

# Facing the Past and Transitional Justice in Countries of Former Yugoslavia

Natascha Zupan

[www.berghof-center.org](http://www.berghof-center.org)

## 1. Introduction

Almost a decade of war and violence devastated the economic and political systems of countries of former Yugoslavia and had a huge impact on the social fabric, leaving many people traumatised, displaced or still missing. Mutually excluding “truths” about these wars and the atrocities committed have emerged, and these are making up part of the national identities, reinforcing the fragmentation of post-war societies.

327

How do societies emerging from war come to terms with their recent violent past? How can people and communities, deeply divided and traumatised, regain trust in fellow citizens and state institutions, achieve a sense of security and economic stability, rebuild a moral system and a shared future? Apparently, this is a complex and long-term process, which ultimately has to involve all layers and structures of a society. Nevertheless, many experiences of past decades suggest that truth-seeking mechanisms and public recognition of responsibility, as well as re-establishing justice through various means, are important elements of this process. They – amongst others – assist societies to constructively deal with their violent past, (re)establish accountable and democratic institutions and achieve reconciliation. Over the course of time, different approaches have been established – more recently referred to as transitional justice mechanisms (see Kritz 1995; UN Report 2004)<sup>1</sup> – in order to address the question of truth and justice in societies transitioning from war to peace. These approaches or mechanisms are: a) prosecution of war criminals before both national and international courts, b) reform of state institutions, especially reform of the security sector and the justice

<sup>1</sup> Further information can be found on the homepage of the International Center for Transitional Justice: [www.ictj.org](http://www.ictj.org).

system, c) victim's reparation, d) lustration, e) truth commissions, f) fact-finding and documentation, g) formal and non-formal education, and h) various healing processes, sometimes applying already existing, community-based reconciliation or reintegration mechanisms.

The following article<sup>2</sup> gives an overview of different approaches to address the recent violent past in countries of former Yugoslavia, and briefly presents the most important developments following the above-mentioned topics – with one exception: it will not focus on state reform and reform of the security sector, which is beyond the scope of this article. Moreover, the article will not explore in detail the different questions and challenges of dealing with the past and reconciliation.<sup>3</sup> Instead, it serves as an introduction into topics which will be discussed more fully by various experts later on in this sub-section of the book.

## 2. Approaches to Transitional Justice and “Dealing with the Past”

### 2.1. Prosecution and Setting Up New Courts

#### *International Criminal Tribunal for the former Yugoslavia (ICTY)*

The ICTY is one of the key – if not *the* key – transitional justice mechanism set up by the international community (*see the article by Sanela Basic in this book*). Established in May 1993 by UN Resolution 827, it only started to work in August 1994.<sup>4</sup> The Tribunal has far-reaching aims, ranging from “[bringing] to justice persons allegedly responsible for serious violations of international humanitarian law committed in the territory of former Yugoslavia since 1 January 1991” and “[rendering] justice to the victims”, to “[detering] further crimes” and “[contributing] to the restoration of peace by promoting reconciliation in the former Yugoslavia”.<sup>5</sup> According to the Dayton Agreement, all countries of former Yugoslavia are duty-bound to cooperate with the ICTY and should for example collect and keep evidence, conduct investigations and forensic work, hear and transfer witnesses, and arrest and detain war crimes suspects. However, cooperation by the respective countries' governments with the Tribunal remains

<sup>2</sup> Between 2003 and 2004, the author was working for the regional peacebuilding programme of the Swiss Ministry of Foreign Affairs, Political Division IV (Human Security), which focuses on, inter alia, “Dealing with the Past” in the region. The following article is mainly based on this work experience.

<sup>3</sup> For deeper analysis of these topics see Lederach 1994; Henkin 2002; Bloomfield/Barnes/Huyse 2003; Bleeker/Sisson 2004.

<sup>4</sup> For a brief discussion of the background of ICTY, constraints, and (financial) problems faced, see, for example, Cibelli/Guberek 1999; Freeman 2004b; Kerr 2004; Amnesty International 2005.

<sup>5</sup> Mission statement of the International Criminal Tribunal for the former Yugoslavia: [www.un.org/icty/](http://www.un.org/icty/).

limited, though it is improving (Amnesty International 2004a and 2004b; HRW 2004; International Crisis Group 2005; Rangelov 2005). So far, 162 individuals in over 90 cases have been indicted, 56 of them are in custody, 37 have received final sentences, 17 are currently serving their sentences and 10 are still at large, among them Radovan Karadzic, Ratko Mladic and Ante Gotovina.<sup>6</sup>

Approximately 10 years after coming into existence, the UN Security Council endorsed the so-called “completion strategy” of ICTY, which foresees the transfer of lower-level cases to national courts in the region, with the completion of all first instance trials by 2008 and of appeals by 2010. Since the timeframe is very narrow and there are few preconditions in place for war crimes prosecution and trials on national levels, concerns are now growing that the completion will eventually foster a culture of impunity.

