countries. After a two year consultation process with regional forums held in Sarajevo, Zagreb, Belgrade, and Pristine the coalition consisted of 1500 civil society organizations and 155 people.[62] It was stated that a Regional Commission for Truth – Seeking and Truth Telling about war crimes in the former Yugoslavia (RECOM) ought to be established by the former Yugoslavian republics with the support of the United Nations and the European Union. In this sense what made RECOM different was the regional, not state-centered, aspect of the project, as well as its origins in the civil society sector in Serbia, Croatia, and Bosnia. The RECOM project can be seen different from other transitional justice mechanisms such as international or domestic trials took place in the regional level mainly because of its focus on fostering public debate and sharing testimonies regarding the past but not on individual prosecution.[63]

At this stage the initiative aimed to investigate the facts about war crimes and other violations of human rights during the time of the war, to clarify the fate of the

[61] Azra Somun, "*Report on the Transitional Justice Experience in Bosnia and Herzegovina*", International Journal of Rule of Law, Transitional Justice and Human Rights, Volume 1, December 2010, p.61.

[62] Wochnic – Jelena Obradovic, "*Ethnic Conflict and War Crimes in the Balkans – The Narratives of Denial in Post Conflict Serbia*", 2013, p.33.

[63] Jelena Subotic, *Remembrance, Public Narratives, and Obstacles to Justice Studies in Social Justice,* Vol. 7, Issue 2, 2013, p. 277.

missing persons, to create a culture of compassion and solidarity with the victims and the fulfillment of the victims' rights, to promote acceptance among political elites and the society, and to prevent the re-occurrence of war crimes and human rights violations in the future.[64] It might be argued that for a regional initiative the RECOM had an extensive approach to deal with the past. It would be better for such an initiative to have taken it step-by-step and to have moved forward in a gradual manner. Extensive definitions of duties were too great to carry out for the sides of the initiative.

It should be noted that RECOM was not an alternative to the ICTY or any other local court that took place in Bosnia and Herzegovina. The division among retributive and restorative mechanisms should not be confused. These are approaches meant not to create divisions and complain in the post-conflict societies but rather attempts to complement one another. One of the evidences illustrating how different mechanisms might work in compliance came from Marinko Jurcevic, the former Chief Prosecutor in the Prosecutor's Office in Bosnia and Herzegovina, and his support towards RECOM reported:

> The Judiciary cannot work alone and in isolation. It should not bear exclusive responsibility and burden of our dark past and it cannot be expected that our courts and Prosecutor's Office in BiH alone can solve the trauma of post-conflict society. Having in mind that only a handful of victims will take part in war crime trials, such a mechanism like RECOM could represent the main forum for victims where they could talk about their suffering. The Commission for Truth and courts could complement each other.[65]

Apart from the high expectations of RECOM, even though it was addressing whole Balkans region, it was also another initiative concluded with the failure and disappointment on the minds of society. It is an unfortunate end for such a great regional commission that there has been no political will to support RECOM further. The establishment of the truth and reconciliation commission for the war took place between 1992 and 1995. It was necessary to come together with the conflicting sides and different ethno – religious identities. However, the establishment of such

[64] Martina Fischer, "*Dealing with the Past as a Common Challenge for State Institutions and Civil Society in Bosnia and Herzegovina, Serbia and Croatia*" p.117,. Edited Book Bettina Gruber "*The Yugoslav Example – Violence, War and Difficult Ways for Peace*" German Foundation for Peace Research, 2014.

[65] Olivera Simic, "*The European Union and the Western Balkans – Time to Move Away From Retributive Justice?*" Routledge Studies in Intervention and State Building, p.198, ed. by Soeren Keil, and Zeynep Arkan, "*The EU and Member State Building – European Foreign Policy in the Western Balkans*.

commissions should be far from tokenism. Once the amount of unsuccessful truth and reconciliation commissions increased starting in the early 2000s, a loss of trust emerged among the society, therefore the door for possible future peace initiatives was closed.

Truth commissions limiting the time of work, limiting the scope of investigation and purpose clarification play important role especially after post-conflict peace building process in Bosnia and Herzegovina. If these four initiatives are compared with one another, it is not difficult to discover the main differences among the abovementioned truth commissions. The commission for Srebrenica was one of the most successful initiatives, without any doubt. What distinguished it from the others basically was that it limited the scope of the research area. Srebrenica is considerably a limited place compared to the other areas where war crimes and human rights violations took place. Additionally, it was one of the first initiatives in the post-conflict, peace-building Bosnia and Herzegovina. Tangible results as a consequence of the work done by the Srebrenica Commission were reached and the past was partly dealt with. Neither the Sarajevo Commission, nor Bijeljina were politically and socially accepted.

The main arguments against the abovementioned attempts to form the truth and reconciliation commissions came from the lack of the involvement in the process of their creation and operation and definition of their mandate of the public at large and in particular of the associations of the victims,.[66] For the multi-ethnic and multi religious political and social structure of Bosnia and Herzegovina, it was required that more specific work would have been done in terms of time and place and more than one particular ethno religious identity should have been addressed.

2.4. Whether the International Criminal Courts and Truth Commissions Work Together or Not in the Context of Post-War Bosnia and Herzegovina

It does not matter whether domestic or international but proposed accountability measures were justified in relation to two central and inter-related goals. The first one suggests responding to the suffering from past abuses and the second one refers to prevention of similar suffering from happening in the future.[67]

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[66] BIH Ministry for Human Rights and Refugees and BIH Ministry of Justice, "*Transitional Justice Strategy For Bosnia and Herzegovina 2012 – 2016*", Working Document, 2013, p.32.

[67] Lutz Ellen, "*Transitional Justice: Lessons Learned and the Road Ahead*", 2006, p.325. In Transitional Justice in Twenty-First Century: Beyond Truth versus Justice, ed. Naomi Roht-Arriaza and Javier Mariezcurrena, New York: Cambridge University Press.

In this sense maintainability of the justice plays significant role and should not be undermined. Domestic and international trials under post-war circumstances are options to establish peace after violent conflict or to solve problems related to atrocities committed by the dictators. On the other hand, the emergence of truth commissions has been on the agenda of the modern understanding of peace establishment efforts. However, it has been questioned whether these two methods of dealing with the past atrocities are compatible with one another or not.

The concerns of the international community and national state have been over international crimes, genocide, and crimes against humanity, torture, hostage taking, and apartheid, together with the atrocities committed by the past regimes. In this sense, international criminal courts have been established to punish the perpetrators of such crimes. Under these circumstances the international community has interest in the treatment of human rights violations and sees punishment before national or international courts as the best option.[68] The position and the necessity of international criminal courts should not be underestimated. However, the question here is more about whether the criminal prosecution process of international criminal courts are sufficient in order to prosecute and create suitable conditions for the establishment of peace in the country, where conflict took place in the past. Among those who care about the success of criminal tribunals, there seems to be growing acknowledgement that tribunals ought to be merged with other mechanisms in order to serve social and psychological requirements for community catharsis and the restoration of individual dignity or with the agreement of scholars which seems has not been achieved yet.[69] It is plausible to argue that mainly because of the characteristics that international criminal courts carry, there have been certain shortcomings in different places and different points in time. If the ad hoc international criminal tribunals are considered the only method to deal with past crimes and atrocities, this would be a very limited reading, and at the same time, possible future reconciliation in conflicting sides would be delayed.

There is no doubt that by looking at the past experience and examples of international criminal tribunals that are established as a result of different conflicts,

[68] John Dugard, "*Dealing With Crimes of a Past Regime. Is Amnesty Still an Option?*", Leiden Journal of International Law, 1999, p. 1002.
[69] Donald Hafner, Elizabeth King, "*Beyond Traditional Notions of Transitional Justice: How Trials, Truth Commissions, and Other Tools for Accountability Can and Should Work Together*", Boston College International and Comparative Law Review, Vol. 30, Issue 1, 2007, p. 93.

one will not reach the intended results, although there has been certain progress. To fill the gaps caused by the inadequacy of international criminal tribunals in certain areas and issues of interest theoretically, potential conflict caused by complementary roles of international tribunals, national human rights trials, and truth and reconciliation commissions need be resolved.[70] When it comes to the relationship between truth and reconciliation commissions, there are two basic outcomes. If there is coordination among international tribunals and truth and reconciliation commissions, the result of relations among these two regarding peace implementation initiatives positively affect the possibility of success in healing the conflicting parts of the society. But if the coordination and cooperation is absent, the results might create divisions in the society and not unify the conflicting sides within a certain framework. In such case, it is plausible that there will be a loss of legitimacy towards both internationally established criminal courts and truth commissions in the eye of the society, particularly of those who were victims of the atrocities or abuse of a brutal regime during war.

Apart from international criminal tribunals and truth commissions, there are also reparation and institutional reform steps to be fulfilled in the framework of transitional justice. It seems that the weight of the debates over reparation and institutional reform is distant compared to the arguments related to tribunals and truth commissions. However, reparation and institutional reform processes should also be working in coordination with the other two main pillars of transitional justice. Additionally, reparation might be considered as the last and one of the foremost outcomes of the transitional justice process once the other steps are practiced. Since transitional justice attempts to bring a variety of results including the deterrence of future human rights violations, retribution and redress for victims, there is a need for a so called "hybrid" system to use multiple mechanisms of transitional justice in order to achieve justice including the other forms of reparation, which cannot be covered by a single element of the transitional justice mechanism.[71] If these mechanisms are evaluated and examined in the context of post-conflict Bosnia and Herzegovina, it might also be seen that neither the elements of the justice

[70] Donald Hafner, Elizabeth King, "*Beyond Traditional Notions of Transitional Justice: How Trials, Truth Commissions, and Other Tools for Accountability Can and Should Work Together*", Boston College International and Comparative Law Review, Vol. 30, Issue 1, 2007, p. 93.
[71] Christian Triantaphyllis, "*Transitional Justice: Are Truth and Reconciliation Commissions Worth it?"*, Revista dos Estudantes de Direito da Universidade de Brasília, Vol. 10, 2012, p. 66.

mechanism, nor the initiatives of the truth and reconciliation commissions with institutional reform attempt to respond to the establishment of peace and reconciliation in Bosnia and Herzegovina. In today's status quo twenty years after the war took place among Bosnian Muslims, Croatian Catholics and the Serbian Orthodox population it is difficult to talk about certain success of transitional justice mechanisms. It should not be forgotten the synchronization of national courts and international tribunals become critical so that they work in tandem rather than at cross purposes.[72]

At this point, within the framework of post-conflict peace-building attempts in Bosnia and Herzegovina, the ICTY did not give its support to the creation of a truth commission in 1997. It was believed by the ICTY officials that the establishment of a truth and reconciliation commission would cause conflict in their mandate and create a dangerous parallel process. Accordingly, a second conference on truth commissions, which produced a draft of the law, did not bring expected results in 2001.[73] The ICTY was responsible for dealing with war crimes and criminals as a way of retributive justice; however the attitude of the ICTY officials towards the truth and reconciliation attempts should have been more than a diversionist approach with sharp rejection of the establishment of truth and reconciliation commissions. It is necessary to underline that the gap and insufficient coordination between the tribunal and the establishment of truth commissions in Bosnia and Herzegovina can be seen as problematic. While the role of retributive and restorative justice initiatives are clear and their possible contributions are all known by the people take place in the tribunal or truth commissions, it is unnecessary to create a competition between these two elements of transitional justice initiatives and nothing more than flogging a dead horse. International ad hoc tribunals and truth commissions should be seen as complementary elements of transitional justice.

It is obvious that inter-ethnic reconciliation and sustainable peace in Bosnia and Herzegovina cannot be achieved without the implementation of justice. It should not be forgotten that post-war justice is not only about judicial – retributive justice, aimed to punish those who have committed crimes and atrocities via fair

[72] Laurel E. Fletcher and Harvey M. Weinstein, "A world unto itself? The application of international justice in the Former Yugoslavia," in *My Neighbour, My Enemy: Justice and Community in the Aftermath of Mass Atrocity*, eds. Eric Stover and Harvey M. Weinstein, Cambridge: Cambridge University Press, 2004, p.30.

[73] Massimo Moratti, and Sabic-El-Rayess, Amra, "*Transitional Justice and DDR: The Case of Bosnia and Herzegovina*", Research Unit – International Center for Transitional Justice, p.23.

proceedings. The mechanisms bringing an end to particular conflict are both judicial and non-judicial, such as prosecution initiatives, truth-seeking processes, reparation and institutional reforms, or a combination of these tools.[74] It is, at the same time, restorative and preventive, aiming to provide redress to victims and to eliminate impunity and make sure that all people in Bosnia and Herzegovina come to terms with the past, and live in peace and security in cohesive, pluralist democratic societies.

2.5. Reparation Initiatives in Promoting Justice in the Post-War Bosnia and Herzegovina

As it was mentioned in the previous chapter, reparation consists of elements such as compensation, restitution, rehabilitation, and different forms of satisfaction of victims in the post-war, peace-building period. Every single aspect plays significant role in dealing with the past in the post-war context. In order to understand whether general reparation initiatives did work in the case of Bosnia and Herzegovina, the three pillars of reparation are going to be examined in the following paragraphs.

- **Compensation**

Compensation was taken into account by national institutions of the country, mainly because it could be costly if the number of settlements was higher for internationally established cases particularly for the Tribunal.[75] However, compensation was never obtained by victims. The main reasons behind the lack of compensation might be in that most of the responsibility belonged to state institutions, and the implementation of laws created obstacles over the issue of compensation. Although internationally established institutions have taken place in the country, it was avoided by international actors in the country to be part of the compensation process.

- **Restitution**

There is an important point that ought to be underlined in the issue of restitution. Restitution is not limited with the restitution of property but also deals with the issues such as employment, accessing health care, education, getting social rights. Unlike compensation, Tribunal was included into the process of restitution. There are certain criteria in order to realize the restitution of property and meet the conditions

[74] Commissioner for Human Rights, "*Post War Justice and Durable Peace in the Former Yugoslavia*", Issue Paper by the Council of Europe Commissioner for Human Rights, 2012, p.9.
[75] Colette Donadio, "*Gender Based Violence: Justice and Reparation in Bosnia and Herzegovina*", Mediterranean Journal of Social Sciences, Vol. 5, No. 16, 2014, p.695.

as a result of the judgment process. However, there was another obstacle before restitution of property. Both national courts and international tribunals were not always available to take place in such investigations. So, victims sometimes had to deal with the complex bureaucracy of the country. The complicated system of the country prolonged running mechanisms and caused a loss of legitimacy on the mindset of the local population. The division of the country into two, the establishment of Republika Srpska in particular, precluded restitutions to work properly. As it was mentioned in the Amnesty report declared in 2009, those who had the right to return to their places of origin faced problems of discrimination in employment, education, access to health care, and social rights mainly because they had become a minority.[76]

In order to deal with the past, the commission for Real Property Claims of Displaced Persons and Refugees was established in Bosnia and Herzegovina according to the Dayton Peace Agreement Article XI of annex 7. It was composed of nine members, three of which were appointed by the European Court of Human Rights, and the rest were composed of three ethnic identities of the country. A five-year term was issued, but later it was extended by two years.

One of the targets of the commission was to check every claim about property. The commission was also given wide-ranging powers that included unrestricted access to all property records in Bosnia and Herzegovina. To resolve property claims falling under its jurisdiction, the Bosnia Commission where vested by the authority to declare any property transfer, which was made under duress or that was otherwise made in connection with ethnic cleansing, invalid.[77] It was also given a legal authority to grant compensation in the places were property was damaged or destroyed. However, one of the shortcomings of the commission occurred at this stage, and the budget for compensation was never adequately funded.[78] Even though there were political and judicial inabilities the Bosnia Commission provided tangible results for the victims of war, and it should be underlined that this was one of the first examples where property restitution was implemented successfully in the post-conflict period of the country.

[76] Colette Donadio, "*Gender Based Violence: Justice and Reparation in Bosnia and Herzegovina*", Mediterranean Journal of Social Sciences, Vol. 5, No. 16, 2014, p.698.
[77] Julien Piacibello, "*Ad Hoc Reparation Mechanisms*", Houston Journal of International Law, Vol.35, No.1, Winter 2013, p.93.
[78] Ibid., p.95.

- **Rehabilitation**

The psychological dimension of the victims during the post-conflict, peace-building time should not be underestimated. Even though the compensation and restitution steps were not reached as expected before, rehabilitation has been the one step that was taken seriously, mostly by the NGOs in the country. As it is known, war crime victims suffer physically, psychologically, and socially. Effects are permanent, severe, and serious, and create obstacles for the future of the country, especially for the generation of war victims. Many of these people face financial problems, social exclusion, inadequate housing, and unemployment.[79]

Different projects and conferences were organized by the NGOs in order to contribute to the psychological development process of war victims, but these kinds of initiatives have been very limited, mainly due to financial inadequacies. Furthermore, there has been a fund called the ICTY Trust, which was meant to cover the process of rehabilitation and expenses, but still its portion in the cake was considerably limited, and in most cases not enough for the establishment of projects in the field. As in the most post-war societies, the rehabilitation of rape victims is one of the most problematic areas in Bosnia and Herzegovina. Since the end of the war the country economically, politically, and socially has not increased its life quality to the level of developed countries. Rehabilitation requires funds, as much as the will of the state and NGOs in the country. It is unfortunate that no funds have been granted to the country as of yet.[80]

- **Different Forms of Satisfaction**

Aside from compensation, restitution and rehabilitation, there is need for the satisfaction of the victims, which can be obtained via various symbolic methods such as apology, building monuments, and memorials.

