



Dealing with the Past in the Western Balkans

Initiatives for Peacebuilding and Transitional Justice
in Bosnia-Herzegovina, Serbia and Croatia

Martina Fischer and Ljubinka Petrović-Ziemer (eds.)

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Martina Fischer and Ljubinka Petrović-Ziemer

Abstract

The study investigates initiatives for reconciliation and “dealing with the past” which were undertaken by international organisations, legal institutions and local civil society actors in response to the wars in the former Yugoslavia in the early 1990s. The coherence of objectives and strategies and their implications for peacebuilding, forms of cooperation and learning experiences, and the political resonance of the various approaches were a particular focus of interest. The research concentrated on Bosnia-Herzegovina, Serbia and Croatia, which are linked by their history of ethnopolitical conflict and are signatory states to the Dayton Peace Agreement (1995), under which they committed to cooperate in order to overcome the effects of war. The inter-country case study was carried out with input from local partners from civil society organisations and academic institutions. In all, 150 interviews were conducted in 28 municipalities.

The results can be summarised as follows:

Compared with other post-conflict societies, “dealing with the past” initiatives began very early in the Western Balkans and were very well-resourced by the international community. The Dayton Peace Agreement and various UN resolutions established the basis for this process. In a situation in which local institutions were unwilling or unable to investigate and prosecute war crimes and crimes against humanity to an adequate extent, the International Criminal Tribunal for the former Yugoslavia (ICTY) in The Hague has made an important contribution and has successfully supported local capacity-building for this purpose. The importance of legal processes for the investigation and prosecution of the crimes committed were recognised by all the interviewees without exception, although assessments of the work of the relevant institutions vary; not all of them, by any means, enjoy unlimited confidence.

Surprisingly, the assumption that peace activists would be more sceptical about processes under criminal law was not confirmed by the findings of the research. In fact, all of these actors take the view that the crimes committed during the war must be investigated in a judicial process and those responsible must be brought to justice. Furthermore, civil society actors, by and large, show little difference in their assessment of the legal institutions. The assumption that the representatives of the courts would be sceptical about the establishment of a regional truth commission, seeing it as undermining their work or challenging their authority, was also refuted by the empirical findings. However, representatives of the official Commissions for Missing Persons in particular were highly sceptical towards such an approach, for the reasons stated.

The various TJ protagonists were united in their view that dealing with the past processes cannot remain a task for the criminal justice system alone. International actors in particular have focused strongly on legal processes and especially the role of the criminal justice system. Restorative forms of justice, by contrast, have received much less attention. The same applies to restorative forms of truth-finding as a contribution to healing, trust- and relationship-building. Initiatives in this field have largely been undertaken by civil society actors. However, their proposals for the development of restorative approaches are highly diverse.

The campaign for a Regional Commission for Truth-seeking and Truth-telling about War Crimes in the Former Yugoslavia (REKOM) was initially a common denominator uniting numerous civil society actors (fact-finding). However, among the groups and individuals which support a REKOM and/or have joined the campaign to lobby for its establishment, there are highly diverse notions of the potential afforded by this type of inter-country mechanism. Some would like it to be equipped with a more far-reaching mandate. That being the case, there is disagreement among the groups of actors investigated whether a REKOM would lead to gains in terms of truth and justice for the groups suffering most severely from the effects

of war (victims and their relatives, refugees and displaced persons) and whether it could influence social dialogue on the past in a constructive manner. The same applies to transitional justice strategies developed by governmental institutions in consultation with civil society actors and with international support.

As regards interaction, a number of effective networking arrangements and partnerships were identified between the various levels of action (international/regional/local, governmental/non-governmental). However, initiatives at the political and societal level tend to run in parallel to each other, rather than being linked. Multi-level approaches focusing on inclusive cultures of remembrance are still absent and are urgently needed. The REKOM initiative, which is being pursued intensively, not only by numerous NGOs from the region itself but now also with the support of several high-ranking politicians, offers potential in this regard. But the process is still open and in a state of flux, and it remains to be seen whether an institutionalised, transboundary mechanism can genuinely be established in which bottom-up and top-down initiatives meet and create synergies. Above all, it is essential to promote initiatives which are supported by political and civil society actors alike and complement each other.

Further perspectives and challenges:

The field research shows that criminal justice mechanisms to prosecute war crimes in the countries under investigation must be further expanded. Witness support mechanisms and information strategies must be improved. In order to fulfil their tasks effectively, judicial institutions need to foster cooperation on a regional level. Furthermore, monitoring of legal and state institutions by civil society and international institutions remains crucial.

Complementary activities which promote restorative forms of truth and justice also require further support. Measures to investigate the still unresolved cases of missing persons in the region continue to require international funding. Supporting the return of refugees and IDPs and the payment of compensation to these groups remains a crucial issue for regional and international cooperation. And finally, it is still an open question whether war crimes' victims will see any reparations and who will provide the funds for this.

Restorative approaches must take account of the region and its complex war history but, at the same time, also aim to change cultures of remembrance, particularly at the local level (e.g. in cities and municipalities). Marking of sites where war operations and atrocities took place remains a challenge in the region, especially in many areas of Bosnia-Herzegovina. There is a need to develop inclusive forms of remembrance that acknowledge all of the victims regardless of their "ethnic" (cultural, religious or political) affiliation.

Special emphasis should be placed on social areas where perceptions and interpretations of the past are formed, with a particular focus on educational institutions. Initiatives that contribute to opening space(s) for exchange of personal experiences and different views on the past are crucial, as are learning spaces for peace education that help to develop individual and social capacities for respect, tolerance and nonviolent conflict transformation.

Introduction

Dealing with the Legacies of the Past in the Balkans:
a Local, Regional and International Challenge

Martina Fischer

chapter 1

The region of the former Yugoslavia experienced brutal wars and gross human rights violations in the 1990s. With the collapse of the state, economic problems and political disintegration, and spurred on by ethno-nationalist propaganda, political constituencies formed around so-called “ethnic” identities and definitions, resulting in a struggle for territories and for political representation, power and recognition. New ethnopolitical nation-states were formed, which led to policies of exclusion in polities with multi-ethnic populations. When Croatia declared its independence in 1991, hostilities between Croatian forces and the Yugoslav People’s Army began, causing devastation in some areas of this new country. War broke out in Bosnia-Herzegovina in 1992. The causes and background of this war have been widely discussed by historians and political scientists, and most of them would agree that a variety of factors have to be considered,¹ but that aspirations for secession played a crucial role.² In view of the developments in Croatia, a majority of the Muslim/Bosniak population and the Croat community in Bosnia supported secession from Yugoslavia, whereas a majority of Bosnia’s Serb population wished to remain within the FRY. Following a referendum, Bosnia and Herzegovina was declared a sovereign state in January 1992. Bosniaks defended its existence as a multi-ethnic republic, in which they formed the dominant constituency in a number of areas. Meanwhile, many Bosnian Serb politicians were pursuing a different strategy, proclaiming a Serb Republic and aiming to unite all Bosnian territories under their military control with Serbia and Serb-controlled areas in Croatia. Croats in Bosnia at first favoured an undivided Republic of Bosnia-Herzegovina but later on shifted position and also fought for a division of the country. In a bid to change existing borders, fighting broke out between various armed forces and militias, and the killing of civilians began.

As close relationships existed between the Bosnian Croat community and *Croatia* and between Bosnian Serbs and the *Federal Republic of Yugoslavia* (FRY, at that time consisting of Serbia and Montenegro), both these countries were also directly and indirectly involved in the Bosnian war. Croat combatants in Bosnia-Herzegovina were supported by the armed forces of Croatia, while the Bosnian Serb forces could rely on supplies of weapons and paramilitary support from the FRY. As international actors (particularly the US, Russia and the EU member states) did not pursue a coherent or coordinated strategy, they were easily outplayed by the warring parties. Bosnia-Herzegovina endured the most destructive forms of war in the period 1992-1995, with around 100,000 war-related deaths and half of the population displaced.³ Many people fled or fell victim to ethnic persecution and expulsion. Rape became a crucial element of warfare⁴ and a systematic strategy of ethnic annihilation.⁵

As Bosnia-Herzegovina, Serbia and Croatia were involved in a common scenario of confrontation, legacies of the past have an ongoing influence on the present. The research project has been designed as a cross-border study as political developments in Serbia and Croatia have been strongly interconnected with the conflict dynamic in Bosnia-Herzegovina also in the post-war period.⁶ The societies in all three countries are still suffering from different forms of traumatisation experienced both by civilians and combatants. Families are still searching for missing relatives, and the authorities in all three countries have to cope with the sensitive task of managing the return and reintegration of refugees and displaced persons. Given that ethnopolitical violence was organised on a regional level, post-conflict peacebuilding efforts also have to consider the regional dimension. The Dayton Peace Accord, facilitated by international negotiators in 1995, provided a framework here: governments from Bosnia, Croatia and the FRY committed

1 For an in-depth analysis of the different factors, see Calic 1995; Woodward 1995; Allcock 2000; Melčić 2007a.

2 See Gromes 2007; Gromes 2009.

3 66% of war-related deaths were Bosniaks, 26% Bosnian Serbs and 8% Bosnian Croats; more than 40% were civilians, according to the Research and Documentation Centre in Sarajevo; www.idc.org.ba.

4 The significance of rape as an expression of political terror and ethnopolitical warfare in Bosnia has been analysed by Stiglmeier 1992; Allen 1996; Bassiouni 1996; Đurić-Kuzmanović 2008; Hromadžić 2004.

5 According to the United Nations Commission of Experts (1994), most of the sexual violence was inflicted in camps. Members of all constituencies committed such crimes. However, Bosnian Serb troops, fighting for a Serb Republic excluding the Muslim/Bosniak populations, applied sexual violence systematically as a weapon of war with the aim of ethnic annihilation.

6 Such inter-connection does not exist with Kosovo, which is not systematically included in our study. However, the conflict between Serbia and Kosovo and related war crimes trials have been mentioned by some of our interviewees, and are therefore mentioned in some chapters.

to mutual recognition and the peaceful settlement of disputes; they also agreed to adhere to the provisions on dealing with the effects of the war, notably the return of refugees and the prosecution of war crimes (Articles VI and IX).

From the very beginning, international actors – with the support of local human rights activists – stressed the *need for a legal process* to address war crimes and gross human rights violations. In accordance with UN Resolutions 808 and 827, the *International Criminal Tribunal for the former Yugoslavia* (ICTY) was established in The Hague in 1993 while the war in Bosnia-Herzegovina was still being fought. Since the war, the European Union has always made it clear that implementation of the Dayton Peace Agreement and cooperation with the Hague Tribunal are preconditions for these countries' accession to the EU. With support from the ICTY, the UN and the EU, legal institutions for war crimes prosecution have been established in Bosnia, Croatia and Serbia. International experts have also pushed for the return of refugees and displaced persons and for property restitution, security sector reforms and the rule of law. In addition, international organisations (IGOs), bilateral donors and international NGOs (INGOs) and foundations have promoted measures to encourage societal processes of dealing with the past, in cooperation with local civil society organisations (CSOs).

The work of the Hague Tribunal – although contested – has formed an important reference point for politics and societies in the above-mentioned countries since its establishment. The Tribunal's mandate is due to expire soon⁷ and any remaining cases will have to be dealt with by the region's own legal institutions. At the same time, proposals for the establishment of non-judicial mechanisms to address the consequences of massive human rights violations are gaining popularity. This study takes the opportunity to look more closely at ongoing developments in the Dayton signatory states and asks: How are the societies in Bosnia-Herzegovina, Serbia and Croatia preparing for the period after the ICTY? How do the international and domestic judiciary, fact-finding commissions, IGOs and INGOs, and local civil society actors whose purpose is to promote a process of dealing with the past assess the TJ approaches that have been applied so far, and what do they propose for the future? Based on a content analysis of 150 focused and semi-structured interviews with different TJ actors and protagonists, the study explores the compatibility and coherence of concepts, goals and approaches. It looks at the interaction between different actors, with a particular focus on forms of cooperation and learning experiences. The voices of political party representatives are also heard, in order to explore how TJ protagonists' activities and proposals are mirrored and linked up with the political level.

This report presents results from field research that was conducted in 28 cities of Bosnia-Herzegovina, Croatia and Serbia in 2010 and 2011. *Chapter 2* gives an overview of the political context and relevant actors in processes of dealing with the past. *Chapter 3* outlines the research design, which builds on the debate about transitional justice, reconciliation and conflict transformation, and introduces the methodology applied for the field research and the qualitative analyses of the interviews. *Chapters 4-7* present the results of these analyses, which offer insights into the engagement of different actors mentioned above, their assessments and expectations of transitional justice mechanisms, their conceptual approaches and their cooperation and learning experiences. *Chapter 8* contains a synthesis of this analysis and outlines open questions, challenges and further perspectives. *Chapter 9* offers policy recommendations for policy-makers and civil society actors in the region as well as for international actors.

⁷ The Completion Strategy had envisaged that the ICTY's work would end in 2010. Under UN Security Council Resolution 1966, adopted in December 2010, it was decided that an International Residual Mechanism should be installed to complete ongoing cases by the end of 2014. See http://www.icty.org/x/file/About/Reports%20and%20Publications/ResidualMechanism/101222_sc_res1966_residualmechanism_en.pdf.

Political Context and Relevant Actors

Martina Fischer

chapter 2

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2.1 Political context in Bosnia-Herzegovina, Serbia and Croatia

Cooperation with the Hague Tribunal was one of the criteria set by the EU for the governments in the Western Balkans – along with others, such as establishing the rule of law and fighting corruption. According to the recent EU monitoring reports many of these criteria have been met. However, serious deficits remain in all of the countries – including Croatia – with regard to establishing standards for human rights, rule of law, border control, and political and economic accountability and transparency.¹ The prospect of EU membership has helped to initiate reforms and provides a framework for improving regional cooperation among political and economic institutions (Calic 2005, 13). But due to the unequal development and special features of the countries in question, there is an ambivalent dynamics ongoing in the region. Some countries have come closer to the mark than others: Negotiations with Croatia have been concluded and this country hopes to join the EU in July 2013. In March 2012, the European Council accepted Serbia as an official candidate for accession, along with Montenegro and Macedonia, while Bosnia-Herzegovina is still far from taking such a step.

In all the countries of the region, there is ongoing conflict between the proponents of modernisation in line with EU standards and those who oppose such processes. Furthermore, state-building processes remain controversial or inconclusive. Montenegro's and Kosovo's independence had major repercussions on the developments in the region, particularly in Serbia and Bosnia-Herzegovina (henceforth: Bosnia, or BiH). Status issues which were unresolved for many years (as in Kosovo²), dysfunctional administrations in sophisticated power-sharing structures (in Bosnia), and feelings of insecurity as a consequence of the recent war experience mean that in some places, citizens' faith in state institutions and identification with the polity have not been able to develop. Almost all the countries – although to very different degrees – struggle with the uneasy presence of parallel societies and divided communities. This is particularly the case in Bosnia-Herzegovina, which was ultimately constructed as a state of three constituencies which continue to regard each other with suspicion.

Bosnia-Herzegovina

Bosnia-Herzegovina's political system, established by the Dayton Peace Accord (DPA), is based on two entities, the "Federation of Bosnia-Herzegovina" (FBiH, primarily inhabited by Bosniaks and Bosnian Croats) and the "Republika Srpska" (RS, primarily inhabited by Bosnian Serbs), and institutions at the state level. These include a State Presidency consisting of three representatives from the Bosniak, Croat and Serb communities³, a Parliament and a Council of Ministers. Bosnia was set up as a semi-protectorate in 1995, with an international High Representative who coordinates the implementation of all civilian aspects of the DPA, in cooperation with an international Peace Implementation Council (PIC).⁴ As a consequence of the Dayton constitution, state institutions remained weak, and entity institutions were more powerful from the very beginning. This imbalance and the very complex administrative structures of the new federal system contributed to a situation where agreements on reforms (i.e. in the educational system or security sector)

1 See Working Documents released by the European Commission on (1) Croatia, (2) Serbia, and (3) Bosnia:

(1) http://ec.europa.eu/enlargement/pdf/key_documents/2012/package/hr_rapport_2012_en.pdf;

(2) http://ec.europa.eu/enlargement/pdf/key_documents/2012/package/sr_rapport_2012_en.pdf;

(3) http://ec.europa.eu/enlargement/pdf/key_documents/2012/package/ba_rapport_2012_en.pdf.

2 Kosovo was granted an EU perspective in 2008, but had to submit to a system of independence under EU supervision, which means that the justice and police sector is overseen by the European Rule of Law Mission in Kosovo (EULEX).

3 Bosniaks, Croats and Serbs are recognized as "constituent peoples" in the preamble of the Constitution of BiH. However, the legal framework determines that the Serb representative in the presidency is elected in the RS, while the Croat and Bosniak representatives are elected in the FBiH.

4 The Office of the High Representative (OHR) oversees the implementation of civilian aspects of the Dayton Peace Agreement that ended the war in 1995 and regularly reports to the Peace Implementation Council (PIC), the international body guiding the peace process. The PIC includes delegations of the US, EU Presidency and Commission, Russia, Germany, UK, France, Italy, Japan, Canada and Turkey.

were constantly obstructed.⁵ Deficits of coordination by international actors have further contributed to this situation (International Crisis Group 2011a, 1).

Representatives of the three constitutive groups in BiH continue to express diverging ideas on the future state structure. Serb representatives promote a confederation combined with a very high degree of autonomy for the entities, while Bosniak representatives want a more federal state based on more powers for the overarching state institutions. In recent years, political confrontation has increased. Influential Serb representatives pointed to Montenegro's and Kosovo's independence and suggested that inhabitants of the RS should have the right to hold a referendum to decide whether they want to be citizens of BiH. Influential Bosniak representatives insisted on empowerment of state institutions and some called for the abolition of the entity structure, which fuelled further polarisation. Croat parties raised their voices, calling for the establishment of a third entity. These tensions were palpable in the election campaigns in late 2010. The elections resulted in a substantial swing towards the Social Democrat Party (SDP). However, in 2011 the country experienced a massive crisis.⁶ At first, the highly influential Croat Democratic Union parties HDZ and HDZ 1990 blocked the formation of governments and refused to send delegates to the entity's House of Peoples from the four cantons they control. The SDP then formed a Federation government against the advice of the state-level Central Election Commission, in violation of the entity constitution. Both HDZs decided to create a Croat Assembly. Later on, the President of the RS, Milorad Dodik (SNSD), announced a referendum on laws imposed by the High Representative regarding the State Court of BiH and State Prosecutor's Office. In fact, by doing so, he questioned the Dayton structure *per se*, as these issues are outside RS' jurisdiction. Furthermore, he held a nationalistic speech at the RS National Assembly, once more challenging the international overseer. Due to the efforts of international facilitators, the proposal for a referendum was cancelled. As ICG has outlined, in this process "all international institutions in Bosnia have lost authority; many, including the Office of the High Representative (OHR), are seen as favoring one side or party. Local leaders demand support from OHR and state institutions alike and ignore rulings that go against them. There is no broadly respected authority in the country, only regional or partisan champions" (International Crisis Group 2011a, 1). In the course of these tensions, formation of the Government took 16 months. In February 2012, a coalition was agreed by the Social Democrats (SDP), the Party of Democratic Action (SDA), the Union of Independent Socialists (SNSD), the Serb Democratic Party (SDS), the Croat Democratic Union (HDZ), and HDZ 1990.

However, in Bosnia, state-building is still incomplete, and some aspects of the Dayton Peace Accord have to be clarified.⁷ Constitutional reforms are seen as a must by the international institutions, as the Dayton constitution is not compatible with EU standards. As a consequence of Bosnia's model of consociational democracy, Serbs who are resident in the Federation and Bosniaks or Croats living in the RS are excluded from being elected to the Presidency, because entity populations have to vote for "their" respective candidates. Moreover, persons who do not match any of the ethnic categories face disadvantages when it comes to positions and jobs in public administrations. In short, the Constitution of BiH discriminates against those who do not assign themselves (or are assigned) to the three constitutive

⁵ For in-depth analyses of Bosnia's development since 1995, see Bliesemann de Guevara 2009; Bieber 2006; Chandler 2008, Fischer 2007b; Fischer 2010; Gromes 2007; 2008; 2009; International Crisis Group 2010; 2011a,b; Solioz 2010a,b; Solioz 2011; Woodward 2009.

⁶ For an analysis of the factors and dynamics of the recent crisis, see Džihić 2010; Gromes 2010, 2012; ICG 2010; 2011a, 2011b.

⁷ In February 2008 the Steering Board of the PIC had set out the requirements that need to be met by the BiH authorities prior to the closure of the OHR: (1) Acceptable and Sustainable Resolution of the Issue of Apportionment of Property between State and other levels of government; (2) Acceptable and Sustainable Resolution of Defence Property; (3) Completion of the Brčko Final Award; (4) Fiscal Sustainability (promoted through an Agreement on a Permanent ITA Co-efficient methodology and establishment of a National Fiscal Council); and (5) entrenchment of the Rule of Law (demonstrated through Adoption of National War Crimes Strategy, passage of Law on Aliens and Asylum, and adoption of National Justice Sector Reform Strategy). Moreover it was agreed that two more conditions need to be fulfilled: Signing of the Stabilisation and Association Agreement with the EU and a positive assessment of the situation in BiH by the PIC Steering Board based on full compliance with the Dayton Peace Agreement. The Board has regularly reviewed progress on this 5+2 agenda since 2008 and assesses the current situation as follows: "While progress has been made in some areas, chronic disagreement among the main political parties has produced gridlock that has prevented the full implementation of the agenda" (http://www.ohr.int/print/?content_id=46773; accessed 31 August 2012).

nations but to minorities.⁸ International initiatives aimed at facilitation of these sensitive topics between the conflicting constituencies have been repeatedly disrupted and to date, no consensus has been achieved. The international overseers face a dilemma, as Serb parties increasingly oppose international involvement, while Bosniak parties are calling for more powerful intervention, and Croats hope for support for their concepts of reforming federal structures. International pressure on constitutional change is seen as an aspiration to “revise the outcomes of the war and restructure what is currently a confederally constituted state into a unitary state in which the Bosniaks, as the largest ethnic group, are the titular nation. Offered the choice whether, despite the uncertain outcome of the accession process, to agree to such demands or to insist on their political rights as a national group, they do not hesitate to make a decision and vote against any change to the status quo” (Despot, Reljić and Seufert 2012, 4-5; translated by H. Crowe). There is a danger that the country will become deadlocked again and again, which might increase the “no future” feeling that is widespread, especially among the young generation.

Serbia

During the research period, Serbia’s government, chaired by Prime Minister Cvetković and the Democratic Party (DS), explicitly supported EU accession.⁹ The pro-EU course also had a staunch advocate in President Boris Tadić, who also sought to advance good-neighbourly relations with Croatia. At the same time, international expectations were not entirely met as government politicians from different parties had clearly stated that for them a unilateral statement of independence from Kosovo was not acceptable, pointing to the Constitution that defines Serbia’s territorial integrity. A common pattern of discourse was also to avoid clear definitions of borders or to keep this vague, which occasionally implies a measure of tacit support of rhetoric of autonomy that is expressed by Republika Srpska’s government in Bosnia. However, although the Government in Serbia had declared that it wanted to settle the conflict and find a solution that is acceptable for both sides, violent incidents at the border between Serbia and Kosovo have repeatedly been reported, apparently also fuelled by actors involved in organised crime. Rapprochement was blocked for a long time, on the one hand, by the German Government, suspecting that such incidents were supported by the Government of Serbia, and on the other hand by the Government of Romania, which expected concessions for the protection of the Romanian constituency in Serbia. After concessions on Kosovo¹⁰ and regulation of minority rights, Serbia was granted accession candidate status in March 2012.

Coping with the socio-economic and political problems is a serious challenge for Serbia. The privatisation of former socially-owned companies, breakdown of companies, and cuts in social welfare programmes have created a difficult situation for much of the population. According to official statistics, 8% live in poverty, which particularly affects jobless people, children, single mothers, refugees and IDPs, and ethnic minorities, such as the Roma. At the same time, economic structures are prone to corruption due to a lack of regulatory authorities and independent media. Reforms of education, healthcare and social insurance, the judiciary and the military are still incomplete. Another challenge is to manage peaceful coexistence of minorities and majority populations in different areas of the multicultural state. Relations

⁸ This became obvious in January 2007, when the representative of the Jewish community in BiH, Jacob Finci, asked the Central Election Commission about a possibility to stand for election to the Presidency and the House of Peoples of the Parliamentary Assembly. He was informed that he was ineligible because of his Jewish origin. Together with the representative of the Roma community, Dervo Sejdić, Finci complained that they were prevented by the Constitution, and the provisions of the Election Act 2001, from being candidates for the above-mentioned democratic functions solely on the grounds of their ethnic origins, which in their view meant a breach of the European Convention on Human Rights. In June 2009, the European Court of Human Rights concluded that the applicants’ ineligibility to stand for election to the House of Peoples lacked a reasonable justification and had therefore breached Article 14, taken in conjunction with Article 3 of Protocol No. 1, and that the constitutional provisions with regard to the Presidency had also to be considered discriminatory and a violation of Article 1 of Protocol No. 12 (see http://www.coe.org.rs/eng/news_sr_eng/?conid=1545).

⁹ For an analysis of recent political developments in Serbia, see Clark 2008; International Crisis Group (2008; 2011c; 2012); Becker and Engelberg 2008; Listhaug et. al 2011; Petritsch et. al 2009; Savić 2009; Uvalić 2010.

¹⁰ The Government of Serbia agreed to accept symbols and signs for “Kosovo” at its borders and to accept representatives of the Government of Kosovo in regional organisations.

between Serb and Albanian constituencies in South Serbia and relations between Serbs and Bosniaks in Sandžak are tense. In Vojvodina, the positions of those who promote autonomy and those who oppose the concept have to be balanced.

In 2011, anti-democratic movements, and in particular the nationalist Serbian Progressive Party (SNS) led by Tomislav Nikolić, mobilised against the Government and demanded early elections. Regular (presidential and parliamentary) elections were held in May 2012. Contrary to the outcomes predicted by surveys, Nikolić finally won the Presidency, with the SNS gaining 24% of the votes. The new government, which consists of the Serbian Progressive Party (SNS), the Socialists (SPS) and the United Regions of Serbia (URS), will be headed by Ivica Dacić (leader of the Socialists and once the right-hand man of former President Slobodan Milošević).¹¹

Croatia

Croatia has been a NATO member since 2009 and the Croatian government signed the EU accession treaty in December 2011. If the member states follow the recommendation of the European Commission, Croatia will become the 28th member of the European Union in July 2013. During the research period, the country was governed by the Croatian Democratic Union (HDZ) and Prime Minister Jadranka Kosor. Elections in December 2011 brought a majority for the Social Democrat Party (SDP) and led to a new government coalition of Social Democrats (SDP) and the Croatian People's Party – Liberal Democrats (HNS), led by Prime Minister Zoran Milanović.

In recent years, Croatia's governments were eager to fulfil international expectations and meet the EU's criteria for institutional and legal reforms.¹² This was backed by a consensus among all the relevant political parties, although some populist voices tried to raise anti-European rhetoric in the period when Slovenia blocked the accession process. Presidential elections in 2009 and elections in 2011 showed a decline of ethno-nationalistic forces, but it is assumed that these still hold relevant power in state administrations and have some potential for populist mobilisation. However, like other countries in the region, Croatia was also strongly affected by the international financial crisis. The country has also experienced several corruption scandals in the past three years. As political parties and administrations were involved in these crimes, citizens' trust in democracy has suffered as well.

Ethnopolitical conflicts play less of a role in Croatia than in Bosnia. The majority of the population is Croatian, as a consequence of the war operations in the early 1990s: the war between pro-independence forces and the Yugoslav army left about one-third of the country in ruins and resulted in the flight of more than 250,000 Serb citizens.¹³ Today the Serb minority has decreased to an estimated 5% of the population. Nevertheless, there is some potential for social conflicts. In particular, the war-affected areas of Eastern Slavonia and the Krajina suffer from massive poverty, and some municipalities are also marked by distrust and parallel societies. Furthermore, economic experts express concerns about the huge welfare gap between urban centres and some rural areas.

In a referendum on 22 January 2012, a majority of Croat voters endorsed the prospect of Croatian membership of the EU. However, it is important to mention that although 60% of voters supported EU accession, turnout at the referendum was only 44%; the 60% majority therefore corresponds to a total of only 29% of the electorate. The majority of the population reacted with indifference or rejected a project that had been defined as an overarching objective by governments for years. This is also connected to

¹¹ <http://www.balkaninsight.com/en/article/new-serbia-ministers-to-be-sworn-in>

¹² For an analysis of political developments in Croatia after 1995, see Ramet and Matić 2007; Ramet et al. 2008; Gagnon 2006; Tanner 2010.

¹³ During and after the military operation "Storm" hundreds of civilians were killed, and thousands of houses burnt down. As of December 2011, 132,608 Serb minority returnees were registered by the UN Refugee Agency. See http://www.unhcr.hr/eng/images/stories/news/stats2012/unhcr_statistical_report_december_2011.pdf. However, it is estimated that approximately 50 per cent of these re-settled and the others only occasionally visit their former homes (see UNHCR 2011, 81-86). For an analysis of the ambivalence of Croatia's past and the policy of the Tuđman regime in the 1990s, see Tanner 2010.

controversial opinions on how to deal with the past: “When some of Croatia’s military leaders were handed over to the Tribunal and found guilty of war crimes, large sections of the Croatian population regarded this as a national defeat. The lack of support for accession to the EU in the referendum in January 2012 must be seen in this context” (Despot, Reljić and Seufert 2012, 4).¹⁴

Common problems and challenges

Although politics and society in Bosnia-Herzegovina, Serbia and Croatia are marked by very different conditions, there are some commonalities:

In all three countries, governments and parliaments are eager to fulfil the standards set by the EU when it comes to reforms of legislation. At the same time the implementation of laws – a precondition for a functioning “rule of law” – is still deficient. Administrations are overstretched and monitoring by civil society and media is inadequate. In all three countries, transitions from a socialist to a capitalist economic system have been burdened by massive corruption scandals (Kregar et al. 2010; Despot and Reljić 2011; Donais 2002) and there are still economic sectors where legal economies and shadow economies overlap or are even connected by structures related to organised crime (Ehrke 2003; International Crisis Group 2012, 7; Hephaestos 2011).

The societies in all three countries – albeit to different degrees – have to deal with the legacies of the wars of the 1990s on a daily basis: there is an ongoing need to search for missing persons, for management of refugee return, integration of IDPs and restitution of property. According to the International Commission on Missing Persons (ICMP), 10,000 persons are still missing from the war in Bosnia, 2,000 from the war in Croatia, 900 from the Kosovo war and 13 from Macedonia.¹⁵ In Bosnia in particular, news magazines regularly report on exhumations, discoveries of mass graves and funerals. Authorities in all three countries have to cope with the highly sensitive task of return and reintegration of refugees and displaced persons. In Bosnia, the process of refugee return has come to an end; however, there are IDPs in collective accommodation who are still waiting for solutions. In Serbia, 52,000 Serbs who fled or were expelled from Croatia, 21,000 Serbs who left Bosnia and 210,000 IDPs from Kosovo (97,000 of whom are considered vulnerable) are waiting for solutions.¹⁶ Solutions for these people depend on cross-border cooperation and the political will to deal with a number of sensitive issues (e.g. property restitution and reparations, and political representation in local communities that reflects ethnic affiliations).

Furthermore, the societies in all three countries face unresolved conflicts either at a local or cross-border level, although to very different degrees. In Serbia in particular (with regard to Kosovo) and in Bosnia, relevant politicians and media still engage in ethno-nationalistic rhetoric on a daily basis. In Bosnia, tensions are also reflected by increasing numbers of hate crimes in divided communities that particularly target returnees and members of minority communities.¹⁷ At the same time, attacks are reported against minorities and vulnerable groups such as Roma, and also against homosexuals, lesbians, trans- and bisexual persons and their organisations in all three countries. In Bosnia and Serbia in particular, violent incidents against these minorities have repeatedly occurred in recent years, initiated by religious and radical groups.

Furthermore, the societies are marked by antagonisms that have developed or deepened in post-war situations, between victims and perpetrators of war crimes who have to face each other in local communities, between refugees, IDPs or returnees and resident populations, between war profiteers and those who lost their property, winners and losers of the economic transformation and, last but not least,

¹⁴ Original quote in German, translated by H. Crowe. For a detailed analysis of the discourse in Croatia, see Melčić 2007.

¹⁵ See <http://www.ic-mp.org/icmp-worldwide/southeast-europe/bosnia-and-herzegovina>.

¹⁶ According to UNHCR information shared in an interview in Sarajevo on 12 May 2011. The Commissioner for Human Rights of the Council of Europe counts a total of 438, 000 refugees and displaced persons in the entire region of former Yugoslavia who are still waiting for durable solutions to their claims. See <https://wcd.coe.int/ViewDoc.jsp?id=1904893>.

¹⁷ In order to combat such crimes, the OSCE mission to BiH issued a handbook (OSCE Mission to BiH/ODIHR 2010) and held round tables with representatives of local authorities. See <http://www.osce.org/bih/74693>.

between urban and rural cultures and populations, based on stereotyped perceptions. Tensions are often fuelled by propaganda that is based on relativisation of war crimes, competition over victim numbers, and selective remembrance.¹⁸

In some places, war criminals or suspects are still seen as heroes. This became obvious on several occasions when governments have extradited fugitives. Protests by veterans' unions and nationalists were organised in Serbia and the RS in Bosnia after the detention of the former Bosnian Serb commanders Ratko Mladić¹⁹ and Goran Hadžić²⁰ in July 2011. Similar reactions could be observed in Croatia when the ICTY sentenced the former commanders Ante Gotovina and Mladen Markač.²¹ Both were convicted of "persecutions, deportation, plunder of public or private property, wanton destruction of cities, towns or villages, murder, inhumane acts, and cruel treatment" against Serb civilians in the Krajina region during the military offensive known as »Operation Storm« in 1995. The two commanders were sentenced on 15 April 2011 to 24 and 18 years of imprisonment by the ICTY Trial Chamber in a first instance verdict that stated that both had participated in a "joint criminal enterprise" planned by military officials and the then Croatian Government led by President Franjo Tuđman (United Nations/ICTY 2011). War veterans and nationalist parties joined in public protests against the verdict and celebrated the suspects' contribution to the "Homeland Defence War". Public celebrations were also held when the Appeals Chamber of the Tribunal, on 16 November 2012, revised this verdict and released both commanders.²²

Finally, in all three countries, several thousand war crimes cases have to be concluded by domestic courts and prosecutors. Many suspects have left their former place of residence and are at large in their own or other countries. As all three countries decided not to extradite fugitives, progress in this area will largely depend on the political will for cooperation among the governments in the region, as well as on monitoring by international actors and civil society organisations (CSOs).

In all three countries, international organisations (IGOs), bilateral donors and international non-governmental organisations (INGOs) as well as local CSOs are addressing the legacies of the wars of the 1990s in one or another way. The following section gives an overview of these actors.

18 See Pupavac 1997; Obradović 2012; Ramet 2005.

19 Ratko Mladić was Commander of the Main Staff of the Bosnian Serb Army (VRS) from 1992 to 1996. He was promoted to the rank of Colonel General in 1994. He is indicted for genocide, persecutions, extermination, murder, deportation, inhumane acts, terror, unlawful attacks, and taking of hostages. http://www.icty.org/x/cases/mladic/cis/en/cis_mladic_en_1.pdf.