### *National Courts*

The prosecution of alleged war criminals on the national level is not only seriously hampered by the unwillingness of political elites to address the issue. Due to weak and politicised police forces, the limited capacities of the judiciary, a lack of adequate witness protection legislation and mechanisms as well as limited trans-border legal cooperation, war crimes trials have mainly failed to establish impartial and unbiased sentences (Amnesty International 2003; HRW 2004). Additionally, since more and more cases will be transferred from ICTY to national courts in the course of the completion strategy, there is a pressing need to adopt or amend legislation with regard to a) the admissibility of ICTY evidence, b) witness protection, and c) principles of criminal responsibility (command responsibility) (Amnesty International 2005).

Until recently, war crimes prosecutions in *Bosnia-Herzegovina* were conducted according to the 1996 Rome Agreement (“Rules of the Road”), which stipulates that “persons other than those already indicted by the ICTY may be arrested and detained only pursuant to a previously issued order, warrant, or indictment that has been reviewed by the tribunal” (Rome Agreement 1996; OSCE Bosnia 2005:5). Out of thousands of criminal files against alleged war criminals reviewed by ICTY, 846 cases provided sufficient evidence according to international standards to either arrest or issue an indictment against the suspect. A total of 54 cases reached trial stage in Bosnia-Herzegovina; only two in Republika Srpska, the rest in the Federation. Currently, the agreed measures of the Rome Agreement are annulled due to the ICTY completion strategy, and the review of cases has been taken over by Bosnian institutions.

<sup>6</sup> The cases are listed on the website of the Tribunal: [www.un.org/icty/](http://www.un.org/icty/).

In *Serbia*, nine war crimes trials exclusively trying low-level perpetrators have been held at domestic courts. In June 2003, a “Law on organisation and jurisdiction of government authorities in prosecuting perpetrators of war crimes” was passed, stipulating the establishment of a special chamber for war crimes at Belgrade’s District Court, a prosecutor’s office for war crimes, and a special investigation unit operating under the Ministry of Interior (OSCE Serbia 2003). The special chamber started its work in March 2004, trying eight individuals indicted for crimes committed at the Ovcara camp near Vukovar (Croatia) in 1991.<sup>7</sup>

In *Croatia*, no special chamber has been established and war crimes trials are mainly held before district courts. During the last two years, legislation related to war crimes trials as well as procedures and trial proceedings has improved, mainly due to the EU accession process. Still, ethnically biased prosecutions and convictions *in absentia* are prevalent (International Crisis Group 2001; OSCE Croatia 2003; Amnesty International 2004b): approximately 50 percent of the OSCE-monitored proceedings were pursued *in absentia*. Those proceedings involved approximately 75 percent Serbs, many of them returnees, and 17 percent Croats (OSCE Croatia 2005).

Fortunately, the war in *Macedonia* in 2001 was contained and had less devastating effects on the *overall* society. Yet, the question of “truth”, responsibility, justice and guilt is probably as contested as it is in other post-Yugoslav countries. No war crimes prosecution has taken place so far, since an amnesty was granted in spring 2002, except for those crimes under the jurisdiction of ICTY. Subsequently, five cases underwent investigations, but only two indictments were issued recently in connection with the so called “Ljuboten Case”. The other four cases will most probably be referred back to Macedonian authorities.

### *Mixed Courts in the Region*

As in Bosnia-Herzegovina, the reform process in Kosovo is mainly implemented by international institutions. Rising concerns about capacities and impartiality of the judiciary have led UNMIK to set up a mixed judicial court system, staffed by international as well as national judges and prosecutors (OSCE Kosovo 2002 and 2004; International Crisis Group 2002c). War crimes in Kosovo are mainly, though not exclusively, processed by internationals. Between 1999 and 2002, 17 cases were prosecuted in Kosovo, the overwhelming majority being trials of Serbs. Only recently, in November 2004, the first trials against

7 For further information see the website of the Humanitarian Law Centre, Belgrade: [www.hlc.org.yu/english/index.php](http://www.hlc.org.yu/english/index.php).

former members of the Kosovo Liberation Army (KLA) started at the ICTY, and in spring 2005 an indictment was issued against the former Prime Minister of Kosovo, Ramush Haradinaj.

Due to the completion strategy of ICTY, the Office of the High Representative (OHR) and the Tribunal took the initiative to create a special chamber for war crimes and organised crime at the newly established State Court of Bosnia-Herzegovina. Here again, international and national judges and prosecutors are working side by side (Amnesty International 2003). The special chamber will take over high profile cases of ICTY (approximately 25 in the course of the following years), while the bulk of charges will still be referred back to national courts.