For some, memorials serve to provoke emotional reaction and create division among conflicting sides, more than contributing to the establishment of peace in a particular place. However, the doctrine and notion of transitional justice takes symbolic forms of apology and memorials as pedagogical function in terms of the education of people and stimulation of an open and widespread social dialogue regarding the

[79] Maja Šoštarić, Perspective Series: Research Report "*War Victims and Gender-Sensitive Truth, Justice, Reparations and Non-Recurrence in Bosnia and Herzegovina*", Impunity Watch, 2012, p.55.
[80] Colette Donadio, "*Gender Based Violence: Justice and Reparation in Bosnia and Herzegovina*", Mediterranean Journal of Social Sciences, Vol. 5, No. 16, 2014, p. 699.

representation of memorials and their link to contemporary social developments, in order to establish a functioning state and social system.[81]

As in many other areas where post-conflict peace building is necessary, in Bosnia and Herzegovina also there has been various events and activities organized under this concept. It is an unfortunate result that these events have been far from being coordinated activities, and memorials have not been taken into consideration in the context and meaning of transitional justice, but rather they have become events that carry emotional characteristics. Such initiatives cause redundant and discursive controversies for the society and become tools, which greatly pave the way for manipulation and create obstacles for the peace implementation process in the country.

2.6. Institutional Reforms in Promoting Justice in the Post-War Bosnia and Herzegovina

The Dayton Peace Agreement has the constitution of Bosnia and Herzegovina as part of the peace conditions agreed upon. The division of the country into two as Federation of Bosnia and Herzegovina and Republika Srpska caused clash and disparity of different institutions at the state level. In this context, two years after the Dayton Agreement, the state had weak to almost nonexistent state institutions, and citizens were mostly denied their basic human rights while those who were responsible for war crimes and atrocities still walked freely in society.[82] In the following years, there were regulations related to the police and judiciary, and as mentioned in the justice mechanism in the early pages of the chapter, the establishment of the court at the state level created a suitable environment to make reforms in promoting justice in the post-war context. One of the most significant steps taken to move forward to contribute to the peace efforts in the country might be considered as the creation of the Transitional Justice Strategy in the country.[83] Generating such initiative was important in terms of defining the problems and shortcomings of the transitional justice strategy and creating systematic plans and

[81] Commissioner for Human Rights, "*Post War Justice and Durable Peace in the Former Yugoslavia*", Issue Paper by the Council of Europe Commissioner for Human Rights, 2012, p.17.
[82] Ana Ljubojevic, "*Quo Vadis, Bosnia*?" Future Prospective of Democracy Consolidation in Bosnia and Herzegovina, European Consortium for Political Research, March 2010, p.9.
[83] Massimo Moratti, and Sabic-El-Rayess, Amra, "*Transitional Justice and DDR: The Case of Bosnia and Herzegovina*", Research Unit – International Center for Transitional Justice, p.18.

programs for the sake of the peace process particularly in society.[84] Although there has been intention towards reforming the institutions of the state, there still are problems and obstacles to be faced. In this respect there are certain cases where budgets have been reduced; and this reduction caused loss of efficiency of the state institutions in different levels.[85] The inability of implementing decisions of judicial institutions might be seen as another obstacle to illustrate loss of efficiency in the level of state institutions. So, one of the essential points to be considered regarding the institutions in the post-war Bosnia Herzegovina is that there is need for wide political support notably from national leadership; accordingly, these institutions should have responses to give to society. Otherwise the problems of the representativeness and responsiveness of different initiatives and institutions towards the population might cause a loss of legitimacy in the long run.

In the context of institutional reforms that took place in transitional justice, there is one more issue that deserves attention. The existence of international institutions, offices, and people who are responsible for the transition period in the country were all determined by the Dayton Agreement. Any proposal, amendment or legal change related to the functioning of the state were mostly proposed by international community and the role of local political elites was mostly limited with the duty of implementing what is coming from external actors.[86] There is no doubt the society is aware of what is going on in the state, and the extraordinary externality of the international community weakens the position and power of local political elites and creates a loss of trust towards the political, economic and social mechanisms in the long run. If the restoration of confidence towards the institutions of the state in a particular time cannot be achieved, this might complicate the institutional reform process more than before.

In general, the partial success of transitional justice initiatives in the country is mainly based on following factors:

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[84] The general purpose of the *Transitional Justice Strategy* is to create an acceptable environment in order to have practical and effective mechanisms and activities through that might allow redressing injustice and heeling the traumas regarding the war, to establish confidence in institutions and to prevent re-emergence of human rights' violations and war crimes. Thereby, it can be considered as a political agreement compatible with the constitutional system of Bosnia and Herzegovina and for the protection of human rights, and expected to be understood and supported by all sides involved in the drafting process in the post-conflict peace-building agenda of the country.

[85] Commissioner for Human Rights, "*Post War Justice and Durable Peace in the Former Yugoslavia*", Issue Paper by the Council of Europe Commissioner for Human Rights, 2012, p.39.

[86] Massimo Moratti, and Sabic-El-Rayess, Amra, "*Transitional Justice and DDR: The Case of Bosnia and Herzegovina*", Research Unit – International Center for Transitional Justice, p.19.

- There has been insufficient coordination among different mechanisms over transfer and share of knowledge in addition to the organized activities and programs.
- Political, financial obstacles in the local and regional levels,
- Dominant role of international community which hinders direct participation of society and government institutions.
- The absence of strategic thinking and planning at the state level recommending an appropriate and implementable approach in establishing peace in the post-conflict peace-building framework.
- The lack of creating social awareness about significance and practice of transitional justice mechanisms.

Table: 2.1. The Genealogy of Transitional Justice Mechanisms in Bosnia and Herzegovina

	The ICTY	**Domestic Courts**	**TRCs**	**Reparations**	**Institutional Reforms**
Owner of the Process	UNSC Resolution	OHR-ICTY Federation of BiH	Local initiatives with NGOs	Limited State and NGOs	State owned
Continuity	Exists since 1993	Local Courts 2000 – War Crimes Chamber 2005	Established in the post-war process but not existing anymore	Established in the post-war process	In progress since 2012
Financial Support	Internationally supported	Limited State support	Lımıted local and international support	Semi-state and semi-NGO support	State support
Results	80 sentenced, 18 acquitted, 13 transferred, 36 terminated, 4.650 witnesses	10 transferred cases from the ICTY, 84 accused were tried in 48 cases	The establishment of Research Documentation Center, RECOM and other initiatives reached tangible results	Only limited number of people have taken some of reparation fees	The establishment of Transitional Justice Strategy from 2012 to 2016 by Ministry for Human Rights and Refugees and Ministry of Justice

Finally, it might be argued that the establishment of domestic courts in the state has had significant impact on the prosecution of war criminals. However, it should be noted that the political will behind the national courts ought to be more sustainable and permanent. The hesitation and indecisive attitude of the political will cause a loss of confidence in the society towards judicial institutions and political elites. Fact-finding and truth-seeking initiatives emerged in different points in time in the post-conflict structure. Nevertheless, the number of tangible outcomes was very limited, and far from contributing to the promotion of peace and trust among different ethnic identities in the country. It is necessary to admit that unsuccessful attempts in terms of fact-finding and truth-seeking caused loss of confidence at the level of society. Regarding the relationship between judicial and fact-finding and truth-seeking mechanisms, it might be told that there were lack of communication and problems about share of information among them. If the international tribunal with national judicial institutions and fact-finding mechanisms succeeded to work in coordination, it would have given more tangible and more profitable results.

The abovementioned inadequacies illustrate a picture where different ethno – religious identities in the country have insufficient knowledge and experience regarding the contribution of transitional justice mechanisms. Surely this is not a mistake caused by the capacity of the population, but it is rather about the shortcoming of the state administration, due to the lack of communication in presenting its policy and will towards citizens within the borders of the country.

CHAPTER 3
THE POSITION OF THE INTERNATIONAL CRIMINAL TRIBUNAL FOR FORMER YUGOSLAVIAN COUNTRIES IN THE MINDSET OF THE THREE ETHNIC IDENTITIES IN BOSNIA AND HERZEGOVINA

In theory, it is expected from war crime trials to create an aura of fairness in order to establish a public record and produce a sense of accountability by acknowledging the losses that victims have suffered and to punish the perpetrators for the harm inflicted. Trials also can create credible documents and events that acknowledge and condemn horrors.[87] The conflict that took place in Bosnia and Herzegovina can be seen as the first crisis in the aftermath of the cold war period together with the dissolution of the Soviet Union. It was also an examination for both the United Nations and the protectors of international law to see how they would have responded to the crises that occurred after the Tokyo and Nuremberg experiences.

In the midst of the war that took place in Bosnia and Herzegovina, it was almost out of control by means of ethnic cleansing, rapes of Muslim women and mass violence at the same time. Under such circumstances diplomatic initiatives seemed to falter and the leaders of ethnic groups appeared invincible. In this sense the creation of the ICTY corresponded to such factors as guilt on the part of the western nations that allowed ethnic cleansing to occur as a sop to those who could not tolerate the escalation of human right abuses but did not want to initiate military action and as a triumph of liberal thinking over those devoted to realpolitik who were concerned more with stability than with rectifying terrible wrongs.[88] The creation of the ICTY also might be seen as an action to provide the balance of power in terms of not involving the Bosnian conflict with military powers in the early times of the war. The USA headship involvement of military forces under the umbrella of the UN

[87] Miklos Biro et al, Attitudes Toward Justice and Social Reconstruction in Bosnia and Herzegovina and Croatia, in *My Neighbour, My Enemy: Justice and Community in the Aftermath of Mass Atrocity*, eds. Eric Stover and Harvey M. Weinstein, Cambridge: Cambridge University Press, 2004, p.197.
[88] Laurel E. Fletcher and Harvey M. Weinstein, "A world unto itself? The application of international justice in the Former Yugoslavia," in *My Neighbour, My Enemy: Justice and Community in the Aftermath of Mass Atrocity*, eds. Eric Stover and Harvey M. Weinstein, Cambridge: Cambridge University Press, 2004, p.35.

would possibly increase the tension not at regional level, but also at the level of the international environment.

On the other hand, by the international community, it was expected from the tribunal to create an objective historical record of the war, and the architects of the tribunal also hoped the court would create an engendering contrition among the supporters of war criminals.[89] By doing so, the possibility of the acceptance of the tribunal by victims would be easier to reach. But the practice regarding the approval of the tribunal was not as successful as its establishment. The lack of political will particularly at the local level caused the tribunal's struggle to establish its legitimacy by the three ethnic identities in the country and to respond that accusation that the ICTY was a fig leaf created by international community to hide its sins and mistakes in the post-Soviet process.

3.1. The Creation and Purpose of the ICTY

The conflict took place in Bosnia and Herzegovina did have an international dimension. In the aftermath of dissolution of Soviet Union, different ethnic identities living under Soviet rule, started to declare their independence one by one. Bosnia and Herzegovina declared its independence in November 1991. However Serb population living in the borders of Bosnia and Herzegovina declared that they would act together with Serbia and Montenegro and did not recognize independence of Bosnia and Herzegovina. In January 1992 Serb population in the Bosnia and Herzegovina declared war against people who did not belong to the same ethnic identity; it was the inception point of Europe's second bloodiest war after the Second World War.

Ad hoc tribunals were established as a result of large scale human rights violations and violations of international humanitarian law, and there are few examples of such tribunals in the history of international relations. In this context, the war that took place between 1992 and 1995 in Bosnia and Herzegovina contained the elements of mass killings, massive, organized and systematic detention and the other crimes that violated humanitarian international law. In the UN Security Council Resolution 827 – 1993 it was agreed to establish an ad hoc tribunal to bring justice to the war crimes committed from 1992 to 1995 in the former Yugoslavian countries. It was also noted in the Resolution text, in the particular circumstances of the former

[89] Laurel E. Fletcher and Harvey M. Weinstein, "A world unto itself? The application of international justice in the Former Yugoslavia," in *My Neighbour, My Enemy: Justice and Community in the Aftermath of Mass Atrocity*, eds. Eric Stover and Harvey M. Weinstein, Cambridge: Cambridge University Press, 2004, p.37.

Yugoslavia, the establishment as an ad hoc measure by the Council of an international tribunal and the prosecution of persons responsible for serious violations of international humanitarian law would enable this aim to be achieved and would contribute to the restoration and maintenance of peace.[90]

The establishment of the ICTY was a milestone for history and the future of the people of the region in terms of judging the responsible people from flagrant violations of international humanitarian law, to execute issues such as reports of mass killings, massive, organized and systematic detention and the rape of women, and the continuance of the practice of "ethnic cleansing", including the acquisition and the holding of territory particularly crimes committed in the borders of Bosnia and Herzegovina. The UN Security Council's establishment of the ICTY can be seen as a precedent-setting decision[91] and together with the foundation of an ad hoc tribunal in the aftermath of Nuremberg and Tokyo Trials following World War II, the international community tried to provide support for the victims of the region as a result of the delayed intervention to the mass atrocities in the country. The creation of the tribunal was also crucial in terms of holding leaders accountable. The development of international law where national courts did not function properly and corrupted by political issues, strengthening the rule of law with the support given to the national courts particularly was essential in providing justice in Bosnia and Herzegovina.

3.2. The Tribunal's Outreach Programme

Even though the tribunal was established, it was difficult for tribunal to work properly mainly because of political and social inabilities in Bosnia and Herzegovina particularly in the early times of its establishment. The existence of an ad hoc tribunal was necessary for the members of different ethnic groups in order to prosecute war criminals who were responsible from various types of atrocities in the time of the war. In its early days the ICTY was likely to work in accordance with international legal standards but its connection and relations between people of the region was limited. In order to get legitimacy and increase the popularity of the ICTY there was need to introduce its working areas in the field by sharing the outcome gathered as a result of its overall working process.

[90] United Nations, S/RES/827, 1993, http://www.icty.org/x/file/Legal%20Library/Statute/statute_827_1993_en.pdf (accessed July 7, 2015)
[91] David Hoogenboom, Stephanie Vieille, Rebuilding Social Fabric in Failed States: Examining Transitional Justice in Bosnia, 2008, p.11.

In this sense, the Outreach Programme was introduced in 1999 by the ICTY President Justice Gabrielle Kirk McDonald, to change the prejudgments about the work of the ICTY and to prevent hostile misinformation about the court at the regional level.[92] One of the former deputy prosecutors of the ICTY, David Tolbert, points out, "…it was much more about… trying to combat the bad reputation the [Tribunal] had in parts of that region. The court was being politicized and attacked in the media, and was not well understood in the countries where it was supposed to have an impact."[93] In regards to the ICTYs wider mandate of contributing to the restoration and maintenance of peace through procuring justice, the Outreach disseminates judicially established facts, which deters denial and revisionism. Throughout the region, this has bolstered a general consensus on the importance of ending impunity, and local courts are processing war criminals with increasing efficiency through the facilitation of expertise-sharing. The Outreach has shown effort to support NGOs with complimentary mandates in order to strengthen civil society, and has worked with local youth to make sure that future generations can learn from the past to better stabilize the future.

Strengthening the position of the ICTY was a significant step to move forward the effectiveness of its works particularly at the level of the society. Accordingly, organizing conferences, seminars, and visits for audiences coming from former Yugoslavian countries were three of the main pillars of the Outreach Programme to create a ground at the level of society from bottom up. In addition, creating opportunity to communicate at different levels such as victims and their families, legal professionals, government representatives, researchers, students, and journalists was important in terms of the contribution of restoration and the maintenance of peace in the region, mainly because it is directly about how ordinary people in the region perceive the work of the ICTY.[94] In doing so, the ICTY was considered as a lecture, which has to be studied by different segments of the society irrespective of religion, gender and age. Before the Outreach Programme initiative was introduced, surprisingly, documents in the tribunal were not even translated into

[92] UNICRI, ICTY Manuel on Developed Practices, 2009, p.193.
[93] Mue Njonjo, Policy Brief: *Enhancing the Societal Impact of International Criminal Tribunals*, Impunity Watch, Knowledge-sharing Programme, 2015, p.4.
[94] Janine Natalya Clark, "*International War Crimes Tribunals and the Challenge of Outreach",* International Criminal Law Review 9, 2009, p.102.

local languages such as Bosnian, Croatian and Serbian, and these documents were not allowed to be broadcasted on the Internet.[95]

There is no doubt that the Outreach Programme was a part of and for the sake of the prosecution process. It was aimed that once the ICTY came to be better known, the trust towards the ICTY prosecution processes, prosecutors and judges at the level of society whether they belong to the same ethnic identity or not, would have increased positively. Recognizing that cooperation with the civil society has great importance in the concept of the Outreach Programme, the role of local NGO initiatives should not be underestimated, and creating a public discourse for the continuation of Outreach efforts should be followed according to the demand of the society.[96]

When it comes to the certain shortcomings in the context of the Outreach Programme, it might be considered that there is low level of collaboration or very weak communication among the media, both in visual and printed media, and NGOs. A limited level of cooperation and communication caused a lack of trust in, and support for, the ICTY at the level of society that was composed of three different ethnic identities. The abovementioned problems related to the Outreach Programme considerably reduce the ICTYs longer-term social impact and its possible contribution to reconciliation.[97] Unless the Outreach Programme establishes a clear understanding of the establishment purpose and the work of the ICTY in the borders of Bosnia and Herzegovina, it will not be more than a dream to talk about its achievements and successes both in short and long term processes.