20 Goran Hadžić was President of the Government of the self-proclaimed Serbian Autonomous District Slavonia, Baranja and Western Sylvania (SAO SBWS) and President of the Republic of Serbian Krajina (RSK). He is indicted for persecutions on political, racial or religious grounds; extermination; murder; imprisonment; torture; inhumane acts; deportation and forcible transfer; cruel treatment; wanton destruction of villages, or devastation not justified by military necessity; destruction or wilful damage done to institutions dedicated to education and religion; and plunder of public or private property. See http://www.icty.org/x/cases/hadzic/cis/en/cis_hadzic_en.pdf.

21 Ante Gotovina was Colonel General of the Croatian Army (HV) and Commander of the Split Military District from 1992 to 1996, and overall operational commander of the southern portion of the Krajina region during Operation Storm. Mladen Markač was Commander of the Special Police of the Ministry of the Interior of the Republic of Croatia from 18 February 1994, with responsibility for the Special Police, and also served as Assistant Minister of the Interior; following Operation Storm, he held the rank of Colonel General. See www.icty.org/x/cases/gotovina/cis/en/cis_gotovina_al_en.pdf.

22 <http://www.balkaninsight.com/en/article/gotovina-and-markac-found-not-guilty>.

2.2 Actors in transitional justice and dealing with the legacies of the past

The International Criminal Tribunal for the former Yugoslavia (ICTY)

The Hague Tribunal has taken the lead in prosecuting war crimes and crimes against humanity and in documenting facts. It has indicted 161 persons for serious violations of international humanitarian law committed in the territory of former Yugoslavia. 126 proceedings have been concluded and 64 persons have been sentenced. 35 proceedings are ongoing.²³ The ICTY has set up regional offices in Sarajevo, Belgrade and Zagreb. On the one hand, by ending impunity and establishing evidence, the ICTY has countered the trend towards silencing atrocities and has helped to narrow the space for denial (Orentlicher 2008, 2010). On the other hand, there are clear indications that the Tribunal's sentences have also fuelled nationalist discourses about the war (Allcock 2009) and hostilities in some local communities, for instance in Bosnia (Meernik 2005). In all three countries, the legitimacy of the Tribunal is seen as controversial. Parts of the population in Serbia and in Republika Srpska in Bosnia have regarded the ICTY, from the outset, as being biased, or as a distant mechanism imposed from the outside (Mertus 2007). A huge deficit of acceptance²⁴ was revealed by opinion polls and also admitted by ICTY officials, which prompted the ICTY to set up a public relations campaign and "outreach strategy" in order to maintain closer contact to the media and civil society (Hodžić 2007a). However, as the ICTY for a long period served as the only comprehensive cross-border mechanism for fact-finding and prosecution of war crimes, it continues to be an important point of reference, also for human rights and victims' groups.

The ICTY and international donors have also engaged in capacity building for domestic judiciaries and contributed to the establishment of institutions for war crimes prosecution in Bosnia-Herzegovina, Serbia and Croatia.

Institutions for war crimes prosecution in Bosnia, Croatia and Serbia

A *Section for War Crimes* of the Court of Bosnia-Herzegovina was inaugurated in 2005 as a permanent state-level organ designed to deal with grave breaches of international humanitarian law. The ICTY facilitated the drafting of the legislation that led to the creation of this legal body and a Section for War Crimes within the Office of the Prosecutor, as well as a Registry. Designed as a hybrid court, international staff was employed, to be phased out after a five-year period. Under a law adopted in 2004, a witness protection unit has been established within the Bosnia-Herzegovina State Investigation and Protection Agency.²⁵ In *Croatia*, four specialised war crimes chambers were formed in 2003 within the County Courts in Zagreb, Osijek, Rijeka and Split. The Croatian Parliament passed the *Law on the Application of the Statute of the International Criminal Court and the Prosecution of Criminal Acts against the International Law of War and International Humanitarian Law*. Croatia also made amendments to the Penal Code in 2004. A department for witness support was formed within the Ministry of Justice in 2005.²⁶ In *Serbia*, a specialised *War Crimes Chamber of the Belgrade District Court* and a *War Crimes Prosecutor's Office* were established in 2003.²⁷ The Serbian Assembly also passed a law to establish witness protection and a special unit for this was established within Serbia's Interior Ministry (Fischer 2011a, 61). All the above-mentioned institutions were created with international support and will continue to take on a central role with regard to fact-finding and accountability.

²³ See <http://www.icty.org/sections/TheCases/KeyFigures> (accessed 4.2.2012).

²⁴ For an analysis of the ICTY's acceptance and impact on societies in the region, see Allcock 2009; Arzt 2006; Mertus 2007; Fletcher and Weinstein 2004; McMahon and Forsythe 2008; Sajkas 2007; Nettelfield 2010.

²⁵ For an overview of the development of the judiciary in BiH, see Ivanišević 2008; OSCE Mission to BiH 2005.

²⁶ For an overview of the development in Croatia, see OSCE Mission to Croatia 2003; 2005.

²⁷ For an overview of the development in Serbia, see Ivanišević 2007; OSCE mission to Serbia and Montenegro 2003.

Civil society actors: Grassroots activities for dealing with the past at a local and regional level

In Bosnia-Herzegovina, Serbia and Croatia, a number of civil society initiatives have been working hard to counter the distortion of facts or biased politics of remembrance. Most of these organisations rely on funding from foreign donors and work without significant political support from governments and parliaments in the region. Their activities cover a variety of tasks.²⁸ They focus on fact-finding, human rights and victims' advocacy, dealing with trauma, creating empathy for different narratives and inclusive cultures of remembrance, and facilitation of dialogue.²⁹ Their work includes collecting information and documenting facts about war victims, supporting families searching for missing persons, marking places of atrocities, oral history projects, and advocating for alternative representations of history in schoolbooks. Some CSOs focus on peace education, dialogue and relationship-building in divided communities or between people from different constituencies. Others are working closely with the Hague Tribunal and/or national war crimes chambers, monitoring trials and providing legal, psychosocial or political advice for witnesses and victims.

CSO activities aim to complement fact-finding and dismantle discourses marked by denial. In 2005, for instance, a video uncovered by the *Humanitarian Law Center* (Belgrade) provided evidence of the killing of several young Bosniaks by soldiers belonging to a special police unit (Scorpions) under Milošević's command. This revealed that the crimes around Srebrenica were not committed solely by Bosnian Serb militia but that actors from (then) Yugoslavia were actively involved. The video was presented in evidence at the Hague Tribunal; it was broadcast by all public TV stations in Bosnia-Herzegovina and also disseminated in (then) Serbia-Montenegro, triggering debates (Kandić 2008, 64).

Another example is the Population Loss Project set up by the *Research and Documentation Centre* (IDC) in Sarajevo. The Centre corrected the figures of an estimated 200,000 and 250,000 Bosnians killed which were generally cited by official sources (Pupavac 1997) and finally presented a total of 97,920 war-related deaths for which data have been verified and recorded (Tokača 2008, 60). Data were collected and presented on the internet. The project has since become well-known as the "Bosnian Book of Dead" (BBD database).³⁰ Although the BBD has faced criticism from the outset, official institutions and politicians have also now started to refer to the new figures.

Furthermore, *victims' groups*, together with *human rights activists* and *psychologists*, are engaged in searching for missing persons and in the empowerment of relatives. In Bosnia in particular, after the 1992-95 war, a huge number of associations of victims, detainees, displaced persons and relatives of missing persons emerged that contributed to fact-finding (Gentile 2008). Many of these support civilian war victims in their struggle for legal regulation of their rights of return, property restitution, or compensation. They also provide psychosocial support for victims who decide to speak out as witnesses in war crimes trials. Victims' groups are influential in shaping discourses on dealing with the past. At the same time they are often at risk of being manipulated for political purposes and ethno-nationalist discourses. The same applies to *veterans' unions* who advocate for the rights of ex-combatants. In Bosnia in particular, some war veterans' organisations have "slowed down the postwar transition by preserving the status quo and refusing to help the peace implementation process", according to assessments by the International Center for Transitional Justice (Moratti and Sabić-El-Rayess 2009, 30). Several of these associations have advocated against the return of displaced persons and refugees who belong to ethnic minorities and opposed the strengthening of state institutions. Although victims' and veterans' groups directly compete for state funds, and veterans are often privileged in comparison to many civilian war victims, the compartmentalisation of society along ethnopolitical lines contributes to a situation where victims' associations and veterans' unions "frequently find themselves on the same side of political issues" (ibid.). Only recently have victims' associations of different (Serb, Bosniak and Croat) constituencies begun to overcome ethnic barriers and taken cautious

²⁸ For an overview, see Balkan Civil Society Development Network 2012.

²⁹ For an overview of CSOs' activities in the field of dealing with the past, see Fischer 2011a; Rill and Franović 2005; Franović 2008; Rill, Smidling and Bitoljanu 2007; Rangelov and Theros 2009; Belloni and Hemmer 2010.

³⁰ For an analysis of the methodology and impact, see Nettelfield 2011.

steps towards cooperation. Both victims' and veterans' groups play an important role in the context of public commemorations.

CSOs have also put a focus on gender aspects of transitional justice (Vušković and Trifunović 2008). In Bosnia in particular, the fate of women who suffered rape and torture during the war was ignored and silenced by taboos. It was only after the launch of the film "Grbavica"³¹ (awarded a Golden Bear at the 2006 Berlin Film Festival) that the Bosnian Parliament formally acknowledged raped women as "war victims" or "war invalids" and decided that they should receive compensation, similar to that payable to the men who fought in the war. This was also a result of campaigns by local and international NGOs (e.g. the Association of Women of Srebrenica and Medica Mondiale) to raise awareness and generate support for the women (Baumann and Müller 2006).

Other organisations engage in facilitation of dialogues and exchange of narratives; they include the Center for Peace Studies (Zagreb), the Center for Peace, Nonviolence and Human Rights (Osijek) and Miramida Centre (Groznan), the Nansen Dialogue Centres (in Sarajevo, Banja Luka, Mostar and Osijek), and the youth group Odisej (Bratunac). Some of the CSOs focus on dialogue and community building on a local level; others have a cross-border or regional focus. One example is the regional peace work of the Centre for Nonviolent Action (CNA) based in Sarajevo and Belgrade, which has developed training formats for nonviolent action and organised public discussion forums where war veterans from different sides speak about their personal experiences (Fischer 2007c; Center for Nonviolent Action 2002). Initiatives for regional dialogue and reconciliation have also been supported by organisations with religious backgrounds and by youth organisations, such as the Youth Initiative for Human Rights (in Novi Sad, Kragujevac, Niš and Sarajevo).

The REKOM Initiative

The Documenta Center (Zagreb), the Research and Documentation Centre (Sarajevo) and Humanitarian Law Center (Belgrade) established cross-border cooperation on dealing with the past in 2004. In 2006, they initiated a campaign to establish a regional fact-finding mechanism for the countries of the former Yugoslavia. After a two-year consultation process (with regional forums held in Sarajevo, Zagreb, Belgrade and Prishtina), 108 local CSOs and 77 individuals from various countries signed an agreement in October 2008.

The document stated that a *Regional Commission for Truth-seeking and Truth-telling about War Crimes in the Former Yugoslavia* (REKOM), should be established by the Governments of Bosnia-Herzegovina, Croatia, Kosovo, Macedonia, Montenegro, Serbia and Slovenia, and with the support of the United Nations and the European Union.³² It was argued that such a mechanism is needed to complement judicial proceedings, as "at the current speed, courts in the region will be able to prosecute at most 1,200 war criminals by the end of 2020" and, therefore, "an accurate overview of war crimes will not be provided, dignity to the victims will not be restored and trust between ethnic communities in the region cannot be built" (ibid.). Furthermore it was argued that different post-Yugoslav societies have "different truths and historical accounts" and that "denial of crimes perpetrated against others, acknowledgment of only one's own victims" still prevail (ibid.). A regional commission should counter this trend by establishing a record that is based on facts. The initiative established an internet forum where victims' reports are published on a regular basis.

Three years later in March 2011, a statute proposal was agreed by members of the coalition that proposes the establishment of a "Regional Commission for Establishing the Facts about War Crimes and other Gross Violations of Human Rights Committed on the Territory of the Former Yugoslavia in the period from 1991-2001". The REKOM Statute proposal outlines the following objectives:³³

³¹ The film by Jasmila Žbanić tackles the relationship between a Bosniak woman who was raped during the war and her teenage daughter. Both are trying to cope with the past in post-war Sarajevo. The film outlines the individual trauma as well as the existing taboos in society.

³² Mission statement at www.webwiki.de/www.korekom.org (accessed 14.1.2010).

³³ Statute of REKOM (March 26, 2011) Article 13, <http://www.zarekom.org/Proposed-RECOM-Statute.en.html>.

- a) To establish the facts about war crimes and other gross violations of human rights committed on the territory of the former SFRJ in the period from January 1, 1991 until December 31, 2001, the political and societal circumstances that led to the commission of these acts, and the consequences of the crimes and human rights violations;
- b) To acknowledge injustices inflicted upon victims in order to help create a culture of compassion and solidarity with victims;
- c) To contribute to the fulfilment of victims' rights;
- d) To help political elites and society in Parties to the Agreement to accept the facts about war crimes and other gross violations of human rights;
- e) To help clarify the fate of the missing persons; and,
- f) To help prevent the recurrence of war crimes and other gross violations of human rights.

The coalition aims to gather one million signatures to be delivered to the governments together with a request to pass a decree on establishing a commission. At the time of writing, 542,000 individuals have signed up in support of the initiative and 1,800 groups and individuals are members of the coalition.³⁴ The initiative is also supported by the Prime Ministers of Kosovo and Montenegro, by the Presidents of Serbia and Croatia, by 188 artists (in a joint letter), and by a variety of international organisations such as the United Nations Development Programme (UNDP), the UN High Commissioner for Human Rights, the European Commission and European Parliament, and the Council of Europe.³⁵ Although the coalition has grown substantially, it is also marked by considerable fluctuation of agencies that are either leaving or joining in. The impetus for a regional fact-finding commission is historically unprecedented and thus deserves further attention, monitoring and analysis.

IGOs and INGOs addressing the legacies of the wars of the 1990s

In all three countries, the EU and OSCE³⁶ maintain departments that monitor democratisation and legal and institutional reforms. Their mandates are closely related to the *EU accession process* and the *Dayton Peace Accord* (DPA) that obliges the governments of all three countries to cooperate with the Hague Tribunal and across the region. EU delegations monitor the governments' cooperation with the ICTY and their efforts to deal with issues related to human rights, minorities, refugees, justice, and home affairs. In Bosnia, the *Office of the High Representative* (OHR) is also involved in this area of activity. The OSCE's mandate in all three countries includes war crimes prosecution monitoring. It maintains war crimes sections and departments dealing with law enforcement and rule of law, human rights, organised crime and corruption. OSCE oversees judicial and police reforms, monitors elections, and implements activities to enhance interaction of courts, ministries, media and civil society.

UN organisations are also involved in processes related to the implementation of the DPA. The United Nations Development Programme (UNDP) supports transitional justice processes, provides support for "vulnerable people", such as refugees and IDPs and cooperates with victims' and war veterans' groups. UNDP also assists institutions and civil society to develop strategies for transitional justice. In Bosnia, this helped to establish a State Strategy for Transitional Justice together with the ICTY, OSCE, and ministries, in consultation with media and CSOs. UNHCR supports refugees and IDPs, monitors return and reintegration and facilitates cooperation between governments to find durable solutions for these groups. In Bosnia, UNHCR supports IDPs, refugees and returnees (Bosnian nationals who were displaced from one area of the country to another, refugees from Croatia, and returning IDPs and refugees from either the region or abroad). In Serbia, UNHCR supports Serb refugees from Croatia and Bosnia, Roma and IDPs from Kosovo. UNHCR also maintains close cooperation with NGOs.

³⁴ See <http://www.zarekom.org/RECOM-Initiative-Voice/RECOM-Initiative-Voice-1/2011.en.html>

³⁵ <http://www.zarekom.org/news/index.7.en.html>

³⁶ At the end of 2011, the OSCE declared the mandate of its mission in Croatia successfully completed; the office in Zagreb was closed in January 2012.

Apart from the above-mentioned international and regional organisations, government departments (embassies or ministries) are also active in bilateral programmes. Furthermore, *INGOs*, *political foundations* and *private donors* are engaged in initiatives that focus on dealing with the legacies of the past. Their goals and activities range from support for democratisation and civil society building, education for tolerance, facilitation of relationship-building in divided communities, and inter-religious dialogue, to human rights monitoring and war crimes prosecution monitoring. Specific strategies include documentation of war crimes and monitoring of trials, support for victims and witnesses, and support for alternative mechanisms for transitional justice. Several organisations are involved in projects that aim to create space for dialogue or empathy for different narratives through oral history. Others provide psychosocial support for dealing with trauma in cooperation with victims or war veterans' organisations. IGOs and INGOs have also actively supported cross-border engagement of CSOs for dealing with the past in the region; examples are the regional cooperation among the documentation centres that were established in Sarajevo, Zagreb and Belgrade, and the REKOM campaign over recent years.

Governments and state institutions

Although by signing the DPA in 1995, the governments committed themselves to dealing with the legacies of the war and to cooperation with the Hague Tribunal, in practice there have been differences in terms of their willingness to cooperate with the ICTY in the years that have passed. Above all, Croatia and Serbia's policies regarding the extradition of suspected war criminals or evidence material related to such cases have at times given cause for complaint.³⁷ Recent assessments by the ICTY state that this policy has improved. The arrests and extradition of the fugitive Ante Gotovina, and, finally, Ratko Mladić and Goran Hadžić are considered a "milestone" in this respect.³⁸

Reviewing the years that have passed since 1995, the official politics of remembrance in all three countries has for a long time focused on the selective commemoration of war victims, each generally characterising its own "constituency" as the main victim.³⁹ These discourses were largely determined by varying interpretations of the recent past, as well as by experiences and narratives from the Second World War, or ancient myths (Popović 2003). However, in recent years, moderate politicians from RS in Bosnia-Herzegovina, Serbia (or, until 2006, Serbia-Montenegro) and Croatia have made public apologies (Fischer 2008a). In November 2010, Serbian and Croatian Presidents Boris Tadić and Ivo Josipović laid wreaths to honour Croat victims at a memorial in Ovčara, near Vukovar. The two leaders also visited a memorial for Serb civilians killed in the town of Paulin Dvor. Both towns were the scene of executions of prisoners and civilians during the war in 1991.⁴⁰ These events have been internationally acknowledged and noted by people in the region. The same applies to the declaration of the Parliament of Serbia on Srebrenica that condemns the crime against Bosnian Muslims in Srebrenica.⁴¹ Nevertheless, such steps are

³⁷ On the interaction between the Hague Tribunal, states and other international organisations, see Zoglin 2005; McMahon and Forsythe 2008; Subotić 2009, 2011.

³⁸ Letter by ICTY President Patrick Robinson to the UN Security Council, see United Nations Security Council 2011.

³⁹ See Kuljić 2009; Ramet 2005; Sajkas 2007; Teršelić 2008.

⁴⁰ In Ovčara near Vukovar, 261 Croat prisoners of war and civilians were shot and buried in a mass grave. 15 persons were found guilty of this atrocity and received a total of 207 years in prison in trials conducted in Serbia and at the Hague Tribunal. In Paulin Dvor near Osijek, Croat forces murdered 18 Serb civilians. "I am here to once again offer words of apology, to express regret and create a possibility for Serbs and Croats, Serbia and Croatia, to turn a new page of history," said Tadić in Ovčara. Josipović expressed belief that this event will help boost the efforts to shed light on the fate of the missing persons and in establishing good-neighbourly relations, underscoring that a different policy, one of peace and friendship, is proving possible. In Paulin Dvor, Josipović said that the victims commemorated there "deserve an apology" (see B92, Tanjug, http://www.b92.net/eng/news/politics-article.php?yyyy=2010&mm=11&dd=04&nav_id=70684).

⁴¹ The declaration was adopted on 31 March 2010. It also calls for all countries of the former Yugoslavia to adopt similar resolutions condemning crimes committed against Serbs during the war and continue the process of reconciliation, based on the equality of nationalities and full respect of human and minority rights and freedoms. A majority of 127 MPs (one more than the 126 required) voted in favour of the resolution. Representatives of the opposition Serb Radical Party (SRS) and Liberal Democratic Party (LDP) did not vote; MPs from the opposition Democratic Party of Serbia (DSS), New Serbia (NS), and Serbian Progressive Party (SNS) voted against the resolution (see www.b92.net/eng/news/politics-article.php?yyyy=2010&mm=03&dd=31&nav_id=66160).

still accompanied by very emotional and controversial debates in the respective societies.⁴²

Governments' activities to trace the fate of the missing persons in the first years after the wars were organised either at a national level or, in the case of Bosnia, at entity level. Later on, in Bosnia, a Missing Persons Institute (MPI) was created in 2000, in response to an initiative launched by the OHR for a "Joint Exhumation Process" that permitted the three former warring parties to conduct exhumations relevant to their own missing persons on the "opposing side's" territory.⁴³ The *International Commission on Missing Persons* (ICMP)⁴⁴ was tasked to facilitate cooperation between the respective entity authorities, and in 2005 the Council of Ministers of BiH took on the role of co-founder of the MPI. Through ICMP, cooperation was also enhanced on a regional level to some extent, with the *Commission for Missing Persons* of the then Federal Republic of Yugoslavia and the *Office for Detained or Missing Persons* in Croatia. On 25 January 2012, the EU announced that it will continue funding exhumation activities in the Western Balkans for another two years.⁴⁵

Apart from allowing the establishment of legal bodies and searching for the missing, governments and parliaments have not been very proactive in supporting further *fact-finding initiatives* in the region. Initiatives to set up commissions on a national level have been either half-hearted or have received very little political support. In 2001, in the then *Federal Republic of Yugoslavia*, President Vojislav Koštunica established a *State Commission for Truth and Reconciliation* as a top-down initiative. But some of the designated members had such serious objections to the Commission's objectives and competencies that they refused to participate. The Commission was abolished in 2003, before it had held a single public hearing (Dimitrijević 2008, 18). In *Bosnia-Herzegovina*, two limited official initiatives have been undertaken with the investigation into the massacre in Srebrenica (Ivanišević 2008, 38) and human rights abuses in Sarajevo.⁴⁶ In reaction to an initiative launched by families of victims who brought an action against *Republika Srpska* (RS) before the Human Rights Court in Bosnia, a commission was established in 2003 to investigate the events in Srebrenica from 10-19 July 1995. The court awarded compensation to relatives of victims and ordered the RS authorities to pay around € 1.8 million to the Foundation of Srebrenica Potočari, which built a memorial to the victims and a cemetery. The court also obliged the Bosnian Serb authorities to reveal all information in their possession about Srebrenica and to conduct a detailed investigation into the massacre.⁴⁷ A report was presented in 2005 in which the RS government finally acknowledged that more than 7,000 persons were killed (correcting the figure of less than 2,000 that had been presented up to that point). In contrast to this, the Sarajevo Commission never presented any results. An idea of setting up a truth and reconciliation commission at state level (Kritz and Finci 2001), as proposed by a *Citizen's Association for Truth and Reconciliation* with support from the US Institute of Peace, was rejected by parliamentarians from different sides (and also lacked the support of victims' organisations).⁴⁸

Facilitated by international organisations, in recent years some initiatives were launched to link activities for transitional justice with confidence building. In Bosnia, in 2008 the Council of Ministers of BiH

42 It was reported that most Croatian politicians welcomed the Serbian President's visit to Vukovar and regarded it as an "historic" event, while the far-right Croatian Party of Rights (HSP) organised protests (see B92, Tanjug, http://www.b92.net/eng/news/politics-article.php?yyyy=2010&mm=11&dd=04&nav_id=70684). The Srebrenica declaration also provoked a great deal of controversy, both in Serbia and Bosnia. For an in-depth analysis of the impact of the Srebrenica declaration on politics and society in these countries, see Horelt 2011, 147. International reactions were also diverse. On the one hand, the declaration was regarded as a step in the right direction (see <http://ictj.org/news/serbian-declaration-srebrenica-massacre-imperfect-important-step>); on the other hand, it was criticised for failing to utilise the terminology of the International Court of Justice and the ICTY, which both classified the killing of more than 7,000 civilians as genocide (<http://www.dw.de/dw/article/0,,5417176,00.html>).

43 See <http://www.ic-mp.org/icmp-worldwide/southeast-europe/bosnia-and-herzegovina>.

44 The ICMP was established at the initiative of US President Clinton in 1996 to support the Dayton Peace Agreement and has its headquarters in Sarajevo. Its primary role is to ensure the cooperation of governments in locating and identifying those who have disappeared during armed conflict or as a result of human rights violations.

45 See <http://www.ic-mp.org/press-releases/eu-and-icmp-donation-agreement/#more-1493>.

46 See Mirna Buljugić, No Progress for Sarajevo Truth Commission, <http://www.bim.ba/en/51/10/2327/>

47 See <http://newsvote.bbc.co.uk/mpapps/pagetools/print/news.bbc.co.uk/2/hi/europe/2828173.stm>.

48 It was spearheaded by Jacob Finci from 1997 onwards, and backed by a coalition of the Forum of Tuzla Citizens, the Citizen's Alternative Parliament, Circle 99 and the Helsinki Committees for Human Rights from Sarajevo and Bijeljina; for details, see Hatschikjan 2005.

agreed on a Transitional Justice Strategy and is cooperating on its implementation with legal institutions, parliamentarians, journalists and experts from civil society. In 2008 and 2009, consultations were held in Fojnica, Brčko and Mostar, in order to enhance dialogue on TJ issues together with victims' and veterans' organisations, women's groups, youth organisations, peace and human rights NGOs, and representatives of academic institutions and faith communities. As a result of participants' recommendations, the Council of Ministers issued a decision on forming an Expert Work Group for drafting a Strategy on TJ in BiH and an Action Plan for its implementation. Three pillars were defined: 1) verifying facts, 2) reparations and memorials, and 3) institutional reforms.⁴⁹ The project is an element of a broader project for a joint strategy for "Supporting National Capacities in TJ processes in BiH". In June 2009 the Ministries of Justice and, Human Rights and Refugees and the UN Development Programme (UNDP) agreed on a concept titled "Access to justice: Facing the Past and Confidence Building for the Future"⁵⁰ to systematically approach outstanding challenges. Expected outcomes are legal awareness-raising, access of individuals to free legal aid and communication capacity building in judicial institutions, in cooperation with civil society organisation.

⁴⁹ For more details, see the TJ Handbook for Bosnia and Herzegovina, and the Report on the Capacities of Courts and Prosecutor Offices edited by UNDP (UNDP 2009; UNDP 2008a).

⁵⁰ The project budget is USD 5.5 million, and UNDP's Bureau for Crisis Prevention and Recovery has provided USD 2.6 million. See <http://www.mpr.gov.ba/en/str.asp?id=397>.

Theoretical Approaches and Research Design

Martina Fischer

chapter 3

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3.1 Transitional justice: the call for a holistic interpretation¹

The concept of *transitional justice* (TJ) was introduced by the international human rights movement. At first it referred to the judicial process of addressing human rights violations committed by dictatorial regimes in the course of democratic transition. Later, the term also came to be used for dealing with war crimes and massive human rights abuses committed in violent conflicts (Kritz 1995; Minow 1998, 2002; Teitel 2000). The concept has been widely discussed by peacebuilding agencies engaged in war-torn societies during the past two decades, and along the way, it has gradually extended its meaning. Today it covers the establishment of tribunals, truth commissions, lustration of state administrations, settlement on reparations, and also political and societal initiatives devoted to fact-finding, reconciliation and cultures of remembrance.²

A relevant part of the TJ literature has centred on the dichotomy of *peace vs. justice* and *truth vs. justice* (Thoms et al. 2008, 18-19; Biggar 2001). In the *peace vs. justice* debate, advocates of the legalist approach have emphasised criminal justice as a means to deter future human rights violations and to support peacebuilding. Another argument is that criminal justice will stigmatise the elites who perpetuate conflict, and help separate individual from collective guilt, breaking the cycle of violence (Minow 1998; Bell 2000). Sceptics doubt that criminal justice can achieve all of this. Some have criticised international criminal justice in particular and argued for domestic prosecutions based on the conviction that justice should follow rather than precede the consolidation of peace.³ In earlier debates, bargains and amnesties, rather than prosecutions, were often seen as the best ways to achieve peace because of the need to contain “spoilers” in many post-conflict regions. Since then, most advocates of transitional justice have come to reject the idea of impunity and emphasise that amnesties, if applied at all, should be introduced as partial and conditional (Hayner 2009).

The *truth vs. justice* debate has balanced the merits of trials against other accountability mechanisms. The 1990s in particular were marked by this dichotomy, due to the almost simultaneous creation of the South African Truth and Reconciliation Commission (TRC) and the ICTY (Hazan 2006, 20). Truth commissions⁴ have been promoted as alternatives to prosecutions. It has been argued that public and official exposure of truth provides redress for victims and may contribute to individual and social healing and reconciliation (Hayner 1994, 2001). Some authors have argued that divided societies in particular need such mechanisms to prevent nationalist myth-making, based on historical distortion (Mendeloff 2004, 356-357). Especially after violent conflicts between ethnic and religious groups, which continue to live next to each other while maintaining their distinct identities, extremists are eager to tie responsibility for past crimes and human rights violations to their ethnic or religious adversaries, and a truth commission is seen as a means to counteract such tendencies. But researchers have also stressed that such efforts need careful preparation and analysis of the framework conditions. As Kritz (2009, 18) has outlined, *truth and reconciliation commissions* should be established “only where (...) a robust civil society remains intact. Where such conditions do not exist, the commission’s mandate should be narrowly focused on documenting the truth along the lines of some earlier commissions rather than on the broader reconciliation goals established more recently. In a context that lacks a civil society altogether, a more top-down approach may be appropriate.”

However, it was also revealed that – apart from a strong civil society – there is a need for reliable alliance partners in parliaments, governments and administrations who are willing to engage in institutional reforms and establish the rule of law. In the 1990s, overly high expectations were raised regarding the

¹ An extended version of the overview of the debate on TJ and reconciliation has been published in the Berghof Handbook for Conflict Transformation (see Fischer 2011b).

² For an overview of the state of research, see van der Merwe et al. 2009; Thoms et al. 2008; Backer 2009.

³ For a critical discussion of the adverse consequences of putting “justice” before “peace” with special reference to the war in Bosnia-Herzegovina, see Anonymous 1996; for further discussions of this dichotomy, see Biggar 2001.

⁴ For an overview of the research on truth commissions, see the bibliography of the Truth Commissions Project, launched by the Program on Negotiation at Harvard Law School, Search for Common Ground, and the European Centre for Common Ground, <http://www.truthcommission.org/bibliography.php?lang=en>

potential that truth commissions may have. Having seen the early truth commissions in Latin America as major advances, the human rights community has meanwhile come to view these instruments much more sceptically. An important aspect was the “enormous chasm” between the commissions’ mandates to develop detailed recommendations on societal reforms and the non-implementation of these proposals by the governments that received them. Clear warnings have also been expressed that establishing truth commissions has become an almost routine and standard practice without analysing the context, as sometimes countries in transition decide to establish commissions without any clear understanding of what such endeavours are about (Kritz 2009, 17). Disillusionment about truth commissions has finally contributed to overcoming the fixation on dichotomies between “truth vs. justice” or “justice vs. peace” and to broadening the discourse (Parlevliet 2011). Meanwhile, many authors agree that societies recovering from oppression or violent conflict need both retributive and restorative approaches.

Alexander Boraine (a former member of the South African TRC and founder of the International Center for Transitional Justice, ICTJ) has made an important contribution to the discussion by suggesting that retributive justice should be complemented with restorative justice. He strongly advocates a holistic interpretation based on five key pillars: accountability, truth, reparations, institutional reform and reconciliation (Boraine 2006, 19-25):

- ≡ *Accountability* derives from the fact that no society can claim to be free or democratic without strict adherence to the rule of law; there are mass atrocities and crimes that have been so devastating that civilisation cannot tolerate their being ignored. Yet in cases of large-scale human rights violations such as those which occurred in the former Yugoslavia, Rwanda or Sierra Leone, it is impossible to prosecute everyone. Given the limits to the law and prosecution, and although criminal justice is important, additional activities are needed that focus on documenting the truth about the past.
- ≡ Within *truth recovery*, four different notions are covered: objective or forensic truth (evidence and facts about human rights violations and missing persons), narrative truth (story-telling by victims and perpetrators and communicating personal truths and multi-layered experiences to a wider public), social or dialogical truth (truth of experience that is established by interaction, discussion and debate) and healing or restorative truth (documentation of facts and acknowledgment to give dignity to the victims and survivors).
- ≡ In this context, *reparations* also play an important role, as they belong to the few efforts undertaken directly on behalf of the victims. Nevertheless, reparations need to be closely connected to other processes aimed at documenting and acknowledging truth; otherwise they could be interpreted as being insincere.
- ≡ *Institutional reforms*, according to Boraine, form a prerequisite both for truth recovery and reconciliation. In particular, truth commissions should not focus only on individual hearings but also on institutional settings, and call to account those institutions directly responsible for the breakdown of a state, repression or human rights violations.
- ≡ *Reconciliation* is seen as a long-term process that must be accompanied by acknowledgment of the past, the acceptance of responsibility and steps towards (re-)building trust. Its starting point depends on the specific situation in a society. Although the concept is ambivalent and regarded with scepticism, due to its Christian connotation, Boraine sees a need to achieve “at least a measure of reconciliation” in a deeply divided society by creating a “common memory that can be acknowledged by those who created and implemented an unjust system, those who fought against it, and the many more who were in the middle and claimed not to know what was happening in their country” (ibid., 22).

As both practitioners and academics have emphasised, a holistic approach requires, furthermore, a “gender lens”. The ICTJ has therefore added gender justice to its agenda, alongside criminal prosecutions, truth commissions, reparations programmes, security sector reform and memorialisation efforts. Given the experience of the systematic rape as part of warfare in the Balkans and other regions, feminist researchers and women’s rights activists have pushed forward the debate on gender-specific war crimes (Allen 1996; Kohn 1995; Korać 1994; Stiglmayer 1992) and focused on the question of how legal standards have to be

modified in order to end impunity in relation to violence against women (Pankhurst 2008). Apparently these debates have had some influence on legal norms, as the tribunals for Yugoslavia, Rwanda and Sierra Leone have recognised sexual violence as a grave breach of the Geneva Convention and a crime against humanity, and the Rome Statute of the ICC⁵ has classified rape, sexual slavery, enforced prostitution, pregnancy and sterilisation as crimes against humanity and as war crimes. Furthermore, researchers, human rights and peace activists have raised awareness that a better understanding of gender, culture and power structures is needed to appropriately analyse the causes, dynamics and consequences of conflict and violence.⁶

3.2 Reconciliation and conflict transformation as multi-level processes

As stressed above, together with transitional justice, the concept of reconciliation has gained importance among peace practitioners and is also extensively discussed by the academic literature on peacebuilding and conflict transformation. It has been argued that reconciliation is a necessary requirement for lasting peace. The concept needs the orchestration of top-down and bottom-up processes (Bar-On 2007, 81), and although the process may begin either with the leaders or at the grassroots, to be effective it must always proceed in both dimensions simultaneously (Bar-Tal/Bennink 2004, 27). Civil society actors have a special role to play in this regard (Assefa 2005; Kritz 2009; Kriesberg 2007; Bloomfield 1997; 2006a). Bloomfield (1997) suggests not assigning primacy to one or the other approach; instead, the interaction between the two should be addressed. He characterises them as the structural (top-down) and cultural (bottom-up) forms and sees them as complementary, closely related and mutually supporting. He outlines that the top-down and bottom-up terminology itself points to some movement, “downwards or upwards from the starting point, some degree of relation or convergence” (Bloomfield 2006b). Furthermore, he highlights that “interpersonal reconciliation – the cultural approach – operates necessarily and by definition from the bottom-up, starting at the individual or small group level, where reconciliation involves personal interaction directly between people who have fed each other’s grievances and who need such interaction to help them define the terms of their future co-existence” (ibid.) The top-down approach is defined as the realm where political actors try to support civic trust-building and political reconciliation, and democratic reciprocity, “where the goal is less to achieve deep understanding and more build adequate working relations as free of, and protected against, subjective engagement.” (ibid.) However, the question is very much, where both spheres meet, whether civil society can form the “transmission belt” (White 1996) between state and society, or “between, on the one hand, grass-roots initiatives, victim advocacy, interpersonal interactions, encounter and dialogue work, documentation and human rights work, and, on the other, the national, society-wide process of legal and constitutional reform, truth commissions, national reparation schemes, development policy, political power-sharing, and so on” (Bloomfield 2006b, 2).