## 2.2. Reparation

So far, no government-sponsored reparation programmes for direct and indirect victims of war have been set up in the respective countries (Djordjevic 2002b). However, high pensions are paid to former soldiers and injured veterans in Bosnia-Herzegovina and Croatia, and the return of property has taken place to varying degrees in the different countries. In the absence of government-sponsored programmes, several lawsuits were filed by individuals and state institutions.

*Bosnia-Herzegovina* filed a lawsuit against Yugoslavia at the International Court of Justice (ICJ) for violating the Genocide Convention in 1993. Six years later, Croatia followed suit. Both states argue that Yugoslavia must pay reparations for damages to persons and property, as well as to the economy and environment. The cases are pending. In April 1999, Yugoslavia submitted an application at the International Court of Justice against ten member states of the NATO coalition for violating several international obligations. In its 2004 ruling, the Court turned down the application, pointing to the fact that Yugoslavia was not an official member of the United Nations when it initiated the case, and consequently it was also not a party to the ICJ's statute, so the Court had no jurisdiction to entertain the claim made in the application.

Probably the most prominent is the "Srebrenica Case". Between November 2001 and March 2002, the Association "Women of Srebrenica" handed over 49 cases of victims from Srebrenica to the Human Rights Chamber for Bosnia and Herzegovina. All were seeking information about the fate and whereabouts of their missing relatives from Republika Srpska authorities and were asking for individual compensation. In its decision, the Chamber ordered Republika Srpska authorities to conduct an official investigation and to publish a report in the Official Gazette of Republika Srpska. Authorities were also ordered to pay KM 2

million to the Foundation of Srebrenica-Potocari as collective compensation for the 49 cases and the families of victims of Srebrenica. Moreover, four additional payments of KM 500,000 to the Foundation in the course of four years are foreseen in the decision of the Chamber. The victims are refusing collective reparation and are asking for individual ones.

A group of Bosnian and international lawyers are currently preparing a lawsuit against the UN and the Netherlands. Most of the individual lawsuits were supported by NGOs: the Centre for Collecting Documents and Information “Veritas” (Belgrade), supporting Serb refugees and victims from Croatia, has assisted with reparation claims via individual lawsuits against Croatia. The Humanitarian Law Center (Belgrade) is supporting about 700 Serb refugees from Krajina in filing lawsuits against Serbia for forcible conscription. Finally, in 2003, the International Commission on Missing Persons (ICMP), together with victims’ organisations and Bosnian institutions, drafted a Law on Missing Persons, which stipulates financial support to family members, the establishment of a foundation aimed at providing funds and the enforcement of rights of family members. The law is not adopted yet.

### 2.3. Lustration

As different experiences in Eastern Europe show (Williams/Szczerbiak/Fowler 2003), lustration and public access to secret police or army files, if done properly and transparently, can constitute an important mechanism in a period of transition from repressive to democratic systems. However, with the exception of *Serbia*, which adopted a Law on Lustration in summer 2003, no national legislation on lustration was passed in countries of former Yugoslavia (Hatschikjan 2005:5). Due to political bargaining, shortcomings of the Serbian law, and an inadequate previous decree on opening secret police files, a transparent lustration process has not taken place so far. However, several NGO campaigns for adequate legislation in Serbia<sup>8</sup> and the region were initiated in 2001 and 2004 respectively (Hatschikjan 2004 and 2005).

In *Bosnia-Herzegovina*, screening processes took place in the course of broader institutional reform processes and were initiated and implemented by international institutions (International Crisis Group 2002a and 2002b). The Dayton Agreement stipulates that no person indicted by ICTY can hold an appointive, elective or other public office (Annex 4, Art. 9) and that civilian law enforcement agencies must operate in accordance with internationally recognised standards

<sup>8</sup> More detailed information on these campaigns can be found on the websites of the Center for Antitar Action, Belgrade: [www.caa.org.yu](http://www.caa.org.yu), and the Lawyers’ Committee on Human Rights, Belgrade: [www.yucom.org.yu/EnglishVersion/LawyersCommittee.asp](http://www.yucom.org.yu/EnglishVersion/LawyersCommittee.asp).

(Annex 4, Art. 3). Moreover, according to the Election Regulations, persons running for election in Bosnia-Herzegovina must undergo a screening process, overseen by OSCE. OSCE and the High Representative can remove candidates from the list, if they violate principles laid down in the Dayton Agreement. Recent experiences with the dissolution, screening and re-appointment of all judges and prosecutors (2002–2004), the (de)certification process of approximately 24,000 police officers by the UN Mission in Bosnia-Herzegovina (1999–2002) and the screening of high-ranking officers of the Bosnian army (2003–2004) brought mixed results. Vague criteria and slow, closed and non-transparent procedures, overseen by internationals, encouraged suspicion and criticism (Hatschikjan 2004; Freeman 2004a).