The contributions of the ICTY Outreach Programme can be evaluated on the extent to which it has achieved programme goals. Regarding the basic goal of Outreach, the provision of information and the level of success is based on the amount of public information activities the Outreach Programme conducts or information material it has distributed. In this sense, the Outreach Programme might be seen as partly successful at distributing information about the ICTY in a ubiquitous and in a reachable manner with publications available also in local

[95] Janine Natalya Clark, "*International War Crimes Tribunals and the Challenge of Outreach",* International Criminal Law Review 9, 2009, p.101.
[96] Kristen Cibelli and Tamy Guberek, *Justice Unknown, Justice Unsatisfied?, Bosnian NGOs Speak about the International Criminal Tribunal for the Former Yugoslavia*, Education and Public Inquiry and International Citizenship at Tufts University, 2012, p.21.
[97] Jonathan Sisson, *Dealing with the Past in Post-Conflict Societies: Ten Years after the Peace Accords in Guatemala and Bosnia – Herzegovina,* Swisspeace Annual Conference, 2007, p.62.

languages. From the inception of the Outreach Programme, sixteen years have passed and it is obvious that the work of the ICTY is more known among the local population then before. Additionally, the goal of the Outreach Programme is not to defend the institution at all costs. It is rather that the Programme strives to accurately inform the region about the goals and work of the Tribunal and provide any resources available to help further peace and stability. While progress towards these goals requires much effort and it is difficult to measure at times, the Outreach may continue pursuing these ends throughout the remainder of the ICTY's mandate.

Overall, it should be taken into consideration that the Outreach Programme was necessary to make ICTY efforts visible. People belong to the different ethnic identities do not question the role of the ICTY any longer. However, people in Sarajevo, Mostar, and Banja Luka started to question the position of the ICTY in both political and legal manners, and most of the arguments are determined mainly by the decisions taken by the tribunal, and dissatisfaction regarding the longevity of the prosecution process, the foreground judgement of so-called big fishes such as Ratko Mladic, Radovan Karadzic, Vojislav Šešelj, Slobodan Milosevic rather than the other instigators and war criminals.

3.3. Key Challenges and Expectations from the ICTY

Since the ICTY has been one of the most significant tools of retributive justice, there have been ongoing discussions about the establishment, purpose, function, limits, and longevity of its existence and lastly, but not less importantly, the decisions taken by the court are also among the main targets of the three ethnic identities, Bosnian Muslims, Croats, and Serbs. In order to construct a clear understanding about the concept and the position of the ICTY, it would be better to bring into light some of the main arguments and perceptions of few thinkers and scholars.

Major negative perceptions from the eyes of the victims can be listed as follows: Length of time for compensation, prolonged implementation date, lack of progress, false sense of hope, anger for victims and their families, and serious shortcomings in the running of the ICTY since its establishment.[98] It should be underlined that not all the negative aspects arise because of the structure of the

[98] Corene Rathgeber, "*Truth and Reconciliation in Bosnia and Herzegovina"*, Katholieke Universiteit Leuven, Belgium, 2000, p.22.

ICTY, but rather there have been problematic issues based on its way of functioning considering its relations and reckoning with the intended population.

In the previous chapter, there was a discussion related to relationship between the domestic court of Bosnia and Herzegovina and the internationally established tribunal the ICTY. In the part where ICTY is examined, it is necessary to mention few other troubles at both judicial and political levels. The ICTY's "Completion Strategy" aimed to transfer some of the middle level cases to the local courts, specifically to the War Crimes Chamber of the State Court of Bosnia and Herzegovina in order to decrease the burden of the ICTY and to include them into the judicial process in the aftermath of the war.[99] However, there are more cases to be processed than have been transferred by the ICTY and most importantly local courts are not capable to fulfill necessary judicial processes. It is not just about inability of local courts of Bosnia and Herzegovina, but also about lack of cooperation with the ICTY.

The international and local NGOs, believed that the War Crimes Chamber in Bosnia and Herzegovina was a Project based on short term planning and the aim was to affect the quickest and cheapest possible withdrawal of the international community, especially from the ICTY.[100] Under such circumstances, it is obvious that the local judicial system in Bosnia and Herzegovina is not capable to respond to several challenges and obstacles without the political support coming from the head of the state and without financial and judicial support coming from the international community.

The ICTY also has been criticized and questioned by victims and their family members concerning the issue of delivering justice to victims. It should be underlined that the main issue related to delivering justice to victims is the dissatisfaction towards the ICTY sentences of war criminals. Interestingly, the dissatisfaction of the sentences is not limited to only one ethnic identity. On the one hand, there is a dissatisfaction from the Bosnian Muslims over the seventeen years of sentence of the ICTY regarding Darko Mrda who was a member of the so-called "intervention squad", in a special Bosnian Serb police unit, about his crimes

[99] Jonathan Sisson, *Dealing with the Past in Post-Conflict Societies: Ten Years after the Peace Accords in Guatemala and Bosnia – Herzegovina*, Swisspeace Annual Conference 2007, p.63.
[100] Amnesty International: *Bosnia and Herzegovina: Shelving Justice — War Crimes Prosecutions in Paralysis*, 2003, p.2.

committed in the Keraterm concentration camp in Prijedor.[101] On the other hand, a senior commander of Bosnian Muslim forces in parts of eastern Bosnia and Herzegovina Naser Oric was released by the decision of the tribunal after his several years in prison. His release was also harshly criticized regarding his release even though he has been known as a war criminal.[102] Hence, the decisions given by the tribunal will always be open to discussion mainly because of the double-edged sword characteristic of the issue.

One of the main arguments related to the ICTY has been over its geographical position. In first sense, it might be understandable not to establish the tribunal in the area of catastrophe, however in the following stage, after the Dayton Peace Agreement was signed by three ethnic identities, the geographical position of the tribunal could be better to re-consider. Additionally, even though there had been serious steps over the issue of language of archives and other related legal documents with the Outreach Programme, the information and facts concerning the tribunal were only accessible in English and French, the two working languages of the tribunal. No records were available in local Slavic languages, and as a result of this, the local population could not understand the tribunal's work even if they had access to it. Together with the language barrier, the verdicts of the tribunal were not communicated in lay-man terms and so even if the transcripts had been available in local languages, any person with no prior knowledge of the juridical terms would struggle to understand it.[103] The abovementioned problems and barriers created a distance and caused a gap between the victims and the tribunal, particularly in the long run.

The issue of victims' contributions to the justice process cannot be ignored, but the tribunal has been criticized also about the issue of the marginalization of the victims' needs especially after testifying at the ICTY.[104] There are certain accusations coming from victims, their families, and witnesses related to the issues of their security in their hometowns and the lack of communication in the following period after testifying at the tribunal. As it is discussed by Eric Stover that the War

[101] Janine Natalya Clark, *Judging the ICTY: has it achieved its objectives?*, Southeast European and Black Sea Studies Vol. 9, Nos. 1–2, March–June 2009, p.130
[102] Ibid. p.131.
[103] Diane Orentlicher, *That Someone Guilty Be Punished: The Impact of the ICTY in Bosnia.* Open Society Justice Initiative, 2010, p.102.
[104] Janine Natalya Clark, Judging the ICTY: has it achieved its objectives?, *Southeast European and Black Sea Studies* Vol. 9, Nos. 1–2, March–June 2009, p.129.

Crimes Trials can be "healing" for victims and witnesses is further undermined by the sense of abandonment many of the ICTY witnesses felt once they had returned to their towns and villages.[105] While victims, their families and witnesses might have a say about the attitude of the ICTY towards them, it is also not much fair to expect more from the tribunal other than fulfilling the basic requirements of the legal prosecution process.

Iranian thinker and scholar of International Law, Akhavan Payam, argues that ICTY and equal tribunals contributed to peace building and carried out criminal accountability in post-conflict societies. Additionally, internationally established institutions have helped marginalize nationalist political leaders and extremist elements that were parts of ethnic war and genocide, to discourage vengeance by victim groups. In the case of Bosnia Herzegovina, the work of the ICTY has dramatically changed the civic landscape and permitted the ascendancy of more moderate political forces backing the multiethnic coexistence and nonviolent democratic process.[106] In his argument, there are three points to be discussed. In the first of his claims, he might be considered as quite right about the implementation of justice for war criminals and ICTY's contribution to the retributive justice where national retributive justice instruments have been less effective compared to the ICTY. On the other hand, it is difficult to talk about the ICTY's marginalization effect of nationalist political leaders. Throughout the end of the war, in every single election campaign and results of the elections have illustrated that the nationalist discourse used by political party leaders is far from being moderate and inclusive. Additionally, discourage vengeance by victim groups should not be directly explained as a result of the ICTYs success, but rather it is a combination of different factors including the impact of the ICTY. The same is also valid in the argument of the creation of the civic landscape and ascendancy of more moderate political forces together with nonviolent democratic process. The turning point that brought an end to the violent conflict was not the establishment of the ICTY, but it was granted with the Dayton Peace Agreement signed in 1995. Therefore, the issue is now about the normalization of the relations among the three ethnic identities in the country and the reconciliation among them as a result of the normalization process.

[105] Eric Stover, *The Witnesses: War crimes and the promise of justice in The Hague.* Philadelphia: University of Pennsylvania Press, 2007, p.132.
[106] Payam Akhavan, *"Can International Criminal Justice Prevent Future Atrocities?",* American Journal of International Law, Vol. 95, Issue 1, 2001, p.9.

There are also discussions that ascribe a meaning to the tribunals more than the judgment of responsible people from war crimes and crimes against humanity. This perspective illustrates that the tribunal justice should never be limited and regarded as panacea for communities divided by genocide and ethnic cleansing. Mark Osiel, professor at Iowa Law School, who has studied the Argentina military trials of the late 1980s, envisions trials in the aftermath of large-scale brutality as a transformative opportunity in the lives of individuals and societies.[107] This argument mainly focuses on how the tribunal should function rather than on what is the primary aim of the tribunal.

There is a reality, which should not be forgotten. Expectations for the ICTY run high. In the United Nations Security Council there has been too much focus on regarding the issue of necessity to punish guilty of war crimes to bring justice to the victims of war. Gathering information about the past to prevent possible future atrocities via truth and reconciliation commissions plays significant role.[108] The first and foremost aim of the ICTY was the prosecution of persons responsible for serious violations. For the sake of healing in the level of society among three ethno religious identities, individualization of guilt plays a broader role and has great importance. In this sense, Kerr argues that justice, through courts such as the ICTY, might contribute to peace by attributing individual criminal accountability. Therefore, instead of considering all groups as former aggressors, the individualization of guilt explicitly identifies those responsible for atrocities.[109] The role of the ICTY in creating the individualization of guilt instead of accusing all members of one particular ethnic identity should not be underestimated as means to normalize relations among the members of the three ethnic groups.

3.4. The Relationship between Reconciliation and the ICTY

Considering the abovementioned discussion points about the ICTY there is one that shapes and questions history and the future of the tribunal at the same time. The ICTY as one of the most prominent tools of retributive justice, its relevance to the issue of reconciliation has been shaping the discussions in both internal and

[107] Eric Stover, Witnesses and the Promise of Justice in the Hague, in *My Neighbour, My Enemy: Justice and Community in the Aftermath of Mass Atrocity*, eds. Eric Stover and Harvey M. Weinstein, Cambridge: Cambridge University Press, 2004, p.115.
[108] Laurel E. Fletcher and Harvey M. Weinstein, "*A world unto itself? The application of international justice in the Former Yugoslavia*," in *My Neighbour, My Enemy: Justice and Community in the Aftermath of Mass Atrocity*, eds. Eric Stover and Harvey M. Weinstein, Cambridge: Cambridge University Press, 2004, p.36.
[109] Rachel Kerr, European Security, 2005, Vol. 14, Issue 3, p.322.

international levels. There are different views in the framework of the relationship between justice and reconciliation. By taking into account other examples such as the International Criminal Tribunal for Rwanda, established in 1994 that was charged with promoting reconciliation[110] unlike the ICTY where there was no specific attention to the promotion of better relations between formerly sides at war.[111] However the tribunals' connection with the reconciliation issue has always been in the statements of the heads of the ICTY. For example, in his annual report to the Security Council in 1994, the tribunal's first President Antonia Cassese, mentioned the position of the tribunal as being far from a vehicle of revenge. The tribunal is a tool for reconciliation and restoring true peace. Even though it was not specifically stated in the related UN Resolution, even the first President of the ICTY made clear the focus of its probable contribution to the implementation of peace in the region. On the other hand, the promoter of the Outreach Programme, Kirk McDonald, argued that the ICTY was created to help in efforts to bring peace, justice and reconciliation to the Balkans, while he was addressing the NATO Parliamentary Assembly in 2007.[112] These were the people responsible for the state of affairs in the ICTY and they knew well how they should have acted to balance relations with the decision-makers at the international level and at the level of the society at the same time. In addition to their contribution to the area of discussion, Richard Goldstone who was one of the former Prosecutors at the ICTY gave special attention to the close relationship between peace and justice hand in hand and took justice as an indispensable element of the process of national reconciliation.[113] Yet the discussions over justice have been going around in the framework of reconciliation. It is difficult to talk about certain outcomes whether the tribunal has contributed to the healing and peace among members of different ethnic identities or not.

[110] It is stated in the UN Security Council Resolution 955/1994 that "UNSC is convinced that in the particular circumstances of Rwanda, the prosecution of persons responsible for serious violations of international humanitarian law would enable this aim to be achieved and would contribute to the process of national reconciliation and to the restoration and maintenance of peace."

[111] James Meernik and Jose Raul Guerrero, Can international criminal justice advance ethnic reconciliation? The ICTY and ethnic relations in Bosnia-Herzegovina, Southeast European and Black Sea Studies, 2014 Vol. 14, No. 3, p.387.

[112] Janine Natalya Clark, *Judging the ICTY: has it achieved its objectives?*, Southeast European and Black Sea Studies Vol. 9, Nos. 1–2, March–June 2009, p.133.

[113] Dejan Guzina and Branka Marijan, *Local Uses of International Criminal Justice in Bosnia-Herzegovina: Transcending Divisions or Building Parallel Worlds?*, Studies in Social Justice Volume 7, Issue 2, p.246.

It should be noted that the suggestion related to the issue of reconciliation is not limited to the people who originated from the ICTY; thereby it is necessary to focus on views at the level of the society as well. For example, in her research, Orentlicher found that both from Serbia and Bosnia, people who support the ICTY, place considerable weight on the role they believe to be an impartial legal reckoning that can play in the fostering of a long-term reconciliation, even if in the short term it can have negative effects on stabilization.[114] It should be underlined that while there are also opposite views, even to the existence of an international tribunal in the region by members of three ethnic identities, it is difficult to put the reconciliation argument into the discourse followed by the society. Therefore it is significant to question whether the ICTY would be able to establish peace through reconciliation, but at the same time it is more important to determine whether the citizens of Bosnia and Herzegovina would accept it or not. Additionally, it would be a limited reading to link the reconciliation only to the existence of the ICTY. There are three pillars to succeed the reconciliation irrespective of the place and time. If the following pillars did not exist, it would not be more than a dream to expect that ICTY contributed to the reconciliation among the members of the three ethnic identities in the country. The pillars are as follows:

- Readiness to accept the presence of the members of the opposing ethnic identities in eight different situations (stores, parks, sporting events, sport teams, concerts, parties, schools, offices and non-governmental organizations).
- Readiness to be reconciled with the conflicted ethnic identities.
- Readiness to accept interstate cooperation.[115]

Nevertheless the relationship between the tribunal and reconciliation should be evaluated within the framework of who the people who link these two terms are [116] and what they mean by reconciliation. Additionally the cost of running is still not clear. It is clear that the tribunal's establishment purpose is incompatible and different from what the internal and international society has been facing. The

[114] Diane F. Orentlicher, *Shrinking the Space for Denial The Impact of the ICTY in Serbia*, Open Society Institute, 2008, p.21.
[115] Miklos Biro et al, Attitudes Toward Justice and Social Reconstruction in Bosnia and Herzegovina and Croatia, in *My Neighbour, My Enemy: Justice and Community in the Aftermath of Mass Atrocity*, eds. Eric Stover and Harvey M. Weinstein, Cambridge: Cambridge University Press, 2004, p.197.
[116] Klaus Bachmann, Sparrow-Botero, Thomas, Lambertz, Peter. *When Justice Meets Politics: Independence and Autonomy of Ad Hoc International Criminal Tribunals, Politicizing Tribunals?* Reconciliation in Sentencing and Judging at the ICTR and the ICTY, 2013, p 339.

healing of war traumas or reconciliation between ethnic groups following a violent conflict is a long term process, and it is difficult to expect its implementation by any single institution on behalf of the people in the region of former Yugoslavia. However, considering the statements of former heads and prosecutors at the Tribunal, its work might represent a contribution to the process of reconciliation in Bosnia and Herzegovina by establishing facts about the war crimes in the country. Through its trials and judgments as well as the exhibits it collected over the years, the tribunal has contributed to reaching certain findings about the wars in Bosnia and Herzegovina. However, still, it is difficult to expect the establishment of these facts that might represent a platform for the three ethnic identities in Bosnia and Herzegovina to take a step forward towards a common understanding of the joint and recent past, acknowledging the pain and suffering of people on all sides of the wars, instead of declaring one ethnic group an exclusive victim or a winner over another side of the war.

In the formulation of Valery Rosoux, there are three pillars of reconciliation that consist of structural, socio-psychological, and spiritual levels. After the Dayton Peace agreement was signed among the parties at war, it was necessary to establish mutually accepted structural and institutional mechanisms in order to have a working state structure and to reduce further disagreements among sides. In this sense the structural approach which particularly deals with the interests and the issues at stake, whereas the socio-psychological, and spiritual levels concentrating on the relationships between the parties. When adversaries live together in one single state as in the case of Bosnia and Herzegovina, structural measures mainly concern institutional reforms with the purpose of integrating all the groups in a democratic system, restoring human and civil rights, and implementing a fair redistribution of wealth.[117] The relationship between structural items such as the ICTY and trauma healing in Bosnia and Herzegovina is the issue to be examined. The main reason the ICTY is taken into account in the framework of the structural level derives from its weight not only at the judicial level but also in the other parts of the state particularly at the level of the society. Additionally, in an environment where most of the transitional justice mechanisms were not able to respond to problems in the country, the ICTY came into prominence as one of the most continuous internationally

[117] Valerie Rosoux, "*Is Reconciliation Negotiable*?", International Negotiation, 2013, p.476.

established institutions with the contribution of the Outreach Programme that started in 1999.