Most authors agree that reconciliation describes a process rather than an end state or outcome, aimed at building relationships between individuals, groups and societies. Reconciliation has also been defined as a process “through which a society moves from a divided past to a shared future”; looking at the past in a way that allows people to see it in terms of “shared suffering and collective responsibility” may help to restore confidence (Bloomfield et al. 2003, 12-21). The need for reconciliation is emphasised in particular for societies that have gone through a process of ethno-political conflict, as these are marked by a *loss of trust*, *inter-generational transmission of trauma and grievances*, *negative interdependence* (as the assertion of each group’s identity is seen as requiring the negation of the other group’s identity) and *polarisation*. Given that antagonists live in close proximity, not addressing these legacies means risking that they will form the causes of new spirals of violence. Reconciliation is regarded as being necessary to prevent the desire for revenge.

5 See <http://untreaty.un.org/cod/icc/statute/romefra.htm>

6 See Jalušić 2004; Nikolić-Ristanović 2000; Slapšak 2000; Zarkov 1995; Bašić 2004; Đurić-Kuzmanović et al. 2008.

The concept has also been discussed in the context of acknowledgment, contrition, mercy and forgiveness. The Truth and Reconciliation Commission of South Africa (1998) and several scholars have placed great emphasis on this nexus (Lederach 1995, 1997; Rigby 2001). Others have argued that reconciliation processes will not necessarily lead to forgiveness (Minow 1998, 17), as this is considered to be a power held only by those victimised. It cannot be claimed by others: “the right not to reconcile is a key issue in understanding some of the resistance victims feel to reconciliation, and one often forgotten by international actors as they blithely design post-conflict reconciliation processes in the abstract” (Bloomfield 2006a, 24).⁷ Bloomfield suggests a rather pragmatic understanding “that does not depend on peace and love, and forgiving”; reconciliation, according to this view, is “a process of gradually (re)building broad relationships between communities alienated by sustained and widespread violence, so that they can over time negotiate the realities and compromises of a new, shared socio-political reality” (2008, 264). It encompasses four main elements: 1) a justice process (punishing past violence, justice reform according to human rights principles, and fair distribution of social good); 2) a process of acknowledging experiences and addressing different interpretations of history; 3) a process of healing, “whereby victims repair their lives by coming to terms with their suffering (ibid.); and 4) a process of reparation (real and/or symbolic compensation) (Bloomfield 2008, 265). Overcoming power asymmetries is also mentioned as crucial for reconciliation (Kriesberg 2007; Bar-On 2007).

Furthermore, as Kriesberg (2007, 254) emphasises, there is a need to address imbalances in suffering. Often, both sides have suffered injuries at the hand of the other, although not in equal measure, and reconciliatory actions are often ineffective because they fail to reflect the given asymmetries. Moreover, reconciliation can only take place if it entails significant complementary reciprocation: if members of one side assert truths that are ignored or denigrated by the other, their assertion is hardly a mark of reconciliation, as the *truths need to be shared or at least acknowledged* to indicate some degree of reconciliation on that dimension. Expressions of regret or apology and acts of contrition must also be recognised and in a sense accepted by the other side, if reconciliation is to progress. Similarly, terms that only one side deems just and the other regards as unjust do not indicate a significant level of reconciliation on that dimension. Therefore reconciliation in post-war societies has four dimensions: *shared truth, justice, regard* and *security* (Kriesberg 2007; 2004). *Truth* is important as societies divided after mass crime usually deny what members of the other side have experienced and thus need to openly accept that they have different views of reality. At a higher level, people might develop a shared truth, supported by official investigations, judicial proceedings and literary and mass media reporting. *Justice* is needed as those who have suffered oppression or atrocities seek redress, which may take the form of restitution or compensation, but also punishment of those who committed injustices, and mechanisms for protection against future harm and discrimination. Expression of *regard* by members of each community towards the other entails recognising the humanity of the others and their human rights. *Security*, in the sense of personal or collective safety and well-being, exists as the adversaries feel a minimum of trust and “have reason to believe they can look forward to living together without one side threatening the other” (Kriesberg 2007, 253). All these different dimensions of reconciliation, according to Kriesberg, cannot be fully realised simultaneously, but are often contradictory at a given time: while some leaders or groups may demonstrate steps of reconciliation, others may remain un-reconciled, or passively resist the new relationship or even seek to subvert it.

In a similar way, *conflict transformation theory* has outlined that overcoming ethno-political conflicts in particular requires a focus on structural, behavioural and attitudinal aspects. According to Johan Galtung, it is necessary to transform the relationships, interests, discourses and the very constitution of society (1996, 70-126). Hugh Miall (2004, 75-77) believes that the meaning of a conflict depends largely on the *context* from which it arises (culture, governance arrangements, institutions, social roles, norms, the rules

⁷ Some scholars therefore argued for more modest approaches such as “co-existence” (Bar-Tal 2004) or “social reconstruction” (Stover/Weinstein 2004, 13-15), or have warned against overemphasising the “religious emotive concept” and suggested focusing instead on trust-building (Bar-On 2007) on different levels of society.

and codes in place). In conflicts involving ethnicity, minorities or challenges to state structures, the very existence of the state is at issue. *Relationships* involve “the whole fabric of interaction” (ibid., 76) within the divided society as well as beyond, i.e. with other societies. Poor relationships between groups are all too often a trigger for conflict, and remain a critical hindrance to peacebuilding efforts in post-war settings. Moreover, the attitudes of the conflicting parties are shaped by previous relationships: their behaviour is based on their memory of what has happened in the past and expectations of what may happen in the future. *Memories* are part of each party’s socially constructed understanding of the situation, shaped by culture and learning, discourse and belief. The way groups remember and construct their past is often central to the mobilisation for conflict, and thus a crucial matter to address.

3.3 Research design

The research conducted within the scope of this project is based on core ideas expressed in the above-mentioned discourse on transitional justice, reconciliation and conflict transformation. Following these thoughts, societies recovering from war and dictatorship have to follow a holistic approach of dealing with the past that builds on prosecution of mass crimes in accordance with international legal norms, but moves beyond this including forensic and objective/factual, narrative, dialogical/societal and restorative forms of truth recovery. Furthermore, TJ initiatives should aim at institutional reforms to induce a change of the systems of justice and security, and should seek to set up procedures for compensation. Finally, in order to set up restorative approaches, multi-level processes, both top-down and bottom-up approaches, are needed in order to reach a minimum of a broader societal consensus at some stage. In terms of research, this means that the interaction of different actors and compatibility of their initiatives should be a focus of interest. A better knowledge of the respective strategies, concepts and underlying assumptions is a first step in this direction and may help to enhance processes of (self-) reflection.

Following the wars of the early 1990s in the former Yugoslavia, numerous initiatives have been undertaken aiming at transitional justice, reconciliation and peacebuilding in the region. The study investigates the coherence and compatibility of goals and strategies of actors who have a specific agenda or focus on dealing with the legacies of the past (“protagonists” of transitional justice). Among these are legal institutions such as the ICTY and the domestic courts, state-driven fact-finding commissions, international and bilateral donors, international NGOs and foundations, and local peace and human rights organisations that support or conduct fact-finding or truth-telling activities, or aim to foster societal processes of facing the past and reconciliation. Among civil society actors, victims’ and veterans’ organisations play a specific role as outlined in Chapter 2.2., and some of these have strong influence on public discourses. The study looks at the guiding concepts, goals and strategies of all these actors, at cooperation and learning experiences in order to identify synergies, as well as examining incompatibilities of goals and dilemmas that might arise from their interaction. Finally, the study analyses how TJ initiatives are assessed by representatives of political parties, as some of these dominate the public discourse.

Research goals

We seek to learn how different actors evaluate the existing transitional justice mechanisms, which achievements and deficits, positive or negative effects they identify so far, and which they would support or reject. Furthermore, we intend to find out what different actors expect from additional mechanisms (such as the idea of a regional truth commission), and whether they have further proposals for approaching the legacies of the past. We also put a focus on the guiding concepts. We want to know how different actors understand terms like *truth* and *justice* and *reconciliation*, how these relate to each other and whether they use these terms in their fields of practice. Another question is what they regard as obstacles and what they see as necessary preconditions for reconciliation and long-term peacebuilding. Moreover, the study asks

which strategies are applied by TJ protagonists, with whom they cooperate, for which reasons and which learning experiences stem from this cooperation, and what kind of initiatives they recommend for the future.

The project does not intend to come up with a general assessment of the impact of TJ mechanisms on the societies in question, as theorists of transitional justice have outlined that comprehensive assessments of the impact can only be determined in the long run (Hazan 2007, 11). Furthermore, this would require a combination of qualitative and quantitative approaches. This study is purely qualitative and therefore makes a contribution to assessing the *acceptance and legitimacy* of TJ mechanisms. Furthermore, the study identifies commonalities or differences with respect to the situation in each of the three countries. We hope that the findings will contribute to critical reflection on the potential and limits of TJ policies in the context of peacebuilding in war-torn societies, and inspire discussions among TJ institutions, civil society organisations and political actors in the region of former Yugoslavia and beyond.

Box 1: Research questions and working hypothesis

1) Research questions on TJ protagonists / organisations addressing the legacies of the wars

- ≡ Why are TJ protagonists convinced that people in the region of the former Yugoslavia should deal with the past right now? How do they assess the dynamic of dealing with the past in the former Yugoslavia?
- ≡ How do they assess the TJ mechanisms that have been established so far (Hague Tribunal, domestic war crimes chambers and local fact-finding commissions)? Are there further proposals on how to approach the past, beyond criminal justice and truth commissions?
- ≡ What is their position with regard to establishing a cross-border, regional truth commission? Which forms of truth recovery do the protagonists expect from this mechanism?
- ≡ On which norms and concepts do they base their work? What is their understanding of truth, justice and reconciliation, and how do these concepts relate to each other? Do they set priorities in sequencing?
- ≡ Do they consider reconciliation to be an adequate concept for the region of the Western Balkans? Which obstacles do they identify and which preconditions need to be fulfilled in order to pave the way for reconciliation?
- ≡ What are their goals, target groups and strategies? Which assumptions about social change are underlying their agenda? Is gender justice on their agenda?
- ≡ How do the activities of different actors in the field of TJ (legal institutions, fact-finding mechanisms, CSOs, international and domestic actors) link up with each other?
- ≡ How do the protagonists of transitional justice evaluate the effectiveness of their work? Which forms of cooperation have they established? Which learning processes have they gone through and which conclusions do they draw for their future work?

2) Research questions on political parties

- ≡ Are representatives of political parties convinced that people in the region of the former Yugoslavia must deal with the past right now? Why or why not?
- ≡ How do they assess the TJ mechanisms that have been established so far (Hague Tribunal, domestic war crimes chambers and local fact-finding commissions)? Do they propose other or additional approaches, beyond criminal justice and truth commissions?
- ≡ What is the added value of a regional truth commission in the view of these actors?
- ≡ Which norms and concepts do they consider important? What is their understanding of truth, justice and reconciliation? How do these concepts relate to each other and do they set priorities in sequencing?
- ≡ Do they consider reconciliation to be an adequate concept for the region of the Western Balkans? Which obstacles do they identify and which preconditions need to be fulfilled in order to pave the way for reconciliation?
- ≡ What, in the opinion of these actors, is the potential and mandate of civil society with regard to TJ and reconciliation?
- ≡ What is the contribution of political parties to this field?

3) Overarching questions

- ≡ How do the different actors evaluate the dynamic of dealing with the past processes in the region? How do they assess the existing TJ mechanisms (Hague Tribunal, domestic courts and fact-finding commissions)? Do the different actors see the closure of the ICTY as a turning point and a new stage in dealing with the past?
- ≡ Is there a consensus on norms and concepts among TJ strategies and how do they relate to the agenda of political actors? How do the preferred norms and concepts relate to conflict transformation and peacebuilding?
- ≡ Do CSO activities in the field of TJ and reconciliation link up with initiatives at the political level? Which forms of cooperation have been developed among CSOs and which steps are they taking to approach alliance partners in governments, parliaments, administrations and political parties? Which steps are politicians taking to cooperate with CSOs?
- ≡ What kind of dynamic and support is needed in order to develop civil society in the respective countries as an “interface”, where bottom-up and top-down approaches for transitional justice and reconciliation can meet?
- ≡ To what degree do notions of victimhood affect the discourse on truth, justice and reconciliation, and to what degree do ethno-political identities and tensions influence the prospects of reconciliation? Can we identify commonalities or differences with respect to the societies in the three different countries?

4) Working hypotheses

- (1) We assume that human rights organisations see war crimes prosecution and judicial evidence as a precondition for peacebuilding and reconciliation and thus attribute a priority to the work of the ICTY and domestic courts. We also assume that peacebuilding actors are more sceptical towards the potential of retributive justice and promote alternative approaches.
- (2) It is likely that political actors have ambiguous assessments of war crimes prosecution by the Hague Tribunal, with a strong tendency to perceive it as imposed from outside. It is likely that politicians attribute more legitimacy to the war crimes chambers at the domestic courts.
- (3) As the ICTY's trials have contributed to polarising discourses in the countries of former Yugoslavia, it is likely that promoters of a regional truth commission want to open space for dialogical and societal truth.
- (4) It has been criticised that legal prosecution addresses primarily the perpetrator, rather than the victim. We assume that the promoters of a regional truth commission aim to address the needs of the victims and, along with this, also to offer space for gender-specific perspectives.
- (5) It is our assumption that the representatives of criminal courts are sceptical with regard to the establishment of a regional truth commission as they perceive this as a competitive mechanism that challenges the courts' efficiency and legitimacy.
- (6) We assume that the understanding of truth and justice differs among TJ protagonists, as some are influenced by the human rights discourse, others by the peacebuilding debate. This leads to controversial expectations and assessments.
- (7) We assume that different actors' groups present different priorities and proposals for sequencing initiatives for justice, truth recovery and reconciliation.
- (8) We assume that in general, TJ protagonists regard processes of facing the past as a contribution to reconciliation. However, we assume that there is no consensus on the necessary preconditions for paving the way to reconciliation.
- (9) We assume that war veterans' and victims' organisation attribute great importance to justice and truth-finding, but are sceptical towards the concept of reconciliation, suspecting that it will be used as an excuse and legitimisation for impunity.

(Research questions and working hypothesis agreed by Martina Fischer, Ljubinka Petrović-Ziemer and Bodo Weber after consultation with our partners in the region, May 2010)

Methods

The research design is based on a participatory approach. Local partners and peace and human rights activists contributed to discussions of the research design, and researchers from Belgrade, Tuzla and Zagreb were involved in the field research. A feedback loop was established through discussions of interim results with our partners from CSOs and with colleagues from academic institutions. In November 2011, Ljubinka Petrović-Ziemer drafted a report on the preliminary results and organised a workshop in Belgrade where the findings were discussed with our partners.

The study is empirical and qualitative. It is based on a content analysis of *150 focused and semi-structured interviews* with actors from the following sections (for a full overview, see Annex 1):

- 1) *Legal Institutions and Fact-Finding Commissions*: representatives of the ICTY field offices, of the war crimes chambers at domestic courts and prosecution offices, and of state commissions for missing persons.
- 2) *Civil Society Organisations (CSOs)*: peace groups and human rights organisations (including women's and youth organisations), journalists, victims' organisations (including family associations and organisations of camp inmates) and veterans' associations. The sample includes a number of CSOs that have been actively advancing or supporting the campaign for a regional truth commission (REKOM) and a number of organisations that – although focusing their work on dealing with the past – are not part of this coalition. Particular attention was paid to a geographical balance, to include a broad range of views and experiences not only from the capitals but also from rural or less urbanised areas.
- 3) *Political Actors*: representatives of the governing parties in Bosnia-Herzegovina, Serbia and Croatia, and of relevant opposition parties.
- 4) *International Actors*: representatives of delegations of international and regional organisations (the UN, EU, OSCE) in the respective countries, as well as bilateral donors (i.e. foreign embassies), and international NGOs, foundations and private donors. Several (but not all) of these are REKOM supporters.

The 150 interviews were conducted in 28 cities of Bosnia-Herzegovina, Croatia and Serbia in 2010 and 2011, mainly in the form of individual interviews (in some cases, at the suggestion of the interviewees, interviews with project teams were also conducted). The *focused interview* is problem-centred; in other words, it determines the interviewees' subjective views about societal problems whose objective aspects were presented within a theoretical/conceptual framework. The interview guidelines were tailored to the particular problems of interest here and to each specific group of interviewees. This means that the project staff could not use a single predetermined model. Furthermore, the focused (semi-structured) interview is characterised by flexibility. Via the guidelines, the interviewee is steered towards specific issues but responses are open-ended. The qualitative approach selected here is therefore process-oriented, empathetic, inductive and interpretative. This offers greater flexibility to identify commonalities, although compared with quantitative approaches, limitations to precision must be accepted (cf. Lamnek 1988, 242ff). Most of the field research was coordinated by Ljubinka Petrović-Ziemer. She also conducted 52 interviews. 21 interviews were conducted by Martina Fischer. 80 interviews were conducted by researchers from the region, Ismet Sejfića (Tuzla, BiH), Katarina Milićević (Belgrade, Serbia), Srđan Dvornik (Zagreb, Croatia), and Vesna Nikolić-Ristanović and her team at the Victimology Society of Serbia (Belgrade).

The interviews have been partly saved as full transcripts and partly as selective protocols (around 1700 pages). Ljubinka Petrović-Ziemer worked on the analysis of 104 interviews (with legal institutions, commissions for missing persons, and civil society organisations). Martina Fischer has focused on analysis of the international actors (23 interviews). Ismet Sejfića, Katarina Milićević and Srđan Dvornik conducted the analysis of interviews with representatives of political parties (23 talks). As many of the interviewees, particularly international actors, but also some interviewees from other sectors, asked for confidentiality, we present most of the quotes in an anonymous form (shortcuts in the text relate to transcripts in our internal database).

The study is based on a content analysis of interviews based on predefined categories. These are highlighted by the headings and subtitles in the following chapters. *Chapters 4, 5 and 6* systematise assessments of TJ strategies, conceptual approaches, achievements, cooperation and learning experiences from the view of TJ protagonists and organisations that address the legacies of the past. *Chapter 7* analyses the perspectives of representatives of political parties in the three countries under investigation. *Chapter 8* highlights differences and commonalities across actors and countries and examines the empirical findings in relation to the hypothesis and theoretical approaches. *Chapter 9* presents recommendations that might inspire further policy development.

Analysis of Interviews with TJ Institutions

ICTY, Domestic Judiciary and Commissions for Missing Persons

Ljubinka Petrović-Ziemer

chapter 4

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A total of 20 interviews were conducted with representatives of the ICTY's regional outreach offices, the domestic courts and prosecutor's offices, and the Commissions for Missing Persons (CMPs) in Bosnia, Serbia and Croatia during the period October 2010 to March 2011. The *ICTY regional outreach offices*, which are located in Sarajevo, Zagreb and Belgrade, aim to serve as a liaison mechanism that enhances cooperation between the Hague Tribunal, state institutions and societies in the region. Another goal is to increase awareness of the work and achievements of the ICTY in the region. Representatives of *domestic legal institutions* state that providing fair trials in war crimes prosecution and concluding as many cases as possible in the near future is a central goal for them, as this will also help to restore the social trust in justice, delegitimise and prevent revenge, and prepare the ground for inter-ethnic dialogue and understanding. In accordance with their official mandates, the *Commissions for Missing Persons* aim to search for and register missing persons in cooperation with the legal institutions and police, and by exchanging information with the commissions in other countries. They are actively involved in exhumations of individual and mass graves and are responsible for the identification and storage of human remains.

4.1 Relevance and dynamics of dealing with the past

Asked why they think that *societies in the region should deal with the past right now*, representatives of the Hague Tribunal, domestic courts and prosecution offices agree that impunity cannot be tolerated, given the gross human rights violations and atrocities committed in the war(s) of the 1990s. They insist that those who are responsible for such crimes have to be punished and prevented from holding high-ranking political positions. It is emphasised that uncovering individual responsibility avoids debates on collective guilt and can thus ease the painful task of facing the past. Representatives of the domestic legal institutions see war crimes prosecution also as a prerequisite for re-establishing a moral value system in the region of the former Yugoslavia.

Regarding the dynamics of dealing with the past in the region, the interviewees outline some positive developments. They are convinced that right after the end of the war(s) in the 1990s, citizens as well as governments and parliaments did not show much willingness for war crimes prosecution. Meanwhile, significant political changes towards democracy have taken place and at present societies show increasing willingness to face the past, as representatives of the domestic courts and prosecution offices in all three countries emphasise. At the same time, ICTY representatives point out that a large part of the population is not yet willing to accept judgments that prove the guilt of individuals belonging to their respective national community.

The representatives of the Commissions for Missing Persons (CMPs) point out that, as a legacy of the wars, in all three countries persons are missing whose fate has yet to be determined. As long as this remains an unsolved matter, they see a risk that this uncertainty will contribute to increasing conflicts or social tensions. Therefore gathering information on the circumstances of disappearances, detecting mass graves, and the exhumation and identification of human remains are an ongoing challenge. Collecting data on these issues also provides the courts with evidence. Furthermore, the interviewees are convinced that this form of truth recovery assists the societies involved in the violent conflicts of the 1990s in coming to terms with their past in a broader sense. The representatives of the Commissions also agree that accountability is important as well, and that punishment of the perpetrators is a central component of justice.

4.2 Potential, legitimacy and acceptance of TJ mechanisms

4.2.1 Assessments of the work of the ICTY

Contributions and achievements

All interviewees agree that the establishment of the ICTY in 1993 made an important contribution to dealing with the past in the Western Balkans. Representatives of the Commissions for Missing Persons in all three countries underline that the ICTY has taken over the responsibility for war crimes prosecution at times when the domestic courts have not been prepared to perform this task. Apart from establishing accountability, the Hague Tribunal's trials have disclosed valuable information on the types and sites of crimes. The data gained through investigations and testimonies and the material presented in evidence at the trials were also supportive of the work of the commissions. The representative of the State Commission for Missing Persons in Serbia explains that in particular, the trials related to the crimes that were committed around Vukovar, in detention camps in Serbia, in Srebrenica and Kosovo helped to find a significant number of missing persons. However, the search process is still far from completed. Further progress will largely depend on the efforts that will be undertaken in the future by domestic courts and prosecutors in the course of investigations for pending war crimes cases.

Interviewees from legal institutions (ICTY and domestic judiciary) emphasise that the Hague Tribunal has successfully investigated massive violations of international humanitarian law and crimes committed by all sides involved in the wars of the early 1990s. Many high-ranking military commanders and politicians have been arrested and indicted. Besides, interviewees explain that the ICTY helped to further develop international humanitarian law. The Tribunal classified the mass murder in Srebrenica as genocide¹ and found that in the former Yugoslavia not only war crimes but also crimes against humanity were committed. All interviewees consider these findings to be the ICTY's most significant contributions.

The interviewees also appreciate that the ICTY has set new norms and reformed some judicial procedures with regard to sexual violence and gender-specific war crimes. Due to normative changes, rape is classified as a war crime. Investigations by the ICTY have revealed that sexual violence has been committed against men and women. However, the interviewees confirm that in cases of gender-based violence, the percentage of women witnesses is higher than the percentage of men. Furthermore, the evidence established by the ICTY shows that rape of women in BiH was organised as a mass criminal act and more systematically compared to gender-based violence against men. The ICTY established a legal practice that allows victims/witnesses of rape to testify in closed sessions. The procedure for cross-examination is strictly regulated. For instance, as a consequence of the ICTY's reforms of legal procedures it is not permitted to ask victims/witnesses about their pre-war intimate life. It is reported that these innovations have also been adopted by the domestic courts in the region.

Furthermore, the representatives of legal institutions highlight that the ICTY established an important archive that can be used for in-depth research. Additionally, it is acknowledged that the ICTY has paved the way for the establishment of war crimes chambers in the region. With regard to the achievements of the ICTY, assessments by representatives of international and domestic legal institutions overlap to a great extent. With respect to the deficits, however, the answers vary.

¹ In its proceedings in the Krstić, Erdemović and Obrenović cases, the ICTY found beyond reasonable doubt that Bosnian Serbs and other forces killed between 7,000 and 8,000 Bosnian Muslim men and boys between approximately 11 and 19 July 1995, that the vast majority were not killed in combat, but were victims of executions, and that the killings were the product of a well-planned and coordinated operation. Hence the Tribunal found that the killing of 7,000 to 8,000 Bosnian Muslim prisoners was genocide. See http://www.icty.org/x/file/Outreach/view_from_hague/jit_srebrenica_en.pdf.

Deficits

Several representatives of *domestic* legal institutions come to the conclusion that the components of Anglo-Saxon (common) law practised by the ICTY have proved inappropriate for cases of gross human rights violations committed during the wars in the former Yugoslavia. The most critical assessment refers to the practice of plea bargaining that was deployed in order to shorten legal proceedings in cases that would otherwise have required complex and costly investigations. If the defendant agrees to plead guilty to a particular charge, the prosecutor might in return drop some of the other charges and reduce the sentence. Part of this agreement may also be that the defendant cooperates with the prosecutor in respect to other crimes/cases by testifying or providing relevant evidence. However, there are no mechanisms that would oblige the defendant to cooperate. The most prominent example mentioned by the interviewees is the case of Biljana Plavšić² who signed a plea agreement but refused to testify in the case of Momčilo Krajišnik, contrary to the ICTY's expectations.³ As already noted, through plea agreements, sentences can be reduced. In particular, representatives of legal institutions in Bosnia criticise this practice. They argue that the pre-term release of convicted persons leads to distrust and endangers community rebuilding since it puts the victims in a position where, after the return of the ex-prisoners, they have to live next to perpetrators in their respective communities.

A further point of criticism is that the trial of the former President of Serbia, Slobodan Milošević⁴, could not be concluded. Vast material has been collected that will help to broaden the knowledge on the wars in the 1990s but due to Milošević's death in 2006 the ICTY was not able to prove or disprove his criminal responsibility. Furthermore, the interviewees express harsh criticism with regard to the case of the former officer of the Kosovo Liberation Army (KLA), Ramush Haradinaj.⁵ In particular, the interviewees criticise the pre-trial proceedings, since the Trial Chamber permitted Haradinaj to be actively involved in politics while he was on provisional release between October 2005 and February 2007, although he was charged with crimes against humanity and violations of the laws or customs of war. The interviewees cannot understand how an indicted war crimes suspect can be given permission to engage in political activities. This is described by representatives of legal institutions in Serbia as a grave mistake.

² Biljana Plavšić was a leading Bosnian Serb politician from 1990 until the end of the war. She was the Serb representative to the collective Presidency of Bosnia and Herzegovina, and a member of the collective and expanded Presidencies of the Bosnian Serb Republic (later Republika Srpska). She had de facto control and authority over members of the Bosnian Serb armed forces. She was indicted for genocide and/or complicity to commit genocide, extermination, persecutions on political, racial and religious grounds, deportation and inhumane acts (crimes against humanity), and murder (violations of the laws or customs of war during the armed conflict). As a consequence of plea bargaining, her sentence was reduced and seven out of eight counts of the indictment were dropped. She was sentenced to 11 years' imprisonment by the ICTY after being found guilty of persecutions on political, racial and religious grounds (crimes against humanity) in 2003. She served two-thirds of her sentence in Sweden and was granted early release in 2009. See <http://www.icty.org/x/cases/plavsic/tjug/en/pla-tj030227e.pdf>.

³ Momčilo Krajišnik was a member of the Bosnian Serb (later Republika Srpska) leadership during the war. He was on the Main Board of the Serbian Democratic Party of Bosnia and Herzegovina (SDS) and was President of the Bosnian Serb Assembly. He was convicted of persecutions, deportation and forced transfer (crimes against humanity). He was indicted for genocide and/or complicity to commit genocide, extermination, persecutions on political, racial and religious grounds, deportation and inhumane acts (crimes against humanity), and murder (violations of the laws or customs of war during the armed conflict). He was acquitted of charges of murder as war crime, genocide and complicity in genocide and was convicted of persecutions, deportation and forced transfer. He is serving his 20-year sentence in the United Kingdom. See http://www.icty.org/x/cases/krajisnik/cis/en/cis_krajisnik_en.pdf.

⁴ Slobodan Milošević was President of Serbia from 26 December 1990 and President of the Federal Republic of Yugoslavia (FRY) from 1997 until 2000; as FRY President, he was also the President of the Supreme Defence Council of the FRY and the Supreme Commander of the Yugoslav Army. He was indicted in 1999 and accused of 66 counts of crimes against humanity, genocide and war crimes in Croatia, Bosnia and Kosovo for the period from 1991 to 1999. He died in custody in 2006. See http://www.icty.org/x/cases/slobodan_milosevic/cis/en/cis_milosevic_slobodan_en.pdf

⁵ Ramush Haradinaj was Commander of the Kosovo Liberation Army (KLA) in the Dukagjin operational zone, located to the west of Priština/Prishtine, in 1998, and became Prime Minister of Kosovo in 2004. In 2005, he was accused by the ICTY of persecutions: harassment, torture, deportation or forcible transfer of civilians, murder, rape, torture and cruel treatment of Kosovar Serb and Roma civilians as well as Kosovar Albanians who were alleged to have collaborated with Serbian forces during the Kosovo war in 1998. He surrendered to the ICTY on 9 March 2005, but on 6 June 2005 he was granted provisional release. In response to a request from Haradinaj, on 12 October 2005 the Trial Chamber decided that he was allowed to appear in public and engage in political activities in Kosovo, subject to specific conditions. Haradinaj had to return to the UN Detention Unit on 26 February 2007 for the start of the trial. Haradinaj was found not guilty in 2008, due to lack of evidence, and released. In 2010 the Appeals Chamber ordered a partial re-trial. Haradinaj was arrested and transferred to The Hague again. See www.icty.org/x/cases/haradinaj/tdec/en/051012.htm; www.icty.org/x/cases/haradinaj/cis/en/cis_haradinaj_al_en.pdf. [The re-trial ended in acquittal; see <http://www.bbc.co.uk/news/world-europe-20536318?print=true>, accessed on December 3, 2012, M.F.]

ICTY representatives also concede that there are deficits in the Tribunal's work. Their self-critical assessments are not focused so much on the legal practice but more on the outreach and communication strategy. They regret that due to the geographical distance, there was no direct exchange of information between the ICTY and the population in the countries of the former Yugoslavia. This has also contributed to the negative image of the ICTY in the region. The setup of outreach offices is considered to have been undertaken far too late. Both international and local interviewees agree that the reputation of the ICTY is rather tarnished in some areas, and that the highest degree of mistrust can be observed within the Serb communities in Serbia and Bosnia. Representatives of legal institutions from Serbia and members of the ICTY outreach office in Belgrade confirm this impression: the image created by the media in this country is that the ICTY is an anti-Serb tribunal, and therefore its impartiality is also seriously questioned by relevant parts of the population.

4.2.2 Assessments of the work of the domestic courts and prosecutors

Contributions and deficits

Representatives of the domestic courts and prosecutor's offices emphasise that in all three countries, legal frameworks have undergone reforms which helped to improve the conditions for war crimes prosecution. All representatives of domestic legal institutions are optimistic about the future development of these institutions and think that they are well prepared to cope with the pending war crimes cases. The interviewees are convinced that the legal institutions that are in charge of war crime prosecution are staffed with highly qualified experts who are willing to professionalise their work by regularly attending further training. The representatives of the Commissions for Missing Persons in all three countries agree with this view. They also express entirely positive assessments of the domestic judiciary's efforts for war crimes prosecution and willingness for cooperation.

Assessing the specific context in the three countries, the interviewees outline significant differences

Interviewees in **Bosnia** state that the judiciary in both Bosnian entities (the Federation of BiH and the RS) has gained experience in war crimes prosecution since 1995. However, due to support and pressure from the international community, judicial reforms were implemented and the Court of BiH was established as a hybrid tribunal, combining local expertise with the knowledge and engagement of international experts. All this has contributed to a situation where the quality of investigations and proceedings has significantly increased. The peak for the work of the legal institutions was in March 2005 when the War Crimes Chamber at the Court of Bosnia and Herzegovina was inaugurated. There were high hopes that the domestic judiciary had reached the state of maturity needed to deal with war crime prosecution on its own.

Despite many achievements, as explained by the interviewees, the Bosnian judiciary also had to face some problems and setbacks. Legal institutions still face difficulties with regard to the protection of witnesses, and often the police fail to offer the appropriate support. Deficits are also revealed with regard to the outreach of the domestic courts. The interviewed representative of the Chief Prosecutor's Office in Republika Srpska complains that war crime prosecution efforts in the RS are under-reported by the media in the Federation of BiH. As a result, a highly negative image is created of the judiciary in the RS. This interviewee also reports that Bosniak victims regularly accuse the judiciary in this entity of intentionally obstructing war crimes prosecution (L-BiH-4). Finally, the representatives of the judiciary in Bosnia highlight the fact that this country experienced the largest number of war crimes and gross human rights violations compared with the other successor states of the former Yugoslavia. One interviewee pointed

out that at the time of the interview, in Bosnia “the courts employ 18 prosecutors and are mandated to try approximately 20,000 war crime cases” (L-BiH-3).⁶

The representatives of legal institutions from **Croatia** explain that the Croatian judiciary went through two phases: The *first phase* (during the 1990s) was characterised by a non-selective approach in compiling the lawsuits concerning war crimes. This means that quite often, all members of an ethnic group in a local community were accused of a crime that was assumed to have been committed by one of them. The same principle was applied to army units in cases where soldiers were suspected of having committed a crime. It is assumed that these collective indictments were formulated due to lack of evidence, which was difficult to obtain at times of war. Others assume that this approach was in some cases a manifestation of insufficient experience on the part of the legal institutions. And it is believed that in some cases, the judiciary was simply biased. As international actors criticised this approach, the domestic courts started to apply the amnesty law, a practice that was again opposed by human rights NGOs and journalists. Apart from issuing collective indictments in the 1990s, trials in absentia were also conducted, only to be reviewed later due to pressure from the international community when it became aware of irregularities related to such trials from reports on domestic war crime prosecution issued by local human rights activists.

In the *second phase* (since 2000), legal institutions in Croatia aimed to identify and avoid the above-mentioned failures and have been prosecuting war crimes that were committed by members of the Croatian Army. Specialised war crimes chambers were established at four county courts in 2003, and this is considered to be a significant step forward. According to the interviewees, complex cases could thus be concluded in a more professional manner, such as the trials of the commanders Branimir Glavaš⁷, Mirko Norac and Rahim Ademi⁸ and the “Lora” case.⁹ In all of these cases, the criminal responsibility of members of the Croatian forces was determined. For the interviewees, this indicates that the domestic judiciary is willing to prosecute all war crimes, regardless of the ethnic background of the accused.