In *Croatia* and *Macedonia*, a law on the security services and a law on handling personal files kept by state security were adopted in spring 2002 and summer 2000 respectively. In principle, both allow citizens access to secret files kept between 1945 and 2000 (Hatschikjan 2005).

## 2.4. Truth-seeking and Fact-finding

### *Truth and Reconciliation Commission*

In 1997, a group of NGOs from Bosnia-Herzegovina, supported by the United States Institute for Peace, started to lobby for a TRC in *Bosnia-Herzegovina*. For more than two years, ICTY and the international community opposed the idea, fearing a disruption of the prosecution process. Finally, in 2000 an agreement with ICTY was reached, and a Truth and Reconciliation Association (TRA) was established. A draft law was prepared in late 2000; further revisions were made in 2001 and submitted to the Ministry for Human Rights and Refugees. No progress has been made since then, as the government rejects the initiative. Another reason for the failure of the idea is the non-inclusion of victims' groups in the process.<sup>9</sup>

In March 2001, *Serbian* president Kostunica took the initiative to establish a TRC. It was inaugurated in February 2002. The Commission was tasked to investigate causes and the course of events of all the conflicts in the territory of former Yugoslavia. At the onset, the TRC had a three-year mandate, but was disbanded in February 2003, without having undertaken any substantial research (Peric 2004). The TRC never gained broader public recognition and credibility.

<sup>9</sup> For further information see the website of the Truth and Reconciliation Association, Sarajevo: [www.angelfire.com/bc2/kip/english/index.htm](http://www.angelfire.com/bc2/kip/english/index.htm), and International Commission on Missing Persons, Sarajevo: [www.ic-mp.org/home.php](http://www.ic-mp.org/home.php).

### *Fact-finding and Documentation*

Even though the establishment of Truth Commissions has failed so far, there are several other truth-seeking and fact-finding mechanisms on the national (or regional) level (Djordjevic 2002a). First of all, each state in the region of former Yugoslavia (and both entities in Bosnia-Herzegovina) set up its own commissions to investigate crimes, identify mass graves and trace missing persons. Those commissions focus almost exclusively on victims of their respective nationality, and are strongly influenced by party politics.

Besides this, two international institutions are present in the region: the International Committee of the Red Cross, which has compiled one of the most complete lists of missing persons in the region, and the International Commission on Missing Persons.<sup>10</sup> The ICRC process for tracing missing persons in *Bosnia-Herzegovina* started in 1996. A multi-party working group was established, but no progress was made as the parties failed to cooperate and exchange information. Thus, ICRC suspended the working group after three years, continuing to work with each nationality separately until February 2003, when the group was re-established. ICRC faced similar problems in *Croatia*, *Macedonia* and *Kosovo*. ICMP was set up at the G-7 Summit in 1996 to clarify the fate of persons unaccounted for as a result of the wars.

Two institutions – the Netherlands Institute for War Documentation (NIOD) and the Srebrenica Commission of Republika Srpska – investigated events before and during the fall of that enclave. While NIOD was conducting research at the request of the Dutch Government and published its report in April 2002, several attempts were needed to set up the Srebrenica Commission, based on the Srebrenica ruling of the Human Rights Chamber. Two reports were handed over to national and international bodies, in September 2002 and September 2003. Both generally denied mass killings of civilians, and contained many misconceptions and frauds. Thus, a new commission was set up in November 2003. Its report was finalised and published in June 2004, after pressure from the OHR and re-shuffling of the Commission.

Moreover, various national and international human rights organisations, as well as victims' groups, have collected documents and testimonies about gross human rights violations and war crimes (Djordjevic 2002a). In spring 2004, three independent organisations in Bosnia-Herzegovina, Croatia and Serbia established a regional network of documentation centres in order to exchange evidence and

<sup>10</sup> For information on missing persons see the websites of the International Commission on Missing Persons, Sarajevo: [www.ic-mp.org/home.php](http://www.ic-mp.org/home.php) and International Committee of the Red Cross: [www.icrc.org/Web/Eng/siteeng0.nsf/htmlall/western\\_europe?OpenDocument](http://www.icrc.org/Web/Eng/siteeng0.nsf/htmlall/western_europe?OpenDocument).

information on missing persons, human rights violations and war crimes, and to monitor national war crimes trials (Protocol 2004).

More recently, some NGOs like the Documentation Center Wars 1991–1999, Caritas Italiana, and the Kosovar Research Documentation Institute have started to implement oral history projects and have published the accounts of refugees, women, victims of human rights violations, relatives of missing persons, youth and veterans.<sup>11</sup>

## 2.5. Public Debates and Public Acknowledgment

To confront the culture of silence and denial, a small number of electronic media (e.g. B92) or film companies (Saga Film, xy films) produced and broadcast documentary films (e.g. “Srebrenica”, “Storm over Krajina”, “Sarajevo Siege”). Additionally, public debates, sometimes broadcast on TV and radio, about specific topics or events of the last decade have become more widespread. Unfortunately, these forums are often restricted to urban intellectual (NGO) circles. Only rarely do debates take place outside the capitals in smaller towns. One exception is a series of public events with judges and prosecutors of ICTY, organised in 2004 by the ICTY Outreach Office in Sarajevo and the Helsinki Committee for Human Rights in the Republika Srpska.