In this sense the status quo of the establishment of the tribunal plays significant role. Comparing the ICTY to the South African peace implementation process, in South Africa it is aimed to achieve the healing and restoration of all concerned, but the victims in the first place and offenders, their families and even the larger community.[118] Therefore it might be said that the foremost purpose of this initiative was not to punish offenders in the first run but rather to reintegrate them into the society, thus to repair damaged social ties in the country. While the Bosnian case largely differs from the South African example in terms of the structure of the conflict, the first and foremost aim of the ICTY was the prosecution of persons responsible for serious violations of international humanitarian law. However in the following process, the tribunal undertook the responsibility of healing the parties at war at the societal level. It is plausible to call the initiatives regarding healing at the level of the society a stepchild of the ICTY, and there have been serious problems faced during the upbringing process.

It should be examined whether abovementioned discussions are groundless or not. Expectations from the ICTY from different segments of the society such as the diplomats, the members of media, and the supporters of the tribunal sought to expand legal mandate of the tribunal beyond the goal of prosecuting alleged perpetrators of war crimes. From various segments of the society it is desired the court would achieve larger, more ill-defined and unrealistic objectives of promoting reconciliation among the groups at war. These aspirations raise the provocative question of whether tribunals can promote reconciliation.[119] Whilst most of the fact finding and truth seeking mechanisms and initiatives together with the reparation initiatives in promoting justice in the post-war Bosnia and Herzegovina were not successfully implemented and most of them at national and regional level did not function as they were planned. These failures dramatically caused higher expectations of people from the one and only functioning tool which is the ICTY. In short it might be said that the views on the relationship between the ICTY and

[118] Valerie Rosoux, *Human Rights and the 'Work of Memory' in International Relations*, Journal of Human Rights, Vol. 3, No. 2, 2004, p.165.
[119] Laurel E. Fletcher and Harvey M. Weinstein, "*A world unto itself? The application of international justice in the Former Yugoslavia*," In *My Neighbour, My Enemy: Justice and Community in the Aftermath of Mass Atrocity*, ed. by Eric Stover and Harvey M. Weinstein, Cambridge: Cambridge University Press, 2004, p.30.

reconciliation between different ethnic groups have been divided as the views on the time of the war.

From now on the argument related to the court will be moved to the relationship between the ICTY and the mindset of the members of three ethnic identities in order to determine what kind of impact it has at the level of the society. To observe if there is contradiction among the ICTY and mindset of members of three ethnic identities is going to be seen and it will be tested whether the ICTY contribute to justice, peace and reconciliation at the level of society or not. This issue is going to be studied over the discussions of the newspapers published in Sarajevo by Bosnian Muslims, in Mostar by Croats, and in Banja Luka, which is the capital city of Republika Srpska, and a newspaper published by the Serbs. In this sense there are three main pillars of the study to examine. The first one is about how justice – judicial decisions, arrests are taken into account by the newspapers that belong to the three ethnic identities. In the second step, I will look at how the relationship between peace and the ICTY is seen by the newspapers that belong to the three ethnic groups, and third, the position of the ICTY that exists as a product of the international order. The methodology will consist of critical discourse analysis.

In order to explore the positions of the ICTY and trauma healing and what kind of impact they have on the level of the society, I will use critical discourse analysis as methodology (CDA), based on Norman Fairclough's theories, by taking into consideration three newspapers that belong to the three different ethnic identities in Bosnia and Herzegovina. There will be three points of analysis in the news published related to the ICTY. In the first step the concept of justice by means of judicial decisions regarding the capture of war criminals responsible for mass atrocities and violations of humanitarian international law given in the ICTY will be taken into account with a retrospective perspective to discover how the three ethnic identities approach and stand over the issue. In the second step, the issue of peace is going to be studied from a prospective perspective to see how the three ethnic identities stand regarding the future peace process in the country in the framework of the ICTY. In the third stage, the position of the ICTY will be evaluated with the role of international order.

CDA seeks to have an effect on social practice and social relationships, particularly on disempowerment, dominance, prejudice and/or discrimination. It might involve more immediate situational contexts, and the wider context of

institutional practices the event is embedded within the framework of the society and culture.[120]

Discourse analysis is interpretative and explanatory. Critical discourse analysis implies a systematic methodology and a relationship between the text and its social conditions, ideologies and power relations.[121]When it comes to the Fairclough approach to CDA, it might be stated that three dimensions in his methodology consisting of analysis of the text based on worldview of the producer of the text, followed by analysis of the text's interaction value, which is built on earlier discourses produced by one person or a group. In this step it is important to combine what was told, referred to approved, or rejected before defining a significant role. In the final stage, called contextual analysis, it is important to analyze the point that the producer of the text makes and compares to the others in society.

Fairclough's model of CDA suggests a more understandable and easier methodology than any other in the area. In order to understand what the discourse is and how it works, the analysis needs to focus on the function of text and the way that this text relates to the way it is produced and consumed in relation to the wider society where it takes place.

However, before making analysis with the CDA technique, it would be better to share the position of the media in theory and practice particularly in societies that violent conflict took place. Mass media has great significance on the three different stages of the conflicts. Mass media is able to escalate or de-escalate conflicts before it turns to violence. As a second stage, during the time of the conflict, mass media might drive conflict to the end of violence or instigate to the greater losses. Either might help to the normalization of relations and establishment of peace or postpone peace initiatives in the post-conflict peace-building agenda.[122] As in this dissertation the tendency of different newspapers and magazines are going to be analyzed it is necessary to focus on the theoretical background of journalism in both pre and post-conflict circumstances.

In order to draw a definite picture about the history and future of the journalism in Bosnia and Herzegovina, it is useful to refer Galtung's point of view about the journalism during the times of the conflicts. There are two significant

[120] John Richardson and Joseph Burridge, *Analysing Media Discourses*, 2011, p.48.
[121] Fang Yu, *Theory and Practice in Language Studies*, Vol. 1, No. 7, 2011, p.875.
[122] Andrew Puddephatt, "*Voices of War: Conflict and the Role of the Media*", International Media Support, 2006, p.4.

approaches called as "war journalism" and "peace journalism". Regarding the war journalism it might be said that it deepens discrepancies between sides of the conflict and gloats evil while suffers victims. The language adopted in the war journalism is based on victimization and demonization. According to this approach, blame and responsibility are assigned almost exclusively to the demonized side, and violence to crush the supposed evil is depicted as understandable, legitimate, or even morally correct. 'Their' gain is often depicted as 'our' loss and vice versa in a competitive zero-sum game.[123] While peace journalism seeks usually to change journalistic practices that too stringently control and limit access to the media and too narrowly define information that is worthy of broad dissemination. Hence the originality of peace journalism is based on its focus over rights to communicate and to receive information regardless of race, ethnicity, class, gender, or nationality. It is necessary to underline that peace journalism unlike war journalism pursues a win-win strategy and rejects simplistic binaries such as good/evil and right/wrong.[124] Additionally, war or peace journalism should not be limited with the period that war takes place. As it was mentioned above in both pre-war and post-war context, journalism might rapid normalization process and establishment of the peace but it might also postpone and extend post-conflict peace-building process.

The media organizations and published or broadcasted products of the media in Bosnia and Herzegovina have been profoundly affected by ethnocentrism, political clientelism, the withdrawal of international donors, and the financial crisis. Thereby, it might be said that country's march towards digitization has been protracted and uneven.[125] It should not be forgotten that the main source of problems in today's mass media formation in Bosnia and Herzegovina comes from ethnic, religious and identical divisions that occurred in the post-conflict process in both state and societal levels.

When it comes to the main characteristics of the newspapers published in the borders of Bosnia and Herzegovina, there are certain features to focus on regarding their relations with the ethnic identities in the country. Dnevni List belongs to the Croatian entity in Bosnia and Herzegovina and its head office is in Mostar and it is

[123] Vladimir Bratic, Susan Dente Ross and Hyeonjin Kang-Graham, "*Bosnia's Open Broadcast Network: A Brief but Illustrative Foray into Peace Journalism Practice*", Global Media Journal, 2008, p.3.
[124] Ibid. p.4.
[125] Amer Dzihana, Kristina Cendic and Meliha Tahmaz, "*Mapping Digital Media: Bosnia and Herzegovina*", Open Society Foundations, 2012, p.6.

one of the most popular ones.[126] Its founder and owner is Croatian businessman Miroslav Rašić and the newspapers mainly address to the Croatian entity and the basic problems in the country.

Nezavisne Novine belongs to the Serbian entity in Republika Srpska publishing its news in the Serbian language; its head office takes place in Banja Luka.[127] Its founder is Željko Kopanja and it uses a moderate language compared to other newspapers such as Glas Srpske which is published by the same company and in Latin, not in Cyrillic script.

Dani belongs to the Bosnian Muslim entity and it is a weekly political journal and not a newspaper.[128] It is published by the company of Oslobođenje, which is a daily newspaper established in 1945.

3.5. The Issue of Justice

In the framework of arguments on justice, it is necessary to know that for the first time since the end of World War II, with the establishment of the ICTY, it became possible to try individuals accused of the most egregious violations of international humanitarian law which means, almost for a half century, no international mechanism had existed to hold perpetrators of war crimes criminally accountable for their deeds.[129] This is the main reason why the issue of justice was chosen as a way of evaluating the position of the ICTY in this thesis. The assurance of justice is highly related to the events that took place in the past. It contains the evaluation criteria of the retrospective perspective. In this sense, judicial decisions regarding the capture of war criminals responsible for mass atrocities and the violations of humanitarian international law given in the ICTY will be studied. To shape the issue of justice it would be better first to be aware of the reality that the meaning of justice might differ from one to another considering the standing point to the approach. The connotation of justice might be different for victims, academicians, human rights activists and world leaders, and all those who are involved in the decision-making positions.

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[126] Mehmet Ugur Ekinci, "*Bosna-Hersek Siyasetini Anlama Kılavuzu"*, SETA, 2014, p. 105.
[127] Ibid. p. 104.
[128] Ibid. p. 106.
[129] Laurel E. Fletcher and Harvey M. Weinstein, "*A world unto itself? The application of international justice in the Former Yugoslavia*," in *My Neighbour, My Enemy: Justice and Community in the Aftermath of Mass Atrocity*, ed. by Eric Stover and Harvey M. Weinstein, Cambridge: Cambridge University Press, 2004, p.31.

Parallel with the position of the ICTY from a victim's point of view, it might be argued that full justice is more than criminal trials, such as capturing and trying all war criminals, locating and identifying the bodies of the missing, returning stolen property, leading lives devoid of fear, securing meaningful jobs, providing children with good schools, and helping those traumatized by atrocities recover.[130] Therefore justice should be thought in a broader sense and not in the sense it was identified in the UN Security Council resolution mainly seen in the news published in the newspapers that contain different perceptions towards the understanding of justice in the ICTY.

At this point, it would be better to make a comparison between other internationally established courts or tribunals such as the ICTR and courts that took place in South Africa in the aftermath of mass atrocities. In the case of Rwanda, the government formally requested from the UN to create a tribunal to prosecute responsible people for the 1994 genocide. In November 1994, the Security Council adopted Resolution 955 creating the ICTR that was charged with bringing justice to those responsible for genocide and other systematic, widespread and flagrant violations of international humanitarian law and with contributing to the process of national reconciliation and to the restoration and maintenance of peace.[131] The first trial did not begin until 1997 but gradually in the following years the number of tried people increased. ICTR aimed to prosecute chief organizers of the genocide, while the Rwandan judicial system as a local offer and solution to deal with the remaining cases called as *Gacaca* carried on the process.[132] On the other hand, in the case of South Africa in the aftermath of the violence, the Truth and Reconciliation Commission (TRC), which should be seen as a court, had the aim of not punishing offenders, but the process was based on the implementation of stronger social ties in the country. Although there are structural similarities between ICTY – ICTR and the TRC in South Africa, the way and methodology that was followed to provide justice has shown sharp differences.

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[130] Eric Stover, Witnesses and the Promise of Justice in the Hague, p.115, In *My Neighbour, My Enemy: Justice and Community in the Aftermath of Mass Atrocity*, eds. Eric Stover and Harvey M. Weinstein, Cambridge: Cambridge University Press, 2004.

[131] United Nations S/RES/955,1994, http://www.un.org/ga/search/view_doc.asp?symbol=S/RES/955(1994) (accessed October 29, 2015)

[132] Timothy Longman, *Justice at the Grassroots? Gacaca Trials in Rwanda*, p. 208. In *My Neighbour, My Enemy: Justice and Community in the Aftermath of Mass Atrocity*, eds. Eric Stover and Harvey M. Weinstein, Cambridge: Cambridge University Press, 2004.

3.5.1. News Published Regarding the Issue of Justice

- **Dnevni List**[133]

18.01.2005, Hague tribunal sentenced former Bosnian Serb officer Vidoje Blagojevic to eighteen and Dragan Jokic to nine years in prison for participation in the mass murder of Bosniak prisoners in Srebrenica in the summer of 1995, reports the ICTY. Trial Chamber Chairman Judge Liu Daqun argued that Bosnian Serb forces committed the Srebrenica genocide against the Muslim population, since the enclave was attacked with the intent to destroy in part the permanent forcible removal.

27.10.2010, Hague tribunal chief prosecutor Serge Brammertz said Ratko Mladic played a critical moment in the search for the Hague, who should be arrested as soon as possible, because time is running out and the ICTY is going to work until closing. "It's time the ICTY expires, so if we want Mladic to be tried before the Hague tribunal, his immediate arrest is of paramount importance," said Brammertz for the International Herald Tribune.

07.12.2010, The headline is “Punish helpers of Ratko Mladic and Goran Hadzic”. The main prosecutor of the ICTY, Serge Brammertz, gave his speech to the Security Council of the UN, "Serbia holds the key to the arrest of Ratko Mladic and Goran Hadzic," and that the authority in Belgrade has to do more than it is. In his regular report Brammertz focused on the issue of "failure of Serbia to arrest" Mladic and Hadzic, stressing that the Serbian authorities must "overcome the gap" between expressed willingness to arrest fugitives.

19.05.2011, The Appeals Chamber of the Hague Tribunal issued a decision according to which funds are granted for the payment of the defense of Vojislav Seselj. On the basis of these decisions, the defense of Vojislav Seselj, the former president of the Serbian Radical Party, could get hundreds of thousands of euros. The second instance the ICTY rejected the appeal of the registry and supported the stance of the panel of Seselj, who is on trial for crimes committed in Bosnia, Croatia and Serbia.

16.04.2011, The ICTY found two Croatian generals Ante Gotovina and Mladen Markac guilty and sentenced to twenty-four and eighteen years in prison for participating in a joint criminal enterprise whose purpose was during and after

[133] The entire news taking place in the dissertation taken from http://www.infobiro.ba/ website which has been collecting newspaper archives published in Bosnia and Herzegovina.

Operation Storm forcibly and permanently removes the Serb population from the occupied territories in Croatia. General Ivan Cermak was acquitted of responsibility and ordered Cermank's immediate release.

23.07.2011, The last fugitive Goran Hadzic arrived yesterday in the Hague tribunal where he will be in the years ahead to stand trial for crimes against humanity and war crimes committed against Croats in Eastern Slavonia in 1991 and 1992. Hadzic was transferred to The Hague by plane the Government of the Republic of Serbia and the Serbian Minister of Justice Snezana Malovic said after extradition to the act of leaving Hadzic terminating the most difficult chapter in Serbia's cooperation with The Hague tribunal.

19.08.2011, There were rumors that the Hague indictee Ratko Mladic was transferred to a Dutch hospital Bronovo, where doctors operated on his hernia, however, the Hague tribunal denies allegations. Mladic's lawyer Milos Saljic says Mladic was operated on due to hernia and he feels better. He says, after surgery the family that will see him next week. On the other hand, ICTY denied allegations about Mladic.

13.04.2013, A recent judgment of the Appeals Chamber of the ICTY canceled the first instance judgment Croatian general Ante Gotovina and Mladen Markac, about claims they committed joint criminal enterprise. Released judgment which confirmed that the Croatian generals Ante Gotovina and Mladen Markac were not found guilty and the armed forces did not organize criminal action with the aim of expelling Serbian civilians to Croatia. Serbs in Bosnia and Herzegovina did not commit ethnic cleansing, that the struggle of our veterans.

30.05.2013, The headline is "Shocking." The decision about Prlic and others is determined as one hundred and eleven years in prison, The Hague: Bosnia and Herzegovina was supposed to join Croatia. Cold shower from The Hague - Jadranko Prlic, Bruno Stojic, Slobodan Praljak, Milo's Petkovic, Valentin Coric and Berislav Pusic were convicted of first instance verdict, the Hague tribunal to a total of 111 years in prison and the Trial Chamber, by majority, chaired by Jean-Claude Antonetti decided that there was a joint criminal enterprise headed by Franjo Tudjman, who had "the ultimate goal of establishing a Croatian entity within the borders of the Croatian Banovina from 1939.

22.03.2014, The headline is "The genocide committed by Serbia or was committed in the name of Serbia." The head of the Croatian legal team Vesna Crnić-

Grotić said that “There was genocide in Croatia committed in the name of Serbia by Serbs and reminded that Serbia has failed to condemn or punish any senior military officers or politicians responsible for war crimes against Croats.” Croatia asked the International Court of Justice (ICJ) to condemn Serbia for genocide against Croats during the war from 1992 to 1995, and asked from Belgrade to punish the perpetrators of crimes and fulfill the requirements of reparations for the victims.