The interviewees from **Serbia** state that the judiciary in this country is also sufficiently prepared and equipped to conduct war crime prosecution. In 2003, the Parliament of Serbia passed a Law on the Organisation and Jurisdiction of Government Authorities in Proceedings against Perpetrators of War Crimes that defines the organisation and responsibilities for war crimes prosecution in respect to crimes committed in the 1990s on the territory of the former Yugoslavia. By virtue of this law, the War Crimes Chamber at Belgrade District Court and the Office of the Prosecutor for War Crimes were established. Investigation services within the Ministry of Internal Affairs and a special detention unit were also set up. According to the interviewees, this law has created a legal framework with clearly defined competences and responsibilities with the purpose of investigating, prosecuting and issuing binding judgments on war crimes perpetrated during the wars in the 1990s. Furthermore, the interviewees are convinced that the legal institutions in charge of war crime prosecution are now equipped with experienced professional staff, guaranteeing that trials are conducted in an unbiased manner and meet international standards.

⁶ All interview quotations in this chapter have been translated from Bosnian, Croatian and Serbian into English by the author.

⁷ Branimir Glavaš was the commander responsible for the defence of Osijek and Slavonia during the war in East Slavonia. In May 2009 the County Court of Zagreb found him guilty of torture and murder of Serb civilians in Osijek. He was sentenced to eight years of imprisonment; www.centar-zamir.hr/index.php?page=article_sudjenja&trialId=50&article_id=48&lang=hr.

⁸ The Mirko Norac / Rahim Ademi case refers to war crimes committed against Serb civilians in south Croatia in 1993. The former general of the Croatian Army Mirko Norac and the former commander of the Gospić military district Rahim Ademi were both indicted by the ICTY with crimes against humanity and violations of the laws and customs of war committed in the operation “Medak pocket” and tried in 2004. See <http://www.icty.org/x/cases/ademi/ind/en/ade-ci040730e.htm>. In 2005, the ICTY transferred the case to the County Court in Zagreb. The trial at this court resulted in an acquittal for Ademi and a seven-year term of imprisonment for Norac. See http://www.centar-za-mir.hr/uploads/PRESUDA_Ademi_i_Norac.pdf.

⁹ The military investigation prison “Lora” served as a prison camp in Split and was active from 1992 until 1997. The majority of the detainees were Serb residents of Split and prisoners of war. Detainees were tortured, beaten and killed. Eight Croatian military officers were tried in 2002 at the County Court in Split and acquitted. In 2005 they were re-tried at the same court and found guilty of war crimes. See http://www.centar-za-mir.hr/uploads/2A12d_2.pdf__1_.dio.pdf; http://www.centar-za-mir.hr/uploads/2A12d_2.pdf__2_.dio.pdf.

It can be concluded that representatives of the domestic judiciary are convinced that in general – although to different degrees - the courts in Bosnia, Serbia and Croatia are well-prepared for war crimes prosecution. The ICTY representatives are reluctant to give detailed assessments of the state of preparedness of the domestic institutions. However, they express two concerns. One relates to the slowness of the domestic war crimes proceedings. The other concern stems from the observation that a great deal of the activities in this field have been undertaken as a consequence of international pressure and the policy of conditionality, and the interviewees see a danger that as soon as the successor states to the former Yugoslavia gain EU membership, war crimes prosecution will be reduced to a minimum.

4.2.3 Assessments of the potential of truth commissions and the campaign for REKOM

Representatives of the domestic legal institutions are convinced that non-judicial mechanisms for fact-finding can support the courts' investigations, provided that the facts are legally valid and the cooperation between the courts and such a commission is clearly defined. Nevertheless, some interviewees also express a concern that truth commissions could undermine the work of the legal institutions, if they understand their work as an alternative approach and not as complementary to the work of the judiciary. It is stated that fact-finding commissions could help to counter manipulation of numbers, figures and events. Furthermore, if their work is based on inclusiveness, they can open a space for multiple perspectives on the past. The interviews reveal that the representatives of the ICTY show more confidence in the potential of truth commissions than domestic legal experts.

The campaign for a regional fact-finding commission (REKOM)

Representatives of the ICTY assess the REKOM initiative as highly beneficial and worth being extensively supported. They express surprise that it took such a long period for the idea of a regional commission to emerge. In contrast to this, in their assessments, representatives of domestic legal institutions focus more on the ambivalence of a regional commission. Some interviewees state that they would support such a commission and that they regard the REKOM initiative as well prepared and professionally organised. Others believe that the idea for this commission has emerged far too late. Now that the ICTY and the domestic courts have gathered a vast amount of material, this commission seems dispensable. They claim that instead of establishing an additional mechanism, systematising and analysing the existing material should be a priority. All the representatives of legal institutions agree that a regional fact-finding commission would be useful only if it were able to secure additional data that have been undiscovered so far. The interviewees also doubt that such a commission would be able to supply the courts with valid facts. They insist that, in order to be supportive of legal institutions, the facts need to be validated by official institutions like the police and the prosecutors' offices. Furthermore, several interviewees express strong reservations about the format of a commission as suggested by the REKOM campaign. They are particularly concerned about the public hearings that are already being organised by the REKOM team in order to give space to the victims' narratives. The legal experts emphasise that the testimonies made in such a setting cannot be used for legal war crimes prosecution unless they are forwarded to the police, courts or prosecutors. The interviewees are concerned that victims who speak out at the public hearings are not informed about this by the organisers of REKOM and might have the expectation that legal prosecution and the regulation of reparation programmes will result from their testimony.

The representatives of the *Commissions for Missing Persons* are even more critical about the idea of a truth commission. Interviewees in all three countries express irritation, above all, at the REKOM campaign. They are concerned that the Coalition for REKOM questions their own fact-finding efforts and the achievements of the courts, police, and victims' organisations in the region, and makes the public

believe that evidence on missing and killed persons is not available or has been manipulated. A further point of criticism is that the activities undertaken by the REKOM campaign may lead to a duplication of efforts that is counterproductive.

The representative of the Commission for Missing Persons in Croatia explains that in the past, victims were asked to share their testimonies on war crimes with the police and legal institutions. Later on, NGO activists appeared and asked the same questions again. According to this interviewee, many victims complained about this practice. This interviewee is convinced that such uncoordinated and arbitrary actions put an additional burden on those who are still suffering from the consequences of the war. Such actions, furthermore, suggest that the official institutions in charge of war crimes investigation are unreliable or incompetent, which damages trust-building processes.

4.3 Guiding concepts

4.3.1 Truth

The *representatives of the Commissions for Missing Persons in all three countries* state that truth recovery is the highest priority for them, and that above all, this means forensic truth. They underscore that finding and identifying human remains is also the precondition for judicial truth and criminal justice. “There is not a crime [like a murder, author’s note] that is committed without a human body, and there is no accountability and justice unless the mortal remains are found and identified” (CMP-SER-1). *All representatives of the legal institutions (ICTY and domestic judiciary)* who were interviewed emphasise that judicial truth is exclusively based on verified facts that help to establish evidence of the events and circumstances related to war crimes and the responsibility of the accused individuals. They believe that the facts established by the courts can reduce scope for speculation about what actually happened during the war and serve as a starting point for truth recovery on a societal level.

4.3.2 Justice

All representatives of legal institutions interviewed agree that establishing justice is the primary goal of legal institutions and proceedings. As representatives of the domestic judiciary state, a verdict may establish justice only if it is based on verified facts that are proven beyond reasonable doubt. In the view of most of the interlocutors, by confirming the guilt of a perpetrator and handing down a binding sentence, the court serves the cause of justice. It is argued that justice is served by punishing the perpetrator. At the same time, interviewees concede that judicial justice in the form of war crimes prosecution will not automatically lead to acknowledgment of the suffering of the victims. In order to achieve this, compensation is needed. This could be established by a reparation programme for all victims regardless of their ethnic background. But so far, such programmes are not in sight.

4.3.3 Reconciliation

The representatives of the *domestic judiciary* in all three countries are convinced that truth and justice can be served without reconciliation. They agree that political and societal reconciliation is beyond the mandate of legal institutions. Politicians are deemed to be responsible for inducing and managing such processes. Several interviewees also state that they find the concept too ambitious and avoid using the

term. One interviewee from Bosnia illustrates this view: “We do not have to reconcile with each other, we have to tolerate each other and engage in cooperation” (L-BiH-5).

In contrast, for some *representatives of the ICTY* the concept of “reconciliation” is uncontested since it mirrors the efforts of individuals and societies for trust-building, shared values, and visions for a peaceful future.

According to the local and international representatives of legal institutions, it is an important *obstacle for reconciliation* that the wars of the 1990s themselves are not questioned by relevant parts of the societies and political decision-makers in the region. In addition to this, concern is expressed that the young generations are exposed to one-sided and biased narratives. It is also stressed that the notion of victimhood forms a barrier to reconciliation. The urge to present one’s own experience as the most tragic one correlates with the need to be recognised as a victim by society. The refusal to acknowledge the suffering of others reflects the deep-rooted fear that an unconditioned recognition of the sufferings of others would cause the loss of one’s own victim status.

As the representatives of legal institutions also point out, a *prerequisite for reconciliation* would be an unconditioned acknowledgment of the crimes committed by members of one’s own ethnic constituency. Yet all of them are convinced that this level of political responsibility has not been reached so far. Furthermore, it is stated that a well-functioning judiciary, fair trials and judgments are important, as well as the identification of missing persons. Political apologies and visits by government representatives to sites of recent crimes are also considered important incentives for the societies to continue their trust-building efforts. Furthermore, education, employment, economic prosperity and cross-border cooperation initiatives are seen as crucial in paving the way for such a process.

The *representatives of the Commissions for Missing Persons* say that they avoid the term “reconciliation”, preferring the notion of *trust* and *trust-building* instead. They are convinced that the peoples of the former Yugoslavia have lost their trust in each other, which now needs to be carefully re-established. Trust-building and shedding light on the fate of the missing persons are considered to be the key prerequisites for rebuilding relationships in the region.

4.4 Learning processes and suggestions

Learning processes and suggestions from the perspective of legal institutions

All interviewees agree that war crime proceedings require a large body of evidence which is time-consuming and challenging to compile. Due to the complexity of such trials, and in order to avoid misunderstandings, it is important to explain the legal proceedings thoroughly to all actors involved. Furthermore, several interviewees highlight that it is difficult to find an appropriate way to present the courts’ findings and judgments to the public. In general, the judgments would need to be presented in a language that is comprehensible for non-experts.

Representatives of legal institutions from all three countries concede that various civil society actors and relevant parts of the public are chronically dissatisfied with the work of the courts. The negative assessments of the work of the courts prevail, whilst the achievements and the positive changes within the judiciary are rarely mentioned in the reports of human rights activists, peace practitioners and journalists. Victims in particular are highly dissatisfied when the sentences are too low. Low sentences are often either interpreted as reflecting the courts’ incompetence or as a way of protecting the perpetrators. A further problem is that many people misunderstand the role of the judges and expect them to protect the interests of the victims from their own ethnic constituency. Furthermore, one of the learning processes stressed by the domestic judiciary is that in a society that lacks the political will for war crimes prosecution, the judgments handed down by the courts will remain contested. However, these legal experts believe that, in the long run, war crimes prosecution makes a crucial contribution to peaceful co-existence, mutual

understanding and trust-building. In their understanding, only when criminal justice is being served are the victims prepared to hear about the suffering of victims on the other side. Therefore the interviewees suggest that the judiciary should anticipate criticism or political and social resistance and respond constructively to this dynamic.

Interviewees also point out that war crimes investigations still face a variety of problems. In the experience of representatives of legal institutions from all countries, gathering evidence is difficult because relevant documents have frequently been destroyed or access is obstructed by state institutions. Often the testimony of witnesses is the main source of information. Interviewees from all countries also stress that protection of witnesses who testify in the courtrooms has to be improved. The interlocutors see a need for state institutions to take measures to optimise the protection of the physical integrity and property of witnesses and victims. The interviewees suggest that regional cooperation needs to be intensified in this field, as witnesses also have to testify in courts in the other countries of the former Yugoslavia and need police protection both in their home country and at the places where they testify. If necessary, a change of residence should be organised for the victims. However, the interviewees also point out that such measures are costly and cannot be implemented without substantial support from international partners.

Apart from the general problems that are mentioned by representatives of legal institutions in all countries, some country-specific challenges and dilemmas are highlighted.

In **Bosnia**, where a large number of war crimes cases are still pending, the interviewees explain that it is a huge challenge for the judiciary to cope with so many cases in an adequate time frame. They point out that investigations of war crimes that were committed many years ago face many problems: After such a long time, there is a risk that witnesses' memories will have faded, and that testimonies are not precise enough and additional time-consuming investigations are required. The interviewees explain that war crimes trials are very complex procedures as many witnesses need to be interviewed. "In very complicated cases approximately 100 witnesses are invited to give their testimonies. Realistically, during a day of a trial only two or three witnesses can testify" (L-BiH-3). But it is difficult to explain these circumstances to a public that is already criticising the fact that war crime proceedings move too slowly. In the interviewees' opinion, it is therefore important to raise awareness of the work of the courts and explain these circumstances to the public.

In **Croatia**, one representative of the legal institutions concedes that in the 1990s, former members of the Croatian army who were accused of war crimes were tried under mitigating circumstances. The judiciary argued that the Croatian army was merely defending its homeland, which in most cases resulted in lenient sentencing and acquittals. This legal practice was abolished later on, but as this interviewee reports, it was – and still is – an enormous challenge for the courts to explain this change to the public. They encounter a great deal of criticism when they hold army commanders accountable. Ex-combatants in particular perceive such trials to be a retroactive degradation of their commitment to defend their country by risking their own lives. Furthermore, representatives of legal institutions from Croatia place too much emphasis on explaining the benefits of trials in absentia. Although the application of this legal instrument has been significantly reduced under pressure from the international organisations, representatives of the Croatian judiciary are still very much convinced of the merits of this practice, and argue against the suspension of such trials. They argue as follows: As the charges are in most cases issued for a group of war crimes suspects, suspending these trials would mean that those who have already been arrested and placed in custody would have to wait for their trial until the rest of the group is arrested, which is difficult if the suspects do not reside in Croatia and could take some years. It must also be assumed that in some cases, the innocence of some of the accused might be proved. For these detainees, the suspension of trials in absentia is reportedly unbearable. It is also mentioned that as a consequence of the suspensions of such trials, more space in detention facilities is required.

In **Serbia**, interviewees from domestic legal institutions concede that courts that try war criminals from Serbia still face a great deal of resistance, in particular from a strong right-wing movement. They also have to cope with a general lack of acceptance. According to the interviewees, witness protection needs to be

improved, but there is still not much awareness of this problem. It is also stated that legal institutions in Serbia still show a lack of empathy with war victims beyond the Serb constituency and a lack of respect towards civil society actors who support these witnesses. One interviewee observes: “Even though not openly spoken, discrimination towards minorities and human rights activists who support minorities and war victims who do not belong to the major national group is also noticeable in legal institutions. Human rights activists in Serbia are treated as traitors even by representatives of domestic legal institutions” (L-SER-3).

Learning processes and suggestions from the perspective of the Commissions for Missing Persons

As the interviewees report, the unsolved fate of missing persons frequently causes tensions among the members of different ethnic groups in local communities. Relatives have to cope with uncertainty over a long period of time, and they believe that members of the other ethnic groups conceal information on mass graves and thus obstruct the search for missing persons. This suspicion creates deep mistrust within ethnically divided communities. Due to the strong wish to determine the fate of missing persons, exhumation processes are accompanied by high expectations in local communities. Consequently, exhumation sites are regularly visited by people from nearby communities. At the same time, interviewees report that as soon as the process of identifying human remains is finished, tensions in the community decline, and the processes of dialogue and trust-building can then take place under more conducive conditions.

The greatest challenge for the Commissions for Missing Persons is to obtain access to information about the sites of atrocities and mass or individual graves. Obtaining access to state archives is often quite complicated and obstructed by the authorities. Most of the evidence was provided by families of the missing. In addition to this, the commissions face other difficulties. Detecting undiscovered mass graves largely depends on the cooperation and observations of people in local communities. This cooperation, however, cannot be imposed. Community members need time to establish trust towards the exhumation teams, before sharing useful information. Besides, the identification of human remains is often very time-consuming. The existence of tertiary mass graves that have been detected in Bosnia is slowing down the process once more, as in this case the remains are even more difficult to access. Furthermore, family members and relatives are crucial for the identification process, but in many cases they are difficult to trace due to frequent residence changes, migration or even death. Despite these problems, it is also mentioned that based on their experience, the Commissions for Missing Persons in Bosnia have set new standards in this field that are now being applied in the wider international context.

Furthermore, the representatives of the Commissions stress that terminological clarification is needed, as key terms related to the war such as “genocide”, “aggression” and “civil war” are defined in very different ways by the members of the CMPs in the three countries. The same applies to terms like “concentration camp”, “detention camp”, “detention centre”, and “collection centre”.

4.5 Partners and forms of cooperation

4.5.1 Cooperation: the legal institutions’ experience

Representatives of the domestic courts and prosecutors’ offices in all three countries draw attention to the fact that, in order to be effective, the judiciary needs good cooperation with various institutions like the police, the state agencies for security, exhumation teams, victims’ and veterans’ associations, human rights NGOs, the EU, the OSCE, and UN organisations. So far, cooperation was rather spontaneously organised and, as a consequence, not always very well-coordinated.

Cooperation between the ICTY, international organisations and the domestic judiciary

ICTY representatives consider the cooperation with the domestic legal institutions to be very good. In general, representatives of the domestic judiciary in all three countries also express very positive assessments of the collaboration with the ICTY. This has focused on improving the technical equipment of the domestic courts, including the transfer of relevant data for trials, on staff training, and on improving the security situation for judges and witnesses. The cooperation is assessed as frequent, direct, highly professional, and constructive.

At the same time, the interviews reveal that the cooperation between domestic judiciary and the ICTY / international organisations was also marked by conflicting opinions on legal proceedings. Interviewees from Croatia mention opposing views on trials in absentia. Domestic courts in Croatia applied the practice of lawsuits in absentia quite frequently in cases when the indicted persons lived outside the country and thus could not be arrested or transferred to the courts. Trials in absentia allow the courts to speed up the conclusion of war crimes cases. International organisations urged the courts to abandon this practice as it prevents the accused from defending himself in court and cannot guarantee that trials are conducted under fair conditions. Interviewees from Croatia express discontent with regard to this international intervention and suggest verifying, in each case, which benefits and disadvantages a trial in absentia would actually bring for a particular case. Furthermore, they complain that the war crimes chambers in Croatia have asked the ICTY to take over cases where they felt that they could not conduct these trials in an appropriate way. But these requests were refused by the ICTY (L-CRO-5).

Cooperation between the legal institutions across the countries has significantly improved, as the interviews reveal. The cooperation among the prosecutor's offices in *Croatia* and *Serbia* is now based on an official agreement on exchange of evidence on war crimes, which is regarded as very positive by the representatives of legal institutions in these countries. In contrast, the interviewees from *Bosnia* are rather dissatisfied with the cooperation among the various legal institutions in their country. They also express discontent with the cooperation on a regional level. They explain that the difficult state structure and political divide impede both effective collaboration between legal institutions in the country and regional cooperation.

Cooperation with human rights NGOs, victims' and veterans' organisations

The interviewees from the ICTY regional offices in all three countries stress that the cooperation with NGOs is indispensable. In particular, the public relations activities of the outreach offices could not have been conducted without the assistance of NGOs. Both the domestic judiciary and the ICTY regional offices emphasise that in particular, the cooperation with the Helsinki Committees for Human Rights in all three countries is very helpful. Specifically, the work with the Helsinki Committee for Human Rights in Bijeljina in the Serb entity of BiH has proved to be most beneficial and welcome. Activities include joint visits to local communities in order to present the findings of courts and prosecution. According to the interviews, these encounters have illustrated that even in divided communities with a high degree of inter-ethnic animosity, community members are willing to give up the practice of protecting and hiding war criminals.

According to the interviews, some CSOs have managed to establish themselves as competent partners for approaching victims and veterans, for instance by accompanying them as witnesses in court proceedings. The representatives of the Chief Prosecutor's Offices in all three countries appreciate that NGOs are very helpful mediators in establishing contacts between victims' groups and veterans' organisations with the prosecutors.

The collaboration with *victims' organisations* is seen as essential since they help trace (victim) witnesses who are willing to testify. The cooperation with *war veterans' organisations* is also considered beneficial for tracing potential witnesses. Furthermore, veterans are considered to be important sources of information on specific war operations, military structures, and chains of command. The interviewees highlight that when communicating with victims and veterans, it is of paramount importance that the judiciary is sensitised to the specific problems and needs of these social groups. Remembering the details

and describing them accurately during questioning is very painful for the witnesses/victims and the courts must ensure that these persons do not experience retraumatisation or amnesia during the trials due to psychological pressure. In this respect, the interviewees suggest that the legal staff should receive special training in order to be sensitised to the need for empathetic treatment of traumatised witnesses. At the same time, the interlocutors recommend that the judiciary should resist unrealistic expectations expressed by victims' groups and veterans' associations. It is reported that victims often express a strong wish for very high penalties for the perpetrators. Veterans' groups often expect the court to prove the innocence of their members. If such expectations are not met, the competence and impartiality of legal institutions are questioned. Additionally, these representatives note that social status is regulated in a more satisfactory way for veterans than for victims. For example, the status of disabled war veterans is already regulated by law, whereas for civil victims of torture it is still in progress.

However, representatives of the domestic judiciary in all three countries also express critical attitudes towards NGOs. One point of criticism is that some NGO activists feel compelled to make assessments in areas they are not qualified for. Even though the critical feedback from human rights activists is highly appreciated, a few interviewees mentioned that some monitoring reports on war crime trials issued by NGOs were based on very limited expertise. The interviewees suggest that civil society actors should realistically assess their own capacities and areas of responsibility in order to avoid misunderstandings, mutual frustration, and duplication of work.

Nevertheless, the interviewees agree that it is important to have an audience consisting of diverse actors, including civil society organisations, in the courtrooms. The presence of journalists, human rights activists and peace practitioners, veterans' unions, victims' groups, and relatives (of the accused, witnesses or victims) is an element of monitoring and control and also a motivating factor: it contributes to sharpening the "conscience of the judges and supports their determination to abide by the principles of fairness and impartiality" (L-CRO-5).

Cooperation with governments and state institutions

In Serbia and Croatia, interviewees report that legal institutions receive full support from the state presidents, the governments and the ministries of justice and finance in the matter of war crimes prosecution. In arresting and punishing war criminals, legal institutions very much depend on the collaboration with the police and military, the foreign ministries, the offices for European integration, security agencies, the state commissions for missing persons, the National Council for Cooperation with the ICTY (in Serbia), and the prisons. The cooperation with these institutions is described as very good.

Assessments in BiH are different: The fact that the President of Republika Srpska Milorad Dodik questions the legality of the Court of BiH is an expression of a deep divide and polarisation within the country that burdens the work of the legal institutions and hinders efforts for war crimes prosecution. The interviews reveal that the cooperation between legal institutions, police and the Commissions for Missing Persons is crucially important. Each has its specific role in the process of investigation and prosecution of war crimes. For example, exhumations are in some cases the first step in collecting evidence.

4.5.2 Cooperation: experience of the Commissions for Missing Persons

Collaboration with legal institutions, local authorities and victims' organisations

The interviews reveal that the Commissions for Missing Persons in all three countries collaborate with legal representatives on a very practical basis. They are obliged to share relevant information with *legal institutions*. As exhumations are a first step in collecting evidence for war crime prosecutions, the process has to be monitored by an investigative judge and a prosecutor. The cooperation with the domestic legal

institutions is assessed as excellent and highly professional by all CMP representatives interviewed. The same applies to the collaboration with the ICTY. On the one hand, the material presented as evidence by the courts helps the CMPs in their search for the missing. On the other hand, the CMPs' findings also complement the information available to the courts. It is reported that the CMPs also engage in regular exchange of information with the police and local authorities in communities where war crimes were committed. They need to build trust with these actors in order to obtain relevant information.

The CMPs are also involved in joint activities with *victims' organisations*, both on a local and a regional level. According to the interviewees, the relationship is based on mutual respect and trust. It is reported that as a consequence of regular and frequent regional meetings, victims' groups from the entire region of the former Yugoslavia have established contacts and developed cooperation. It is believed that the benefit of such encounters is that victims realise that there are victims in all national groups, and that they all have similar problems. The CMPs in all three countries also work closely with the International Commission on Missing Persons (ICMP) and the International Committee of the Red Cross (ICRC), which extensively support the regional activities and also the meetings with victims' organisations. The collaboration with these international agencies is also assessed as highly valuable and professional.

Cooperation among the Commissions of Missing Persons across countries

Representatives of the CMPs in all countries emphasise that consolidated lists of missing persons are very important as they significantly speed up the search and reduce opportunities for manipulation. Consolidation can only be achieved through regional cooperation. The Commissions from BiH, Serbia and Croatia meet regularly in order to evaluate achievements, reflect on unsolved questions, and plan further activities. The cooperation is regarded as very effective and as having a firm basis. Between Croatia and Serbia, much of the information on missing persons and inmates of detention camps in both countries was consolidated. This is seen as a significant step forward.

In **Bosnia**, the assessments hint at the ambivalence of cooperation. The representative of the Missing Persons Institute of Bosnia-Herzegovina (MPI) says that he is satisfied with the achievements of his agency, as well as with the findings of the previous commissions established after the war (in this earlier period three commissions were in operation, reflecting the ethnopolitical divide: the Commission of the Federation of BiH, the Commission of the former Herceg-Bosna, and the Team for Missing Persons in the RS, which is still active). In contrast, the representative of the Team for Missing Persons in the Republika Srpska argues that the search for missing persons was more efficient before the MPI was founded as a joint mechanism at the state level in 2008. The interviewee argues that more missing persons from the Serb community were found before, that the creation of the MPI was unnecessary, and that it is impeding rather than speeding up the process of determining the fate of the missing.

Finally, the interviews reveal that misunderstandings and tensions have arisen among members of the CMPs in the three countries due to divergent understandings of key terms related to the war. Concepts like "genocide", "aggression", and "civil war" are defined in very different ways. Terms like "concentration camp", "detention camp", "detention centre", and "collection centre" also need clarification. Disputes over these terms show that conflicting interpretations of war events exist. The interviewees therefore suggest that terminological clarification is needed to pave the way for better cooperation and understanding.

4.6 Further perspectives and challenges

Given the negative reputation and lack of trust in legal institutions, all interviewees agree that it is essential to *improve the public relations activities of the courts and prosecutors*. It is seen as very important to explain the courts' decisions to the public in a more comprehensive manner, to highlight the diverse achievements in reforming the judiciary, and in particular to illustrate that impartiality is a guiding principle for the work of legal institutions. Above all, they emphasise that judicial proceedings need to be presented in a way that non-experts are able to comprehend.

Improving witness protection, according to the interviewees, also requires special attention. Representatives of legal institutions from all three countries explain that the protection measures applied by the domestic courts and the police are so far very limited. Many witnesses are in serious danger after the trial. A witness who testifies abroad is protected in the country where the trial takes place but left unprotected as soon as they leave that country. According to the interviewees, state institutions should set up specialised services for witness protection after the trials. For this purpose, it should also cooperate with NGOs that have experience in witness support and understand victims' needs. Furthermore, the authorities in the communities to which the witness returns after the trial should be encouraged to take measures to guarantee their safety. An alternative network of witness protection needs to be established. As the interviews reveal, improvement of witness protection can only be achieved by better regional cooperation among governments and by cross-border communication of local authorities.

Representatives of the Commissions for Missing Persons in *all countries* emphasise that the most important challenge still remaining is to *gather additional data on undiscovered mass graves*. They also point out that exhumation, storing and identification of human remains will require further funding. The interviewees from Bosnia and Serbia say that international support in this area of dealing with the past is still very much welcome and needed. In contrast, the representative of the CMP in Croatia is convinced that institutions in this country are capable of closing this chapter without external assistance. This view is shared by the ICMP, which has now closed its office in Croatia, on the grounds that the Croatian Office for Missing Persons has proved to be capable of conducting the search for missing persons without international assistance.

Representatives of the *domestic legal institutions in all three countries* are also convinced that international assistance will be needed in the future in order to improve mechanisms of transitional justice. In **Bosnia**, they state that external actors are welcome in the capacity of facilitators to support processes of state-building, and they should also continue to monitor the implementation of institutional reforms. Furthermore, they are needed as mediators in a polarised society. In **Croatia**, the expiry of some international organisations' mandates (OSCE left the country in 2011) is appreciated by the legal experts and seen as a consequence of the international organisations' assessment that governmental and non-governmental organisations are well prepared to solve their problems by themselves. However, the representatives of legal institutions in this country say that international support is still desired, and should take the form of an exchange of know-how and education on topics related to transitional justice. They also think that external assistance is needed to maintain the databases and archives related to war crimes cases. In **Serbia**, the interviewees also see an ongoing need for international assistance, especially in the field of institutional reforms. At the same time, they insist that any kind of international support should aim to support capacity-building, thus enabling the society concerned to solve its problems on its own.

Analysis of Interviews with Civil Society Actors

Peace and Human Rights Activists, Journalists, War Veterans' Unions, and Victims' Organisations

Ljubinka Petrović-Ziemer

chapter 5

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In the past two decades, (local) civil society actors in the region have engaged in a variety of activities aimed at peacebuilding and dealing with the past. Some of them have focused on fact-finding. They helped to establish a record of human losses and missing persons, supported the work of exhumation teams, and engaged in the documentation of war crimes. Most of these activities have been undertaken in cooperation with legal institutions and Commissions for Missing Persons. CSOs' fact-finding activities have also contributed to providing evidence in war crimes investigation. Some organisations were also involved in monitoring and reporting on war crimes trials and supplied legal institutions with critical feedback on their work. Furthermore, CSOs supported victims and witnesses who were willing to testify at trials and organised psychological and legal support for witnesses and their families. In addition, CSOs offered psychosocial assistance to traumatised persons and engaged in the social reintegration of war victims and veterans. Moreover, CSOs organised assistance for refugees, displaced persons and returnees, and protection for vulnerable persons, groups and minorities. Civil society actors are also actively engaged in rebuilding ethnically divided communities, by offering informal education and training on peacebuilding, conflict resolution, nonviolent communication, and human rights. Others aim to establish inclusive cultures of remembrance, and are involved in cultural initiatives, research and publishing activities on war-related issues.

The following analysis is based on 84 interviews that were conducted with human rights activists, peace practitioners, journalists, representatives of victims' organisations and veterans' unions in 25 cities and local communities in all three countries under investigation.

5.1 Relevance and dynamics of dealing with the past

Why should societies in the region deal with the past right now?

The interviewees from all three countries are convinced that dealing with the legacies of the past is imperative for progress and stability in the region of the former Yugoslavia. Facing the massive human rights violations and large-scale destruction related to the wars of the 1990s is considered a precondition for building peace and restoring justice. This is seen as a moral duty that should be supported by a broad spectrum of stakeholders: "Dealing with the past shows how a society has taken responsibility on an individual, collective and state level for what happened in war" (CSO-BiH-1).¹ According to the interviewees, it is necessary to learn from past mistakes in order to avoid them in the future, and hopefully to prevent the relapse into violence and armed conflict. This includes mistakes made under the previous communist regime that established a selective culture and policy of remembrance: "Remembering under Tito meant glorifying the partisan fighter as hero. The experience of civilian victims was present but it was overshadowed by the victor narrative" (CSO-BiH-19).

The interviewees further emphasise that in all societies there are still tendencies to deny and relativise crimes committed by members of the "own" constituency against the crimes committed by members of the "other" ethnic groups. An inclusive approach is needed that addresses all crimes, perpetrators and victims regardless of their ethnic affiliation. Such an approach aims to prevent the manipulation of historical facts and counters the potential for mobilising resentments among the different constituencies in the region.

Interviewees from **Bosnia** strongly articulate the need "to precisely classify the different degrees, quantities and forms of responsibility of all conflict parties" (CSO-BiH-19). More than in other countries, the interviewees outline that in this country, people face the legacies of the recent past in private, social and political life to such a degree that it can hardly be ignored. Intense media reporting on war crimes prosecutions, exhumations and funerals is a daily reality. In public, war victims and veterans claim their rights and involve themselves in commemoration events. All these activities evoke memories of the violent

1 All interview quotations in this chapter have been translated from Bosnian, Croatian and Serbian into English by the author.

past. At the same time, it is reported that divided communities like Mostar struggle with ongoing conflicts (CSO-BiH-9). According to the interviewees in Bosnia, there are many grievances in divided communities and almost every problem that emerges is closely related to war events and crimes. The collapse or lack of communication between ethnic groups originates mostly either from unsolved issues related to the war or from opposing truths that keep colliding with each other. In this light, the interviewees observe growing concerns in BiH rather than progress in conflict transformation. One interviewee notes that Bosnian society is still “infected” (CSO-BiH-7) by the recent war. The peace established by the Dayton Agreement is perceived as an “artificial break between two wars” (CSO-BiH-10). Or, as one interviewee states: “The weapons are silent, but the war is going on in people’s heads” (CSO-BiH-12).

Human rights and peace activists in **Croatia** also mention ethnic division and intolerance as a crucial problem that requires further attention. In their view, dealing with the past is a prerequisite for establishing inter-ethnic understanding, trust and peaceful co-existence. In their society they observe a still very vital tendency to blame “the others”, in the first instance members of the Serb community, for the outbreak of the war. The conviction that the Croatian Army could not have committed war crimes because it fought a Homeland Defence War² is still powerful. While the interviewed human rights activists and peace practitioners in this country suggest that state institutions should face their responsibility for the war crimes perpetrated by the Croatian Army, the interviewed victims’ groups and the majority of veterans’ unions insist that the responsibility for the war lies with Serbia. They expect state institutions in Serbia, first and foremost, to be held accountable for the military “aggression” towards Croatia.

The interviewees in **Serbia** see a need for authorities in this country to lay open the contribution of the regime under Slobodan Milošević to the wars in the 1990s. In addition to this, they advocate for improved information and education on issues of the past in order to foster young people’s capacities to resist ethno-nationalist propaganda. More strikingly than in the other two countries, the interviewees from Serbia insist on clarifying the interrelation of collective and individual responsibility. The majority of human rights and peace activists suggest that the state of Serbia should take full responsibility for its involvement in the wars of the 1990s and publicly acknowledge war crimes committed by Serbs and the suffering of non-Serb victims. It is also stated that the phenomenon of Serb nationalism and its development since the 1970s have to be analysed by scholars and discussed in public. Moreover, they argue that addressing only the state’s active role in the wars would blank out the fact that the regime and its military were largely supported by the general population. It is argued that the citizens of Serbia cannot be absolved from responsibility for what was done in their name and that they thus have to reflect on their own roles and contributions to war. Several interviewees mention also that there is a tendency both in the region and in the international community to perceive the population of Serbia as a “perpetrator nation”. These interviewees have the impression that, as a consequence, Serb victims and their experience of victimhood are still largely ignored throughout the region.

Furthermore, the interviews reveal that there is a need to *improve the still critical social situation of victims and veterans* who still suffer from the consequences of their distinct war experiences. Therefore, victims’ organisations and war veterans’ unions try to respond to the needs and concerns of their members. Their assistance consists mainly in claiming the rights to which victims and veterans are entitled and organising psychosocial and medical support for their members and their families.