Another example are the public debates with former combatants in several towns in Bosnia and Serbia and Montenegro. The debates were coordinated and implemented by the Centre for Nonviolent Action (Sarajevo/Belgrade) in cooperation with several local NGOs. They were probably the first such events, not only involving former combatants in peacebuilding activities, but also providing space to talk about individual wartime experiences in local communities (CNA 2002–2004; Wils/Zupan 2004; *see also the article on dealing with the past by Martina Fischer and the interview with CNA staff in this book*).

A different approach to initiating public discussions are exhibitions. “Blood and Honey”, a photographic exhibition by Ron Haviv, for example, chronicles the war in Yugoslavia and toured different towns in Serbia in 2002.

Symbolic acts of acknowledgement of responsibility and remorse are often seen as important. Several such public symbolic acts have been made by, for example, the Presidents of Serbia and Montenegro, Croatia and Bosnia-Herzegovina (Peric 2004).<sup>12</sup>

<sup>11</sup> See Documentation Center Wars 1991–1999, Belgrade: [www.dcr.org.yu/ocentru.php?language=eng](http://www.dcr.org.yu/ocentru.php?language=eng).

<sup>12</sup> Further information on this topic can be found on the website of the Igman Initiative: [www.igman-initiative.org/](http://www.igman-initiative.org/).

Finally, memorials are probably one of the most noticeable parts of official or semi-official dealing with past politics: the Srebrenica Foundation and Memorial were set up in 2001 after a decision of the High Representative.<sup>13</sup> Construction work started in October 2002 and ended in August 2003 with the inauguration of the Memorial. Many other memorials have been set up after the wars in communities, mainly building a source of collective memory (depicting heroism and victimhood) for one nationality.

## 2.6. Education

Education, especially history education, can build a crucial pillar for processes of dealing with the past. But in the absence of any thorough reform processes during the last decade, education systems remain divided along national lines and education or training on such topics as human rights, democracy, (religious) tolerance, peace and nonviolence are mainly provided by the non-formal educational sector (NGOs).

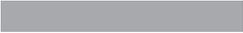
The rewriting of history books in Serbia, initiated by the Ministry of Education after the fall of Milosevic, has failed to introduce a non-partisan, unbiased view on the last decade.

The Center for Democracy and Reconciliation in South East Europe conducted a two-year project on history education in South East Europe, mainly looking into education systems, and history textbooks (Koulouri 2001 and 2002). The past decade of wars was excluded from the project. Some NGOs (e.g. *Deutsch-Französisches Jugendwerk* [French German Youth Office] or the Ethnic Conflict Resolution Project in Skopje) have organised workshops with students of history and youth aimed at building a shared understanding of the history and more recent past of Macedonia.

## 2.7. Healing and Story-Telling

During and after the wars, many organisations, especially women's organisations, offered psychological services for traumatised women and children (*see the article by Monika Kleck on trauma work in this book*). However, while the individual level was and still is addressed (at least to a certain degree), few initiatives have aimed at supporting reintegration and healing processes on the *community* level, especially in the context of minority return processes. This might be due to the absence of community-based reconciliation mechanisms, the focus on retributive justice mechanisms (see below), and the internationally

<sup>13</sup> The name of the Foundation is: "Foundation of Srebrenica-Potocari. Memorial and Cemetery". For further information on aims and statute see [www.ohr.int/ohr-dept/pol/srebrenica](http://www.ohr.int/ohr-dept/pol/srebrenica).



led *reconstruction* process, which gave priority to infrastructure rather than the rebuilding of the social fabric. Nevertheless, there are experiences of trust-building and reintegration through, for example, active listening (Kruhonja 2001), or individual story-telling (see CNA 2002 and *the article by Martina Fischer on dealing with the past in this book*), which can be used for healing and dealing with the past on the community level.

### 3. Conclusions

Various activities have been launched in the countries of former Yugoslavia on different levels, but as yet many preconditions for “Dealing with the Past” are still not in place. This is especially true for macro-political conditions. At the onset, peace agreements brokered by the international community left all conflicting sides with a sense of defeat, and kept those responsible for staging the wars in power for several years. Thus, to date the political elite lacks the will to confront past abuses and assume responsibility. In general, one can speak of a continuity of the former system in varying degrees, specifically with regard to the army and the police. Moreover, a weak, politicised and often corrupted judiciary in all countries cannot deliver a sense of justice to its respective societies. Absence of political accountability, lack of rule of law, and widespread impunity, particularly with regard to war criminals, not only seriously undermine the legitimacy of state institutions in the region, but also hamper a broader process of value-based, socio-political change.