10.04.2014, Former Chief of General Staff of the HVO General Slobodan Praljak, who is the first-instance verdict of the Hague Tribunal was sentenced to twenty years in prison, and apparently, he will remain to defend himself during the appeal process. In fact, it is the decision of the Appeals Chamber left without access to a lawyer ex official, who also rejected his request that the appeal process stops until getting results of the judgment.

30.01.2015, The headline is “The life detention order was given to Popovic and Beari for genocide in Srebrenica.” Officers of the Army of Republica Srpska, Vujadin Popovic and Ljubisa Beari were sentenced to the life imprisonment for genocide against Bosniaks in Srebrenica by the ICTY. It is the first final judgment about Army of Republica Srpska officers for genocide in the history of the ICTY. So far, the general Army of Republica Srpska Radisav Krstic sentenced to thirty-five years in prison for helping and abetting genocide in Srebrenica.

31.03.2015, The headline is “I'm not going to the Hague, let me catch!” Seselj stated that “the prosecutor's appeal is not based on valid legal motives, and under these circumstances it will not be easy for them to catch me.”

01.04.2015, According to the former spokeswoman of the Hague Florence Hartmann “The ICTY does not give justice to the victims and the tribunal is responsible from this circus.” Hartmann also accused the Hague tribunal of being circus by addressing to the case of "Seselj". According to her “The tribunal’s request from Seselj regarding his re-extradition puts Serbia in an awkward situation.”

Considering the news published by Croatian Dnevni List newspaper, at different points in time about the issue of justice it might be said that Dnevni List illustrates a picture that shows: yes there were crimes, and some of the people from Croatia are guilty, but there are people more guilty than them such as Serbian generals and political leaders during the time of war. There are claims regarding Serbia did not fulfill their role to give war criminals and created obstacles for the prosecution process in Hague. Additionally, there are comments regarding the

decisions of the ICTY that the punishments are not fair and there has never been an intention about the establishment of Greater Croatia during the time of the war. Therefore, in the concept of justice, it is difficult to talk about the satisfaction of the Croats from the decisions of the ICTY, but it seems that for Croatian newspapers the issue of justice in the ICTY should protect further the rights of the Croats, since they are unhappy with the decisions taken by the tribunal. Justice from their perspective should be more protective for their own sake, since it is believed that Croatians were not attacking but rather they were protecting themselves from the attacks of other ethnic identities.

- **Nezavisne Novine**

04.06.2003, Croatian Supreme Court tomorrow will decide on the appeal Hague indictee Ivica Rajic to the decision of the Zagreb County Court on his extradition to the ICTY, Hina reported. Session pentagonal Judicial Council, which will decide on the appeal of Rajićeva, will be open to the public and this will be announced on the website of the Supreme Court. If the Supreme Court confirms the decision of the Zagreb County Court, no longer will there be any legal obstacles for Rajic's extradition to the ICTY.

22.10.2003, Following the trial of former Serbian President and the Federal Republic of Yugoslavia Slobodan Milosevic before the ICTY, a protected witness B-1122 yesterday stated that the former JNA gave logistic support to paramilitary houses in the municipality of Gacko, in eastern Herzegovina, in 1992. The witness said the paramilitary unit "White Eagles" occurred in Gacko in March 1992 and was stationed in the barracks in Avtovac, near the city.

03.12.2003, US Defense Secretary Donald Rumsfeld said in Brussels that the US forces in Bosnia and Herzegovina helped the action of the Stabilization Force (SFOR) transfer to the ICTY the persons indicted for war crimes. Radovan Karadzic and Ratko Mladic, Rumsfeld said that SFOR had already initiated action "crackdown on criminal networks" that allows the remaining list of Hague regarding the accused, of war crimes.

04.12.2003, The verdict in the case against Stanislav Galic will be held before the Trial Chamber tomorrow, the ICTY announced that Galic is charged on the basis of individual criminal responsibility and criminal liability, in particular for crimes against humanity and violations of the laws or customs of war. The indictment was

issued on 26 March 1999, but was sealed by 20 December of that year when Galic arrested by SFOR.

24.03.2004, Berislav Pusic, who in 1992 was an officer of the Military Police of the Croatian Defence Council, and later the head of the Commissions of the HVO for the exchange of prisoners, the sixth Croatian defendants for war crimes in Bosnia and Herzegovina, on trial at the ICTY. The Croatian press stated particularly Pušic was the only one who could be surprised by the indictment, because the media already announced several times that the former commanders of the Main Staff of the HVO, General Slobodan Praljak and Milivoj Petkovic will soon be indicted at the ICTY.

30.12.2004, Republika Srpska Defense Minister Milovan Stankovic while resigning said yesterday in Banjaluka that the information is not true that General Ratko Mladic was on the payroll of the Army of Republika Srpska, and that the allegations that he was in a military facility in Han Pijesak was "the product of someone's imagination." He told reporters that the MoD is preparing a report which will present all the facts about payment to General Mladic and other suspects, on the list of the Hague Tribunal.

05.03.2005, The Hague tribunal on Thursday and Friday held discussions on the transfer of the trial of Zeljko Mejakic in and three other Bosnian Serbs, during which the Prosecutor's Office assessed the conditions for referral in the case to Justice BiH, while the defense counsel and a representative of Serbia and Montenegro opposed. Prosecution of the ICTY suggested that the case be referred to Bosnia and Herzegovina, on the territory that crime was committed.

13.11.2005, Prosecution of the Hague Tribunal filed a proposed amended indictment against the former commander of the Bosnian Army Rasim Delic, in addition to the existing charges of war crimes Mujahedin against Croats and Serbs in central Bosnia, charged with crimes the Bosnian Army against Croats in Herzegovina and Bugojno 1993. The proposed amended indictment Delic additionally charged with violation of the laws or customs of murder and cruel treatment, which are members of the Army of Bosnia and Herzegovina committed crimes against humanity.

07.12.2005, The Chief Prosecutor of the ICTY, Carla del Ponte wants to have a retrial 45-year-old General Tihomir Blaskic, former commander of the Croatian forces in central Bosnia, said in documents released on Tuesday. Once it was the first

instance court sentenced on March 3, 2000 to 45 years in prison, Blaskic was after the appeal hearing on 29 July 2004, the sentence was reduced to nine years in prison.

29.12.2005, Serbian President Boris Tadic said that the reports of intelligence that he receives there is nothing which would have led to hide even that close to the solution of problems of the former Bosnian Serb army commander and accused war criminal, General Ratko Mladic. "The case Mladic is the most difficult problem and solution of the case is a precondition to solve the other," he told Radio-Television Serbia (RTS). He said he believes that the Serbian government is doing all it can, pointing out that he had already done a great job.

11.08.2006, The headline is "Bosnia needs justice." Without justice there cannot be trust in the rule of law, there can be no acceptance of the loss suffered by the families and friends of the victims of all nationalities and without justice there is great danger that the whole nation flag collective guilt. The pain of losing loved ones of those who survived the mothers, fathers, wives, husbands and children can never be underestimated. I gave up his political career in Germany because I believed that the fight for justice in Bosnia and Herzegovina is more important than anything that I could achieve at home. I still believe in it, and for that belief I give my best and as High Representative and as EU Special Representative, because justice is critical to the future of this country, its three constituent peoples and all its citizens. Therefore, without justice we cannot believe in the rule of law.

04.04.2008, The headline is "Only the Serbs and Croats are on trial." The judiciary, the courts and prosecutor's offices in Bosnia and Herzegovina do not work properly, and the second issue is about these cases in those courts are behaving selectively to the principle of nationality, rated by Association "Croatia Libertas". The mail claim is Croats and Serbs causes of action and aggression, but not Bosniaks.

13.08.2009, The headline is "Tolimir complained about violence." Zdravko Tolimir, former deputy commander for intelligence and security of the Main Staff of the Serbian Army (VRS), accused the administration of the detention unit of the ICTY to use physical force against him during the identification of the end of July 2009. "I was invited to talk to the warden of the detention unit, where I found a number of people and technical appliances. They demanded from me fingerprints, but I refused to give them and it is followed by physical force.

13.02.2009, The headline is “Santic’s early release.” President of the ICTY has approved the early release of a former commander of the military police of HVO Vladimir Santic sentenced to eighteen years in prison for participation in the massacre in Ahmici. "This week, the tribunal president Vladimir Santic Ovdobrio request to reduce the sentence," the Nerma Jelacic, spokesperson for the ICTY stating that Judge Patrick Lipton Robinson is decided his release.

24.10.2009, The headline is “Protests at the start of Karadzic's trial.” Umbrella Organization of Bosnia and Herzegovina working in Netherlands, "The Platform of Citizens of Bosnia and Herzegovina" invited citizens of Bosnia and Herzegovina living in the country to join a peaceful demonstration in front of the Tribunal on the occasion of the start of the trial of Radovan Karadzic. The Association "BiH Citizens Platform" in the Netherlands has pointed out that de demonstrations held just before the start and after the end of the first session, and in the meantime follow the de-trial in the building across from the Tribunal.

01.12.2009, The headline is “The witness were not seem to the Court.” Robert Alexander Franken, former Commander of the Dutch battalion, who in July 1995 was in Srebrenica, did not appear at the tribunal in The Hague, where he was supposed to testify via video link against Radomir Vukovic and Zoran Tomic, former members of the Second Special Police Squad Sekovicl Vukovic and Tomic are charged with the murder of more than a thousand of Bosniaks in the Agricultural Cooperative "Kravica". A judge of the International Criminal Tribunal for the former Yugoslavia, said that witness Franken failed to appear at the ICTY.

Considering the news published by Serbian Nezavisne Novine newspaper, in different points of the time about the issue of justice it might be said that the ICTY is seen as an institution only works for accusing members of Serbian community as responsible for war crimes and crimes against humanity. The discourse used in the published news shows that politicians and army members in the time of the war should not be seen as only attackers, therefore there are more defense based arguments took place in the columns of the newspaper Nezavisne Novine. Taking into consideration theoretical discussions regarding the issue of justice, it might be seen that also for Serbian population the issue of justice changes from one ethnic identity to another. For Nezavisne Novine it is justice to release or decrease the number of years in prison of a Serbian commander or a politician during the time of the war, but at the same time, prison sentence of a Bosniak or a Croat given by the

ICTY look like a sign of assurance of justice. The decay of war crimes and crimes against humanity mainly because of non-existence of witnesses might also mean assurance of justice in the name of Nezavisne Novine which belongs to the Serbian ethnic identity.

- **Dani**

03.08.2007, The headline is "Serbia is not innocent." Six months after the communication of the judgment do not reduce the fierce debate about it. It seems that no one is satisfied; neither professional nor the public, at least the anti-war community in the ex-Yu region. The victims are also dissatisfied. Milanovic one of the victims said: I am, indeed, very sorry about it. But I have to say that this is mainly due to dissatisfaction with the essential misunderstanding of the judgment. This judgment is in the public, and the Bosnian and Serbian, understood as the judicial abolition of Serbia since its participation in the war in Bosnia and Herzegovina.

19.06.2009, After it turned out that the ICTY judges without legal basis adopted for the conservation of Belgrade documents among which are the key evidence of the Serbian-Montenegrin aggression on Bosnia and Herzegovina and committed genocide, the decision is revoked. Then the appeal of Serbia and Montenegro again returned. Its decision the Tribunal's judges are marked to protect confidentiality, which means that the disclosure would lead to rigorous legal sanctions

30.10.2009, The headline is "Karadzic's trial will prove the responsibility of Belgrade." There is a book regarding the events took place in the war, prepared by Ewa Tabeau. The book is a collection of reports of experts of the Hague Tribunal on demographic losses in the wars in the former Yugoslavia from 1991 to 1999. When it is asked about importance of the reports, Tabeau said that "this is a very important material and it needs to be accessible to a wider audience. I worked with demographic experts and highly appreciate their contribution to the study of demographic consequences of the wars in Croatia, Bosnia-Herzegovina."

10.09.2010, The headline is "Karadzic wants his indictment to be trimmed." Optimistic announcements of the Tribunal that the trial of Radovan Karadzic - which prove the most serious war crimes and genocide and the responsibility of the political leadership of the Republic of Serbian and Serbia for what has happened in the last war in Bosnia and Herzegovina - to be completed in two years, were completely wrong. Additionally, not only is too little time to carry out an abundance of evidence

and testify against the former first man of the RS, but also because of the beginning of the process Karadzic Hague courtroom into a theater.

28.10.2011, The headline is "There is no true justice for the victims." One of the most monstrous criminals from Foca Dragan Zelenovic was sentenced by The Hague Tribunal to fifteen years in prison for the rape of Bosniak women in Foca in 1992, which they had kept in forced captivity, tortured and humiliated in ways that normal human mind cannot comprehend. Now that freak, having served five years imprisonment, asked the court to be released on temporary release. Patrick Robinson, President of the ICTY, rejected Zelenovic's request.

30.12.2011, The Hague tribunal is certainly one of the most successful since its inception: arrests of Ratko Mladic and Goran Hadzic, the last two Hague fugitives, pronounced the verdict Momcilo Perisic Chief of the Yugoslav Army, which is due to the war in Bosnia and Croatia, was sentenced to 27 years in prison, detained the end of the longest trial of Jadranko Prlic and others, were sentenced Croatian generals Ante Gotovina and others. The beginning of 2011 was marked by the presentation of closing arguments at the trial of Jadranko Prlic, Bruno Stojic, Slobodan Praljak, Milivoj Petkovic, Valentin Coric and Berislav Pusic in the so far longest Hague proceedings that lasted more than 450 days. The defendants are charged that they were members of the criminal enterprise through which it was made political and military subjugation, permanently remove and ethnically cleanse Bosnian Muslims and other non-Croats who lived in areas on the territory

07.06.2013, The headline is "Has the ICTY came to the dark places of international law?" The Trial Chamber of the Hague Tribunal by a majority vote, with the dissenting opinion of Judge Michele Picard, acquitted of all charges Jovica Stanisic and Franko Simatovic. The prosecution tried to prove that Stanisic and Simatovic participated in a joint criminal enterprise aimed at the forcible permanent removal of the majority of non-Serbs from large areas of the so-called. SAO Krajina, Slavonia, Baranja and Western Srem in Croatia and municipalities of Bijeljina, Bosanski Samac, Doboj, Sanski Most, Zvornik and Trnovo

23.08.2013, Mr. Brammertz, in his address at the inauguration of the Residual Mechanism for International Criminal Tribunals, you said that the ICTY risks to undermine his own achievement if justice is not understood by the victims, communities in the region and the international community, citing as the cause of this controversial decision of the ICTY. When he was asked whether there were any

reactions to his words he told that I received many positive comments from the Tribunal that shares my concern in this regard as the victim or the public.

27.12.2013, The shock of the verdict by which Momcilo Perisic was acquitted of responsibility for the war, or war crimes in Bosnia, is somewhat mitigated by the conviction Jadranko Prlic and Herzegovinian group. But the existence of justice was no longer than twenty four hours once Jovica Stanisic and Franko Simatovic were released. It was decided that there were organized, trained, armed criminals and there were armed forces sent to Bosnia and Herzegovina paramilitaries to commit war crimes. The judges of the ICTY had ruled: Croatia in Bosnia and Herzegovina was the aggressor, but not Serbia.

13.06.2014, for years, victims of crime protests and seeks an answer to the question: why the ICTY automatically convicted war criminals are released after two-thirds of the sentence served? Dario Kordic was sentenced to twenty five years served in Austria, where the legal system provides that after half a criminal serving his sentence may be released. Kordic was asking for, but it was the ICTY refused, because adopted paragraph Tribunal to let the criminals, but after two-thirds of the time served.

Considering the news published by Bosniak Dani political magazine, in different points of the time about the issue of justice it might be said that again dissatisfaction of the tribunal decisions over war criminals from both Croatian and Serbian but at the same time there is unhappiness over decisions given by the Tribunal regarding Bosnian Muslims who were seen responsible from violations of international humanitarian law mainly because of they were found too much comparing to the other ethnic groups war criminals. There is also unhappiness about the ICTY view of Serbia and Montenegro was not the main aggressor in the war. However, it should be said that arrests of big names such as Radovan Karadzic, Ratko Mladic show how Bosniak population in the country was hungry to assurance of justice. The arrests of big names created an environment that the ICTY is on the right path. Once Bosniaks faced tangible actions and results the legitimacy of the decisions taken into the tribunal becomes more significant. However, as it was mentioned in the discussion of the justice which might differ from one to another again exist at this point. The longevity of the prosecution process, the releases of the criminals after two thirds of the sentence serve and changes in the given decisions

look like still cause wobble view of Bosniaks towards understanding of justice of the ICTY.

3.6. The Issue of Peace

It should not be undermined that in today's social and political structure, possible contributions of the tribunal would be limited. The lack of cooperation between the ICTY and social or political institutional mechanisms in the country created a gap among members of the society. Accordingly, the tribunal's public image has suffered and its legitimacy has been compromised. This loss of credibility suggests that without links between the ICTY and the process of national reconstruction these trials might become nothing more than a theoretical exercise in developing international humanitarian law.[134] Synchronization of the interconnected institutions together with sharing responsibilities of restorative elements might draw a more positive future agenda in the establishment and maintainability of peace in the country. From such discussions e.g. those on whether the ICTY can contribute to the peace or whether the ICTY should spend its effort to establish peace in the country, it can be inferred that there has been strong connection between peace and the ICTY. Even though it is difficult to talk about certain and concrete outcomes and contributions of the ICTY to peace thus far, ICTY's experience of peace should be evaluated according to how it is perceived at the level of the three ethnic identities concerned.