Victims’ organisations advocate for the rights and respond to the needs of survivors of detention camps and torture, and of family members of missing persons. Representatives of these groups primarily

² The stance that members of the Croatian Army were defending Croatia while being attacked by the Yugoslav People’s Army and Serb insurgents was officially legitimised by a statement by the then President of the Supreme Court of Croatia, Milan Vuković, in the early 1990s. In his statement, Vuković claims that in a defensive war the defending army cannot commit war crimes. After the ICTY issued the verdict in the case of Gotovina et al., Vuković’s reaction in public showed that his conviction in this respect has not altered: “Onom tko jedva spasi živu glavu braneći se od napada, ne mogu se pripisivati zločini.” [“Those who are attacked and try to save their bare lives cannot be accused of committing war crimes.”] See Marko Čulić: “Vuković ponovio: U obrambenom ratu nema ratnih zločina”, *tportal.hr*, 8.11.2011. Available at: <http://www.tportal.hr/vijesti/hrvatska/158409/Vukovic-ponovio-U-obrambenom-ratu-nema-ratnih-zlocina.html>.

have to cope with their own experience of violence and the loss of relatives. This personal experience is the impetus for their engagement. They argue that it is their obligation to support other war victims with similar experiences. In their view, dealing with the past mainly means documenting all circumstances concerning war crimes, the types of victimhood and the long-term consequences of torture and armed violence. They also work to improve medical and psychosocial support and advocate for legal status and acknowledgment of war victims. They assist victims who have been expelled from their homes and facilitate the return of refugees and displaced persons to their previous places of residence. The interviewees pay particular attention to local communities where the victims of past crimes of human rights abuses are not recognised. According to information from the interviewees, the situation is most critical in communities where victims belong to a minority group since they still endure threats or discrimination, and cannot count on any protection from police forces.

The representatives of veterans' unions also organise psychosocial support for their members. It is reported that many war veterans have to cope with physical injuries and psychological disorders. The interviewees note that these disorders also burden family members of ex-combatants. War veterans' unions therefore address not only the psychosocial needs of ex-combatants but also of their family members. In contrast to the situation of victims, the legal status of veterans is more clearly defined and the latter benefit from programmes for disarmament, demobilisation, and reintegration. The interviewed representatives of veterans' unions, however, observe that ex-combatants are not familiar with these legal regulations that pertain to their status as veterans. Many veterans' organisations therefore inform their members about their rights and support them in claiming them. Nevertheless, many of them live under precarious conditions in most of the countries under investigation. As a representative of a veterans' umbrella organisation in Croatia outlines, veterans are still in the first phase of demobilisation and far from social reintegration. This interviewee highlights that the challenge of dealing with the past from an ex-combatant's perspective first of all means having to cope with disturbing individual memory and accessing psychosocial support. Most veterans still suffer from the consequences of active and passive forms of violence that they perpetrated, experienced or witnessed: "In war the veterans dream about peace; in peace the veterans dream of war. We still live in war because we were not enabled to leave this state. It is very easy to demobilise a soldier, but it is endlessly difficult to demobilise a civilian. Demobilising a veteran is actually a form of psychological disarmament" (VE-CRO-2).

Human rights activists and peace practitioners in all three countries see a need for societies to acknowledge all victims regardless of their ethnic background. In contrast to this, the majority of the interviewees from victims' and veterans' organisations expect members of their national community first of all to acknowledge their own concerns. Any engagement for protection and acknowledgment of the victims of other nationalities is perceived as betrayal. Of course, exceptions to this rule can also be observed: the "Veterans for Peace" in Serbia and veterans engaged in the organisation "IzMir" in Croatia, for instance, reflect their involvement in war in a different and more comprehensive way. In their view, it is necessary for everyone who was involved in war to take responsibility and acknowledge their own wrongdoings, instead of defending them and blaming others.

Dynamics and timelines of dealing with the past

Interviewees from all countries agree that the dynamic of dealing with the past in the region is influenced by several factors: the pressure from the ICTY on the governments to comply with the agreement on cooperation, the degree of political will of governments and parliaments to face the past, the decision of civil society actors on when and how to deal with the past, the media reporting on war crimes, and the prosecution of members of the state army and paramilitary units in domestic courts. The interviews reveal that, despite some similarities, different dynamics in the three countries under investigation can be observed.

The majority of the interviewees in **Bosnia** agree that processes of dealing with the past in this country are not well coordinated and suffer from the ongoing political polarisation. Criticism is raised in particular with regard to the state and entity institutions. Interestingly, the National Strategy on Transitional Justice that was adopted by the Ministry of Justice and the Ministry of Human Rights and Refugees is not perceived as a local concept since the main promoter is an international institution. The project was extensively supported by the Sarajevo-based office of the United Nations Development Programme. More than half of the interviewees doubt that the state and entity institutions are genuinely committed to the Strategy.

Human rights activists, peace practitioners, and journalists in **Croatia** report that prosecution of war crimes committed by members of the Croatian Army had an accelerating impact on dealing with the past processes. In particular the transfer of former general Ante Gotovina, accused of war crimes and crimes against humanity during the military operation “Storm”, to the ICTY in December 2005 is viewed as one of the major turning points. The interviewees assert that the extradition of this war crimes suspect signalled that dealing with the past has entered a new phase that can no longer be disrupted or even reversed. At the same time, they concede that there is no broad consensus on this in Croatian society, as many veterans regard trials that hold commanders of the Croatian Army accountable as dishonouring the Homeland Defence War and as a direct accusation of all soldiers involved.

The interviewees from **Serbia** stress that the appointment of Zoran Đinđić³ as the Prime Minister of Serbia in 2001 raised high expectations that Serbia would move towards a democratic society and advance the relations with the other post-Yugoslav states. Understandably, his assassination in 2003 was a deep shock and read as a sign that Serbia is still not mature enough for political change. Later on, the Declaration of Srebrenica was adopted by the National Assembly on 30 March in 2010, condemning war crimes committed in Srebrenica. This is valued as a tangible step by the state to show responsibility for past crimes. Finally, the interviewees highlight that the diplomatic course taken by President Boris Tadić together with his Croatian colleague, President Ivo Josipović, is helping to improve relations between Serbia and Croatia. In particular, ceremonies for showing respect to war victims on all sides, such as a commemoration event in Vukovar in November 2010, denote a new phase in the process of regional reconciliation.

Although the dynamic of dealing with the past is assessed differently in the respective countries, interviewees from all countries mention two developments that promoted fundamental progress: Firstly, the launch of the REKOM initiative, and secondly, the joint actions of the Presidents of Croatia, Ivo Josipović, and Serbia, Boris Tadić, are seen as important developments that mark the beginning of a new and encouraging phase. Nevertheless, the interviewees are still cautious towards the new developments. Most of them think that the willingness of the societies and political actors to tackle issues of the recent past is still very low in all three countries and that the governments in the region do not approach these issues with the necessary political maturity. They are convinced that civil society organisations have established more substantive initiatives.

The interviewees emphasise that activities of civil society actors in wartime have provided the ground for dealing with the past in the post-war period. CSOs were engaged in the protection of human rights, and many of them showed solidarity with victims regardless of their ethnicity. Others documented facts and evidence on atrocities. Courageous journalists stepped beyond ethno-nationalistic ideology and provided reliable reports that have also helped to build a solid base for dealing with the past. Furthermore, it is stated that civil society actors have important potential for challenging one-sided narratives. Yet the interviewees admit that the efforts undertaken by CSOs will remain ineffective unless they link up with activities on other levels since the engagement and cooperation between state institutions, governments, parliaments and civil society are indispensable for coming to terms with the past.

³ Zoran Đinđić was one of the opposition leaders when Slobodan Milošević was in power, and was president of the Democratic Party of Serbia. After Milošević was overthrown, he became Serbia's Prime Minister.

5.2 Potential, legitimacy, and acceptance of TJ mechanisms

5.2.1 Assessments of the work of the ICTY

Contributions and achievements

The overall assessment of the interviewees is that the ICTY deserves credit for its historic role in combating impunity. It has served justice by arresting and trying many high-ranking commanders who were responsible for war crimes and crimes against humanity. There is a widespread belief that no other institution would have had the authority and capacity to fulfil this task. It is emphasised that the Tribunal had a de-escalating effect since it approached all suspects equally, irrespective of their nationality. This helped to disrupt an “us” vs. “them” discourse and to shift the focus to victims and perpetrators instead. In the view of the interviewees, this was only possible since the ICTY’s judges and the prosecutors were not involved in the war. Interviewees in all three countries agree that the ICTY was successful in providing evidence on individual responsibility and that it has also helped to focus public attention on the role of state institutions, which must be held accountable for their involvement in the wars in the former Yugoslavia. Without the ICTY, most of the interviewees doubt that awareness about this could have been created in the societies in the region. It is also underlined that the Tribunal contributed to advancing the standards of international humanitarian law. Classifying rape as a crime against humanity is considered an important step that is highly valued by the interviewees. In addition to this, ICTY officials have archived valuable evidence and interviewees assume that the Tribunal’s archive will serve as the most relevant database for in-depth research on the recent wars in the former Yugoslavia.

The interviewees in all three countries are convinced that the ICTY triggered some positive effects on the societies in the region.

Representatives of victims’ organisations in **Bosnia** say that arresting war crimes suspects was of paramount importance. One survivor from Srebrenica states: “The moment when the first arrests were made, life in Bosnia-Herzegovina became a bit safer” (VI-BiH-1). In contrast to this, war veterans would not share this assessment. They express concern that ex-combatants are wrongly arrested and transferred to The Hague.

Human rights activists and peace practitioners in **Croatia** underline that the prosecution of war criminals from all ethnic groups by an international court is currently the most effective instrument to change the attitudes of the population in Croatia regarding the involvement of the state army in war crimes. Hope is expressed that in the long run, this might help to question the narrative of the Homeland Defence War that often serves as a means for justifying war crimes in public discourses and that was also used as an argument for lowering sentences or for acquittals in war crimes trials.

Civil society actors in **Serbia** argue that the Declaration on the crimes committed in Srebrenica, adopted by the Parliament of Serbia, as well as President Tadić’s visit to the commemoration in Srebrenica in 2010 are important gestures that can be considered to be a direct consequence of the Hague Tribunal’s pressure on the Government of Serbia.

Shortcomings and limitations

Interviewees in all three countries also highlight a number of deficits and problems with regard to the work of the Hague Tribunal.

Human rights activists first of all mention *the weak witness protection mechanisms*. It is reported that key witnesses in highly sensitive war crimes cases had to endure serious repercussions after testifying in The Hague. Apparently, there is a lack of protection in particular after the trials. The majority of the interviewees are convinced that protection of witnesses in highly sensitive cases is almost impossible to guarantee. In addition to this, several interviewees draw attention to the negative impacts that stem from the ICTY’s legal

practice. To start with, the amalgamation of the continental and *Anglo-Saxon common law* is appraised by interviewees from all countries as inadequate for war crime prosecution. The practice of plea bargaining is viewed as highly problematical. In particular, interviewees in Bosnia criticise the fact that one of the consequences of plea agreements is the pre-term release of convicted persons. As representatives of victims' organisations in BiH outline, it is completely unacceptable for victims to have to face their perpetrators in local communities again following pre-term release. Furthermore, these interviewees complain that the judgments were often not accepted by the community where the crimes took place or, even worse, war criminals are still celebrated as heroes. In the view of the interviewees, the *limitations of criminal justice* thus become visible. The interlocutors believe that conviction by the Court needs to be accompanied by public acknowledgment of the crime.

The majority of the interviewees in all countries also criticise the international community for making the governments' cooperation with the Hague Tribunal a condition for the EU accession process. Some of the interviewees argue that the ICTY has thus taken on a political role. In the words of an interviewee from Serbia: "The ICTY gained high political importance for EU diplomatic actions" (CSO-SER-3). Consequently, this interviewee thinks that this supports the perception that the ICTY serves as an instrument for political bargaining – a view that is widespread among populations in the Western Balkans. In the light of this, some interviewees come to the conclusion that the ICTY has further unsettled the already quite delicate situation in the region.

Interviewees from each country provide numerous examples to illustrate the above-mentioned deficits and problems. A few of these will be singled out in the following paragraphs.

In **Bosnia**, interviewees of Serb and Croat nationality point out that several judgments against commanders from the Bosniak side who were accused of war crimes against Croats and Serbs are highly questionable. As an example, the interviewees mention the case of the former Bosniak military officer Naser Orić. He was Senior Commander of the Bosnian Muslim Forces in municipalities in eastern Bosnia, including Srebrenica, from 1992 until the fall of the Srebrenica enclave in 1995.⁴ Orić was indicted by the ICTY as under his command members of the military police detained Serb individuals in the Srebrenica police station and in the building behind the Srebrenica municipal building in the period between 24 September 1992 and 20 March 1993. It was alleged that these detainees were subjected to physical abuse, serious suffering and injury to body and health. In some instances, prisoners were beaten to death. In 2006 Naser Orić was found guilty of the failure to discharge his duty as a superior to prevent the occurrence of murder and cruel treatment, and sentenced for two years' imprisonment. As he had already spent three years in detention, the Trial Chamber ordered his immediate release. Orić was later found not guilty by the Appeals Chamber in 2008.

The other two examples mentioned by the interviewees are the cases of two commanders of the Army of the Republic of Bosnia and Herzegovina, Sefer Halilović, who was discharged of guilt⁵, and Rasim Delić, who was sentenced to three years but released after the verdict due to the time he had spent in pre-trial detention.⁶ The interviewees report that all these judgments contributed to deepening the suspicion among Serbs and Croats towards the ICTY and gave reason for them to perceive the Tribunal as biased and politicised.

⁴ See http://www.icty.org/x/cases/oric/cis/en/cis_oric_en.pdf. Naser Orić was commander of the Srebrenica Municipal Territorial Defence Staff, which was later re-named the Srebrenica Armed Forces. He was also appointed as Commander of the Joint Armed Forces of the Sub-Region Srebrenica in early November 1992, encompassing the municipalities of Srebrenica, Bratunac, Vlasenica and Zvornik.

⁵ Sefer Halilović was Deputy Commander and later Chief of the Supreme Command Staff of the Army of the Republic of Bosnia and Herzegovina (ARBiH). He was head of an inspection team to command and coordinate Operation Neretva '93. He was indicted by the ICTY for the murder of 33 Croat civilians in the village of Grabovica near Mostar in 1993. Halilović was acquitted and released by the Trial Chamber in 2005 and again found not guilty by the Appeals Chamber in 2007. See <http://www.icty.org/x/cases/halilovic/acjug/en/071016.pdf>.

⁶ Rasim Delić was Commander of the Main Staff of the ARBiH from 1993 and charged on the basis of his superior responsibility with murder and cruel treatment of Croat civilians and soldiers in the municipality of Travnik, the killing of soldiers of the Army of the RS and the rape of Serb women in the camp "Kamenica" in the municipality of Zavidovići. See http://www.icty.org/x/cases/delic/cis/en/cis_delic_en.pdf.

Interviewees from **Serbia** also criticise the release of the former Bosniak military officer Naser Orić, and they also complain about the ICTY's benevolent treatment of the former UÇK commander Ramush Haradinaj who was allowed to engage in politics during a pre-trial provisional release (see Chapter 4.2). These two cases have repeatedly been mentioned as one of the triggers that intensified the mistrust towards the ICTY in Serbia.

In **Croatia** it is noted that the ICTY has missed the opportunity to address the core problem of crimes committed during and after the military operation "Oluja" ("Storm"). As one human rights activist underscores: "Oluja was just the peak of the systematically conducted ethnic cleansing of Croatian Serbs" (CSO-CRO-9).⁷

Representatives of the *victims' and veterans' organisations* in all three countries assess the work of the ICTY more negatively than other civil society actors. Most of them regard it as a "biased institution" that openly discriminates against members of their own constituency and protects the interests of the opponents. A further point of criticism is that justice as served by the ICTY was not linked with reparations. Furthermore, they criticise what they see as the ICTY's failure to communicate legal proceedings to victims and witnesses and its lack of a sound strategy for explaining its findings and judgments to a broader public, resulting in CSOs having taken over these tasks.

5.2.2 Assessments of the work of the domestic courts and prosecutors

Reviewing the work of the domestic courts and prosecutors, negative assessments outweigh the positive observations. Only a few interviewees believe that the domestic courts have met the ICTY's standards in war crimes prosecution and that the domestic judiciary has collected valuable material and evidence. However, the majority of the interviewees in all three countries are convinced that the legal institutions are biased and that their work contributes to deepening rather than overcoming mistrust between different ethnic groups and states in the region. In addition to this, the efficiency of domestic courts is seen as being in jeopardy, given that a high number of perpetrators are still at large. Furthermore, a lack of adequate witness protection is observed. Limited imprisonment capacities will, according to the interviewees, result in more pre-term releases of convicted persons. Moreover, doubt is expressed that all perpetrators will be prosecuted. Many interviewees think that this is not likely, in particular as potential key witnesses might die, lose their memory or refuse to testify due to the lack of safety. However, the interviewees from all three countries also realise that the domestic courts have to perform their duties under rather discouraging and intimidating circumstances, given the unstable and extremely complicated political situation in some areas.

In each country, specific achievements and negative developments in respect to war crime prosecution are singled out.

In **Serbia** it is seen as one of the most significant improvements that in the past years Serb military officials were also prosecuted by the domestic judiciary. As human rights activists and peace practitioners emphasise, it was a problem that in earlier years it had only prosecuted suspects who were not of Serb ethnicity. The interviewees assume that critical monitoring reports issued by the European Union⁸ forced the state institutions and parliament to initiate the required changes. Moreover, as a consequence, a law on war crimes was adopted that allows victims to be represented by human rights activists at courts, and these make use of this possibility to the utmost extent. It is also reported that the quality of the trials has improved, due to the intense involvement of NGOs in witness support and their continuous presence in

⁷ Author's note: The verdict in the case of Gotovina et al. delivered by the ICTY on 15 April 2011 addressed these events and offers a legal basis to investigate war crimes committed systematically against the Serb population in Croatia.

⁸ A report issued by the European Commission on Serbia's progress in respect of EU accession in 2010 assessed that the judiciary is one of the weakest segments in Serbia's institutional system. See European Commission: Serbia 2010 Progress Report. Commission Staff Working Document, Brussels, 9 November 2010. Available at http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/sr_rapport_2010_en.pdf.

the courtrooms. The conclusion of the “Ovčara”⁹ and “Scorpions”¹⁰ cases is seen as a key contribution by the domestic judiciary to dealing with the past so far. Yet in general, the number of completed cases is considered to be too low.

In **Croatia**, many interviewees welcome the development that the courts have started to review earlier cases that were conducted “in absentia” and often lack valid evidence. Peace practitioners and human rights activists underscore that this is a significant step in advancing the judicial system: The reviews can be seen as an official recognition that the trials against Croatian Serbs in the 1990s were politically motivated and utterly biased. Currently, the interviewees are concerned about some ongoing trials held at smaller county courts (like Sisak or Karlovac) that are performed to low standards due to a lack of basic facilities and sufficient expertise.¹¹

In **Bosnia**, the situation is viewed more pessimistically, as the interviews reveal. Human rights activists point out that the number of concluded trials in the Federation of BiH is higher than in Republika Srpska. Furthermore, it is seen as a huge problem that the institution that is in charge of war crimes prosecution at state level, the Court of Bosnia-Herzegovina, cannot rely on support in both entities: The Court of Bosnia-Herzegovina is accepted by large parts of the population and political leaders in the Federation, but questioned by many citizens and political decision-makers in the RS. In particular, government officials have stated that the Court is biased and internationally imposed. Furthermore, it is considered to be a major problem that criminal laws are not yet harmonised within and between the entities. It is reported that at present, four criminal laws for prosecuting war crimes are applied in BiH.¹² This contributes to a situation where the sentences vary noticeably at different courts for the same category of crime. These differences are mostly incomprehensible to the public and are often interpreted as an expression of an ethnic bias. Apart from this, the interviewees complain that unclear divisions of competences within the judiciary lead to a duplication of efforts. Some institutions perform the same tasks, yet are unaware of this. As a consequence, victims are being interviewed several times about the same issues, and this reinforces their impression that state and entity institutions are incompetent and not well-coordinated. In this context, interviewees call for legal reforms. A further point of criticism is that the regional cooperation among the war crimes chambers in the successor states of the former Yugoslavia is still weak and must be improved.

5.2.3 Assessments of the potential of truth commissions and the campaign for REKOM

Most interviewees in all three countries doubt that a truth and reconciliation commission is an appropriate mechanism for the context of the Western Balkans. However, some of them argue that truth commissions that focus on fact-finding together with state institutions should be installed in each of the countries in the region, before states institute a regional body for fact-finding. In their opinion, the regional body should

⁹ At a farm called “Ovčara” near the town of Vukovar in eastern Slavonia, more than 200 men, mostly of Croatian nationality, were executed by Serbian forces between 20 and 21 November 1991. In 2009, the District Court of Belgrade issued a verdict against 13 individuals responsible for the massacre at Ovčara and sentenced them to a total of 193 years. The convicted persons were members of the Territorial Defence of Vukovar as part of the Yugoslav armed forces and members of a voluntary corps known as “Leva Supoderica”. See http://www.hlc-rdc.org/images/stories/pdf/sudjenje_za_ratne_zlocine/srbija/Miroljub_Vujovic_i_dr/Presuda-Ovcara-12_03_2009.pdf

¹⁰ The “Scorpions” were a Serbian paramilitary unit that took part in the genocide at Srebrenica. In April 2007, four members were found guilty of the execution of six men and boys from Srebrenica and sentenced by the Supreme Court of Serbia. The total sentence penalty amounts to 58 years. See http://www.hlc-rdc.org/images/stories/pdf/sudjenje_za_ratne_zlocine/srbija/Skorpionioni%20SI%20Medic/Skorpionioni%20-%20Presuda%20Vrhovnog%20suda%20Srbije%20-%202013.06.2008.pdf.

¹¹ In 2011 the Ministry of Justice and OSCE agreed that only ongoing cases should be concluded by the courts in local communities. All new cases should be dealt with by the four specialised courts. See <http://www.osce.org/zagreb/45126>: “The OSCE monitors reported that though four specialized courts were available, most cases were investigated and tried in the communities where the crimes occurred – raising the risk for bias. Following amendments to the Law on the Application of the International Criminal Court Statute (ICC Law) adopted by Parliament in May 2011, four specialized courts – the county courts located in Zagreb, Rijeka, Split and Osijek – should handle all newly raised war crimes cases.”

¹² The four criminal laws are the Criminal Law of BiH, the Criminal Law of the Federation of BiH, the Criminal Law of the RS, and the Criminal Law of the former Socialist Federal Republic of Yugoslavia, which is in force only in the RS. These laws define criminal acts related to war crimes differently and impose different sentences for the same type of crimes. See Ahmetašević 2006.

be a platform for exchange between the national commissioners. A fact-finding commission is claimed to be an appropriate tool to prevent the manipulation of facts and figures. It is also believed that it could help to develop an inclusive concept of remembering. However, interviewees also express scepticism towards the effectiveness of such mechanisms, given the negative experiences gathered with previous attempts to install official fact-finding commissions in Bosnia and Serbia. Most of these are regarded as failed initiatives. As an exception, the Srebrenica Commission that was set up by the Government of Republika Srpska has at least corrected figures on the genocide in Srebrenica, as the interviewees report. The results were made public and the then President of RS apologised to the families of the murdered. However, the commissions' work remains contested. The findings are questioned both by Serb and Bosniak victims: Bosniaks criticise that the figures assessed by the Commission are lower than the numbers presented by victims' organisations. Serb victims argue that the investigation included war events that cannot be assigned to the Srebrenica genocide, and that the Commission has operated with unverified information.

Interviewees in Serbia all express a high degree of scepticism towards the idea of truth commissions. They point to the negative experience with a fact-finding commission that was inaugurated by the then President of Serbia, Vojislav Koštunica, on 22 February in 2002. The commission disbanded in February 2003 owing to disagreements on the mandate among the commission members. A report of its work was never issued. All interviewees share the view that this commission was installed in order to relativise the crimes for which Serbia has to accept responsibility. The investigation of war crimes from World War II was also incorporated into the commission's mandate. This is viewed as a further indicator that it was formed to defend the official narrative.

Interviewees from all countries agree that previous fact-finding commissions either failed to present valid results or were highly politicised. Furthermore, these initiatives lacked guidance by morally convincing personalities. Although many interviewees are highly sceptical towards the concept of truth commissions, they mention some positive expectations of the REKOM initiative.

The campaign for a regional fact-finding commission: REKOM

All interviewees are convinced that the wars of the 1990s and their dynamic can only be assessed when the regional context is taken into consideration. Expectations of REKOM are therefore connected with the strong wish to establish a regional database on all war victims in the former Yugoslavia. Most interviewees, whether or not they are supporters of REKOM, believe that the most important task of a regional commission should be fact-finding. It is assumed that this can reduce the manipulation of facts and help to pave the way towards a shared history or provide the grounds for inclusive history textbooks. Interviewees from all three countries suggest that a regional commission should also be able to provide material that will allow multi-dimensional analyses of the wars in the former Yugoslavia.

However, the interviews also reveal that the REKOM initiative is a controversial issue for civil society actors in all three countries.

Interviewees from all three countries consider victims' testimonies to be important. They expect truth-telling mechanisms to offer space for individual testimonies that cannot be disclosed by investigations performed by the police and legal institutions. But several interlocutors also express concern with regard to the public hearings that have been organised by the REKOM coalition in order to provide a space for victims' testimonies. In particular, interviewees from **Bosnia** and **Serbia** complain that the public hearings were not prepared mindfully enough, as victims were invited to tell their stories but nobody anticipated the risk of retraumatisation during and after these events. There were no psychologists and physicians available to assist the speakers. Some interviewees who participated as speakers at these public hearings confirm that the credibility of their testimonies was questioned by participants at the hearings, and that such denial contributed to worsening the state of traumatisation. These interviewees are convinced that the public hearings can only achieve a positive effect for the victims if the members of other ethnic groups are willing to accept their narrative. Another problem is reported: It was observed that other victims received a great

deal of attention for their individual war narrative during the public hearings, but after the return to their communities had to face indifference again. This also caused distress and intensified feelings of isolation.

Other interviewees criticise that the REKOM coalition so far has not offered a convincing methodology for fact-finding, nor answers to the question how the facts can be made available for legal institutions. They point to the dilemma that information obtained in a conversation with a witness or victim cannot be taken as evidence until it is verified by the police and legal institutions, and it remains an open question what to do with confidential information gathered from a witness who wishes to remain anonymous. Several interviewees warn that such questions require legal expertise which the members of a regional truth commission might lack.

In particular, the interviewees from **Bosnia** point out that any fact-finding mechanism has to consider that the countries of the former Yugoslavia were affected by the wars to very different degrees. They emphasise that Bosnia suffered by far the worst destruction, as well as a high proportion of war-related casualties and war crimes. A further point of criticism is that NGO consultations organised during the course of the REKOM campaign did not address these issues, and some doubt is expressed that they can be appropriately approached in the setting introduced by the REKOM coalition. It is assumed that the organisers avoid adding these problems to the agenda since they would provoke disagreement among the participants and raise controversy on the question of guilt and responsibility.

5.3 Guiding concepts

Although all interviewees acknowledge the relevance of the terms *truth, justice and reconciliation* for processes of dealing with the past, most of them avoid using any of these in their daily activities. In particular, peace practitioners explain that all these concepts are contested and raise heated disputes among participants in seminars on peacebuilding and dealing with the past. Only a small number of civil society actors consider these terms as instrumental for their activities and programmes (CSO-BiH-7, CSO-SER-7).

5.3.1 Truth

For the majority of the interviewees in all three countries, fact-finding and truth-telling (oral history and public testimonies) are considered to be the *most important* categories within the triad composed of truth, justice and reconciliation.

The *gathering and verification of facts* are crucial for establishing evidence for trials. From this perspective, justice cannot be served without factual truth. Interviewees state that the relation between truth and reconciliation is intricate. Truth can cause anxiety, resistance and upheaval, and become a serious obstacle to reconciliation. It should therefore not be implied that truth and reconciliation are terms that induce a harmonious relationship. Generally, the interviewees stress that it would be advisable to avoid the term “truth” and instead resort to the term “fact”, as the concept of “truth” has fallen prey to extensive instrumentalisation during and after the violent disintegration of the former Yugoslavia.

According to the interviewees in all three countries, establishing verified, undeniable facts and forensic truth is an important task. Furthermore, it is agreed that facts also need to be embedded in a political and societal context and therefore an interpretative process is unavoidable. The interlocutors recall that although a set of undeniable facts has already been established, the same facts are used to phrase strikingly different interpretations and narratives, as they vary from individual to individual, from nation to nation, and from state to state. Even among civil society actors, various views exist, and the international community has also created specific versions. The interpretations diverge in respect to the character of the war, its causes and consequences, and the share of responsibility and guilt. Therefore the interviewees are convinced that even a minimum of consensus on the past will be very difficult to establish.

In all three countries, human rights activists, peace practitioners, journalists and representatives of victims' organisations and veterans' unions emphasise that silenced narratives have to be saved from oblivion and that it is important to gather individual stories. Both victims and veterans assume that storytelling can pave the way for acknowledgment of their specific experiences. Veterans expect that this will offer a chance to disrupt the misleading perception that ex-combatants are perpetrators. The interviews also highlight the connection between truth recovery and relationship-building. It is also stated that trust can only be established if facts are presented without distortion and there is no motivation to present a misleading picture.

Finally, it is stressed that some open questions remain, related to the challenge of how to step from factual truth to social and dialogical truth:

- 1) How can reliable facts be gathered, and how should they be presented to the public in order to make people more resistant to propaganda and manipulation?
- 2) How should dialogue processes be facilitated in order to bridge the gap between the distinct views and positions of people with different war experiences?

5.3.2 Justice

According to the civil society actors interviewed, the concept of justice first of all implies an obligation to combat impunity. Establishing evidence on war crimes and arresting and punishing war criminals therefore have a high priority, as well as legal regulations that guarantee the victims' rights, property restitution, compensation, and return of refugees. Furthermore, public acknowledgment and condemnation of the crimes without relativisation and conditioning are seen as imperative. Establishing the rule of law is closely linked with all these aspects. Several interviewees argue that apart from legal prosecution, restorative elements of justice, such as reparation for victims and an integrative concept for memory politics and remembrance, are needed. Additionally, the interviewees call for institutional reforms and transformation of state structures which have to provide a framework for justice to be served. While for human rights activists the notion of justice is instrumental, and victims' and veterans' organisations also use the term, most peace practitioners in the three countries explain that they do not use the term since their activities do not directly aim to serve justice. However, those peace groups which support victims and witnesses or engage in monitoring of trials also have a strong focus on justice.

In all three countries, the interviewees draw attention to the serious lack of capacity of the legal institutions and come to the conclusion that justice has not sufficiently been served. In **Bosnia**, interviewees state that the rule of law needs to be established in order to guarantee that people are not threatened and can live in safety. This pertains to the fact that minorities are still exposed to discrimination and threats and do not enjoy the same rights as citizens who belong to the majority population. The interviewees relate the lack of physical security directly to a malfunctioning legal system.

In **Serbia**, human rights activists are convinced that so far, functioning mechanisms of transitional justice have not been implemented in Serbia. They mention the low number of completed war crimes trials as an indicator that the state does not take combating impunity seriously enough. They recall that in the decade after the fall of the Milošević regime, governance structures in Serbia have not undergone a thorough transformation, and reforms of state institutions such as the police and the military are proceeding at a very slow pace (e. g. CSO-SER-2, CSO-SER-3, CSO-5, CSO-13). Most of the interviewees believe that the state of impunity and the justification of war crimes have bred a new generation of young people who glorify and practise violence excessively.

In **Croatia**, interviewees point to the still difficult situation of victims from all ethnic backgrounds as a sign that states have failed to serve justice to individuals who suffered great losses and injuries in times of war. These interviewees are convinced that the states in the region have not yet fulfilled their duties towards victims as they have not established reparation programmes.

5.3.3 Reconciliation

Interviewees from all countries underscore that the term “reconciliation” is an inherent element of the vocabulary which they use when they apply for international funds, as donors expect them to address this concept. However, most of the interlocutors stress that they avoid the term in their daily work. They regard the term “reconciliation” as inadequate and insist that the concept must not be imposed by external actors. Those who explain that they avoid the term agree that reconciliation can only take place on a personal level. In the Bosnian/Serbian/Croatian language, the verb “pomiriti se” (to reconcile) is used when individuals had a quarrel or a dispute, found a mutually acceptable solution, and thereafter restore a friendly relationship. It is argued that the deep-rooted mistrust, fear and hatred that mark societies in the region of the former Yugoslavia are not a consequence of interpersonal quarrels but a legacy of armed conflicts and organised violence with a high rate of killed and tortured individuals. Some interviewees warn that one should not put victims under moral pressure to reconcile with a person who has harmed them. Representatives of *victims’ organisations* from all countries underline that after massive violations of international humanitarian law, it is inappropriate to use the term “reconciliation”. One interviewee, a survivor from Srebrenica, states that “the right to return, the right to know, the right to live in dignity and safety, and the right to employment” are the most important requirements “that can help to pave the way from a violent past to a peaceful future” (VI-BiH-1).

Nevertheless, the interviews reveal that the concept of reconciliation is present as a notion in discussions among civil society actors who are engaged in the field of peacebuilding and conflict transformation and that it is more frequently used by peace practitioners than by human rights activists. Those who use the term see reconciliation as a process that implies that individuals or different ethnic groups become aware of their own experiences, roles and views in the war and at the same time realise that other people have had a different experience and formed their own views on what happened in war. A researcher who facilitates dialogue activities outlines that reconciliation means “to create conditions and allow that through dialogue and communication the participants learn to understand these different narratives and interpretations of truth. The most important goal is that at the end of such seminars the participants do not regard each other as enemies. This would imply that they are able to accept the differences between the adversaries but no longer treat them as reasons for war” (CSO-SER-11). Or in the words of a psychologist: “Reconciliation would be to connect a person’s own position with an opposing position” (CSO-SER-17). Other interviewees are convinced that reconciliation also requires approaches that aim to change social and political structures, as one peace practitioner from Croatia specifies: “The primary goal of those of us who are engaged in peacebuilding is not to work on reconciliation between ethnic groups involved in armed conflicts. We try to change the mechanisms of governance and power that have led to the wars” (CSO-CRO-2).

As *obstacles to reconciliation*, the interlocutors specify that many perpetrators are still at large and there is a huge number of war crimes cases pending. In addition to this, the culture of denial and the ongoing tendency to celebrate war criminals as national heroes in some places are identified as serious problems. Representatives of victims’ organisations from all countries explain that from the victims’ perspective, the denial of the war crimes they personally experienced or witnessed disempowers them, making it difficult for them to claim their rights. They also see this as a major obstacle to reconciliation.

Preconditions for reconciliation: War crimes prosecution, fact-finding and acknowledgment as first priorities

War crimes prosecution and disclosing the fate of missing persons are seen as indispensable preconditions for reconciliation. Interviewees also emphasise that politicians should unconditionally condemn war crimes committed in their nation’s name and publicly apologise for state institutions’ involvement in war. Furthermore, it is argued that such gestures should be followed by acts of compensation. This requires governments and parliaments to set up legal frameworks for reparation programmes. The abolition of

ethnic segregation in the education system, relationship-building in ethnically divided communities, and the practice of an inclusive culture of remembrance are also identified as prerequisites for reconciliation.

In particular, interviewees from **Bosnia** complain that many perpetrators are still at large. Some of them are even employed in key state institutions or private enterprises. Arresting as many perpetrators as possible is stressed as an urgent requirement. This would help to create an atmosphere of security. The interviewees also see a need to intensify the practice of vetting and lustration. Furthermore, they mention that in order to create security, reforms of state structures are necessary. Only if this is guaranteed might reconciliation become a goal that is possible to achieve. The interlocutors also see an urgent need to prepare the ground for reconciliation on community level. They suggest that mobile teams should be trained to assist divided communities in dealing with the legacies of the violent past and war crimes. In this context, reconciliation is understood as a process of rebuilding divided communities.

In Serbia, the interviewees focus much more on the regional level rather than the local community level when they discuss preconditions for reconciliation. They see a need for reconciliation among the countries in the region of the former Yugoslavia. In particular, human rights activists and peace practitioners in this country emphasise that a precondition for this is to recognise and accept the borders of the newly founded states of the former Yugoslavia. In their view, political decision-makers or groups who question the borders create mistrust and confusion. These comments refer to Serbia's official policy not to recognise the sovereignty of Kosovo.