337

One indicator of this is the still widespread culture of silence and denial about past human rights abuses and war crimes. Very often, perpetrators are celebrated as “heroes” in their communities. This not only causes continuing hurt to survivors of human rights violations, but also affects how collective historical memories of wartime are developed. To date, mutually exclusive truths and notions of victimhood and heroism are still shaping the various group identities, thus reinforcing the existing social fragmentation. Added to this, a high number of refugees and IDPs are still not able to return, and the fate of about 25,000 missing persons in the region (including 3,000 missing persons in Kosovo) remains unknown.

The *regional dimension* of the wars on the territories of former Yugoslavia and the subsequently established new borders add a specific challenge to dealing with the past processes: on the one hand, certain very concrete and pressing issues, such as identifying missing persons, war crimes prosecution and witness protection, can only be addressed by taking a regional approach. Here, politics

often causes obstacles to progress. On the other hand, one should be cautious in generalising the need for regional approaches or simply transferring specific measures from one country to another, because war experiences, conflict settings, needs and priorities differ from country to country (Nikolic-Ristanovic 2003; Hatschikjan 2004; Stubbs 2003; Victimology Society Serbia 2004).

Another aspect renders the situation rather unique: it is the strong presence of the *international community* in the region and its often-contested and highly controversial role during the wars. This raises several critical issues with regard to transitional justice and dealing with the past. First of all, the international community is not neutral, but rather a party to the conflict in many settings, which renders its role and position in supporting these processes difficult and ambivalent. A case in point is the strong support given to transitional justice issues in Serbia, contrasted with a much greater reluctance in Kosovo and Bosnia-Herzegovina. Secondly, NGOs working in the field of transitional justice and dealing with the past are viewed with suspicion by their fellow citizens, and are often perceived as “traitors” or an “extended arm” of the international community. Finally, the strong presence of the international community and the transitional justice mechanisms set up by it are narrowing the space for genuine processes to develop.

The ICTY is currently the key instrument to address the culture of impunity. However, lack of information, media distortion, misconceptions about its work and the notions of victimhood and heroism have distorted perceptions of the Tribunal among the populations. The Court lacks credibility, especially in Serbia and Republika Srpska, where it is perceived as “victor’s justice” (“*Siegerjustiz*”), and is – to a certain degree – reinforcing national solidarities. Here, it is important to mention that *all* nations tend to perceive the ICTY as mechanism to prosecute war criminals of the *other* side.<sup>14</sup>

While both civil society groups and international actors are focusing on prosecution – often referred to as “retributive justice” – and factual or forensic truth<sup>15</sup>, other mechanisms are neglected. Few attempts have been made so far to heal and reach reconciliation through story-telling (Kayser 2000 and 2001; Stauffer/Hamber 1995) or involving communities and different victim and survivor groups in reconciliation processes on the local level. In contrast to

<sup>14</sup> On the difficult relation between formal justice mechanisms such as ICTY and reconciliation processes in the context of ethno-political conflict and genocide, see Stover/Weinstein 2004.

<sup>15</sup> The report of the South African Truth and Reconciliation Commission distinguishes between 1) factual or forensic truth: establishing facts on the individual level and in the wider context, 2) personal narrative truth: healing through story-telling, 3) social dialogue truth: healing through interaction and transparency, and 4) healing restorative truth: healing through public acknowledgement of human rights abuses.

other countries such as South Africa, Rwanda or East Timor, where existing community-based reconciliation mechanisms were, or are being, applied, those mechanisms are either non-existent or not applicable because of the religious divide. Civil societies in the respective countries, especially in Bosnia-Herzegovina, Macedonia and Kosovo, are also still relatively weak, often divided along ethnic lines, and conflicts exist between human rights organisations advocating retributive justice as a means to reconciliation and proponents of other approaches. Finally, family associations of missing persons, victims of human rights abuses, and refugees, which represent genuine interest groups, have few organisational and financial capacities, are often highly politicised and manipulated, and are rarely recognised by urban NGOs as partners in the process (ICMP 2004).

Taking into consideration the many challenges organisations and institutions are facing while working in this field, it remains even more vital to support a broader and more comprehensive approach to dealing with the past in the region. Prosecution, or retributive justice, is only one important element in this context. Creativity, energy and time are needed to support healing and re-integration processes on the community level. And while reforming state institutions is crucial, re-defining a shared value system as societal base for a shared future is equally important.