When it comes to the Rwandan example it might be said that there were two warring sides, the Hutu and Tutsi. The establishment of peace was not only limited to the contributions of the ICTR. There was an alternative, a local solution, even though it produced certain shortcomings. The existence of a system together with political will to solve the conflict had positive impact on the peace process in the country. Regarding the Rwandan case it is necessary to note that many Rwandans have felt that the ability of the court to contribute to reconciliation was limited, since activity of Rwandans was removed from the general population they focus on each perpetrators rather than social processes, there is little role for victims in the court process and there is no attempt to bring restitution to those who suffered.[135] On the

[134] Laurel E. Fletcher and Harvey M. Weinstein, "A world unto itself? The application of international justice in the Former Yugoslavia," in *My Neighbour, My Enemy: Justice and Community in the Aftermath of Mass Atrocity*, eds. Eric Stover and Harvey M. Weinstein, Cambridge: Cambridge University Press, 2004, p.30.
[135] Timothy Longman, Justice at the Grassroots? Gacaca Trials in Rwanda, p. 206.

other hand, the South African TRC paid special attention to the peace implementation process, achieving the healing and restoration of all concerned, victims in the first place but also offenders with larger community. One might discuss about three approaches offering different solutions regarding the issue of peace, but it is more important to discover in this sense how the relationship between the ICTY and peace was perceived by the three different ethnic identities. In the Bosnian case peace does not only depend on normalizing the relations of different ethnic groups, as there is also a struggle for state and nation building together with reconciliation attempts.

News Published Regarding the Issue of Peace

- **Dnevni List**

04.12.2010, The United Nations will address the film Angelina Jolie in a way to make this a coveted, no matter what the famous Hollywood actress their goodwill ambassador. Movies that illustrate how people suffered during the time of the war in Bosnia and Herzegovina, through artistic catharsis, focusing on unending suffer of women victims of war, which often remain forgotten in the margins of current social developments. Thus, the content of the movie of Angelina Jolie is something outside of her job. It's not something that has to do with its responsibility about the United Nations, told Deutsche Welle UN representative in New York, Farhan Haq. From what is known about it in America, it is of course on the use of artistic freedom to

27.01.2011, Repairing relations between Serbian and Croatian is encouraging for Bosnia and Herzegovina, said Tadic, adding that Serbia is for the sovereignty and territorial integrity of Bosnia and Herzegovina. Serbian President Boris Tadic said before the representatives of the Parliamentary Assembly of the Council of Europe in Strasbourg that the relations in the region of Southeast Europe's best in twenty years. Relation to BiH stressed that bilateral relation between the Croatian and Serbian on the rise despite the different positions about the war 1991 to 1995. "I would like to draw your attention to the bilateral relations between Serbia and Croatian. They are improving, despite deep differences among each other.

10.06.2013, Croatia will continue to strongly support the right of all those who fled to return to their pre-war homes, and this is particularly true of the Croats expelled from the country who were in the country" said the president of the Croatian Parliament Josip Leko at the start of his three-day visit our country in the framework of participation in the international summit "Peace and Reconciliation:

the Way Forward". Leko visited the Prijedor area and met with the spiritual and political representatives of the region as well.

12.07.2013, After serving a religious ceremony, the coffins with the remains of four hundred and nine victims of the Srebrenica genocide at the hands of the participants were transferred and buried in the Potocari cemetery. Most of the victims buried beside their loved ones who are buried here in earlier years. There was indescribable sadness in Srebrenica yesterday, according to estimates by the organizers, gathered about twenty thousand people. During the burial, also excavated tombs were mostly women, which is one of the reflections of the demographic picture of Srebrenica after the genocide committed by the army.

21.07.2013, The headline is "Justice and reconciliation are too long waiting in the Balkans." More than twenty-year after the first war in connection with the dissolution of Yugoslavia problems occurred in the region. 12,200 people of the still missing, 423,000 refugees and displaced people still cannot return to their homes, some 20,000 people are still stateless or at risk of becoming, at least 20,000 women who were subjected to sexual violence in the war. All this, coupled with impunity for war crimes, hinders reconciliation and jeopardizes after war process at the same time.

03.04.2015, The headline is "Serbia must not offend the feelings of people in Croatia!" The withdrawal of Croatia's ambassador from Serbia in response to the war crimes indictee Vojislav Seselj's burnt of a Croatian flag in Belgrade, Interior Minister of Croatia told that "Serbia must respect the decision of the Hague Tribunal and should not go against the feelings of the people in Croatia." The Hague war crimes indictee Vojislav Seselj declared in an interview published by the Sarajevo weekly Dani, and threatened to come to Croatia "armed and on a tank", and reaffirmed and that he does not have an intention to voluntarily return to custody in the Netherlands regardless the decision of the Appeals Chamber of the ICTY.

Considering the news published by Croatian Dnevni List newspaper, in different points of the time about the issue of peace it might be said that the establishment of peace process was frozen in the post-war schedule in the country. The Srebrenica Genocide takes its place as an important element and should be evaluated in the context of normalization of relations among conflicting sides as a crime against humanity and international law and Croats are in for Bosniaks in the issue of genocide. However peace on the side of Croats does have its limits. On one hand while Croats supporting the right of Croatian population who fled to return to

their pre-war homes. On the other hand Angelina Jolie's initiative as a goodwill ambassador was not welcomed by the entity by claiming its one sided content. Therefore, it should be argued that one sided peace building perspective did not contribute establishment of sustainable relations among conflicting sides.

- **Nezavisne Novine**

27.11.2004, We want tangible results but not empty promises anymore from the Government of Republika Srpska. Serbian Government has shown no willingness to cooperate in order for the accused war criminals were brought to justice in The Hague, said Douglas McElhaney, US Ambassador of Bosnia and Herzegovina. McElhaney was commenting on possible sanctions against the authorities in Banja Luka, and said no matter what, he wants to see results in the direction of cooperation between the RS Hague so that they could analyze. "But I have not seen the results. I saw a lot of commotion, the RS Government officials say Belgrade, there were a lot of statements and the MUP

02.02.2005, The headline is "Medžida Kreso asked for support from the Hague Tribunal." Research and Documentation Center (RDC) in Sarajevo provides full support for the President of the Court Medžida Kreso and support states its arguments in a letter sent to the President of the International Criminal Court in The Hague, Theodor Meron. "Our support is a result of contacts with victims and their associations through which they expressed their concern and rejected the possibility that the crimes committed on the territory of Bosnia and Herzegovina on trial in neighboring countries.

19.02.2006, When the number was announced about 95,000 injured civilians and soldiers during the war in Bosnia and Herzegovina, it was very difficult to accept and it was also necessary to make a trustful research on it. These numbers manipulated the war victims and their families for years. Despite these attacks, Tokaca remained calm. Bosnia and Herzegovina might be seen as victim only ethnic respects. Victims are engaged in a decade and a half, and is expected that this can make a good estimate. Good assessment was also his expectation that there will be an outcry when publish the results of their research.

21.12.2009, The headline is "The postmodern demonization of Serbs." In my recent article titled with "Enough", where I mentioned some well-established and dirty attacks against Serbs in these post-modern times, and who do not have the essential foundation, were expected exhausting the barren rhetoric without real

arguments. It does not exempt the Serbs of the crimes committed. In the war: there was a struggle for territory on ethnic and religious grounds, and there were materially strengthened large quantities of weapons and staff of the former JNA.

06.05.2011, According to Inzko problems in Bosnia and Herzegovina, wrong doings of Republika Srpska and two HDZ, while Bosniak politicians are not mentioned in a negative context. Special Report of the High Representative Valentin Inzko to the Security Council (UNSC) of the UN it is made to the UNU received support for reconfiguration of BH through amendment of Annex 4 of the Dayton Peace Agreement, which is the Constitution of Bosnia and Herzegovina. It is noted that Inzko wants to take advantage of preparing the Republika Srpska referendum as proof that the Republika Srpska against the Dayton Peace Agreement, and that it is necessary to make a radical change in the Bosnia and Herzegovina constitution.

13.09.2013, The headline is "Ivo Andric, is a theorist of genocide?" Last month Rusmir Mahmutćehajić published an article in the American magazine "East European Politics & Societies" and accused Ivo Andrić of being aesthetics of genocide". It is difficult to describe and understand the title of the article. However constructing arguments against Bosnian Serbs over Andric is an unacceptable act and creates obstacle about the future of ethnic identities.

10.03.2014, Lawyers of Republica Srpska admitted in the International Criminal Tribunal for Former Yugoslavian Countries that there were serious crimes against Croats but there was no planned genocidal attempt against Croats and it should be known that Serbia is not responsible from these crimes. Serbia began to respond crimes committed during the time of the war from 1991 to 1995. There were 12.500 people suffered from different types of crimes and 1.500 religious buildings were destroyed. Investigation about 865 missing people is still going on. Serbian legal expert Obradovic concluded his statements by saying that "we do not have problems with Croatian people or state of Croatia itself but what we do not accepts is about Croatian nationalism. The rigid behavior of the Croatian government and false claims against Serbian side are the points that we cannot agree on. We are against extreme nationalism wherever it comes from even from Serbian side."

29.06.2015, The headline is "What happened in Srebrenica was a mass murder but not genocide." One of the most important scholars of the holocaust and genocide studies Yehuda Bauer admits that what happened in Srebrenica was a mass crime and it is impossible to prove that there was an intention to destroy all the Bosniaks as an

ethnic identity. If there was such an intention to make an ethnic cleansing, it should be written in the formal documents. My position towards the issue is objective one and it is necessary to know that there were mass killings from all sides, so one cannot say that Srebrenica was the only mass murder committed during the time of war between 1992 and 1995.

14.07.2015, The headline is "Srebrenica was not genocide." An American born Israeli historian Efraim Zuroff emphasized that "I do not deny that Serbian forces killed Muslims in Srebrenica which was not supposed to happen and these people should be brought to justice, however what happened in Srebrenica was not genocide. If the Serbian forces released women and children to leave, it should not be called genocide, but rather should be called politics. Even the President of the United States Clinton refused to call the event took place in Srebrenica as genocide but chose to call many lost their lives."

Considering the news published by the Serbian based newspaper Nezavisne Novine, in different points of time regarding the issue of peace, it might be said that if peace is going to be established, the attitude towards the Serbian entity in the post-war context should be evaluated once more, and reconsidering Serbs as they were not the attackers. The main motivators behind the Serbian point of view regarding the issue of peace might be seen as one sided. It is believed that despite provocations against the Serbian entity, it keeps itself calm and postmodern demonization of Serbian population together with groundless attacks on their community is not welcomed. It is also believed that Bosniak politicians are not considered or even mentioned in a negative context, while Serbian politicians are experiencing harsh criticisms. On the other hand, to normalize relations, academics and authors might play the role of moderator among conflicting sides. However, there has been no limit and no stop to creating newly produced arguments even about teachers of literature. Ivo Andric who is a Serbian novel writer was accused of being theorist of genocide by a Bosniak writer, and this jeopardized relations rather than creating a peaceful environment. These realities do harm and create obstacles in the establishment of peace according to the news published in the Banja Luka centered Serbian newspaper.

- Dani

30.07.2005, The headline is "The tribunal wants concrete action." The ICTY wants to see concrete action, and accused of war crimes in The Hague, said a

representative of the Office of the ICTY in BiH Matias Hellman, commenting call Ljiljana Zelen Karadzic's wife Radovan to surrender. Hellman reiterated that the commitment of local authorities to find, arrest and transfer to The Hague accused of war crimes, and that the tribunal will not close its doors before the trial of Radovan Karadzic, Ratko Mladic and other Croatian Generals.

23.03.2005, Advisor Carla del Ponte said that the Prosecution satisfied "positive developments", but that he could not talk about Serbia's cooperation because it does not extradite "persons whom everyone knows where" Another sixteen ICTY indictee free, Serbian authorities have not arrested Lukic, Pavkovic and Tolimir, although they know where they are.

22.09.2005, The tribunal in Bosnia and Herzegovina remains at least three years, The chief of the Hague Tribunal to Bosnia and Herzegovina Howard Tucker confirmed yesterday, in separate meetings with the Chairman of the Bosnia and Herzegovina Presidency Ivo Miro Jovic and Presidency member Sulejman Tihic, to the tribunal in BiH still be present for at least three years. Jovic during the talks stressed that, because of the peace and a secure and stable future, Radovan Karadzic and Ratko Mladic have to be arrested while Tucker and Tihic jointly assessed that the judiciary in Bosnia and Herzegovina.

24.11.2006, The headline is "All sides committed crimes, but not the same extent." Report of the investigation team Academic Initiative dedicated to ethnic cleansing and war crimes in the period between 1991 and 1995. As scientists have criticism that is invaluable to the process of creating objective presentation of the past. The report points out its current version are not the last word on the subject, but "the first stage" of the process means a lot to light the future.

09.10.2009, Serbian Republic was founded on genocide, and there is a dialogue that can mitigate this fact many analysts agree: the situation in Serbia is radicalized and violent fascist organization as a result of the political manipulation and so many years of nationalistic indoctrination encompassing all the layers of Serbian society. Latest developments, however, show that there is no "change of generations" and the change of the Milosevic regime has made no significant progress. Last chance to the international law mechanisms Serbia forced a reckoning with the past is passed on 27 February 2007, when the International Court of Justice ruled that Serbia was responsible "for failing to prevent" genocide." In the Serbian public that was

interpreted as a confirmation that Serbia was not at war in Bosnia and Herzegovina. After this judgment, the denial was given a new dimension.

09.07.2010, The headline is "Boris Tadic would have to apologize for Genocide." Michael Stanton worked at the office of State Department of the USA admits that it is important to take a step about past crimes and atrocities at the war. Therefore apologizing for crimes committed in the area of Srebrenica is necessity and it should come from the head of the state.

29.06.2011, RECOM has caused enormous damage to the reconciliation in the region. After the president of the Humanitarian Law Center (HLC), resigned as president of the Coalition of NGOs for the river, it is quite clear that the end of the pompous idea of a regional commission for establishing truth about war crimes in the former Yugoslavia.

20.12.2013, The book with the name of "Revisionism, denial and anti-ICTY discourse in Serbia" deals with the entire legacy of the ICTY will be published in 2014. The authors are eminent world intellectuals, who speak about what is the current legacy of the ICTY, and the Tribunal may serve for the goals of reconciliation and coming to a consensus about the past in the region.

29.06.2014, The political leaders of Republika Srpska, missed an opportunity to demonstrate their commitment to the common European values of peace and reconciliation, according to the US Embassy in Sarajevo to mark the 100th anniversary of the Sarajevo assassination. It is necessary to share message of peace, cooperation and understanding in the regional level.

Considering the news published by Bosniak Dani political magazine, in different points of time about the issues of peace, security, and stable future for the country, it might be said that the establishment and sustainability of peace are based on the arrests of big names and their prosecution processes. Additionally, it is believed that the release decisions of war criminals taken by the tribunal should not be misread by the Serbian community. If there were attempts of organized crime against international law and humanity, the Serbs would have reconsidered their position, and would have showed effort such as apologizes for committed crimes, to show an indicator of normalizing relations. It is also believed that political leaders of Republika Srpska missed the opportunity to demonstrate reconciliation, and messages of peace, as well, to cooperate and ensure mutual understanding among conflicting sides. However it is obvious that Bosniaks also consider peace from their

own perspective and expect compromise not from themselves but rather from the sides of the Serbians and Croatians, which does not lead to the creation of a peaceful environment in politics, or at the social level.

3.7. The Position of International Order

Discussions regarding the ICTY should not be limited to the features of justice and peace. It is necessary to investigate the triggering factors behind the idea of the establishment of international tribunals in the post-conflict peace-building agenda. The status quo in the establishment time of the ICTY corresponded to the dissolution of the Soviet Union and the rise of liberal based international politics and word order. In this sense, the shift towards a legal framework that holds individuals criminally responsible for war crimes reflects the ascendance of the liberal perspective in international relations. The liberal or idealist perspective promotes democracy, human rights, and individual freedom based on the assumption that democratic countries promote stability and peace.[136] On the other hand, the establishment of the international ad hoc tribunals might be seen as a result of the preferred response of the international community to respond and shape tenor of post-conflict peace-building processes. In the Bosnian case the immediate inaction of the USA, as well as the European and international communities, raised the confidence of the parties involved in genocide, ethnic cleansing and other types of mass atrocities and war crimes.[137] It is plausible to face serious criticism towards the existence of the international order in the aftermath of mass violence.

It is significant to determine how the three ethnic identities in the country perceive the position and involvement of the international community in the country. For example, while legal professionals agreed that the active involvement of the international community was necessary to keep up peace and rebuild Bosnia and Herzegovina – particularly the judicial system – many felt diminished by the representatives of the international community with whom they came in contact.[138] The involvement of the international order in the conflict in both Bosnia and

[136] Laurel E. Fletcher and Harvey M. Weinstein, "A world unto itself? The application of international justice in the Former Yugoslavia," in *My Neighbour, My Enemy: Justice and Community in the Aftermath of Mass Atrocity*, eds. Eric Stover and Harvey M. Weinstein, Cambridge: Cambridge University Press, 2004, p.38.
[137] Lutz Ellen, Transitional Justice: Lessons Learned and the Road Ahead, 2006, p.332.
[138] Laurel E. Fletcher and Harvey M. Weinstein, "A world unto itself? The application of international justice in the Former Yugoslavia," in *My Neighbour, My Enemy: Justice and Community in the Aftermath of Mass Atrocity*, eds. Eric Stover and Harvey M. Weinstein, Cambridge: Cambridge University Press, 2004, p.42.

Herzegovina and in the region has multidimensional characteristics. Since the international community believes trials are for the victims and that they promote reconciliation, this finding might be seen as very provocative.[139] On the one hand it creates an obstacle to alternative solutions to solve certain disagreements among members of different ethnic groups, on the other hand, it draws a limit to the political and societal will of the population in the country. Here, at this point, how the issue of international order is perceived by the three different ethnic identities will be examined.