Interviewees from **Croatia** are convinced that the EU accession of the post-Yugoslav states will enhance reconciliation. Yet accession alone will not bring all the solutions with it. The successor states of the former Yugoslavia should therefore seek "bilateral settlement of unsolved questions between neighbouring countries" (CSO-CRO-10). By this, they would prove their political maturity to handle inter-state disputes without mediators. Interviewees in Croatia and BiH stress the importance of rebuilding ethnically divided communities for reconciliation. In their view, one aspect of community-building should be to restore good neighbourhood relations and enable all inhabitants to identify with their community as a living space that they share with others regardless of their ethnic and religious background. In the words of a peace practitioner from Vukovar: "A strong sense of community belonging can help to weaken powerful ethnic identities" (CSO-CRO-6).

Representatives of *victims' organisations* in all three countries are convinced that a shared record of facts and a consensus in the assessments of the causes and dynamics of the war(s) that happened in the 1990s are a necessary precondition for reconciliation. Furthermore, they see a need to set up different categories of victims and to clearly define what is actually a war crime. They insist that there is a difference between a siege and an attack, and between an unprotected population and armed personnel. Insisting on such terminological clarification is linked with their experience that in discussions among different ethnic groups, certain terms like "civil war", "aggression" and "genocide" unfold explosive power. The debates about these terms can escalate to such a degree that all parties involved in these disputes gain the impression that the opposing views are irreconcilable with their own. To quote one interviewee from Serbia: "As long as one side claims that there was aggression, whereas the other side insists that the armed conflict was a civil war, dealing with the past as a process will not yield progress, and reconciliation as a goal becomes invisible" (VI-SER-2). The interviewed victims reason that the clarification of these terms is important for developing programmes for reparation and compensation. In this sense, clarification of terms would mean that the former conflicting parties reach an agreement on what happened and who holds what kind of responsibility for past abuses. They argue that legally, it would make a difference if an individual is a victim of a civil war or of aggression. Some victims argue that the gravity of crimes victims experienced should be taken into consideration when drafting reparation programmes.

Other concepts

As the interviewees point out, other concepts, such as non-violence, peacebuilding, empathy, solidarity, and human rights, are much more important for their practical work than truth, justice and reconciliation. Those interviewees who have great reservations about the concept of reconciliation propose a wide range of alternative terms they would prefer, such as: normalisation, stabilisation, rebuilding divided communities, rebuilding understanding and trust, peaceful co-existence, peacebuilding, solidarity with and empathy for all victims, rebuilding broken ties among family members, relatives and friends, respect. As understood by the interviewees, *normalisation* means creating conditions under which a state that is recovering from war can resume all its essential functions and safeguard the security and safety of all its citizens, provide economic stability and protect human rights for all. *Stability* implies that the states in the region should reach an agreement that obliges them to prevent a relapse into violence and to solve all disputes via diplomatic efforts. Other interviewees state that working towards stabilisation and normalisation also means assisting divided communities to establish relations that are based on the principles of trust, respect and mutual understanding. Some interviewees stress that for them, the most important task on the way towards peace is to show solidarity and empathy for all victims. Those interviewees who prefer to use the term *peaceful co-existence* believe that all that a society recovering from armed conflict can achieve is a state where former opponents do not inflict harm on each other and respect the rights and needs of the others. *Peacebuilding* denotes the aim of removing obstacles that hinder peaceful co-existence, and engaging for “social changes by applying the principles of non-violence and the protection of human rights” (CSO-CRO-1). Peace practitioners therefore prefer to use the terms “conflict management, opening the conflict and understanding the conflict” (CSO-CRO-1) as these describe a process rather than a result.

5.4 Assessments of achievements and learning processes

5.4.1 Assessment of own achievements

Peace practitioners and human rights activists in all countries confirm that positive results of their work are already visible. They highlight that during and immediately after the war, when communication was disrupted or marked by a high degree of mistrust, CSOs managed to open up windows for dialogue between people from the different sides. Yet reflecting on the impact of their work in the long run, most of the interviewees come to the conclusion that civil society actors have accomplished very little in respect to stabilisation and trust-building in the region. The interviewees’ assessments of their own achievements are more pessimistic in Bosnia and Serbia than in Croatia.

Interviewees in **Serbia** and **Bosnia** point out that peacebuilding activities and initiatives for dealing with the past were often driven by a high degree of enthusiasm and moral notions but conducted by activists who were not formally trained for this role. It is believed that this lack of qualifications has diminished the effectiveness of initiatives and damaged the reputation of CSOs, which in general face a lack of acceptance in society. A number of NGOs have meanwhile professionalised their own work and gained much more expertise, but many of them still lack a clear vision and strategy for peacebuilding. As interviewees also emphasise, peace organisations are still few in number compared with human rights organisations and so far peace activism has not grown into a social movement.

In contrast to the picture presented in Bosnia and Serbia, human rights activists, peace practitioners and journalists in **Croatia** state that civil society in this country has developed a convincing peacebuilding concept that is based on distinct values and is so far being successfully implemented. As an example, the interviewees report that the reintegration of the territory of the former Serbian Autonomous Oblast (SAO) of Eastern Slavonia, Baranja and Western Sylvania into the state of Croatia was indeed a peaceful process with many different actors having contributed to it. This region of Croatia had joined the self-proclaimed Republic of Serbian Krajina in June 1991. In November 1995, the authorities of Croatia and the local Serb

representatives of this entity signed the Erdut Agreement on the Region of Eastern Slavonia, Baranja and Western Sirmium that created the political framework for peaceful reintegration. The UN Security Council¹³ established in 1996 a transitional civil authority (United Nations Transitional Authority in Eastern Slavonia, Baranja and Western Sirmium – UNTAES) and mandated peacekeeping forces. UNTAES fulfilled tasks with military and civilian components. According to the interviewees, civil society actors also played an important role. Civil society actors, for example, supported intensely the process of return and served as mediators between the returnees (mostly Croats who were expelled by Serb forces) and their neighbours of Serb nationality who had supported the previous regime under which Croat inhabitants were systematically expelled.¹⁴ Peace practitioners and human rights activists highlight that the peaceful reintegration was a very fruitful interplay between local authorities, international actors and civil society. During this process, neither outbreaks of violence nor other grave breaches of human rights were recorded. The peaceful integration was completed in January 1998. Most of the interviewees assess that this model of peaceful reintegration is worthwhile and should be considered as a modifiable model for other crisis regions. Peace practitioners and human rights activists highlight that this process was guided by the principles of non-violence, peaceful conflict management and respect for human rights.¹⁵

As the interviewees from Croatia further report, the legacy of the Antiwar Campaign that celebrated its 20th anniversary in 2011 also provides evidence that peace organisations and human rights activists have over the last two decades continuously worked on peacebuilding and the protection of human rights. They have, furthermore, managed to maintain fruitful cooperation among themselves and to steadily improve on concepts and methodology. Even though the assessment of their own work is positive, the interviewees admit that the broader society still does not show much enthusiasm for the work and concerns of peace and human rights activists.

It can be concluded that civil society activities in the field of dealing with the past are very self-critically assessed by a surprisingly high number of interviewees in all countries. Most interviewees regard these efforts as largely ineffective insofar as CSOs failed to establish communication on these issues with society at large. Many interviewees take the view that human rights activists and peace practitioners in particular are at risk of being viewed as an elitist circle. A further point of criticism is that CSOs still largely focus on working with like-minded groups and individuals, and that they prefer to work in urban centres rather than rural regions, which also contributes to their detachment from the broader society. A majority of the interlocutors are convinced that this gap can only be bridged by intensifying cooperation with other agencies which have an influence on the discourse, such as victims' organisations and veterans' unions, state institutions and local authorities.

Interviewees in all countries suggest that the achievements and deficits of CSO activities should be carefully analysed in order to better prepare for future programming. They see a need to assess whether the engagement of NGOs had an impact on local communities. Many interviewees are convinced that better coordination of CSO actors could also help to increase impacts and to avoid a duplication of efforts.

5.4.2 Learning processes and suggestions

Several learning experiences are addressed that led to adapting or changing prevalent strategies.

Increasing understanding of the scope of legal mechanisms

It is reported that the Youth Initiative for Human Rights in Croatia discusses ICTY findings in its seminars on human rights issues. The women's organisation "Vive Žene" from Tuzla organises meetings between

¹³ The agreement was recognised by UN Resolution 1023."

¹⁴ For more information, see http://www.un.org/en/peacekeeping/missions/past/untaes_p.htm

¹⁵ See CSO-CRO-1, CSO-CRO-2, CSO-CRO-11, CSO-CRO-15).

witnesses and legal experts. The purpose is to explain the legal proceedings and the mandate of judges and prosecutors to victims. A psychologist from “Vive Žene” notes that “the encounter was very helpful for both sides. Legal experts better understood the problems of the witnesses, and the victims testifying at courts have learned more about legal proceedings and about the difficult work of judges and prosecutors. After this meeting, the victims became more realistic in their expectations of legal institutions” (CSO-BiH-21).

The need for trust-building, healing and community-building

Organisations that have focused their engagement on community rebuilding have found that before activists can address emotionally sensitive issues related to the past, they first of all need to build trust towards and among community members. Therefore, in a starting phase, activities have to concentrate on less sensitive issues and subjects that are most relevant to the community members: agricultural topics, reconstruction work, cultural events or health issues. A period between one and two years is required, according to the interviewees, to prepare the ground for establishing trust in a way that allows topics related to the past to be tackled in a particular community. An example of a successful experience of trust-building is highlighted by interviewees from Croatia.

Civil society organisations that provide psychotherapy for children and young people, victims and war veterans have learned that it is important to communicate not only with the patients but also with their relatives. Otherwise, new insights gained by the participants might cause conflicts, suspicion and discomfort among the family members. It is stressed that in particular, the reintegration of victims and veterans into community life poses a huge challenge. From the perspective of psychologists who work with veterans and victims, the major problem is that the societies are not informed about the symptoms that are characteristic of war trauma and retraumatisation. The interviewees report that victims and veterans do not receive enough understanding of their difficult inner state. One interviewee from Serbia who works for an organisation that offers psychological treatments explains: “Quite often it happens that traumatised victims and veterans come to us again once the treatment has finished because they face a lack of understanding in their families and community and cannot explain their difficult emotional state to others. The lack of understanding leads to severe retraumatisation, which they are not able to cope with by themselves” (CSO-SER-17). In the experience of therapists in Bosnia, the return of victims to their pre-war places of residence can also cause retraumatisation. An interviewee from Bosnia remembers: “While we were treating victims in our therapies we could not anticipate that once they return to their homes they were expelled from, they would suffer from retraumatisation. Once they returned home, we had to start the therapy all over again” (CSO-BiH- 21). Due to the repeated experience of incomprehension, victims and veterans often avoid socialising and communicating with others. Hence they become isolated and “in danger of losing their reason to live” (CSO-SER-2). They suggest that the societies in the region should be better informed about post-traumatic stress disorders and how to approach persons who suffer from it in a more empathetic manner.

NGO representatives in **Croatia** and **Bosnia** learned that the reintegration of vulnerable community members demands more than psychological support; offering economic perspectives is particularly important. They therefore started to apply a combination of trauma work and income generation initiatives since they believe that healing is not possible without at least a minimum of financial security and social inclusion.

While interviewees in Croatia and Bosnia regard community rebuilding as an area that requires urgent action, this is not seen as a priority in **Serbia**, although Serbia is a very multi-cultural society. An important difference is that ethnically mixed communities in this country were not affected by war operations. Nevertheless, several NGOs in Serbia focus on community work in smaller towns, where they provide psychosocial support to vulnerable groups. Others also support youth initiatives.

Community building with young people and children is considered to be a very important task. Interviewees in all three countries warn that children are exposed to different war narratives at home, in schools, and through friends, media and the internet, and that it is difficult for them to come to terms with

this. The interlocutors are aware of the fact that it is impossible to control or channel the flow of information that reaches the younger generations. Concern is expressed that the desire for revenge among children who suffer from inter-generational trauma could become a trigger for future conflicts. The interviewees believe that the most appropriate way to prevent this is to enable young people with different ethnic affiliations to meet each other. Exchange programmes that offer young people space for engaging in cultural, sports and educational events are therefore of great importance, as is peace education.

The need to work with veterans

Interviewees in all three countries suggest that human rights groups and peace organisations should intensify their cooperation with war veterans. In all three countries, several human rights organisations and therapy institutions dedicate part of their engagement to the concerns of veterans. On the one hand, it is stressed that war veterans often suffer from post-traumatic stress disorder syndrome (PTSD) and need adequate psychological support which they do not receive in the mainstream health care system. On the other hand, it is argued that veterans can become key actors in peacebuilding and processes of dealing with the past. The *veterans for peace* from Serbia explain that many veterans have an existential need to distance themselves from war crimes that were committed in their names and therefore are suitable promoters of non-violence and peacebuilding. Having been exposed to violence and having used violence against others, veterans can authentically report on the horrors and the senselessness of violence and wars. A psychologist from Serbia shares a positive example: “It has proved to be very beneficial when *veterans for peace* visit schools and report about their war experience and their decision to become engaged in peacebuilding. Also, they are very successful as trainers for anti-aggression programmes with delinquents” (CSO-SER-2).

Other interviewees are convinced that veterans are a destabilising factor in societies recovering from war. As long as their rights are not satisfactorily regulated and their psychological situation is unstable, they offer great potential for political manipulation and are a possible source of violence.

Two interviewees also mention the *specific situation of female ex-combatants*. It is reported that in the laws that regulate veterans’ rights, female ex-combatants are not mentioned at all. It is almost impossible for a woman to prove retrospectively that she joined the army voluntarily as a combatant. Since the law did not permit women to join the combat units, they were registered as administrative staff. As a result, female ex-combatants who became war invalids cannot claim their rights.

In other cases, invalidity of male veterans has long-lasting effects on the life perspectives of women and families. Frequently spouses have to resign from their jobs or work part-time in order to care for their husbands. The need for intensive nursing can increase over many years. After recovery, the attempt to re-enter the labour market proves to be arduous. Therefore, several interviewees suggest that the years of home nursing should be recognised as employment and credited towards the statutory pension.

The need to work with victims and dealing with victim mentalities

The difficulty of how to address and deal with victimhood is frequently raised in the interviews in all three countries. Victimisation is mentioned as the infliction of injury and damage to a person or a collective. A further problem identified is that political actors often make use of the victims’ traumatic experiences. It is observed that victims’ organisations offer high potential for politicisation. Finally, the interviews reveal that there is a strong competition among victims of different sides over “exclusive” victim status.

Psychologists, human rights activists and peace practitioners posit several different goals in their work with victims. Psychologists engaged in CSOs aim to heal trauma, empower victims to claim their rights, and facilitate reintegration of victims in the communities.¹⁶ In contrast to this, peace practitioners

¹⁶ Representatives of victims’ organisations state that psychosocial, legal and medical support appear to be most beneficial to

attempt to raise awareness of the suffering of the victims on all sides and to question identities based on victimhood. Seminars on dealing with the past, peacebuilding and non-violent communication often focus on overcoming such identities.

Some interviewees who are human rights and peace activists report that victim mentalities can burden discussions. The presence of victims in mixed seminars quite often creates an uncomfortable atmosphere. A victim's narrative may create unease and give other participants the impression that victims are claiming some form of moral superiority, and this blocks the flow of communication. Another difficulty mentioned is that the "victim" label may reinforce victim mentalities. However, avoiding such classification seems to be equally problematical since it could be construed as a way of ignoring the victims' experience of suffering. Psychologists argue that in the context of trauma therapy and human rights work, it is not possible to reject the term "victim" because it guarantees the person affected by violence the necessary support for recovery and secures their social status. In societies where the status and the rights of victims are still not clarified, or where crimes are being denied, it is unrealistic to expect a victim to overcome the mental state of being a victim. On the other hand, all interviewees agree that a person who was exposed to direct violence and terror should definitely not be reduced to this experience. Psychologists suggest that seminars that deal with the legacies of the past should be co-facilitated by experts who are able to approach a situation of acute retraumatisation in a professional manner.¹⁷ The interviews reveal that peace practitioners are not aware of this shortcoming and this blind spot in their "dealing with the past" programmes.

The need for a holistic view on gender-specific violence

Several interviewees deal with victims of gender-based war crimes like rape. They claim that this form of violence was utilised more systematically against women than men. Many interviewees emphasise that women's organisations have made important contributions to gender justice in the region. Representatives of women's organisations in all three countries recall that it was the local and international women's organisations that demanded, in joint campaigns, protest activities and vigils, that rape be classified as a war crime by the ICTY. However, representatives of women's groups in all three countries also stress deficits in their approaches. They concede that for a long period, sexual violence was mainly perceived as a criminal act directed exclusively against women. But in the meantime it has been revealed that men, especially soldiers, but also children were targets of sexual violence in war.

Furthermore, it is reported that, apart from facing severe psychological traumas, many victims experience stigmatisation in their families. Often rape is followed by divorce. The interviewees learned that in order to support traumatised rape victims in an appropriate manner, psychologists also have to involve the victims' families.

Activists and researchers affiliated with women's organisations in Bosnia present several suggestions on how to advance gender justice. One proposal is that victims of rape should officially be recognised as war invalids. This would mean that they can receive a disability pension. Furthermore, it is proposed that funds should be guaranteed in order to support victims of rape who are willing to bring charges against a perpetrator. Another suggestion is to establish women's courts. In addition to this, the interviewees propose that therapy programmes for rapists should be developed and implemented.

Influencing cultures of memory

Interviewees in all three countries report that acts of selective remembrance often serve to increase the ethnic divide. In particular, one-sided and exclusive forms of commemoration may create mistrust and provoke tensions in local communities. Instead, inclusive commemorative events would be needed

them (e. g. VI-BiH-7, VI-BiH-8, VI-CRO-1, CSO-CRO-2, VI-SER-1, VI-SER-3).

¹⁷ See CSO-BiH-14, CSO-BiH-21, CSO-CRO-3, CSO-SER-11, CSO-SER-17.

to support individual and collective healing, trust-building and reconciliation. Yet the approach needs to be rooted in empathy for the narratives and the suffering of all sides. In particular, interviewees in Bosnia complain about selective practices. They report that the commemoration events for Srebrenica are organised in such a dominant and prominent way that they tend to overshadow and marginalise other massive crimes committed in the country. According to these interviewees, the annual commemoration events also contribute to deepening the division between the different ethnic communities.¹⁸ Many Serbs in Srebrenica and the surrounding area feel provoked by this concept of remembering and criticise the fact that crimes against Serbs in the same area are simultaneously ignored. At the same time, the interviewees complain that it is taboo even to question the demonstrative form of the commemoration ceremony that, in their view, is highly politicised.

5.5 Partners and forms of cooperation

5.5.1 Cooperation among civil society actors

As peace and human rights organisations *in all three countries* point out, during the war and in the immediate post-war period they engaged in activities against nationalistic attitudes and for pluralistic and democratic values, seeing this as a precondition for peacebuilding.

Many interviewees emphasise that even during the war operations, CSOs from the region of the former Yugoslavia were already engaged in close cooperation. In this phase of engagement, they were also cooperating intensively with international organisations as a source of financial support and expertise. At a later stage, after the NGOs had gathered experience, it was recognised that networking on a micro-level (community, inter-community, or cantonal level) is more pressing and important than focusing on the regional level. Such cooperation developed among actors who mobilise around similar goals but are specialised in different areas like human rights, psychosocial support, peacebuilding and education. The interviewees stress that the local networks proved to be much more efficient and sustainable than the regional networks, which are more suitable for sporadic campaigns. In order to function well, networks need to gather a diversity of expertise, bringing together NGOs which complement each other when approaching an urgent or pending task. Furthermore, they mention that networking may contribute to cost-sharing. In some cases, organisations with a similar profile decided to move into joint premises and help each other in times of financial constraints as a gesture of solidarity. However, the main purpose is to bring together organisations with similar goals and diversified expertise and to guarantee that through intensive collaboration, their work becomes more visible, effective and influential.¹⁹ Since most of the organisations are confronted with similar problems (most of them cannot rely on continuous funding and rely on short-term projects in order to keep working), such forms of practical support often help to bridge periods when financial and other resources are in short supply.²⁰

Reviewing their experiences of cooperation, the interviewees also present self-critical assessments. It is mentioned as a deficit that over a long period, many NGO activists cooperated mostly with like-minded people (i.e. other NGOs) and that they failed to approach local academics as potential consultants and partners. It is seen as a huge mistake that the NGOs focused primarily on international expertise and did not seek support and collaboration with open-minded intellectuals at universities and research institutions in the region. By virtue of being locals, experts from the region possess, in the opinion of the interviewees,

¹⁸ Exactly one day after the commemoration of the genocide in Srebrenica, the RS authorities organised commemorations in the neighbouring community of Bratunac to honour Serb soldiers and civilians who were murdered by Bosnian Muslim forces commanded by Naser Orić in 1993. As one interviewee states, these selectively organised commemoration days “bring the community of Srebrenica into a state of emergency every year” (VI-BiH-2).

¹⁹ The interviewees mention in this context, for instance, the Houses of Human Rights established in Zagreb and Sarajevo.

²⁰ To highlight just one example: One interviewee from a women’s organisation in Srebrenica notes that in times of financial difficulties they received substantial support from the Belgrade-based feminist organisation “Women in Black”.

a broader spectrum of knowledge related to the region and deeper insights into internal affairs than internationals. The interviewees assume that contacts with local academics offer an opportunity to establish more effective links with students and to awaken their interest in civil society activities and concepts of non-violence, peacebuilding and human rights. Meanwhile, many peace practitioners and human rights activists have opened up to broader cooperation. Several interviewees report that they maintain partnerships with artists and cultural associations with a well-functioning infrastructure that can be used for NGO activities. They organise events where intellectuals, artists, translators, writers, journalists, students and NGO activists can enter into debates about socially and politically relevant issues. These forums are considered to be places where critical thinking among a wide spectrum of actors can unfold. In all three countries, human rights NGOs collaborate with veterans' organisations. Peace groups also recently started to cooperate with veterans' union. However, they regret that to date, very few ex-combatants have been willing to get involved in peacebuilding or dealing with the past. But several peace activists also report that they decided not to work with veterans and victims' organisations, as these groups have very specific needs and some of their members suffer from serious psychological disorders that ought to be dealt with by professionals. Others admit that they perceive victims and veterans as highly politicised and loyal to nationalist parties.

Representatives of *victims' organisations* report that – apart from the Commissions for Missing Persons, police and legal institutions, ministries and local authorities – their most important partners are victims' associations from other countries. Regional meetings among these groups are usually organised by the International Commission on Missing Persons (ICMP). The cooperation with the ICMP is assessed as highly professional and reliable. The most important experience reported by the victims who were interviewed, as regards their dealing with the local and the international commissions, is that the relationship is based on trust and confidence. Representatives of victims' organisations explain that victims' concerns require a cautious choice of partners, which is why they have not initiated contacts with other NGOs. However, some interviewees admit that it is time for victims to open up to cooperation with other civil society actors.

Representatives of *veterans' unions* in all three countries report that the most intense cooperation has evolved with other veterans' groups. *Veterans for peace* have regular meetings with like-minded organisations in the region²¹, whereas veterans' unions that are exclusively concerned with the needs of their members rarely cooperate with other veterans' groups. According to one interviewee, only like-minded veterans collaborate with each other. Specifically, a "veteran for peace" would most probably refuse to work with a veteran who is loyal to the state or an ex-combatant who holds radical political views. The interviews reveal that members of a particular veterans' group appreciate the support and attention they receive from the others. However, in general, the cooperation among veterans' associations is assessed as average since they do not collaborate on a regular base.

In contrast, the veterans for peace highly praise their own regional cooperation with other similar organisations. In the words of a veteran for peace from Serbia: "Since I have started to cooperate with other veterans for peace in the region, I have realised that we veterans who fought against each other have much in common and a lot to share. To be honest, veterans from Bosnia and Croatia understand me in some respects better than most of the veterans here in Serbia. Engaging with others for peace and tolerance gives a new meaning to my life" (VE-SER-3).

The interviews reveal that veterans' unions see themselves as hybrid organisations: To some extent still linked with the army, they are at the same time civil society actors, and some of their tasks also overlap with those of victims' associations. Some veterans' representatives report that they collaborate with victims' groups, but have also found that these have quite different approaches and that their interests do not necessarily match.

²¹ A representative of the "Peace coalition of war veterans in the Western Balkans" (established in 2011) reports that this alliance consists of veterans' organisations from Bosnia, Serbia and Croatia. Their main goal is to promote peace and tolerance and they organise joint (inclusive) commemorations at places where atrocities occurred.

Both interviewed representatives of victims' and veterans' organisations concede that they do not engage in frequent cooperation with other NGOs, partly because they have to deal with problems that are emotionally draining and very time-consuming so that they lack energy to invest in networking. However, the interviewed victims' groups and veterans' organisations express a need to open up to cooperation with others, as they see that in their manifold tasks with organisations with large memberships, they easily become overwhelmed.

For illustration, a victims' representative from Serbia explains: "We have collected a vast amount of information about the victims, the crimes they were subjected to and the forms of violence they have experienced, but we do not have the energy or the capacity to systematise this valuable material. It would be very helpful if competent activists from other organisations could assist us in systematising this material. We are all quite ill and weak. Now, we really do need a bit more support from others for our work" (VI-SER-1).

The interviewed veterans believe that establishing contacts with other civil society organisations would help to overcome the feeling of isolation and marginalisation that many of their members are suffering from. In this way, veterans might also become involved in other activities that are not strictly related to their own concerns. Yet as one interviewee recalls: "The problem is that other civil society actors are still reluctant to cooperate with us" (VE-SER-1).

But representatives of both victims and veterans' organisations feel that it is difficult to figure out which organisations might be suitable partners, so that the cooperation could trigger synergy effects and yield mutual benefits.

5.5.2 Cooperation with legal institutions and commissions for missing persons

Human rights activists, victims' organisations and peace practitioners involved in witness support and war crimes monitoring²² in all three countries have the most intensive contact with the police, the prosecutors and the courts. As already noted in Chapter 5.2., the interviewees express some disappointment with the work of legal institutions. However, they underscored their commitment to support the work of the judiciary since they profess a strong interest in the prosecution of war crimes. Interviewees from Bosnia very much appreciate the cooperation with the ICTY's outreach office. In particular, victims' groups closely cooperate with the outreach programme on the community level, which is well received. It is reported that staff members of the ICTY outreach office, domestic courts and human rights activists from the Helsinki Committee for Human Rights (Bijeljina) visited local municipalities and presented their findings on war crimes that took place in these communities. These events have brought a great many new insights on war events and were very much appreciated by victims' groups and the local communities.

5.5.3 Cooperation with governments, parliaments and local authorities

CSO representatives point out that right after the wars, communication with state and government institutions was almost impossible. However, in the last couple of years the situation has improved. In all three countries, diverse forms of cooperation have been developed, although assessments are ambivalent. It is reported from all three countries that the cooperation with local authorities in smaller municipalities is highly productive and mutually beneficial. If NGOs address burning issues and deal with tasks that are of interest to the whole community, they succeed in involving a broad spectrum of social and political actors. The local authorities then offer either financial assistance or they place public premises at the disposal of the NGO concerned. However, most of the interviewees in all countries believe that the cooperation could

²² Examples of this involvement among peace organisations include the Center for Peace, Nonviolence and Human Rights in Osijek and the women's organisations "Viva Žene" in Tuzla, "Žene Ženama" in Sarajevo, and "Žene u crnom" in Belgrade.

be more intensive. They suggest that civil society actors should overcome the rather antagonistic attitude towards the state. The interviews reveal that at present, the state and civil society exist as parallel worlds that need to be bridged. It is assumed that most of the civil society actors fear that closer cooperation with state institutions means losing the freedom to critically monitor the work of state officials. Several interviewees think that it is time that NGOs developed a joint strategy for better cooperation with state institutions. They argue that the engagement for dealing with the past will not be successful without the involvement of governments, parliaments, state institutions and local authorities.

Whereas in Croatia and Bosnia, collaboration between CSOs and state authorities is assessed as steadily improving, the relationship in Serbia is assessed as tense. The current government is viewed as more trustworthy than previous governments under Presidents Milošević and Koštunica. Nevertheless, the interviews reveal that mistrust and caution still predominate in CSOs' attitudes towards the state. All interviewees from Serbia confirm that their cooperation with government institutions is sporadic and takes place only when necessary. The interviewees also complain that the performance of state authorities contributes to this distance as many of them simply regard NGOs as their "servants" who should fulfil the tasks that the state earmarks for them (CSO-SER-19). Furthermore, disappointing experiences have fuelled widespread suspicion. Human rights organisations report that their efforts to support the return of refugees to Croatia and Bosnia were obstructed by authorities in Serbia. Despite these negative impressions, the interviewees are aware that any kind of work with vulnerable groups (like refugees, victims, and minorities) requires cooperation with official institutions.

5.5.4 Cooperation with international actors

It is reported that immediately after the war most civil society actors in the region concentrated more on cooperation with international actors than with governments in the region (veterans' and victims' organisations form an exception in this respect). International organisations also favoured NGOs as partners (as a kind of substitute) when representatives of state institutions pursued obstructive politics. It is argued that NGOs were chosen as partners for tasks that overstepped their competences. Ignored and devalued by the state, and at the same time empowered by international actors, the NGOs became harbingers of hope. However, such expectations were unrealistic and clashed with the self-perception of many activists, who were overwhelmed by the responsibilities which they were told they could fulfil better than the state. At the same time, many accepted this benevolence as justified.

Broadly speaking, there are three types of cooperation with international organisations: (a) a purely donor-based relationship, (b) collaboration that combines partnership with funding, and (c) a partnership that does not imply financial support.

The purely donor-based cooperation (a) is described as impersonal and bureaucratic insofar as there is no direct contact between the donor agency and the recipient of the donation. The cooperation encompasses the funding application process, and later on, the compilation of a final report. During the project implementation phase, donors and recipient do not meet each other for exchange or updates. The interviewees wonder whether this could be changed in future. One peace practitioner from Croatia states: "It would be very helpful for us and the donors if, for example, a representative of the donor organisation could come (...) and visit the projects, and discuss with us the process we are going through in our activities. That could only be beneficial for both sides. Otherwise it is very impersonal, and you have the impression that the donor is not really interested in the projects his organisation supports" (CSO-CRO-2).

The interviews reveal that in cooperation with other donors, it is possible to combine partnership and funding; here, the provision of funding is not the major component. The financial support is sporadic and does not imply large-scale funding.

(c) Partnerships that do not include financial aid are established in most cases on the basis of long-term collaboration or even friendship with either individual peace activists or peace researchers, or

institutions and organisations that offer different forms of support in order to empower local actors or assist in capacity-building.

The interviews reveal that NGOs have, in the course of their existence, formed both a relatively stable circle of international supporters and partners and a less constant and rather impersonal circle of external donors. The experience described above is shared by human rights advocates and peace practitioners in all three countries.

Interviewees also state that *donor agencies should critically review their grant-making strategies* and create better conditions for long-term engagement in the field of peacebuilding. Interviewees from Serbia, Croatia and (to a lesser extent) also from BiH claim that Bosnia has received more funds than any other successor state to the former Yugoslavia. However, this money has not been distributed in the most efficient way. These activists suggest that future grant-making should learn from this experience. It should primarily focus on social needs and should build on better cooperation and partnership between local and international actors.

Interviewees from all three countries criticise the funding practice of most international organisations, which requires NGOs to focus on short-term projects and is characterised by a pragmatism that is not compatible with the needs of peacebuilding. Many activists feel alienated from the substance of their engagement when they are forced to fit their ideas into project proposal schemes. Additionally, it is reported that many donors exercise a “terror of efficiency” (CSO-SER-19) that aims to measure success and does not allow for experimental work (making mistakes and changing course where necessary). As a consequence, many projects respond to virtual realities and are detached from social needs and from the life of the citizens in the region. Several interlocutors therefore suggest that instead of merely debating results of the work, more content-related discussions among local and international actors are needed. Furthermore, it is seen as a danger that many activists are trained to address only those issues that might be eligible for funding proposals. Several interviewees from all three countries suggest that CSOs should first of all discuss relevant questions among themselves without immediately translating them into project ideas.

5.6 Dilemmas and open questions

The interviews reveal several *dilemmas and open questions*. These pertain to the ambivalent roles of victims in peace processes and the need to work with victims, and to asymmetries in numbers of human losses and suffering.

The ambivalent roles of victims and the need to work with victims

Interviewees in all three countries point to the need to work with victims, in order to improve the situation of this vulnerable group in society. It is argued that leaving their needs unaddressed increases the risk of their political manipulation. Several interviewees are convinced that victims can develop a particular potential for peace and reconciliation work if they receive empathy and solidarity.²³ Others point out that in mixed seminar groups the narratives of victims can cause discomfort for other participants because it leaves them with the impression that victims claim some form of moral superiority, and this blocks the flow of communication.²⁴ Yet the interviewees concede that this is no reason to avoid working with mixed groups or to organise seminars exclusively for victims. This would only lead to isolation instead of social integration of victims. Another issue that preoccupies the interviewees is the question of the extent to which labelling individuals as victims reinforces victim mentalities. On the one hand, the interviewees

²³ See interviews CSO-BiH-2, CSO-BiH-11, CSO-BiH-12; CSO-CRO-6, CSO-CRO-11, CSO-CRO-18; CSO-SER-10, CSO-SER-11.

²⁴ See interviews CSO-BiH-1, CSO-BiH-5, CSO-BiH-7, CSO-BiH-18; CSO-CRO-2, CSO-CRO-3, CSO-CRO-16; CSO-SER-3, CSO-SER-5, CSO-SER-12.

agree that victims should not be reduced to their experience of victimhood and should be reminded that their personality is composed of many different facets. However, the interviewees are also aware of the fact that the term “victim” cannot be disposed of as long as victims struggle to assert their rights and seek acknowledgment of their traumatising experience.

Fact-finding and asymmetries

Another dilemma reflected in the interviews concerns fact-finding activities and the interpretation of facts. It is stressed that Bosnia suffered most of the war-related destruction, deaths and atrocities. Several interlocutors insist on acknowledging this huge difference in numbers. Others opt to avoid discussions about statistics. They suggest that every single victim has to be acknowledged, regardless of their origin and ethnic affiliation. The two opposing positions have divergent aims in mind. While the first one poses the question of individual and collective responsibility, the second one aims to resist the tendency to classify victims according to ethnicity.

Interviewees point out that facts must be verifiable and should be presented in their political and social context. If no such contextualisation takes place, facts might contribute to myth-making. As the interviewees point out, many myths related to the recent wars have already seeped into the collective memory of the societies in the region over the past two decades. The interviewees are doubtful whether they can be successfully invalidated. Many facts have already undergone misinterpretations, due to incomplete or distorted presentations of historical events. Several interviewees recall that a large quantity of data has already been collected, and this material requires in-depth analysis.

5.7 Further perspectives and challenges

The interviewees outline several *challenges* that will require further efforts and support. Some of the burning issues highlighted in the interviews are as follows:

Fact-finding and alternative views on history

The interviewees mention the need for further fact-finding, above all the continued search for missing persons, and they propose to proceed with fact-finding missions on community, entity/state and regional level. They also suggest continuing with systematising and analysing the collected facts. They also draw attention to the importance of sound analyses of the recent wars and their relatedness to events during and after World War II and the need to develop alternative history textbooks.

Support for war crimes prosecution and improving legal regulations for victims

The interlocutors also see a need for international organisations and civil society actors to provide further support for war crimes prosecution. In particular, they see a need to improve witness protection and suggest that judicial findings should be better presented in local communities. Furthermore, the interviews reveal that apart from prosecution and criminal justice, regulation of the rights of war victims must be improved and issues like property restitution and reparations ought to be tackled.