## Literature

- Amnesty International 2003. *Bosnia-Herzegovina. Shelving Justice. War Crimes Prosecutions in Paralysis*. Amnesty International Index: EUR 63/018/2003.
- Amnesty International 2004a. *Serbia and Montenegro – Amnesty International’s Concerns and Serbia and Montenegro’s Commitments to the Council of Europe*. Amnesty International Index: EUR 70/002/2004.
- Amnesty International 2004b. *A Shadow on Croatia’s Future: Continuing Impunity for War Crimes and Crimes against Humanity*. Amnesty International Index: EUR 64/005/2004.
- Amnesty International 2005. *Amnesty International’s Concerns on the Implementation of the “Completion Strategy” of the International Criminal Tribunal for the Former Yugoslavia*. Amnesty International Index: EUR 05/001/2005.
- Bleeker, Mo and Jonathan Sisson (eds.) 2004. *Dealing with the Past. Critical Issues, Lessons Learned, and Challenges for Future Swiss Policy*. KOFF Working Paper 2/2004. Bern: Swisspeace.

- Bloomfield, David, Teresa Barnes and Luc Huyse (eds.) 2003. *Reconciliation after Violent Conflict. A Handbook*. Stockholm: IDEA.
- Centre for Nonviolent Action 2002. *About the Panels. Four Views: How I Found Myself in War, How to Reach Sustainable Peace*. Translation of Special Articles published in *Vreme*, No. 600, 4 July 2002. Belgrade/Sarajevo: CNA.
- Cibelli, Kristen and Tamy Guberek 1999. *Justice Unknown, Justice Unsatisfied? Bosnian NGOs Speak about the International Criminal Tribunal for the Former Yugoslavia*. Medford: EPIIC at Tufts University. [www.epiic.com/class/justicereport.pdf](http://www.epiic.com/class/justicereport.pdf).
- Djordjevic, Djordje 2002a. *A Report on Local, Regional and International Documentation of War Crimes and Human Rights Violations in the Former Yugoslavia*. New York: International Center for Transitional Justice.
- Djordjevic, Djordje 2002b. *Casualty of Politics: An Overview of Acts and Projects of Reparation in the Former Yugoslavia*. New York: International Center for Transitional Justice.
- Freeman, Mark 2004a. *Bosnia and Herzegovina: Selected Developments in Transitional Justice*. ICTJ Case Studies Series. New York: International Center for Transitional Justice.
- Freeman, Mark 2004b. *Serbia and Montenegro: Selected Developments in Transitional Justice*. ICTJ Case Studies Series. New York: International Center for Transitional Justice.
- Hatschikjan, Magarditsch (ed.) 2004. *Past and Present: Consequences for Democratisation*. Proceedings of the Seminar Organized within the Project: "Disclosing Hidden History: Lustration in the Western Balkans", Belgrade, July 2004. Thessaloniki: CDRSEE.
- Hatschikjan, Magarditsch (ed.) 2005. *Manual on Lustration, Public Access to Files of the Secret Services and Public Debates on the Past in the Western Balkans*. Thessaloniki: CDRSEE.
- Henkin, Alice H. (ed.) 2002. *The Legacy of Abuse: Confronting the Past, Facing the Future*. Washington: Aspen Institute.
- Human Rights Watch 2004. *Justice at Risk: War Crimes Trials in Croatia, Bosnia and Herzegovina, and Serbia and Montenegro*. HRW Report 16, 7(D). New York.
- International Commission on Missing Persons 2004. *Paths to Reconciliation*. Conference Report (10 December 2003). Sarajevo: International Commission on Missing Persons.
- International Crisis Group 2001. *Croatia: Facing Up To War Crimes*. Balkans Briefing No. 24. Zagreb/Brussels: ICG.
- International Crisis Group 2002a. *Courting Disaster: The Misrule of Law in Bosnia and Herzegovina*. Balkans Report No. 127. Sarajevo/Brussels: ICG.
- International Crisis Group 2002b. *Policing the Police in Bosnia: A Further Reform Agenda*. Balkans Report No. 130. Sarajevo/Brussels: ICG.