News Published Regarding the Position International Order

- **Dnevni List**

03.02.2005, Del Ponte's report on non-cooperation with the Hague Bosnia and Herzegovina is declared at the meeting. The Steering Board of the Peace Implementation Council, which holds in Brussels under the chairmanship of the President of the High Paddy Ashdown, spoke about the cooperation of Bosnia and Herzegovina with the ICTY.

13.02.2005, The headline is "Strengthening of the coordination of agencies and institutions play significant role." The Chairman of the Council of Ministers Adnan Terzic and High Representative in Bosnia and Herzegovina Paddy Ashdown, held a constitutive session of the monitoring group for cooperation with the ICTY. The officials of the state and entity authorities responsible for ensuring the realization of full cooperation with the Hague Tribunal, representatives of international organizations in Bosnia and Herzegovina and the Hague Tribunal participated to the meeting. Participants of the meeting analyzed the current situation and created a report of the meeting.

28.10.2010, Dayton brought an end to the war, but changes in Dayton about to the future of the country should be taken into account. Croatian President Ivo Josipovic said on the occasion of the fifteenth anniversary of the Dayton Peace Accords, the document is stopped the war in Bosnia and Herzegovina, but from now on it is necessary to consider the changes on the agreement. It is obvious that Dayton does not serve the needs of the citizens of Bosnia and Herzegovina. "Dayton is not a

[139] Miklos Biro et al, Attitudes Toward Justice and Social Reconstruction in Bosnia and Herzegovina and Croatia, in *My Neighbour, My Enemy: Justice and Community in the Aftermath of Mass Atrocity*, eds. Eric Stover and Harvey M. Weinstein, Cambridge: Cambridge University Press, 2004, p.201.

perfect thing, but it should not be forgotten that the agreement ended the war in the country," said Josipovic in his welcoming speech at the Law Faculty in Dayton.

08.12.2011, The headline is "The control of City of Mostar is intended to give to the Croats." The first man of Mostar SDA Zijad Hadžiomerović in an interview with daily newspaper comments on the latest developments around the statute of Mostar. Hadžiomerović claims that the SDA will never agree to change the statute of the city. On the other hand it should be known that The Constitutional Court has no power to change the Mostar City statute. For me there is nothing new. The international community is trying to solve the problem of Mostar, as they wish. The intention of international community is strengthening the position Croatian population in the borders of the city.

31.08.2014, Washington is becoming more aware of how again and again make the same mistake. Americans, in fact, cost more choices and more power invested in the elections in the "new democracies", but not in reconciliation and end in peace. The result of this policy is that the former war zones such as Bosnia and Herzegovina, Iraq, Afghanistan, and Libya... Abovementioned areas remain paralyzed with no prospects and little progress.

22.09.2013, The headline is "Backlog of war crimes." The fact that there is an urgent need to resolve the remaining war crimes cases among representatives of judicial institutions, the victims, the public and the international community, who agreed to the pace of prosecution must be accelerated, he said among other things in an interview with the Daily Francesco Caruso, project manager for prosecution of war crimes Prosecutions in front OSCE Mission in BiH. OSCE Mission launched a project prosecution of war crimes in March 2013. Additionally the existence of OSCE Mission is under question.

Considering the news published by Croatian Dnevni List newspaper, in different points of time about the position and involvement of international order it might be said that European existence in the post-conflict agenda is preferred rather than US led policies and programs. It is believed that Dayton was necessary to stop the war and killings but in the aftermath of the conflict there has been nothing done to increase the standards and quality of democracy and politics as well. Therefore Washington is criticized of being incapable of managing the things in the post-war agenda and this has been existed not just in Bosnia and Herzegovina but also in Iraq, Afghanistan and Libya. However, there is a reality that should not be forgotten,

Croat population is still happy with the existence of international order and institutions and demands strengthening coordination of agencies and institutions of Bosnia and Herzegovina. This idea illustrates the need of international existence in the country while the trust among conflicting sides has not been established by themselves and their own initiatives are not found adequate to solve the current problems in the politics, economics and social level as well.

- **Nezavisne Novine**

19.02.2003, For tomorrow's announcement of a new meeting in Brussels and the resumption of talks between the OHR and the ICTY on the establishment of the War Crimes Chamber, confirmed a spokesman for the Office of the High Representative Oleg Milisic. This meeting will be dedicated to discuss the costs of the tribunal and to create a legal framework for the successes of the Council in Bosnia and Herzegovina. Additionally, it is planned to discuss additional proposals of interested member of the Peace Implementation Council in the following meetings.

21.06.2003, The headline is “American lawyers can defend the accused people in The Hague.” A spokesman for the Hague Tribunal in Bosnia and Herzegovina Refik Hodzic said Friday that the US administration confirmed that American lawyers can defend the accused people in The Hague and trials might continue in such a way. According to him, the problem regarding the involvement of the American mind attorneys was due to make a mistake about interpretation of the text of the Executive Decree of the President of the United States.

25.07.2003, The High Representative had to deal with some difficult issues, which local leaders avoided, and for full implementation of the Dayton Peace Agreement but also for the rapid accession of Bosnia and Herzegovina into Euro-Atlantic integration, said Christopher Hou. The problem is not the OHR Bosnia, but unwilling local authorities are main sources of the problem. The most important issue in Bosnia and Herzegovina will be the engagement of American economic power to develop the economy and create a climate for investment that will create jobs, said the charge business at the US Embassy Christopher Hou. "Job creation will need reforms that will attract foreign capital and the rule of law. In the course of the reform of the judiciary, prosecution, police and the entire legal system, but developments in the abovementioned areas newly started and it will take time until we reach to the desired goals.

08.04.2004, The headline is “Bosnia and Herzegovina has to take responsibility for reform.” The Ministry of Foreign Affairs of Japan announced in full text of proposals from the Ministerial Conference on the stabilization of peace and economic development in the Western Balkans, held in Tokyo on 5th and 6th of April. The seventh point conclusions specifically related to the obligations of the authorities of the Western Balkan countries have elements such as to arrest and hand over all against whom the ICTY indicted. “Bosnia and Herzegovina has to take responsibility for the implementation of reforms in order to become fully alive sustainability.

13.07.2004, US Ambassador to Bosnia and Herzegovina Clifford Bond said politicians at the Republika Srpska must continue reforms politicians in the Republika Srpska to move forward with the implementation of the reform, as officials in Republika Srpska were recently taken by the High Representative in Bosnia and Herzegovina. Paddy Ashdown was not directed against the Republika Srpska, but against the criminal elements that block the work of the Government and public companies in Republika Srpska. So it should be known that "the activities of the High Representative were not directed against the Republika Srpska, but against individuals and criminals. I know there was political commotion in this entity.

16.11.2004, The headline is “Problems take place in Republika Srpska ought to be solved.” The president of the Hague Tribunal, Theodor Meron reported yesterday the UN General Assembly that the Republic of Serbian co-operation with the Tribunal is insufficient while the Federation of Bosnia and Herzegovina has done a satisfactory job until this point of time. Meron pointed out, except some war crimes took place in Srebrenica, Serbia and Montenegro practically did not cooperate with the tribunal, while Croatia significantly improved the level of cooperation with the Tribunal. Meron urged Croatian authorities to do the utmost effort to fugitive General Ante Gotovina ended up in The Hague.

04.02.2005, The headline is “The Hague and difficult times”. Politicians in the Bosnia and Herzegovina have neither the will nor the responsibility for solving problems regarding the post-war circumstances. They also, accelerated or slowed down Euro-Atlantic integration. The cause of the unrest on sociological level of Bosnia and Herzegovina, Serbia and Montenegro and Croatia should be reduced to a common denominator.

20.09.2007, In Bosnia and Herzegovina, mutual acquaintance, understanding, tolerance and a little good-will might be achieved far more than what we have

achieved until now. The EU is light at the end of our tunnel. Jakob Finci, president of the Jewish community in Bosnia and Herzegovina, and the first Bosnia and Herzegovina citizen who awarded international prize from the Council on American Freedom. This award recognizes the outstanding contribution to the promotion of freedom of the individual conscience, freedom of belief and religion, as well as mutual respect and understanding among people, communities and governments. Finci is a prominent Bosnia and Herzegovina citizen, honored and respected in international circles.

04.04.2008, The headline is "Only the Serbs and Croats on trial." The judiciary, the courts and prosecutor's offices in Bosnia and Herzegovina do not work properly, they are selective about the issue of nationality, rated by Association "Croatia Liberty". "The Croats and Serbs are seen as sources of problems and action at the war, but not Bosniaks.

28.02.2008, The headline is "Office of High Representatives will remain until further notice." Political Directors of the Peace Implementation Council made the decision yesterday to extend the mandate further OHR without linking it to the time, to achieve results in the transition period until its abolition. Having reached certain developments in Bosnia and Herzegovina in the past months, the Board PLC reiterated that it is aimed to transition and transfer of responsibility to local authorities. "First of all, actors in Bosnia and Herzegovina are the ones who should create conditions for the transition in the future of the country.

20.08.2010, Del Ponte is under investigation because of pressure on witnesses. Prosecutors of the International Tribunal for war crimes in the former Yugoslavia ICTY will be interrogated Hague tribunal over claims that "bullying attitude towards witnesses," writes "The Guardian." The Guardian "writes that former chief prosecutor Del Ponte heard allegations that allowed to threaten witnesses or to bribe and for illegal collection of evidence. "The Guardian" notes that ICTY faced such a claim for the first time in its history.

21.10.2011, Denying the position of Republika Srpska which is guaranteed by the Dayton Agreement does not make sense. The hidden agenda of radical Bosniak politics creates problems and obstacles. Political mimicry, skills and tactics will not give expected results.

23.12.2013, The headline is "Will The Hague tribunal close its doors in 2017?" The ICTY will not be closed until it completes the procedures in the eleven

remaining cases, and appeals completed in seven of these eleven cases, which means the Hague Tribunal might be placed at the earliest in mid-2017. In fact, The Hague Tribunal, in the mid-2017 expected to complete proceedings in the cases of "Prlic and others", according to estimates of professionals, should be completed until 2017.

Considering the news published by Serbian Nezavisne Novine newspaper, in different points of time regarding the position and involvement of international order it might be said Serbian authorities and society live in Republika Srpska feel themselves under pressure of the ICTY therefore produces contra arguments against its existence. Therefore, in most of the areas people together with political authorities in Republika Srpska, they do not prefer to make cooperation and coordination with The Hague. This shows that there is legitimacy problem of the ICTY mainly because of the decisions taken in the tribunal. However the existence of international order and support from them are still on the agenda for Serbian population. Particularly integration to Euro-Atlantic institutions and benefit that may come from European Union are not ignored and still taken into account. There are also initiatives to legitimize the existence of internationally established institutions on the mindset of local population live in Republika Srpska in order to include them into the position of responsibility for the future of the country.

- **Dani**

16.09.2004, The headline is “Europe is dissatisfied with the cooperation of Republika Srpska and the ICTY.” Representatives of the Council of Europe warned deputies of the Parliamentary Assembly that they are not satisfied with the cooperation of Republika Srpska with the ICTY. Water monitoring team of the Council of Europe Timothy Cartwright said that the country's progress in European integration depends on the fulfillment of international obligations, in particular cooperation with the ICTY. European representatives are particularly dissatisfied non-cooperation of the Republic of Serbian with the Tribunal suggests ways for creation of share of responsibility with the Federation of Bosnia and Herzegovina.

13.07.2005, Dnevni Avaz, Joining the Partnership for Peace guarantee that crimes committed at the war time will not happen again Srebrenica. Deputy Defense Minister Vukasin Maras received the delegation of the Joint Commission for Defense and Security Policy of the Parliament of Bosnia and Herzegovina, which is in Belgrade. Maras expressed the hope that Serbia and Montenegro and Bosnia and Herzegovina will soon be part of NATO's Partnership for Peace Program and

contribute to collective security and the consolidation of peace and security in the region. Maras also hopes that it will soon be the most wanted criminals to the tribunal in The Hague, which would create the possibility for accession to the institutions in both regional and international levels.

21.10.2005, Dnevni Avaz, The headline is "The peace brought by Dayton is unfair." Chairman of the Presidency Ivo Miro Jovic said yesterday in an interview with a delegation of the Monitoring Team of the Parliamentary Assembly of the Council of Europe (CoE) that the Dayton Accords brought an end to the war in Bosnia Herzegovina, and it caused to the construction of unjust peace, all the extraordinary changes took place rapidly. He added that the role of the international community in Bosnia and Herzegovina should be advisory and consulting.

31.01.2006, The ICTY established in 1994 has funded mainly by the UN and the biggest donors have been Italy, Malaysia and Pakistan, The most powerful actors in the international political scene: the United States, Britain, France, Russia and the United Nations do not always have the same attitude towards the crisis in the Balkans, nor were equally devoted to the Hague Tribunal. To show how the Tribunal is or is not an instrument of world politics, an initiative of scientists decided to investigate the relationship of each of these centers of power towards the ICTY. Initiative believes that all the mentioned actors have experienced internal political conflict over the use and character of the Tribunal.

12.02.2006, The doctrine of human rights has focused on the idea that different ethnic groups can live together. Crimes committed in Bosnia and Herzegovina suited the definition of genocide. The United Nations Security Council believes in the establishment of international justice. ICTY is a message that crime must be stopped. A sincere commitment to human rights, not only in the case of the Yugoslav crisis, but, in general, in all humanitarian conflicts is one of the key motivations for the establishment of the ICTY. The creation of the ICTY was seen by states as an opportunity to correct mistakes committed in Nuremberg and Tokyo, but also to intimidate the warring parties in the Balkans, ceased to commit crimes. In the long term, it was believed that the ICTY will help to heal the wounds, bringing justice to victims.

13.04.2007, The headline is "Where are the values of the European Union?" According to the judgment, adopted by the International Court of Justice in February 2007, the aggression that was between 1992 and 1995 suffered the Bosnians would

not be genocide, with the exception of the Srebrenica massacre. Evidences of intention about the size of destruction of the Bosnian population according to the claims remain insufficient, but the existence of crimes committed Bosnia and Herzegovina are recognized, war crimes and crimes against humanity that are also in jurisdiction.

19.06.2009, Last week, a few hundred e-mails and facsimiles regarding the documents signed by Hague tribunal Judge Theodor Meron and Fausto Pocar, and carried dates from September 20, 2005 and April 6, 2006 were received. The content of the formal documents confirms the agreement between the International Court in The Hague and Serbia and Montenegro on the protection of the documents that are key evidence of the Serbian-Montenegrin aggression on Bosnia and Herzegovina and committed genocide.

28.01.2011, The headline is “Does the role of the ICTY positive or negative for Bosnia and Herzegovina?” Does Carla Del Ponte rule deal with Serbian authorities? What is the role of some of the protected key documents of Belgrade that could be of crucial importance for BiH lawsuit against Serbia? Were the legally protected ICTY documents published days last year? What is going to be the fate of judgments at the ICTY? What was the character of the war: the conflict or aggression? Those are the questions that should be answered. In the absence of answers of these questions the problems in the country will remain as it is.

19.08.2011, After the arrest of Ratko Mladic and Goran Hadzic raised questions about whether the ICTY is near to come to an end. It is significant to determine how the ICTY and international community will remain and in what position these two are going to take place. So here is the main question, what did the ICTY for Bosnia and Herzegovina?

21.06.2013, One of the Presidents of the Hague Tribunal Theodor Meron must confess masterfully lined all the pieces. In addition to the ICTY established standards that are in the interests of the great powers, brought the judgment they meet and Serbia and Croatia, so that any questioning leads to the opening of their responsibilities in the war in the former Yugoslavia, and Bosniaks certainly cannot do anything without the consent of the Serbs and Croats in Bosnia and Herzegovina which is, unfortunately, still more important what they think "nuts" of the interests of their own country.

30.08.2013, The first ICTY prosecutor Richard Goldstone told that there are three basic factors essential in the functioning of an international tribunal, including the ICTY, namely: first, the support of the founder, secondly, the cooperation of the states and third commitment and professionalism of the ICTY staff. Until a few years ago, only a third one was about to function properly and it was fascinating how the staff of the ICTY more than a decade and struggled for a place "under the sun", as with its founder.

06.12.2013, The conference was held last week in Sarajevo to mark 20th years of the ICTY essentially confirmed that after recent events in and around the Tribunal, with the right to speak about the default goals set by the United Nations Security Council and given the mandate of the ad hoc international court. Three proclaimed goal of UN: the establishment of the ICTY and punish those responsible, an end to the commission of the crime and that the Tribunal contribute to the restoration and maintenance of peace. Stopping crimes and the establishment and maintenance of peace have vital importance.

24.01.2014, The headline is "Crime of crimes." The main focus over what happened in Srebrenica whether it was genocide or not do not contribute to important debates concerning international intervention in armed conflicts. The ICTY like other similar international ad hoc tribunals were not established just to prosecute crimes in the level of genocide. Thus, main problem regarding the above mentioned argument starting from the fact that no international court or tribunal has been established just to judge genocide, there are other responsibilities such as fulfilling different needs of victims in the areas of justice and reparations.

20.06.2014, The lack of political support of the UN to the ICTY causes problems. Serge Brammertz chief prosecutor of the ICTY, in his address to the UN Security Council, made an emphasis on the progress made in the completion strategy of the ICTY. Regarding the issue of jurisprudence, Brammertz said legal precedents that will have "far-reaching and might have positive impact on both the International Court of Justice, as well as on international criminal law but there should be support coming from international community.