Combining retributive and restorative approaches

Civil society actors in all three countries consider legal institutions to be an important pillar of transitional justice and regard accountability for war crimes as indispensable for normalisation and trust-building in the region. At the same time, all interviewees are aware that other mechanisms are needed that complement

judicial proceedings. Interviewees have outlined that retributive justice does not encourage the convicted person to accept responsibility for their wrongdoings. This would be a task for restorative justice. It is suggested that measures for rehabilitation are needed that address this aspect, and a legal framework should establish perpetrators' involvement on a mandatory basis. At the same time, it is suggested that current rehabilitation programmes need to be reformed because they encourage the criminal to make excuses for their wrongdoings rather than to distance themselves from the criminal act and feel shame and regret (CSO-CRO-11).

Community-building and healing

Another burning issue, according to the interviewees, is to assist ethnically divided communities in coming to terms with the consequences of war and to intensify the work with the most vulnerable social groups. Furthermore, social work and psychosocial support need to be intensified, especially for people in rural areas and smaller towns, with a particular focus on the grievance that in some communities, released prisoners and their victims have to co-exist.

Support for youth exchange and peace education

Interviewees in all three countries suggest that exchange programmes which offer young people space for engagement in cultural, sports and educational events should be continued. Peace education should also be available on a broader basis, especially in ethnically divided schools. Several interviewees also propose that education on peace and human rights should become an integral part of the formal school curriculum. For this purpose, peace practitioners and human rights activists should start to negotiate with schools and ministries of education about the prospects of implementing such innovative plans.

The need for multi-level approaches

As the interviews have revealed, many civil society actors have learned over the years that NGOs and state institutions cannot perform their tasks in isolation from each other. It is now recognised that all actors involved in dealing with the past function as a link in a chain, but that the awareness of this reality has just started to reach the different stakeholders. A balanced strategy of cooperation between state institutions and civil society actors needs to be elaborated and implemented.

The need for international support

Furthermore, the interviews demonstrate that CSOs in all countries under investigation are convinced that international support is still needed for processes of dealing with the past on the societal level. In particular, they see a need for mediation and facilitation, advocacy, and empowerment of the civil society sector. Furthermore, they stress the need to provide support for reforms of education, independent media and cultural activities. Apart from financial support, all interviewees see a need for exchange of knowledge, skills, and experience. International assistance is also desired. According to interviewees from all countries, there is also a need for monitoring, by the international community, of institutional reforms and the work of legal institutions. Concern has been expressed that without international pressure, the commitment to war crime prosecution in domestic courts might significantly decline. The international community and in particular the European Union are perceived as the only agents with the authority and capacity to exert pressure on the states in the Western Balkans to fulfil their obligations.

Analysis of Interviews with International Actors

Martina Fischer

chapter 6

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A total of 23 interviews with representatives of IGOs and INGOs, bilateral and private donor organisations were conducted in autumn 2010 and spring 2011 in field offices in Sarajevo, Belgrade and Zagreb. Some of the interviews took place with leading representatives of these organisations, and others were conducted as group interviews with additional staff members or entire teams. As most international missions are multinational in composition, some of the interviewees were international staff, and some are local employees. Others hold citizenship of one of the IGO member countries but originate from the region, or have a family background related to the region. The activities of the interviewees' organisations include war crimes monitoring and capacity building for domestic courts; support for campaigns for TJ mechanisms that complement the work of legal institutions; assistance for institution building and legal reforms; facilitation of refugee return, displaced persons and property restitution; civil society building; and support of community-building, dialogue or education initiatives. Some of these, in particular IGOs, cooperate with governments and CSOs, while INGOs generally work as both donors and partners of CSOs.

6.1 Relevance and dynamics of dealing with the past

International representatives in all three countries are convinced that dealing with the past is an urgent need and should start as early as possible. It is argued that all of these societies are burdened by legacies of past violence, although they were affected by the war operations to different degrees. The dynamic of dealing with the past in the respective countries is assessed as follows.

International representatives in **Bosnia** point to the problem that many families are still searching for missing relatives and that from March to September, the news was full of reports on exhumations of mass graves (I-2a). Obtaining clarity on the fate of the missing is considered crucial. In addition to this, the interviewees see an urgent need to counter the tendency that “enemy images are fostered constantly” (I-18). All of them agree that the atmosphere in BiH has become more and more polarised, especially since the President of the RS, Milorad Dodik, pushed for a referendum on the legitimacy of the state court in March 2011, questioning the authority of the High Representative and the Dayton Peace Agreement. As one interviewee reports, influential politicians and the media in the RS have adopted “more and more discriminatory gestures aimed at exclusion and fear-mongering”, thus “constantly instrumentalising the past” (I-14). The interlocutors are convinced that the willingness of political decision-makers to establish reliable facts and figures is not very high in this country. However, they expect some progress since an expert group has been established and is in charge of implementing a strategy for transitional justice on the state level (I-2).

International representatives in **Serbia** stress the particular need to sensitise young people to the mistakes made during the Milošević period (I-9). They believe that dealing with the legacies of the wars of the 1990s must start as early as possible and should be based on the knowledge of people who have personally witnessed the war, when “memories of victims and perpetrators are fresh”. Germany's experience of dealing systematically with the legacies of the Second World War and the Holocaust is mentioned, especially its reconciliation with Israel (I-4; I-9; I-23). Assessments of the process in Serbia are more positive in comparison to the above-mentioned evaluation of the situation in Bosnia. The Srebrenica declaration of the Parliament of Serbia is seen as a qualitative shift and a clear step towards facing the past in a constructive manner (“the ethno-discourse is going to lose its appeal”; I-7). Furthermore, the interviewees in Serbia are convinced that in the past two years, relations between Croatia and Serbia were marked by greater openness in terms of official apologies and political dialogue. However, more sceptical voices state that the official declarations lack substance and are marked by double standards: “On the one hand, Tadić is taking serious steps in improving communication with Croatia, but when it comes to the RS or Kosovo, such seriousness is forgotten” (I-3). The interlocutors agree that the international pressure, combined with financial support and the prospect of EU accession, has been a driving factor for a positive dynamic (I-7). In addition, this process has been particularly supported by civil society actors who were

able to establish spaces outside political control where discussions of the past could develop (I-23; I-3).

The interviewees in **Croatia** share the impression that the Presidents of the Republic of Serbia and Croatia have made progress:

“The wreath-laying ceremony in Vukovar and at other sites where Croats committed crimes was very important, as is the recognition that the suffering of victims on all sides is of equal importance” (I-1).

One person is convinced that after 15 years of a very conservative and right-wing nationalistic government, there has been some change in **Croatia**, as the HDZ in particular has undergone a process of renewal and liberated itself from some very radical positions as a consequence of international pressure. This shift was also expressed by the decision to arrest and hand over the former Croatian General Ante Gotovina (I-22). At the same time, the interviewees express concern that some nationalist discourses are ongoing. They were most aggressively expressed against the ICTY’s recent verdicts in the Gotovina and Markač trials, according to the interlocutors. It is observed that denial, selective remembrance and relativisation of past events are still widespread (I-5) and that it is still a taboo to question the hypothesis of the “Homeland Defence War” and to place any responsibility for human rights violations on the Croatian side (I-6). Several interviewees see an urgent need to clarify facts and responsibilities for crimes and human rights violations related to *Operation Storm*, which was conducted by Croatian military forces in the Krajina in 1995 (I-15; I-22). Furthermore, they see a need for rapprochement between different nationalities living in Croatia, in particular between Croats and the Serb minority, for instance in Eastern Slavonia, where local communities are marked by an ethnopolitical divide (I-15). One interviewee describes Croatia as a divided society, split into “one internationalist, cosmopolitan, secular and progressive part and one traditional, nationalist and revanchist part, which do not communicate with each other, let alone talk about the past” (I-5). According to this person, dealing with the past is a necessary precondition for bridge-building between these different parts of society.

6.2 Potential, legitimacy and acceptance of TJ mechanisms

6.2.1 Assessments of the International Tribunal for the former Yugoslavia (ICTY)

International actors in all three countries agree that the ICTY has made an important contribution to dealing with the past in the countries of former Yugoslavia. They mention several positive outcomes but also problematical aspects of the Tribunal’s work.

Positive assessments

All interviewees are convinced that the Hague Tribunal is vitally important. It is argued that without this international court, the majority of crimes would not have been prosecuted (I-8). It is underlined that the ICTY has “removed the atmosphere of impunity” (I-21; I-4) and “provided fair trials” (I-22), as there was an independent and professional international judiciary (I-18; I-8). Furthermore it is acknowledged that the ICTY helped to establish domestic war crimes chambers and prosecutor’s offices in the region of former Yugoslavia (I-16; I-12). It has established “judicial truth”, facts and evidence which were shared with the public (I-18) and the domestic courts (I-8). The Hague Tribunal’s investigations have helped to document facts (I-12; I-23) that cannot be denied and distorted, and “lead to a historical record” (I-13). Several interviewees are also convinced that the Tribunal can pave the way to reconciliation (I-13; I-15), because “victims see that there is some kind of justice” (I-13), and it holds individuals accountable and thus offers a chance for people to absolve themselves of collective guilt (I-4; I-22; I-12). Finally, it is

mentioned that the work of the ICTY has enhanced debate in the countries of former Yugoslavia (I-2). Some interviewees also think that perceptions and attitudes towards the Tribunal are currently shifting. As an example, interviewees from Serbia mention the public discourse and reaction of the media in Serbia after the Gotovina/Markač verdict:

“There is a perception over here that it is mainly Serbs who have been sentenced by the ICTY. Refugees in particular see the Tribunal as biased. The Gotovina verdict has corrected this view a little bit. Some days ago I also read a news headline saying: ‘Anti-Croat verdict by the anti-Serb tribunal’” (I-19).

Problematical or negative assessments

The interviewees stress that the trials take “an enormously long time”, and this is “difficult to explain to organisations representing victims and their families” (I-14; I-2). In addition to this, there were shortcomings because the ICTY did not have its own police service to collect the evidence needed in the judicial process (I-8). It is also stated that the ICTY’s public relations policy was not very well-developed (I-22), and a lot of funds have been spent on outreach programmes with poor results (I-23). As most of the verdicts have been insufficiently explained to the public, this created space for manipulation by the media (I-18) and dissemination of distorted facts (I-20). Furthermore, some interviewees are convinced that the practice of “bargaining” has harmed the credibility of the Tribunal (“an example of this is Biljana Plavšić¹, who does not regret what she did”; I-2). There is also criticism of the International Tribunal in that it provides a “platform for well-known war crimes suspects to perform their self-justifying role”:

“I think it is shameful how Karadžić behaves and how the judges could allow such a person to defend himself. This is a complete show. Milošević did the same thing. I find this extremely harmful, this live streaming from the court room. He repeats every speech he made during the war. And in the RS they echo his arguments. Many Bosniaks are upset about this. The judges should have been stricter about this” (I-14).

6.2.2 Assessments of the domestic courts and prosecutors

In general, representatives of international organisations, INGOs and donor agencies express positive assessments of the war crimes chambers and prosecutors in BiH, Serbia and Croatia. At the same time, problems and shortcomings are mentioned that impact on the level of legitimacy and acceptance.

All interviewees in **Bosnia** are convinced that the domestic courts have the capacity to deal successfully with pending war crimes cases (“they have qualified prosecutors and judges” (I-11), a department for witness protection, and a mechanism for impartiality” (I-21)). It is reported that most of the war crimes and in particular highly sensitive cases have to be dealt with at the Court of BiH, at state level. But at the decision of the state court and prosecutors, several cases are transferred back to lower level courts in municipalities where the crimes took place. Cantonal and district courts in various cities (Sarajevo, Banja Luka, Tuzla, Brčko, Mostar, Trebinje, Orašje) are also dealing with war crimes. It is reported that Tuzla,

¹ Biljana Plavšić was the 2nd President of the self-proclaimed Serb Republic of BiH from 1992 onwards. She was sentenced by the ICTY to 11 years in prison for “creation of impossible conditions of life, persecution and terror tactics in order to encourage non-Serbs to leave the area, deportation of those reluctant to leave, and the liquidation of others”. She plea-bargained to reduce her sentence, was released in 2009 and after this admitted that she had taken responsibility for the crimes only for tactical reasons; www.faz.net/aktuell/politik/ausland/kriegsverbrechen-plavsic-auf-freiem-fuss-1867638.html.

Sarajevo and Banja Luka are handling the majority of cases and all are “doing quite well” (I-14). But it is also mentioned that they are not as well-equipped as the Court of BiH, and *witness protection* is non-existent in many places (I-14). A general problem relates to *gender justice*, given the poor living conditions and lack of compensation for victims who experienced sexual violence, and in particular women who were raped during the war. Some hope is expressed that a new strategy recently adopted by the Ministry for Human Rights and Refugees might improve this situation (I-16).

With respect to the *legitimacy and acceptance of domestic accountability mechanisms*, interviewees in Bosnia express concern that the mandate of the Court of BiH is questioned by the RS government and attacked as internationally imposed. According to the interviewees, these attacks are partly due to its mandate to fight corruption and investigate RS leaders’ performance. With regard to war crimes prosecution, relevant parts of the RS population see it as biased; they assume “that it is only Serbs who are being tried at this court and Serb victims are not heard and their cases have not been prosecuted” (I-14). One interviewee reports that it still happens that – due to a high degree of distrust – Serb victims in Bosnia prefer to bring proceedings in Belgrade instead of approaching the domestic courts (I-4). In order to support and protect the Court of BiH, one interviewee recommends that it should be given constitutional status (I-17)

International representatives in **Serbia** are generally convinced that the national prosecution office is well-functioning, despite initial shortcomings (I-9; I-3; I-12; I-7; I-23). It is mentioned that the Serbian institutions’ cooperation with prosecutor’s offices in Croatia has substantially improved (I-11). However, it is reported that the *legitimacy* of the judiciary in Serbia is low. It is assumed that the lack of credibility and acceptance stems from mistakes that were made in earlier periods, in particular when courts decided “to try a lot of people in absentia, because fugitives had escaped to other countries” (I-10). The interviewees are convinced that in terms of outreach, the domestic legal institutions still suffer from many deficits and therefore organisations and agencies which promote war crimes prosecutions need to be supported. Finally, the interviewees insist that the entire justice sector needs to be reformed and a lustration law is needed (I-7).

International representatives in **Croatia** have fairly positive assessments of the work of the chief prosecutor’s office and war crimes chambers.² They report that the courts’ performance was not satisfactory in the 1990s but has improved in the subsequent decade. The courts are considered to function well and are regarded as less biased³ than several years ago (I-1; I-15; I-8). Four specialised courts in Zagreb, Osijek, Rijeka and Split have staff and judges who are familiar with war crime issues. All new war crimes cases are transferred to these courts, which will be in charge of war crimes prosecution in future. This is appreciated and seen as “a major move” that international organisations were pushing for (I-15). A *war crimes prosecution action plan* initiated by the Chief State Prosecutor and adopted in 2008 will also improve witness protection, through involvement of the Ministry for Internal Affairs, as one interviewee hopes (I-8). It is also reported that the prosecutors’ office has revised several “in absentia” trials and established stable cooperation with prosecutors in Serbia and Bosnia, based on reliable procedures for the exchange of evidence. This guarantees that fugitive suspects can be put on trial in the respective countries, which is considered an important step forward (I-1).

Despite the positive assessments, several interviewees emphasise that in Croatia, a lot still needs to be done in terms of accountability, especially with regard to the events during and after *Operation Storm*⁴:

² This assessment is also documented by the Interim Report from the Commission to the Council and the European Parliament on reforms in Croatia in the field of judiciary and fundamental rights, Brussels, 2 March 2011 COM (2011), , online at http://ec.europa.eu/enlargement/pdf/hp/interim_report_hr_ch23_en.pdf.

³ Some of the county courts were criticised for being biased and poorly prepared for their task. It is reported that earlier practice was “to deal gently with Croatian suspects and preferably to accuse Serbs, based on the argument that Serbs had committed more crimes. For a long time Croatian suspects could rely on a “homeland bonus and more lenient punishments” (I-8).

⁴ Figures relating to these events are highly contested. While human rights NGOs refer to 677 persons killed in the aftermath of the military operation, the state attorney argued that there were only 114 victims after 1995, and only recently accepted the number of 677.

“The brutal fact is that up to now there has not been a single conviction of members of the Croatian army for war crimes during and after Operation Storm (...) There are 33 trials pending for the murder of civilians, but the state attorney has not addressed these as war crimes so far” (I-15).

It is also argued that:

“The ultimate indication that Croatia is dealing seriously with its past will be its willingness [the willingness of the domestic courts] to consider the 33 cases of murder and convert them into war crimes trials. Furthermore, the judiciary will have to find out what happened to the 677 civilians [killed in the aftermath of the military operation]. This is of particular importance because the ICTY will not pursue any other case in the context of Operation Storm” (I-15).

The interlocutors emphasise that progress with regard to the investigation of these events depends very much on the pressure from civil society (I-15; I-1; I-8). It is largely recognised that CSOs have contributed a great deal to fact-finding and also to improving the preparedness of the courts. International representatives express a strong wish that CSOs should continue to monitor courts’ activities, and not shift their focus too much to other areas, such as the REKOM initiative: “The NGOs are very much involved in this, and we are concerned that they will forget monitoring the domestic war crime trials” (I-15).

With regard to the *legitimacy of the domestic courts*, international representatives observe that the war crimes chambers in Croatia face similar problems of acceptance as the ICTY, as many Croats perceive these courts as imposed by the European Union. Furthermore, it is reported that the courts can never meet the expectations of Croatian society: “If they [the domestic courts] sentence Croats, they are seen as too strict, and if they convict Serbs it is said that they are too soft” (I-1). One interviewee points to the need for a systematic PR strategy. He concedes that most courts have websites and do publish information, but “this is still far away from how the ICTY handles this issue” (I-15).

6.2.3 Fact-finding: the campaign for REKOM

International representatives in Bosnia, Croatia and Serbia welcome the idea of establishing a commission that documents facts on a regional level. Several of them have actively funded the campaign since they are convinced that additional TJ mechanisms are needed to complement legal procedures (I-11), in particular as it will “not be possible for the courts to deal with all cases of war crimes” (I-17). A regional fact-finding commission is seen as a helpful mechanism by most interviewees, although none of them has a clear model in mind. Almost everybody is convinced that the process is as important as the goal and result. Several donors emphasise that the process of establishing and defining the mandate of REKOM should be completely owned by local organisations (“it’s important that it’s a home-grown initiative”; I-10). Nevertheless, some expectations about the scope and impact of REKOM are expressed.

Expectations of REKOM

1) Establish forensic and objective/factual truth

The need to collect and document reliable data about the missing and murdered on a regional basis is underlined by various interviewees. They are convinced that the regional approach offers huge advantages. However, it is also stated that it has to be genuinely guaranteed that its members will have access to the archives in all countries, and therefore it must be established “as an official body. There is no way that it could be an NGO-driven body” (I-21).

2) Give victims acknowledgment and a chance to speak out

The most important task for a regional commission, as one interviewee explains, is to *give a voice to victims and witnesses of crimes* and to offer them a forum “to be heard and to move out of a stigmatised context and out of silence”. This will also lessen the opportunity for nationalist leaders “to use these victims somewhere else, taking these people to their party meetings and creating their narratives” (I-17).

3) Establish narrative and dialogical/societal truth

Several interviewees (I-21; I-20; I-18; I-17) expect that a regional commission can help to give acknowledgment to the suffering of *all sides* and give space to *different narratives, help to address taboos, create empathy* for individuals with different experiences, counteract denial and question stories that justify wars and heroism. One interviewee from Bosnia emphasises that REKOM should contribute to establishing a *shared truth* (I-21).

Several interviewees are convinced that the societies in the region should not only deal with the recent wars but also address *narratives of earlier events*, “digging deeper in the history of the Second World War”, as opposing interpretations of former conflicts contributed to the more recent ones (I-21). It is also stated that experiences of discrimination should be reflected in a broader historical perspective (I-22). One REKOM supporter thinks that, apart from truth recovery, the entire region also needs a *culture of dialogue* on these issues. REKOM should “organise as many debates as possible on a regional level and bring people and experts from different areas (historians, diplomats, university professors, etc.) together in a dialogue” (I-9).

4) Encourage reconciliation

One REKOM funder from Serbia thinks that the logic of this initiative “goes more towards to reconciliation even if they [the coalition] dropped this term from the title” (I-12). One supporter from Bosnia explains: “to establish reconciliation, you need to establish the truth, and reconciliation can only happen on a regional level” (I-16). It is also stressed that, in addition to the legal mechanisms, REKOM may help “to take away the idea of collective guilt” (I-12) and thus pave the way for a culture of apology, and, as one interviewee emphasises, also forgiveness (I-9).

5) Critical voices

However, there are also critical voices raised with regard to REKOM. One international representative in Bosnia thinks that the idea of a regional truth commission is unrealistic. He believes that first of all, each society in the region has to go through a process of dealing with the past on its own. Furthermore, this person assumes that a commission that receives support from international donors will always be regarded as a foreign-driven mechanism and lack acceptance by the local population (I-2). Several interviewees think that “expectations of truth commissions are higher than their actual effects” and that REKOM might even generate new conflicts along the existing lines (I-23; I-15). Particular doubts are expressed about the concept of public hearings for victims in the scope of a REKOM that will probably “not bring them satisfaction” (I-23). One interviewee in Croatia thinks that truth commissions are always a strange “hybrid between a public process and psychotherapy” that overloads victims (I-3). Another person thinks that the mandate of REKOM is still unclear, as is how it relates to the legal proceedings; furthermore, “an open question is how sexual dimensions of war crimes can be addressed in such a setting” (I-16). Even an interviewee who funds the campaign expresses some doubts: “How can you set up a truth commission without being sure that you have rule of law and functioning institutions, and in particular witness protection? What could be a setting for victims to speak out without being intimidated?” (I-12).

Problems and dilemmas of the REKOM campaign

Interviewees in **Serbia** and **Croatia** report that the campaign has initiated important debates in these countries, as it has managed “to bring together very diverse people, starting from war veterans’ associations,

and victims' organisations which have not been at the same table before, talking about these issues. There is great value in having these dialogues taking place (...); the process is as important as the ultimate goal might be" (I-20). At the same time, a warning is expressed that the campaign should not "rely too much on its own" and CSOs should "communicate also with people from other post-war regions in order to better understand the dynamic of conflicts and reconciliation processes" (I-20).

With regard to the *question whether governments in the region will support and implement such an initiative*, interviewees' opinions differ. One interviewee is convinced that there is a chance for the campaign to get support from politicians and governments in Serbia and Croatia (I-16; I-13; I 14), in particular as "Josipović and Tadić have already declared that they are in favour of such a commission" (I-16). But several interviewees doubt that the campaign can be successfully implemented in **Bosnia**: "They [the coalition] can get support from certain authorities hopefully. But it will be tough to get the Government on board, (...) to get the three Presidents to declare support" (I-13). One person points to the fact that Bosnia is politically divided, and thus it will be difficult to form a national team with common interests that would be part of a regional truth commission (I-21). According to the interviewees, the campaign suffers from several constraints in Bosnia, as it was not successful in attracting victims' organisations, and war veterans' organisations, especially from Republika Srpska (I-18), and "there are very few NGOs, associations and lobby groups that really seem to be pushing the Government" (I-13). It is also mentioned that one lead agency (RDC) has already left the coalition (I-16)

6.3 Guiding concepts

6.3.1 Understanding truth, justice and reconciliation

Interviewees in all three countries think that both *truth recovery and justice* are important elements and principles of peacebuilding. They do not single out one of these concepts as being a priority over the other. Several interviewees are convinced that *truth comes first* on a timeline, as *justice* (in the form of prosecution of war crimes and human rights violations) needs to be based on facts, so *truth recovery* is a necessary *precondition for accountability*. Several forms of truth recovery are mentioned in particular by the interviewees; these can be classified as (a) forensic, (b) objective/factual, (c) narrative and (d) dialogical/societal truth. Furthermore, three different dimensions of justice are mentioned that relate to (a) legal accountability/retributive justice, (b) rule of law/protection/and safe spaces, and (c) restorative or social justice. The results of the interviews can be summarized as followed.

Truth recovery

- a) *forensic truth*: "documentation of facts; finding missing persons" (I-21)
- b) *objective / factual truth*: "collection and documentation of facts – as many as we can establish" (I-3); "knowing what has happened, knowing who did what, trying to understand the structures of what has happened" (I-12)
- c) *narrative truth*: "both facts and a different view of history" (I-20) as future generations need to be properly informed (I-21)
- d) *dialogical / societal truth*: open space(s) and create empathy (I-5) and discuss the different narratives that are circulating on the past, as it is "important to reach a minimal societal consensus on what happened during the war" (I-21)

Justice

- a) *accountability/retributive justice*: investigation and punishment of war crimes, “to give acknowledgment to the victims and survivors, in order to give some form of moral satisfaction” (I-21)
- b) *justice* is important not only in terms of war crimes prosecution but also in terms of establishing “rule of law”, creating safe spaces, legal assistance and empowerment for vulnerable groups (“vulnerable because of gender, origin or displacement”) (I-18)
- c) *restorative or social justice*; return and integration of DPs, property restitution; finding durable solutions for refugees and DPs

Reconciliation

In Bosnia, five interviewees regard reconciliation as important. In Serbia, four interviewees and in Croatia three interviewees use the term. Eight (of a total of 23) interviewees confirm that reconciliation is also a guiding notion for their programmes and activities. The interviews reveal that reconciliation is regarded both as an outcome and as a long-term process that is likely to take decades. Reconciliation is seen as:

- ≡ a consequence of factual, narrative and dialogical truth (I-8) and of re-establishment of human values (I-20)
- ≡ a process of creating respect and empathy for individuals with different interpretations of the past and individual experiences (I-4; I-23)
- ≡ a process of normalisation of relationships (people feeling safe when travelling all over the region) (I-3; I-20; I-19)
- ≡ a consequence and a process of “bridge-building” and restoring relationships in daily life (I-5)
- ≡ a process of trauma healing (I-7)
- ≡ a process of creating a culture of acknowledgment, apology and forgiveness (I-9; I-4)

The interviewees see a need for reconciliation in various dimensions:

- ≡ between minorities and majorities in Serbia, Bosnia, Croatia, and the wider region (I-20; I-10)
- ≡ between people of different “ethnic groups” and “nationalities” within these countries (I-9; I-10)
- ≡ between religious communities (I-9)
- ≡ of “people [individuals and groups] with themselves and their identities” (I-20).

One interviewee warns not to mistake the certain degree of normalisation that has taken place in the region of former Yugoslavia for reconciliation: on the one hand “people travel and business is going on”, but on the other hand, people “are ready to cut each other’s throats” (I-19). The crucial question for this interviewee is:

“What keeps the balance? The EU carrot worked somehow. Some cooperation was enhanced by this. But Croatia started the cooperation for tactical reasons. Serbia also decided to cooperate in order to get closer to the EU. But all this has nothing to do with reconciliation. Maybe Croatia will cease its cooperation once EU integration moves closer. Those who keep the balance can easily also get out of balance. The whole process can easily become unbalanced by political and economic developments” (I-19).

With regard to the *obstacles* and *preconditions* for reconciliation, the interviewees list various aspects that will be outlined in the following section.

6.3.2 Obstacles and preconditions for reconciliation

Obstacles for reconciliation

In **Bosnia**, the interviewees are convinced that “as long as there are missing persons, no reconciliation is possible” (I-16). Others blame the *political system* that supports divisions between people along ethnic identities and a *lack of identification with the state* of Bosnia-Herzegovina, expressed by political leaders and relevant media organisations (I-13). It is observed that political polarisation and *ethno-nationalistic discourses* become stronger during election campaigns in particular, *creating an atmosphere of fear* that is not supportive of rapprochement (I-2). *Ethnic separation and “ethnic teaching”* of children in schools also exacerbate the separation of identities.

Furthermore, it is mentioned that the widespread *culture of victimhood* forms a serious obstacle to reconciliation, as explained by a local representative of an international foundation: “We are still in the phase of telling each other about our victimhood. We must come to a situation where we really listen and (...) accept that human rights (...) must not be violated regardless of the cause (...); this must become our shared value if we are to avoid further wars” (I-18). Other interviewees state that there is competition over the question of who has more right to claim to be a victim, and who bears more guilt, and that this is a major obstacle in terms of creating a common future (I-2; I-21). Others observe a constant instrumentalisation of victims and war veterans by ethno-nationalist leaders (I-18). One interviewee thinks that overblown expectations can also form an impediment to reconciliation. This person feels that apologies by Serbs or Croats are not sufficiently acknowledged by Bosniaks: “If they are accepted at all, this is always accompanied by comments that these steps are not enough” (I-2).

Interviewees in **Serbia** are convinced that a main obstacle to reconciliation is a trend for political stereotyping of people (I-3) and legitimising recent events by earlier history (I-3). *Notions of victimhood* are also widespread and go hand in hand with the tendency to relativise crimes: “After the Srebrenica declaration of the Serbian parliament (...) blogs were full of comments that argued that before Srebrenica, just as many Serbs had been killed” (I-7). One interviewee also thinks that in Serbia many people were facing strong international pressure and have the feeling “that they are held collectively responsible for what has happened (...) and then there is a reaction that people do not want to acknowledge” (I-20). This person thinks that it is important to educate people on how they can acknowledge crimes that have been committed in their names without bearing any personal responsibility.

One person regrets that young people in particular do not see a need for reconciliation, as they have no memory of the times before the war when people were living together in the region of Yugoslavia: “They were so young when the war in Bosnia and Croatia started. And they also did not have a possibility to travel and meet (...) There is no sensitivity, they just ask: why should we reconcile with those people? And propaganda is still strong” (I-10).

In **Croatia**, interviewees underline that cultures of denial, both with regard to Croatia’s role in the war in Bosnia and in *Operation Storm* in the Krajina in 1995, are serious obstacles to reconciliation. They also mention notions of victimhood combined with “tensions stemming from different views on history”, and narratives that dominate perceptions (I-8). As reported, the narrative of the “Homeland Defence War” and the interpretation that Croatia was a victim of the aggression of the former Yugoslav Army and the Milošević regime, and therefore has no responsibility for any violent events, are still widespread in Croatian society (I-5). According to the interlocutors, veterans’ associations in particular promote these views and contribute to polarisation (I-1).

Preconditions for reconciliation

Several interviewees argue that both “truth” and “justice” are prerequisites for reconciliation. Accountability for the crimes committed during the wars is seen as indispensable by all interviewees, as is forensic and objective/factual truth. All agree on the need to establish a full record of missing persons. In addition to this, further preconditions are mentioned that can be classified as *elements of restorative and social justice*:

- ≡ *Refugee return and durable solutions for IDPs*: The right of return is seen as a clear precondition for reconciliation, but for those who do not want to return, durable solutions have to be found; for this to happen, the governments in the region need to cooperate (see Chapter 6.4.1.)
- ≡ *Property restitution and compensation, and also dealing with imbalanced distribution of property*, as particular groups were excluded from the privatisation process. In particular, many Serb refugees who came from Croatia were not able to buy their flats in Croatia, whereas most other people received the flats that they inhabited during the privatisation process (I-19).
- ≡ *Economic development*: Several interviewees point out that economic support and development are crucial. One interviewee in Serbia is convinced that unless the economic situation of people improves, there will be no willingness to engage in closer cooperation, integration and reconciliation: “How can you expect people to accept immigrants, IDPs and refugees if they are economically in a very bad position?” (I-19). One person points out that there is a connection between economic decline and ethno-nationalist radicalisation and that both were driving factors in the wars of the 1990s (I-7). One interviewee in Croatia thinks that the most effective form of influence that internationals can exert is to improve the economic conditions in order to create a favourable climate in which dealing with the past processes and rapprochement can develop (I-22).

Further suggestions relate to *processes of healing and restoration of relationships and communities*:

- ≡ *Healing of trauma* caused by experiences of violence or expulsion (I-7)
- ≡ *Willingness to reflect on stereotypes and simplifications* (such as “all Serbs are aggressors, or all Bosniaks are victims”, I-23)
- ≡ *Education for tolerance and human rights* (I-10), and a shift of identity: “adopt a concept of identity that is based primarily on an identity as citizens, with nationality and ethnicity being secondary elements” (I-23)
- ≡ *Inter-religious dialogue* (“given that ethnic, cultural and religious differences have fuelled the dynamic of the violent conflicts, and in order to transform them”; I-9)
- ≡ *Bridge-building in divided communities* (between different sections of Croatian society, and between people of different nationalities living in Croatia, for instance in Vukovar, where Serbs and Croats live close by in parallel communities; I-15; I-5)
- ≡ *A change of norms, values and mindsets* (from focusing on “what the others should do” to the question: “what can I do/ what can we do?”; “readiness to cope with one’s own role and responsibility (...) and to find adequate gestures to express that one has dealt with this” (I-14)
- ≡ *Public apologies* are seen as important as they “have an important impact on the society and its view on the war”. Furthermore, the media “have to take more responsibility for reporting on such gestures as it is important to maintain this intensity of public awareness about the process” (I-8)
- ≡ *A culture of acknowledgment and forgiveness* (I-9)
- ≡ *Relief from collective guilt* (I-20) and *willingness to take responsibility* (I-4; I-3; I-23; I-12).

Finally, several interviewees insist that reconciliation can only take place if *rule of law is established and an atmosphere free from fear* is created (I-16). As one interviewee underlines, this applies particularly to Bosnia, which desperately needs a “reform of institutions that are capable of dealing with and preventing hate crimes, which are increasing in divided communities”; I-17).

6.3.3 Suggestions for other concepts

One interviewee thinks that *justice* and *truth* are misleading terms, as there is a “big gap between justice that is based on facts and what people perceive as just”. The same applies to the concept of truth, in this view, as it is almost impossible to establish justice and truth for all sides involved in the wars.

Furthermore, there are several sceptical views about the concept of *reconciliation*. One interviewee regards the term as vague as it is unclear whether it relates to individuals, groups, or the state level (I-23). Not all of the international representatives use the term. Interviewees in **Bosnia** are the *most reluctant*. One person reports that her work aims to re-establish *social trust* in Bosnia (I-17). Another interlocutor thinks that even trust will hardly ever be achieved again and international actors should instead seek to create “conditions for a secure life” by building a functioning state and community (I-21). One person is convinced that all one could expect in Bosnia is “co-existence” (I-13). Others believe that the concept of reconciliation is too ambitious for the group they are working with (war veterans) and therefore prefer the term dialogue (I-4). It is also argued that victims’ groups feel uncomfortable with the concept, and that in Bosnia “people are still afraid that they betray those who lost their lives if they join the reconciliation discourse” (I-18). The interviewees who explicitly use the term “reconciliation” strongly recommend that the concept should not be overloaded with Christian connotations – particularly in a context where the majority of the population is Muslim (I-16).

Several international representatives in **Serbia** and **Croatia** also express some reservations about the concept of reconciliation. One interviewee in Serbia doubts that reconciliation can ever be achieved in the region of former Yugoslavia; he thinks that all that can be expected is some *pacification*, and “openness to economic cooperation, but not to friendship” (I-6). It is suggested that more modest and neutral concepts, such as *regional cooperation*, should be applied (I-11). One interviewee in Croatia prefers “peaceful co-existence” as he thinks that the concept of reconciliation “is overloaded with expectations, and linked with forgiveness” (I-5).

6.4 Cooperation and learning processes

6.4.1 Assessments of cooperation with authorities and governments

War crimes prosecution

The interviewees report that cooperation on war crimes prosecution between the governments in all three countries has substantially improved in the past five years. The Government of Bosnia-Herzegovina has an excellent record of *cooperation with the ICTY*, and it is reported that the cooperation with the Croatian and Serbian Governments has also improved (I-16; I-11; I-22). The sharing of facts and documents, e.g. in the cases of Gotovina and Markač in Croatia, and greater openness in the search for Ratko Mladić in Serbia are regarded as expressions of this positive shift. This development is regarded as a consequence of the conditionality and pressure applied by the European Union in the context of the accession process (I-1; I-11; I-22).