- International Crisis Group 2002c. *Finding the Balance: The Scales of Justice in Kosovo*. Europe Report No. 134. Pristina/Brussels: ICG.
- International Crisis Group 2005. *Serbia: Spinning its Wheels*. Europe Briefing No. 39. Belgrade/Brussels: ICG.
- Kayser, Undine 2000. *Creating a Space for Encounter and Remembrance: The Healing of Memories Process*. Cape Town: Centre for the Study of Violence and Reconciliation and Institute for Healing of Memories.
- Kayser, Undine 2001. *What Do We Tell Our Children? The Work of the Centre for Ubuntu in Cape Town (formerly the Religious Response to the Truth and Reconciliation Commission)*. Cape Town: Centre for the Study of Violence and Reconciliation and University of Cape Town.
- Kerr, Rachel 2004. *The International Criminal Tribunal for the Former Yugoslavia: An Exercise in Law, Politics and Diplomacy*. Oxford: Oxford University Press.
- Koulouri, Christina (ed.) 2001. *Teaching the History of Southeastern Europe*. Thessaloniki: CDRSEE.
- Koulouri, Christina (ed.) 2002. *Clio in the Balkans. The Politics of History Education*. Thessaloniki: CDRSEE.
- Kritz, Neil J. (ed.) 1995. *Transitional Justice: How Emerging Democracies Reckon With Former Regimes. General Considerations*. Washington: United States Institute for Peace Press.
- Kruhonja, Katarina (ed.) 2001. *I Choose Life. Building a Democratic Society Based on the Culture of Non-violence. Post-war Peace Building in Eastern Croatia*. Osijek: Center for Peace, Nonviolence and Human Rights.
- Lederach, John P. 1994. *Building Peace. Sustainable Reconciliation in Divided Societies*. Tokyo: United Nations University Press.
- Netherlands Institute for War Documentation 2002. *Srebrenica – a ‘Safe’ Area. Reconstruction, Background, Consequences and Analyses of the Fall of a Safe Area*. <http://213.222.3.5/srebrenica/>.
- Nikolic-Ristanovic, Vesna 2003. *Truth, Reconciliation and Victims in Serbia: the Process so far*. Draft Paper presented at the XI<sup>th</sup> International Symposium on Victimology. Stellenbosch, South Africa, 13-18 July 2003.
- OSCE Mission to Bosnia and Herzegovina 2005. *War Crimes Trials Before the Domestic Courts of Bosnia and Herzegovina. Progress and Obstacles*.
- OSCE Mission to Croatia 2003. *Background Report: Domestic War Crime Trials 2002*.
- OSCE Mission to Croatia 2005. *Background Report: Domestic War Crime Trials 2004*.
- OSCE Mission to Kosovo 2002. *Kosovo’s War Crimes Trials: A Review*.
- OSCE Mission to Kosovo 2004. *Kosovo: Review of the Criminal Justice System (April 2003-October 2004). Crime, Detention, and Punishment*.
- OSCE Mission to Serbia and Montenegro 2003: *War Crimes Before Domestic Courts*.

- Peric, Tatjana 2004. *Facing the Past: Religious Communities, Truth and Reconciliation in Post-Milosevic Serbia*. Paper presented to the 6<sup>th</sup> Annual Kokkalis Graduate Student Workshop. Cambridge (USA), 6 February 2004.
- Protocol on Regional Cooperation for the Purpose of Investigation and Documentation of the Crimes of War in the Post-Yugoslav Countries, Sarajevo, 6 April 2004*. Research and Documentation Centre, Sarajevo; Humanitarian Law Center, Belgrade; Documenta, Croatia. [www.idc.org.ba/protocol.html](http://www.idc.org.ba/protocol.html).
- Rangelov, Iavor 2005. *EU Accession Conditionality and Transitional Justice in the Former Yugoslavia*. Paper presented to the European Foreign Policy Conference. London 1-2 July 2005.
- Rome Agreement*, February 1996. [www.ohr.int/ohr-dept/hr-rol/thedep/war-crime-tr/default.asp?content\\_id=6093](http://www.ohr.int/ohr-dept/hr-rol/thedep/war-crime-tr/default.asp?content_id=6093).
- Stauffer, Carl and Brandon Hamber 1995. *Putting a Face on the Past: Survivor-Offender Mediation and the Truth and Reconciliation Commission*. Paper presented at Centre for the Study of Violence and Reconciliation on 20 February 1995. Johannesburg: Centre for the Study of Violence and Reconciliation.
- Stover, Eric and Harvey M. Weinstein (eds.) 2004. *My Neighbor, My Enemy. Justice and Community in the Aftermath of Atrocity*. New York/Cambridge: Cambridge University Press.
- Stubbs, Paul 2003. *Dealing with the Past in Bosnia and Herzegovina, Croatia, and Serbia and Montenegro. Regional Synthesis Report*. Unpublished Report. Quaker Peace and Social Witnesses.
- UN 2004. *Report of the Secretary General on the Rule of Law and Transitional Justice in Post-Conflict Societies*. UN Doc. S/2004/616, 23 August 2004.
- Victimology Society Serbia 2004. *Truth and Reconciliation in the Former Yugoslavia: Where Are We Now and Where to Go?* Brief on the International Conference. Belgrade, 15-17 October 2004.
- Williams, Kieran, Aleks Szczerbiak and Brigid Fowler 2003. *Explaining Lustration in Eastern Europe: 'A Post-communist Politics Approach'*. SEI Working Paper No. 62. Brighton: Sussex European Institute.
- Wils, Oliver and Natascha Zupan 2004. *Dealing with the Past and Conflict Transformation in Former Yugoslavia*. Evaluation Report. Berlin: Berghof Research Center. [www.berghof-center.org/publications/other/joint\\_evaluation\\_report\\_cna.pdf](http://www.berghof-center.org/publications/other/joint_evaluation_report_cna.pdf).