Considering the news published by the Bosniak Dani political magazine, in different points of time, regarding the position of the international order, it might be said that there is ignorance towards the problems caused directly because of Bosnian Muslim's own mistakes, and the Bosnian Croats and Bosnian Serbs are considered as

sources of problems. Europe is dissatisfied when it comes to Republika Srpska's cooperation with the ICTY, but it should be asked whether Europe is satisfied with the contributions of Bosnia and Herzegovina and its cooperation with the ICTY. It is clear that the creation of the ICTY is most welcomed by the Bosnians. ICTY is seen as a message that crimes must be stopped, since there is no other alternative legal mechanism driven by the international community regarding the crimes committed during the time of the war in the country. In the following process, there are complaints, dissatisfaction is clear, and unhappiness can be seen regarding the running of the ICTY. In this sense, the Bosnians believe there are further goals expected to be fulfilled by the ICTY. Joining Euro-Atlantic institutions still has vital importance, and would guarantee the non-existence of future conflicts in the future, in Bosnia and Herzegovina, and in the Balkan region.

Table: 3.1. Different Attitudes of Three Ethnic Identities (Croats, Serbs and Bosniaks) in Bosnia and Herzegovina towards the issues of Justice, Peace and the position of International Order

	Justice	**Peace**	**International Order**
Dnevnli List Mostar–Bosnian Croats	Wants to be recognized as victims of the war	Peace process was frozen by Dayton, difficult to establish without making changes in Dayton	Integration and cooperation with European Union is preferred rather than US led intervention
Nezavisne Novine Banja Luka-Bosnian Serbs	Do not consider themselves only attackers, crimes committed in the war should be distributed among ethnic identities	Peace is possible only if attitude towards them changes, so that they can take a step to contribute peace process	Integration with European Union is on the agenda but in the current situation they are less open to cooperation with the ICTY
Dani BiH Sarajevo Bosnian Muslims (Bosniaks)	Dissatisfied with the decisions given to the Croats and Serbs but unhappy with the decisions given against Bosniaks at the ICTY	Consider themselves only victims of the war, expect from other ethnic identities to take responsibility	Cooperation and integration to the Euro-Atlantic institutions plays significant role, very much open to cooperate with the ICTY

It is necessary to underline that delivering justice to victims is seen as a precondition for reconciliation. Accordingly, it is expected from the retributive justice instruments to reduce risks if revenge, prevents a return to power by the

perpetrators of war crimes and it helps to create accountability of individuals for those who committed crimes.[140] However, the different views towards the decisions of the tribunal illustrates that retributive justice itself is far from meeting the requirement in the level of society. Therefore, when it comes to the relationship between the tribunal and other unsuccessful restorative justice initiatives in the case of Bosnia and Herzegovina, it would be mistake to blame or to exaggerate the position of restorative justice attempts against restorative justice initiatives followed or vice versa in the post-conflict peace-building agenda. It should not be forgotten that the existence of truth commissions to discover what happened in the past is significant as the position of the ad hoc tribunal to judge war criminals. However, the lack of cooperation and unnecessary competition between the truth and reconciliation commissions and the ICTY should be solved by integrating transitional justice initiatives between each other in the case of Bosnia and Herzegovina. Otherwise, the lack of integration might cause further polarizations not just in the level of society but also in the level of different institutions of the state. It is necessary to underline different transitional justice mechanisms might get successful only if these instruments complement each other. In the absence or hitch of any of the different methods of transitional justice between each other, the status quo in the aftermath of war, would not be different from what it is today.

In the shadow of the discussions mentioned in the previous pages about the issue of peace, it should be said that it is not easy to define peace as in the case of 'justice.' In order to explain the three different views regarding the issue of peace, the 'positive and negative peace' theory of Johan Galtung can be useful to theorize how is the case in the borders of Bosnia and Herzegovina in the post-war context. It should be underlined that peace and violence have strong connections between each other and peace can also be regarded as absence of violence or war.[141] Therefore, according to the news published in the different newspapers, there has been negative peace and just absence of violence in the post-Dayton process of Bosnia and Herzegovina. In the absence of harmony, cooperation and integration[142] which are

[140] Roland Kostić, "*Transitional Justice and Reconciliation in Bosnia and Herzegovina: Whose Memories, Whose Justice*", The Hugo Valentin Centre Uppsala University, 2012, p.657.

[141] Johan Galtung, *"Violence, Peace, and Peace Research"*, Journal of Peace Research, Vol.6, No.3 1969, p.168.

[142] Johan Galtung, *"Twenty-Five Years of Peace Research: Ten Challenges and Response"*, Journal of Peace Research, Vol. 22, 1985, p.152.

easy to face in the current status quo of Bosnia and Herzegovina, it will not be easy to move from the negative aspect of the peace to the so called positive one unless different ethnic identities demand for the establishment of cooperation and more integration among themselves in the future.

CONCLUSION

The theory of transitional justice is a historical phenomenon, but today it has a systematic structure to be followed in the aftermath of mass violence or fall of an oppressive regime. The implementation of justice, reparation of victims, and existence of truth commissions to provide societal healing and institutional reform in the state level are most significant mechanisms in the post-conflict peace-building agenda.

When it comes to the post-conflict process in Bosnia and Herzegovina, there were various initiatives practiced under transitional justice mechanisms. In the field of justice, the most prominent and significant element was the establishment of the ICTY with the UN Security Council resolution which is followed by the establishment of War Crimes Chamber in 2005 in Bosnia and Herzegovina. In this sense, regarding implementation of justice, there was a need for cooperation between the ICTY and national courts to deal with the crimes committed during the time of the war. However, this cooperation faced serious obstacles in transferring cases and information from the ICTY to the national courts and there was a problem of accessing ICTY archives as well. Additionally, local courts faced low public confidence, political opposition derived from multiethnic structure of the country and judicial system was not able to tackle serious crimes mainly because of poor investment in human and technical resources. These inabilities caused lack of availability of suspects, physical evidence and witnesses to testify. Therefore regarding the functionality of national courts, justice system of Bosnia and Herzegovina should be politically and practically organized as unbiased as possible and supported to set up mutual trust among three ethnic constitutive elements of the country.

Regarding fact-finding and truth-seeking mechanisms, there have been numerous attempts in Bosnia and Herzegovina. The Commission for the investigation of the Events in and Around Srebrenica from 10 to 19 July 1995, The Commission for the Investigation of the Siege of Sarajevo, The Bijeljina Commission and Commission for Truth Seeking and Truth Telling about War Crimes in the former Yugoslavia as a regional initiative were established in the

concept of restorative justice. Even though there were certain tangible results as a result of different initiatives in various places, in the end, no one of them reached a sustainable way of functioning mainly because of pressure of civil society, media and political parties, financial and logistical inadequacies and disagreements among members of the commissions. It looks like in the absence of a moderator or a mediator together with political will it is difficult for them to come together and discuss issues related to war crimes committed during the time of the war. However the will of the local ethnic identities to solve the problematic issues plays greater role rather than participation of the mediator or moderator in truth seeking and fact-finding mechanisms.

About reparation and institutional reform initiatives there were steps taken. Especially about institutional reform in the aftermath of mass violence, the state created Transitional Justice Strategy which defines problems and shortcomings faced in the aftermath of the war and create systematic plans and programs to be practiced in the state level. It is still necessary for the project to be developed to make it measurable, accountable and sustainable.

When it comes to the lessons to be drawn from the post-conflict context of Bosnia and Herzegovina, it is necessary to argue that lack of coordination and cooperation between different transitional justice initiatives create deadlock over the establishment of peace process in the country. There is an environment in Bosnia and Herzegovina that a competition between retributive and restorative justice initiatives shaped the practice in the post-conflict peace-building discussions and initiatives. Accordingly, ICTY is seen one and only functioning institution especially after numerous failed initiatives of truth-seeking and fact-finding mechanisms in the context of transitional justice. It is obvious that international community did not back the establishment and continuation of functioning truth and reconciliation commissions unlike the ICTY. It should not be forgotten that behind the lack of coordination and failures of different transitional justice initiatives, there is role of instability in the government system, weakened central government with the combination of cantons based political system and while every single canton has its own parliament, ministers and decision making mechanism. If the all negative aspects of the domestic institutional inabilities are taken into account combined with failures in the transitional justice mechanisms, Bosnia and Herzegovina case can be seen as a place of uncertainty. However, none of the abovementioned problems are

unsolvable. Additionally, it is clear to realize top-down approach did not give expected results in the Bosnian case. The Dayton Agreement brought an end to war, Office of High Representatives was established to oversee implementation of Dayton Agreement in the level of society and the ICTY was established to brıng justice to the crimes committed during the time of war, however when it comes to the tangible results, products of abovementioned top-down approach reached partial success beside created obstacle over possible local solutions. Therefore, there is a need for bottom-up approach in which society itself declares its will to make changes in the constitution and political system of the country and if there are points to be solved again society might demand help from outside of the country. Regarding the post-conflict peace-building initiatives, it is necessary for the society first to get ready to be reconciled and in the following process three ethnic identities may come together and constitute their own truth-seeking fact-finding mechanisms with the support of unbiased domestic courts. Political structure should be able to create its own human resources and develop projects in order to provide healing among the members of different ethnic identities. That's why local solutions rather than international top-down involvement should be supported.

Therefore in the implementation of transitional justice mechanisms in Bosnia and Herzegovina, it can be said that there has been insufficient coordination between retributive and restorative initiatives together with political and financial limitations in the local and regional levels create obstacle over implementation and practice of transitional justice mechanisms, the absence of planning and strategic thinking at the state level until recent years, postponed earlier solutions and lack of creation of social awareness about significance and practice of post-conflict peace-building initiatives caused the loss of belief among the members of three ethnic identities that the relations might be reconciled and peace established in the aftermath of the war.

When it comes to the ICTY, it was established when the war was out of control, diplomatic solutions did not work. International community did not want to tolerate escalation of human rights abuses any more during the time of the war. It was one of the results that liberal world politics brought in the aftermath of the war took place in Bosnia and Herzegovina. However, the establishment of the tribunal did not deter the aggression. Additionally, the involvement of the United Nations remained limited with the delivery of humanitarian aid. It should be underlined that military intervention was the furthest and last option for United Nations and it was done when

there were no other options. Accordingly the establishment of the ICTY was essential as an impartial institution to prosecute crimes that took place in the time of war. On the other hand, the establishment of the ICTY might be seen as a fig leaf created by international community to hide its sins, mistakes and immediate inaction in the early times of the war. In this sense, it was necessary for the ICTY to be legitimate at the societal level; the Outreach Programme was introduced to increase efficiency and popularity in society by organizing conferences, seminars, translating decisions of the tribunal to the local languages. However the Outreach Programme was weak in creating ties and communication with media and NGOs; thus it faced lack of trust and social support and its works in different places remained limited with local successes.

There have been challenges that the ICTY faced such as length of compensation and prosecution, prolonged implementation date, lack of progress, false sense of hope and inadequate coordination and cooperation with state institutions. Together with abovementioned problems, the relationship between the ICTY and reconciliation should be defined because even though it was not charged with succeeding healing in the society, the issue of reconciliation has been put into words by not just members of the local population but also prosecutors and heads of the tribunal. The main reason behind this issue from the perspective of local population can be explained by their high expectation from the tribunal in the absence and failures of other legal mechanisms. However from the legal professional's perspective the main reason behind this can be seen as the wish to create a discourse and belief to show society that the tribunal is prepared to respond demands of the society and make it legitimate as much as possible. But it should not be forgotten that only Muslims, Croats and Serbs can decide whether they are ready and willing for reconciliation.

There has been an ongoing discussion regarding the existence of trials by saying that trials are good politics, but good politics do not necessarily serve the truth. Therefore even if the tribunal makes such a great work in implementation of justice and creation of a historical record, it is nothing more than an imagination to believe that it might contribute to the reconciliation process if the members of the three ethnic identities are not ready to recognize this reality.

Since the ICTY is seen one and only functioning mechanism and it is burdened with both reparative and restorative needs of three ethnic identities in Bosnia and

Herzegovina, it is essential to check the ICTY in accordance with the perceptions of three ethnic identities of the country under three categories which are the most significant pillars of the tribunal at the same time.

The issue of justice is perceived by the Dnevni List newspaper published by Croats in Mostar illustrates the ICTY should be more fair for Croats as it is for Bosniaks. One of the most significant expectations of Croats from the ICTY in this sense was to demonstrate that the Croats were victims of the war. On the other hand, when it comes to the perception of Serbs from the Nezavisne Novine published in Banja Luka by Serbs; there is first the problem of legitimacy of the tribunal. Accordingly, the decisions given by the tribunal highly criticized and it is seen as an institution that only works for accusing members of Serbian community. To them justice means to release or decrease the number of years in prison of Serbian war criminals. In the evaluation of Bosniaks from the Dani Political Magazine published by Bosniaks, it should be said that there is an obvious dissatisfaction and unhappiness over decisions given against Croats and Serbs by the tribunal. Thus for Bosniaks justice has been giving a birth to the greater demands of justice from the tribunal.

The issue of peace perceived by the Dnevni List newspaper published by Croats in Mostar illustrates that peace process in the aftermath of the war is frozen and for them there should be some steps taken for the establishment of peace. However for real peace nothing serious has been done by Croats other than creating symbolic discourses regarding the issue of peace. On the other hand, the perception of Serbs from the Nezavisne Novine published in Banja Luka by Serbs if peace is going to be established in the country, they have their preconditions. In this sense the image of Bosnian Serbs' as the aggressors in the conflict should be changed and equalization of the position with Bosniaks and Bosnian Croats is demanded. It looks like from Bosnian Serbs perspective peace is not in today's agenda. In the evaluation of Bosniaks from the Dani Political Magazine published by Bosniaks, they are expecting different steps to be taken by the other ethnic identities in the country. They are considering peace from their own perspective and expect compromise not from them but other ethnic identities. It should be said that even the arrests of big names of war crimes from Bosnian Serbs and Croats mean for Bosniaks play important role regarding their belief towards the establishment of peace.

About the position of international order perceived by the Dnevni List newspaper published by Croats in Mostar, there has to be stronger cooperation with internationally established institutions in the country, but Washington is highly criticized by being incapable of managing the politics in the post-war circumstances. There is still no problem in the legitimacy of the tribunal from their side, but there is an obvious demand to be considered as they were also victims in the war. On the other hand, about the position of international order from the perception of Serbs from the Nezavisne Novine published in Banja Luka by Serbs, there is a problem of legitimacy particularly about the tribunal. According to them the tribunal is politically biased against them and it was also created against them beginning from in the early times of its establishment and to demonstrate their view it is claimed that the ICTY has been indicted only Serbs, but not Bosniaks nor Bosnian Croats. Therefore in the news published in the newspaper, there are contra arguments focusing on the existence of the tribunal. Bosnian Serbs should not pretend and should not consider their situation as they have been wronged by the tribunal and other ethnic identities. Bosnian Serbs are trying to gain legitimacy in the level of their society by accusing the tribunal. However, this strategy might be broken with the involvement of international community by telling they are not against Bosnian Serbs in general what they are fighting against is individuals who committed crimes during the time of the war. In the evaluation of Bosniaks from the Dani Political Magazine published by Bosniaks related to the position of international order they should be seen that the establishment and existence of the ICTY is most welcomed and supported by them. However the problems and shortcomings taking place at the tribunal become excuse of Bosniaks. By blaming the functioning of the ICTY, they are walking away from responsibility and ignoring problems; thus they do not feel themselves to take a step.

Regarding the general perceptions of the newspapers that belong to three different ethnic identities ion the issues of justice, peace and international order, they have a moderate aspect comparing to the excessive ways of thinking in the early times and in the early post-war process. However it does not mean any of three ethnic identities are ready to accept responsibilities that took place during the time of the war. The moderate language that they have in newspapers addresses audience that demand normalization of the relations comparing to the other excessive segments of the society. In this sense, it can be said that without mutual trust among

members of three ethnic identities, it is difficult to talk about a success in the transitional justice mechanisms. Alternative and local solutions at least should be taken into account and the most important outcome of the possible peace and reconciliation process would be regulation of Dayton Peace Agreement as a solution that originated from its own societal dynamics. My humble suggestion regarding the position of the ICTY is that the prosecution process of the tribunal should be completed or the lower cases ought to be transferred to the local courts and ICTY might close its doors as much as earlier. In the following process, local solutions for the establishment of reconciliation should be considered and encouraged. On the other hand, if the international order wants to protect its existence in Bosnia and Herzegovina, more options should be taken into account other than the ICTY. Internationally organized third party arbitration with the involvement of local initiatives should be considered for the sake of reconciliation and the establishment of peace in Bosnia and Herzegovina. Additionally, there are two significant pillars to be followed in the case of Bosnia and Herzegovina. The first one is inclusiveness. Any solution offered for reconciliation and healing at the level of society ought to include different ethnic identities and segments of society. Otherwise, it would be workless and possibly would create new problems. The second one is about implementation. If the unsuccessful transitional justice initiatives and attempts are taken into consideration, it is easy to realize that problems regarding implementation and sustainability have to be fixed. It should not be missed that the two abovementioned pillars are meaningful and applicable only if the sides are willing to come together and solve problems. In the absence of good will and trust among sides, the road that drives society to healing would be unreachable.

It is significant to analyze transitional justice process in Bosnia and Herzegovina mainly because of its multiethnic structure not just at the level of society, but also in the state level. Still, the state structure and order of Bosnia and Herzegovina after Dayton Agreement is considered as dysfunctional and highly debated issue. Bringing an end to conflict in the country with reconciliation after violent conflict in the area that composed of Bosniaks, Croatian Catholics and Serbian Orthodox have not been achieved yet. Bosnia and Herzegovina is one of the most popular and unusual and exceptional case with its heterogeneous identity and population structure. The perpetual and sustainable peace twenty years after violent conflict in the country is an experience that should come to an end as much as earlier

in order to build normalized relations and functioning state institutions. Otherwise long transition without justice and without tangible results might double and deepen the ethnic differences in the country.

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