As outlined in Chapter 6.2.2., the representatives of IGOs have positively assessed the cooperation with the Government of Croatia regarding the Action Plan for war crimes prosecution. Interviewees in **Bosnia** also regard it as huge progress that it was possible to gather the support of ministries and a broad spectrum of civil society (human rights’ organisations, refugees’ and victims’ organisations) for the development of a *Strategy for Transitional Justice* at state level that was approved by the Council of Ministers and combined with a concept for judicial reform (I-21; I-14). This project is seen as a multi-level approach as the Ministry of Justice and the Ministry of Interior are involved, and UNDP provides the secretariat, chaired by the president of the Council of Refugees. The interviewees very much appreciate that the strategy is multi-dimensional

and focuses on institutional reforms, truth-telling, reparation, and support for victims' and veterans' associations in their efforts to achieve reintegration and psychosocial treatment of post-traumatic stress disorders. At the same time the interviewees are convinced that the suggestions that were formulated by the participants in the consultations to advance these issues can only be implemented if the constitutional reform is completed, as "different legislation exists in the two entities, and a legal framework for victims' concerns needs to be created on the state level" (I-21). It is also reported that an expert working group was established, but stalled when RS institutions withdrew (I-17).

Finding solutions for refugees and IDPs

It is reported that the cooperation with governments and local authorities on refugee return and solutions for IDP faces a great many obstacles. Almost all the people who were affected by the war in Bosnia were granted the right to return, and – according to international statistics, as mentioned by one interviewee – 95% got their property back. But not all of them returned, as some were afraid to be a minority group in their communities (I-14). Improving life for refugees and returnees and for the specific group of IDPs who do not want to return and still live in uncertain conditions is seen as crucial (I-19). It is argued that governments and local authorities have difficulties recognising that there are many people who need help and "who can't go back and won't go back" (I-13). In **Bosnia**, "this would also mean closing the remaining centres for refugees and IDPs and searching for serious solutions for their integration in their respective communities" (I-13). This interviewee points out that international organisations and Bosniak leaders initially pursued a clear strategy to encourage people to return in an attempt to reverse the ethnic cleansing, but later on this strategy had to be revised:

"For the international community to shift even took us a long time. For them to shift and then to talk to their people about that they are going to assist other Bosniaks to stay in some parts of the Federation and not to go back to the RS is extremely sensitive to them. They still see it as some kind of putting a stamp of approval on ethnic cleansing. That is also to a certain extent the position of the Croat leadership, while the Bosnian Serb leadership has supported return but would also say that they would support people to stay in the RS if they want to" (I-13).

The same interviewee mentions in particular that the Government of the Federation of BiH for a long time insisted that they are not willing to assist IDPs in their current places of residence, and were only willing to support return. It seems that it has slowly started to accept that some people will not return and need help where they are now, "but this is still extremely political" (I-13). This person also identifies particular projects which offer hope of a change of policy in this field: for instance, the leadership of all three constituencies have helped to build villages for former soldiers. However, they decided to do so under the auspices of the Ministry for War Veterans and not under the Ministry for Human Rights and Refugees, and they avoided any publicity on this issue. It is reported that policies in this area are still accompanied by a great deal of competition between authorities and disagreement on legal mechanisms. In the RS, for example, the authorities attempted to offer people monetary compensation for a destroyed house, but administrations in the Federation of BiH were opposed to this plan and were concerned that this would discourage return. Finally, the FBiH authorities compromised and said that they would be willing to accept that compensation could be paid, but the Federation "would definitely not allow this to come from the fund for reconstruction of houses that is intended to encourage return. Again, there was a major political struggle between the two entities" (I-13).

It is reported that in general it is difficult to convince authorities and governments in the region to cooperate and to think about solutions besides return. This applies also to **Serbia**, where refugees from Kosovo face a similar dilemma. Serbia hosts 52,000 Serb refugees who fled or were expelled from **Croatia** and 21,000 Serbs who left Bosnia, and the majority are not interested in return. In addition to this, there are

210,000 IDPs (Serbs) from Kosovo, 97,000 of whom are considered vulnerable (including Roma and asylum seekers). The interviewees see a need to push the governments to cooperate on solutions for refugees and IDPs besides return in order to avoid increasing frustration and radicalisation of these people: “as long as there is no solution for refugees and IDPs, there will always remain a huge danger of destabilisation” (I-19). The question of how to design such solutions will very much depend on the political will of the governments in the region, but also on the willingness of international organisations to provide funding for this process (I-19).

Education

Another interviewee in **Bosnia** reports that his organisation campaigned for peace education to be included in the school curricula but failed due to the different regulations within the RS and Federation. This person complains that the country has “three educational systems, each teaching about the past the way they [the different constituencies] see the past” (I-18). Authorities in Bosnia are still not open to establishing an inclusive system of education, as the interviews reveal. But there are also (self-)critical assessments of international initiatives in this field. The decision to provide school education for children of different ethnic communities in separate classes and separate shifts in one building (“two schools under one roof”) is viewed very critically. This model was particularly promoted by the OSCE as a means of enhancing integration. However, several interviewees conclude that this system, as it has taken a permanent form, has widened the divide instead of fostering integration (I-2). One of the interviewed organisations has conducted a research project in a region inhabited by Bosniaks and Croats near Stolac, based on talks held in schools. The study revealed that pupils and parents strongly oppose any change towards a more inclusive system:

“Because they have grown up with it and have never experienced anything else, they don’t want to try something different. What started off as a temporary arrangement at the instigation of the OSCE is now people’s reality” (I-2).

Several interviewees think that the system needs to be reformed. They also suggest that international organisations should critically reflect upon this experience in order to learn what works and what does not work well in divided communities.

The interviews in **Serbia** also reveal ambivalent assessments. One interviewee reports that his organisation regularly invites representatives from ministries to seminars and conferences, and has successfully conducted high-level conferences, also with the Ministry of European Integration and a series of cross-border activities with parliamentarians (I-7). One organisation had established very good cooperation with the former Deputy Minister for Human Rights (who was “very open minded and supported the gay pride parade”, but he then had to resign due to political pressure; I-10). But in general, this person argues, cooperation with the political level is “more of a division of labour, not real cooperation” (I-10).

As the interviews reveal, cooperation with authorities and governments still faces a great many difficulties. However, one interviewee underlines some positive experience in the field of education. He reports that history books supported by his organisation – “aimed at primary schools, written in English and then translated into regional languages” – were first rejected by the ministries of education throughout the region, but several months ago authorities in Serbia decided to support the material: “There is some openness now which is great” (I-20). The books are now officially recommended by the Ministry of Education, although their use is not obligatory. Teachers have been trained to use the material, although most interviewees are still convinced that a more proactive approach by authorities will be needed to implement the scheme in the classrooms.

6.4.2 Assessment of cooperation with and among CSOs

International representatives in all three countries acknowledge that CSOs have substantially contributed to progress in war crimes prosecution and fact-finding (I-15; I-17; I-10). In Croatia and Serbia in particular, international organisations report that they maintain very stable and reliable cooperation with CSOs engaged in monitoring of war crimes trials and providing support for victims who testify at the courts (I-1; I-10; I-15). Several representatives of international NGOs report that their engagement focuses more on partnerships and joint activities rather than funding (I-4; I-22; I-3), which is difficult to explain to some local CSOs which expect every international agency to offer financial support. Although they maintain excellent cooperation with local partners (CSOs), they notice that sometimes unrealistic expectations may cause disappointment among these organisations. A particular challenge, in the view of the interviewees, is to shape cooperation so that it does not lead to long-term dependency. Some of them critically reflect on the unintended consequences that may result from insider-outsider cooperation.

In **Bosnia** in particular, interviewees report that the international funding has reduced individual initiatives by civil society: “People have not learned to engage voluntarily for issues that are related to the needs of the community” (as one local representative of an INGO explains); and “some NGOs have perfected the art of adapting their agenda to whatever donors want and often stop working on issues if the funding dries up” (I-4; I-18). Strong competition over resources among CSOs is also observed, placing limits on fruitful cooperation. In particular, there is strong competition between NGOs working in the larger cities and those working in rural areas and smaller towns, which is partly due to the narrow focus of international sponsors which concentrate many of their activities on the capitals and neglect other areas (I-4). CSOs also struggle with a lack of legitimacy in Bosnia, according to the interviewees, as “they are more likely to be seen as lobby groups by the rest of society” (I-14). Nevertheless, the interlocutors are convinced that CSOs definitely need to be supported: “Concentrating efforts only on the middle and top level of society” is also not seen as an appropriate approach, as it tends “to ignore the feelings and thoughts of ordinary people” (I-4).

International representatives in **Serbia** report that CSOs – and in particular human rights activists – have contributed substantially to the dynamics of DWP processes in this country. However, there are ambivalent assessments of the cooperation among CSOs in the context of the REKOM campaign. One person thinks that the initiators “do a good job”, but they are not well accepted by Serbian society, due to a lack of transparency and diplomatic skills. It is mentioned as an example that the REKOM team invited representatives of the newly founded Orthodox Church of Montenegro to attend a consultation, and as a consequence offended the Serbian Orthodox Church, which does not officially recognise the Montenegrin autocephaly (I-9). One interviewee is concerned that the process initiated by the campaign “has become deadlocked” due to distrust and intrigues among the participating organisations (I-3). Another representative (a donor to REKOM) is more relaxed about this development. He observes that “some people leave, others join, there are internal conflicts, but (...) they keep this train moving” (I-20).

One interviewee explains that civil society is desperately needed as a counterweight to ethno-nationalism in all societies of the region. But he also notes a discrepancy between the “thousands of projects driven by hundreds of NGOs” and their real impact on society (I-3a), as a lot of activities are driven by a professionalised NGO sector that is separated from society and cannot be seen as an agent for social change, as many organisations have already “merged with the political establishment”. Apart from this sector, as this interviewee outlines, “there is a civic society, academics and journalists, who are more critical towards political processes and are seeking debate” (I-3), and it is their activities, rather than the “professionalised” NGOs, which should receive much more support.

6.5 Further perspectives and challenges

Many interviewees are reluctant to predict future trends or propose tangible approaches for dealing with the past in the region of former Yugoslavia. They insist that the societies in the region have to find their own strategies (I-5), and state that external actors should not introduce pre-designed concepts or role models (I-22). They should aim instead to facilitate exchange between different actors, within the countries, on a regional level and beyond (I-22). However, in all three countries, interviewees see an ongoing need for external assistance. Furthermore, they are convinced that external pressure on governments remains necessary and that EU conditionality is “important for progress in almost every area” (I-13).

In **Bosnia**, the interviewees consider that the capacities of the domestic judiciary are sufficiently developed for war crimes prosecution. At the same time, they are convinced that “without strong support from the international community, the war crimes court would not be able to function” (I-13). International support will be particularly needed to increase the courts’ PR capacities (I-2; I-4), to monitor and further implement the National War Crimes Strategy and other TJ mechanisms at the state level (I-17), and to clarify the issue of reparations (I-21). In **Serbia**, according to the international representatives, further external monitoring is important to oversee accountability, to push for reforms of the justice system and establish the rule of law (I-23). In **Croatia**, too, although it is acknowledged that the country has proceeded quite far in approaching European standards with regard to reforms of the justice system and rule of law, almost all the international actors are convinced that international supervision, pressure and assistance are still needed.

Several interviewees agree that within the implementation of *TJ strategies*, the issue of *gender justice* will remain a particular challenge. Several interviewees mention, as a major step forward, the fact “that rape is now part of the criminal law and considered a war crime, which was not the case before” (I-16). But addressing gender-specific violence related to the war still faces a lot of taboos: As some interviewees in Bosnia report, the film *Grbavica* by Jasmila Žbanić and campaigns launched by the NGO *Medica Mondiale* helped to address some of the taboos and to introduce legislation for the payment of compensation for raped women (I-18; I-16). It is also mentioned that the EU delegation in Bosnia, together with the UN, the Ministry of Justice and the Ministry for Human Rights developed a strategy to support women, which should also address the issue of reparations. However, several interviewees underline that so far, the situation of women affected by sexual violence during the war has not significantly improved (I-16; I-17).

According to the interviewees, if REKOM comes into being, such a *regional fact-finding mechanism* definitely deserves support. However, some of them point out that apart from initiatives aimed at regional cooperation, international assistance should support activities at *the local level aimed at inclusive forms of remembrance*. It is particularly emphasised that in Bosnia, many sites where atrocities took place still remain unmarked (I-14).

Continued *funding of civil society initiatives* is considered an important task by the international representatives in all three countries. Several persons suggest that civil society initiatives are crucial, both for creating *space(s) for debate on the past* (I-15; I-3; I-12; I-2) and paving the way to a “shared interpretation of the past” in the region of former Yugoslavia (I-1; I-20). It is argued that pressure from CSOs on decision-makers in governments and parliaments is indispensable, as they need to be pushed to implement institutional reforms and strategies of transitional justice, and also subjected to a system of controls (I-5; I-8; I-15; I-22). In particular, interviewees in Croatia repeatedly emphasise that war crimes monitoring by NGOs will be crucial when international agencies leave the country (I-15).

Support for cultural initiatives is seen as an urgent need (as they “would cease to exist if there were no international support”, I-18), and support for *youth initiatives* is also seen as a must (I-18). It is argued that several peace and human rights activists rely on international funding as this is the only way to guarantee their political independence (I-20). However, a critical voice states that NGOs have been “spoiled” by the international community and therefore donors should rethink their funding strategies: “they should give smaller amounts of money for smaller projects” in order to “educate people and make them think how to do more with less money” (I-18).

Furthermore, it is suggested that the international actors should *focus on reforms of the education sector* in all of the countries, in order to support a transfer of *European values* (I-18), to raise awareness of human rights, and to overcome totalitarian mindsets (I-9). International actors should also try to change the patterns of communication, which – according to the interviewees – means sensitively encouraging and facilitating debate, constructively addressing victim identities, and insisting that no collective blame be attached (I-4).

Finally, several interlocutors insist that international organisations should continue to urge government(s) to take decisions in favour of *durable solutions for IDPs and refugees*. It is appreciated that the EU is willing to fund a regional refugee project, but the question is whether sufficient funds will be allocated, given that “donor fatigue is a huge problem” (I-19). Finally, international representatives in Bosnia and Serbia point out that vulnerable people exist in all countries; these people have fallen into poverty even though they have not been displaced. Therefore mechanisms of *poverty prevention for the broader population* are needed (I-13; I-21; I-19). It is warned that a lack of assistance for vulnerable groups and failures of social and economic policies might lead to a situation where political frustration increases and right-wing parties are strengthened. International actors should therefore primarily *encourage innovation in economic and social policy*. Economic perspectives are desperately needed, as one interviewee points out. This person also underlines that last but not least, “a lively civil society will not exist without this as a basis and will always be open to political manipulation” (I-7).

Analysis of Interviews with Representatives of Political Parties in Bosnia-Herzegovina

Ismet Sejfija

chapter 7.1

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7.1.1 Introduction

Analysis of society in Bosnia and Herzegovina (BiH) is faced with a phenomenon of (ethno-)politicisation of nearly all segments of political and social life. It therefore seems necessary to explain the context in which the field research took place and to clarify the sampling criteria (see Box). The interviews were conducted in the period between May and August 2011, during the sixth, seventh and eighth months after the general elections held in October 2010. After these elections the country entered a complex political crisis. This was marked by conceptual differences concerning the constitutional set-up (a decision by the European Court of Human Rights requires that the Dayton Constitution of BiH be changed¹) and problems that stem from the Dayton “system” (the problematical position of the Croats in the country, and differing interpretations and implementation of Dayton constitutional principles within the two entities, the Federation of BiH and Republika Srpska). Opposing positions on these issues, together with political controversies around NATO accession and the statehood of Kosovo, have led to deep polarisations among the leading political parties. At the time of writing this text, the legislative authority had been formed at all levels, but, more than a year after the general elections, a new Council of Ministers (the executive body at state level) had not yet been formed. The election results have in fact reflected the divisions within the electorate itself and a regrouping of political parties along four opposing sections, which will be briefly outlined.

1) The leading parties in Republika Srpska (RS)

A group of parties gathered around the President of Republika Srpska, Milorad Dodik, who has publicly claimed the greatest possible level of independence of the RS from the state of BiH. He has clearly expressed his aspiration towards greater autonomy and the transformation of this entity into a state-building subject. Alongside Dodik’s *Alliance of Independent Social Democrats* (SNSD), their partners in the state-level government – the *Serb Democratic Party* (SDS) and, to a lesser extent, the *Socialist Party of Republika Srpska* (SPRS) – also share this basic aim. The SNSD and SDS are co-signatories to a “Platform for joint action in the common state bodies of BiH”.² Dodik’s political project enjoys support from other Serb ethnic parties, such as the SDS. The SDS itself is in opposition in the RS, where it is critical of the current SNSD-SPRS ruling coalition, but on the state level they act in unison. This group of political parties has insisted on the literal implementation of the Dayton Agreement. Furthermore, it has publicly criticised the work of the Hague Tribunal for issuing the majority of the verdicts against Serb defendants; it has also denied the genocidal character of the war crimes in Srebrenica, and demanded that the representatives of the international community, especially the Office of the High Representative, should promptly leave BiH.

2) The leading parties in the Federation of BiH (FBiH)

The second cluster consists of the leading parties of the FBiH: the Bosniak *Party of Democratic Action* (SDA), the *Social Democratic Party of BiH* (SDP BiH, which won the most votes at the general elections in 2010), the *People’s Party Work for Betterment* (NSRZB) and the *Croat Party of Rights* (HSP). Their ethnic

1 The BiH Ambassador in Switzerland, Jakob Finci, and the Roma Council activist Dervo Sejdić have sued BiH at the European Court of Human Rights, claiming that, as members of national minorities, the Constitution prevents them from being elected to posts in state institutions and government, the House of Peoples and the BiH Presidency. The Court ruled for Finci and Sejdić, and the State Parliament formed a Temporary Commission, which should prepare amendments to the Constitution by the end of November 2011. The members of the Commission (delegates from the 13 parties represented in the State Parliament) proposed changes to the Constitution. The politicians from the FBiH promoted a more wide-ranging constitutional reform, based on the so-called “April package”, while the political leaders from the RS argued that the Constitution needs minimal changes. See www.mhrr.gov.ba.

2 More on the platform in: Glas Srpske, Banja Luka, 14 November 2010. On a referendum to pose the question of the status of Republika Srpska, see, for instance, the Belgrade daily Blic of 12 February 2010, article titled: “Dodik: one day, a referendum on the status of Republika Srpska will be held”; on denying genocide, see “Report on the state of human rights in BiH” at <http://www.amnesty.org/en/region/bosnia-herzegovina/report-2010>.

composition varies (the SDA is nearly hundred percent Bosniak; the SDP is publicly declared as a multi-ethnic party, but the majority of its membership is Bosniak; the NSRZB gathers members of all ethnic groups, while the HSP is a traditional, right-wing Croat party), and their ideologies and programmes differ (from social democracy, through a popular centrist party, to a national right-wing party). However, all these parties have gathered around the common “Bases for the formation of government in the FBiH” and the “Platform for joint action in BiH institutions in the mandate period 2010-2014”.³ The aim of this group is to settle the crisis and form the government in the Federation of BiH, and to continue joint operation within state agencies. For the members of this platform, the integrity of BiH is unquestionable. They advocate the strengthening of the political institutions on the state level, and they are opposed to the concept of confederalising BiH. They support the work of the Hague Tribunal, and demand that the domestic courts in the countries of the region accelerate the processing of war crimes. In March 2011, this coalition formed the Government of the FBiH, but without participation of representatives from the two largest Croat parties in BiH, which has further complicated the political crises. Simultaneously, the SDP candidate for the Croat member of the Presidency of BiH, Željko Komšić, won the majority of votes at the general elections. The Croat parties have contested his “ethnic” legitimacy, claiming that he was not the “real” representative of Croats in BiH and was elected with Bosniak votes.

3) The Croatian parties in the Federation of BiH

The third group consists of the two largest Croat parties: the *Croat Democratic Union of BiH* (HDZ BiH) and the *Croat Democratic Union 1990* (HDZ 1990). They came into existence when the once-unified HDZ in BiH split, but in the post-electoral period, they worked in unison to improve the general situation of Croats and their representation in institutions at all levels. This group does not question the sovereignty of BiH as a single state, but advocates constitutional restructuring, with guarantees of territorial sovereignty of the constituent peoples. Hence it promotes the idea of a “third”, Croat entity in BiH. Besides, like the leading parties in the RS, it also insists on political representation of the constituent peoples in BiH, claiming that these can be represented only by authentic national parties, with a majority of votes from their “own” people.⁴

4) The opposition parties in both entities

The fourth cluster comprises the opposition parties at all levels. This group has no common foundations in terms of programme or ideology. For instance, the *SDS* is an opposition party in the RS, while it operates together with the *SNSD* at state level. The *Party of Democratic Progress* (PDP) is the most significant opposition party in the Republika Srpska, led by the ex-Prime Minister of the RS and BiH former foreign affairs secretary Mladen Ivanić, who was a candidate for the Serb member of the Presidency of BiH at the general elections. The party is a stern critic of Dodik’s politics in the RS. Yet it shares its basic political principles aiming at the maximum independence of this entity. Within the wider party spectrum, the PDP is more inclined to build compromises. Dragan Čavić, the former President of the RS, and his newly-formed *Democratic Party* (DP) are the most open critics of the current RS government. Čavić’s mandate has seen the creation of a special commission and drafting of a “Report of the Government of Republika Srpska on War Crimes in Srebrenica”, while Čavić has publicly expressed the need to face the facts laid out in the report. The *far right in the RS* is occupied by the radicals, divided into three parties with the well-known nationalist programme of a Great State.

The opposition spectrum in the Federation of BiH consists of a number of parties: the *Party for Bosnia and*

³ More on the platform in *Oslobođenje*, Sarajevo, 18 March 2011.

⁴ For more details, see *Europamagazin*, April 2011, or www.europamagazin.info. See also: Vehid Šehić, “Izvještaj o aktivnostima Foruma građana Tuzla za 2010. godinu” (“Activity Report of the Tuzla Citizens’ Forum”), FGT Tuzla, March 2011, p. 7; Asim Mujkić, “Na putu ka normalnoj Bosni” (“On the Way to a Normal Bosnia”), *Odjek*, Revija za umjetnost, nauku i društvena pitanja, Sarajevo 2003, 104.

Herzegovina (SBiH; led by a former member of the Presidency, Haris Silajdžić), has been a consistent advocate of the project of transforming BiH into a state with a “normal” structure, arguing for the minimalisation of the application of the principle of ethnic and entity consensus in decision-making in state bodies. The party was heavily defeated at the general elections. It is undergoing a process of internal restructuring and redefining of its programme. The *Party for a Better Future of BiH* (SBB BiH), led by the media magnate Fahrudin Radončić, has also entered the Parliament of the FBiH. So far this party has made no significant impact on the general political trends in BiH, unlike the media owned by the party’s president (the most widely read daily paper in BiH – *Dnevni Avaz*). With few votes in both entities, the *Our Party* (NS) has emerged through long-term political profiling of activists in the sphere of civil society and promotes a social-liberal slant. The party has a solid number of supporters among the younger population, but is without influence in state- and entity-level politics. The same applies to the *New Socialist Party* (NSS), founded by the current mayor of Foča (a municipality in the RS), Zdravko Krsmanović. NSS holds one seat in the National Assembly of the RS in coalition with the Our Party. This coalition has no significant political influence, but it does have a paradigmatic value, as it proves that two parties can liaise across the entities. The *National Democratic Union* (DNZ), a party that was formed by Fikret Abdić, the national leader from West Krajina convicted of war crimes in Croatia (currently serving his prison sentence in Croatia), has representatives in the Parliament of the FBiH and the state Parliamentary Assembly, as well as the Unsko-Sanski Canton Parliament. During the war the DNZ supported Abdić’s attempt to found an Autonomous District of Western Bosnia. His troops (“Popular Defence” / *Narodna odbrana*), supported by the Army of Republika Srpska and consisting mostly of Bosniaks, came into conflict with the 5th corps of the Army of BiH, which also mostly consisted of Bosniaks. It was the only confrontation between military troops with nearly identical ethnic composition, which has particular repercussions on the process of reconciliation in that part of BiH.

The Sample Characteristics

In choosing the interviewees we tried, first of all, to cover those parties that are relevant actors in the political arena of BiH; second, to cover both the state- and entity-level government, and third, to encompass the most important paradigmatic discourses in addressing the past in the political sphere of Bosnia and Herzegovina, which meant including the most significant opposition parties in our research sample. Furthermore, we tried to access the highest-ranking members in their parties or persons who hold political offices in the state government, and we also tried to include members of each of the three constitutive peoples. All interviewed representatives stressed that, given that the issue of dealing with the past and reconciliation in the societies of the former Yugoslavia goes beyond particular party interests and policies, their answers would also include their personal views and attitudes in cases where the positions are not strictly defined in party documents. The selected parties are represented in parliaments at the local and entity levels (DP) or at the local, state and entity levels; the interviewees belong to the highest level of hierarchy.

Political Parties in the Republika Srpska (RS)

BRANKO DOKIĆ: THE PARTY OF DEMOCRATIC PROGRESS: Interviewed on 7 May in Banja Luka. The PDP founding assembly was held on 17 December 1999, and Branko Dokić was the first president. He is a representative in the Parliamentary Assembly of BiH, former minister in the Ministry for Transport and Communications in the Council of Ministers of BiH, and the top official of the PDP. (Membership of the party: almost one hundred percent Serb).

DRAGAN ĆUZULAN: SERB DEMOCRATIC PARTY OF THE REPUBLIKA SRPSKA: The general secretary of the SDS. Interviewed on 8 May, 2011, in Banja Luka. (Membership of the party: one hundred percent Serb).

DANIJEL DRAGIČEVIĆ: ALLIANCE OF INDEPENDENT SOCIAL DEMOCRATS: Vice-president of the SNSD, member of the SNSD presidency, vice-president of the SNSD's Young Social Democrats, president of the Zvornik municipality council, long-time activist in the non-governmental sector (the Youth Information Agency Sarajevo). Interviewed in Banja Luka, on 7 June 2011. (Membership of the party: almost one hundred percent Serb).

MILOJE SEKSAN: DEMOCRATIC PARTY: General secretary of the Urban Committee of the Banja Luka City Board of the DP. Interviewed on 7 June 2011 in Banja Luka. (Membership of the party: mostly Serb).

Political Parties in the Federation of Bosnia and Herzegovina (FBiH)

MIRZA KUŠLJUGIĆ: SOCIAL DEMOCRATIC PARTY OF BiH: Member of the Presidency of the SDP BiH; representative in the House of Representatives of the BiH Parliamentary Assembly; BiH ambassador with the UN from 2001-2005. Interviewed in Tuzla on 13 May 2011. Majority of membership is Bosniak, although a large number of party functionaries are of various ethnic affiliations, and it openly advocates multi-ethnic party organising.

MLADEN IVANKOVIĆ LIJANOVIĆ: PEOPLE'S PARTY WORK FOR BETTERMENT: President of the NSRZB. Representative in the BiH Parliamentary Assembly; candidate for president of the Council of Ministers of BiH. Interviewed in Sarajevo, on 15 May 2011. A multi-ethnic party whose programme strongly emphasises the economy, its leadership has occasionally appeared at Croat parties' gatherings.

BOROVINA SULJO: PARTY FOR BOSNIA AND HERZEGOVINA: Member of the party leadership; former member of the House of Representatives of the BiH Parliamentary Assembly. After the party lost the October 2010 elections, he has returned to the cantonal level. Interviewed on 12 June 2011 in Sarajevo.

HAFEZA SABLJAKOVIĆ: NATIONAL DEMOCRATIC UNION: Vice-president of the DNZ, member of the House of Representatives of the Parliamentary Assembly of the FBiH. (Membership of the party: mostly Bosniaks).

BAJAZIT JAŠAREVIĆ: PARTY OF DEMOCRATIC ACTION BiH: Member of party presidency; served two terms as Prime Minister of the Tuzla Canton. Member of the Tuzla Cantonal Assembly. Interviewed in Tuzla on 2 August 2011. (Membership of the party: almost one hundred percent Bosniak).

IVO ANDRIĆ LUŽANSKI: CROAT DEMOCRATIC UNION OF BiH: Member of party presidency. President of the Herzeg-Bosnian Croats' Assembly (elected in 2010); former president of the BiH Federation; removed from the post of Member of BiH Parliamentary Assembly by the High Representative Wolfgang Petritsch in 2001; took part in the last elections for the Parliament of the Republic of Croatia, and was elected as representative for the "diaspora". Interviewed in Tuzla on 3 August 2011. (Membership of the party: Croat).

7.1.2 The relevance of dealing with the past from the perspective of political party representatives in BiH

The representatives of the *political parties in both the RS and in the FBiH* believe that the ex-Yugoslav societies need to deal with the past.

The *interviewees in the RS* express the following views: The PDP argues that dealing with the past is necessary, especially if it does not entail the abuse of various "convenient political truths" as a means of unprincipled political marketing. This process should be guided by neutral experts, free from political

pressure, in order for history to truly become the teacher of life in these regions. The SDS representative believes that the process needs to concentrate on the recent past, which has a strong impact on the present in all its aspects. For the DP representative, dealing with the past is necessary in order to establish normal everyday life here, since “the energy wasted in conflict reduces the creative energy of every individual and the societies”. The SNSD representative likewise insists that the societies have to deal with the recent past, and also to confront what happened during the Second World War, or even before. As the political elites of the time never found the strength to deal with the past, this has led to new conflicts. This burden may on no account be left to future generations.

The *representatives of the political parties in the FBiH* express similar opinions. The representative of the SDP states that the question is not whether dealing with the past is necessary, but *when* and how to start this process. He observes three parallel processes in the region: the integration of the states into the EU, development of transnational cooperation, and dealing with the past. In his view, all the societies of the region are going through the difficulties of post-war transition. It is therefore necessary to choose the right moment to start the process of dealing with the past. The right moment is now, while war crimes prosecution at the Hague Tribunal and the domestic courts is ongoing. The process must be based on the analysis of the court rulings, and the process would further develop through various forms of regional cooperation.

The representative of the SDA believes that dealing with the past largely depends on democratic institutions, and needs inter-party dialogue that is not burdened with everyday political rhetoric. The representative of the DNZ holds a similar opinion: “Permanent peace in these regions is only possible through an honest, open dialogue about painful issues and establishing truths about them. The heaviest consequences of the war, besides lost human lives, are hatred and an enduring sense of frustration. This is the fuse that may be lit at any moment, causing a new conflict. The representative of the NSRZB is convinced: “Reconciled with the past, facing the present, we must have a positive view of the future. We cannot go forward if we haven’t broken with the past!” According to the SBiH representative, confrontation with the recent past requires that a consensus of values is adopted around the issue of a common future. The representative of the HDZ BiH is convinced that there can be no reconciliation without truth about the events of war and their consequences.

7.1.3 The potential, legitimacy, and acceptance of TJ mechanisms

Assessments of the work of the ICTY, the domestic courts, prosecutors, and official fact-finding commissions

Opinions in the RS

The representative of the PDP concedes that the Tribunal’s documentation constitutes valuable material for uncovering the truth by professionals and academics. However, he is convinced that, in several cases, the ICTY’s work was politically motivated. His main objection is that the ICTY gives different treatment to cases with different ethnic “labels”. This should be rectified, as different yardsticks do not support justice. The representative of the SDS is also convinced that the Hague Tribunal has “succumbed” to political influence, primarily from the US. In his view, this contributed to the pronounced mistrust on the Serb side; for that matter, not a single country in the region has embarked on an all-encompassing discussion on war crimes.

The DP representative sees the Hague Tribunal in a positive light: If it had not been there, those who really did kill and commit crimes would walk the streets. According to this interviewee, the work of the domestic war crimes chambers in the region is still characterised by great hypocrisy, lack of professionalism, and bias. Nevertheless, he is convinced that the ICTY has fulfilled its role, and now it is “up to us to grow up” and take responsibility. This means that the legal system has to develop as the most important cornerstone of transitional justice and the domestic judiciary has to professionalise.

The representative of the SNSD finds that the “Hague Court” has both positive and negative impacts. Through the proceedings, the crimes are being personalised: they acquire “a name and surname”. The

negative side is political meddling in the court's work and a very poor information policy. This leaves space to interpret the work of the Tribunal in various ways. This interviewee is convinced that in the past few years, the domestic courts have improved their performance, especially in Serbia, less so in Croatia, and the least progress is observed in BiH. This interlocutor is convinced that the expiring mandate of the ICTY is an opportunity for the countries and peoples of the region, who – according to this interviewee – can find solutions to their problems among themselves (“Why should foreigners try local citizens, when it pleases neither the Serbs, nor the Croats, nor the Bosniaks?”)

Opinions in the FBiH

The representatives of the political parties in the Federation of BiH express more nuanced evaluations and opinions on the work of the legal institutions.

The SDA representative believes that “the Hague Tribunal is the best institution that the international community has founded. (...) This court is a neutral institution, which has nevertheless strived to remain beyond the influence of global politics, occasionally more or less successfully.”

This interviewee suggests that politicians should not comment on the work of the courts but create good conditions for them to function in a transparent and professional way. Parliamentarians should define strategies for dealing with the past, but may not interfere with the work of the prosecution and courts. According to this interviewee, the Court of BiH has fully justified its existence, although the state did not have sufficient funds to employ more judges and prosecutors, and create a better infrastructure. According to this interlocutor, the Hague Tribunal can close as soon as Karadžić, Mladić and Hadžić are tried and once all the cases that go beyond the capacities of domestic courts are completed. However, this interviewee suggests that the ICTY should maintain a supervising role in order to guarantee that high standards are established in the work of the domestic courts.

The DNZ representative also gives positive marks to the work of the Hague Tribunal, but notes that it operates too slowly. She complains that proceedings take a long time, many criminals have not been taken to court, and many victims have already died, or will not get to see the perpetrators convicted. The same applies to the courts in the countries of the region: although they are stepping up, their work is still very sluggish, and their politicisation is evident. Nevertheless, this interviewee believes that the termination of the activities of the Hague Tribunal will force the local judiciary to speed up its activities.

The SDP representative notes that the ICTY has provided good foundations for the process of reconciliation, in particular through documentation. The Tribunal had three goals: punish the criminals, acknowledge the victims and initiate the reconciliation process, with the aim of preventing any new conflicts. According to this interlocutor, it was successful in the first two goals, while the third one is a task for political institutions and civil society. This interviewee also believes that after the trials of Karadžić, Mladić and Hadžić, the mission of the Hague Tribunal will be completed. He hopes that the domestic courts will do what the Hague Tribunal cannot do. A precondition for this is close and professional cooperation among the courts in the region: it is not right that a court in Belgrade should try differently than a court in Sarajevo. This politician recommends that the ICTY should continue harmonising the standards of the domestic courts. Furthermore, it should find a just solution with regard to the further use of its archives. The president of the NSRZB believes that both the Hague Tribunal and the domestic courts in the region are operating too slowly, and that politics interferes too much into the work of all these courts (the same applies to the work of fact-finding commissions). Nevertheless, he is convinced that the processing of war crimes must be left to the domestic courts as soon as possible.

The representative of the SBiH also believes that the Hague Tribunal should have operated more professionally and free from political influence. Nevertheless, he thinks that it has opened the process of reconciliation. In his opinion, the domestic courts are also still strongly influenced by ideologies. As it is, the perpetrators of genocide are convicted, but not the ideologues (such as Dobrica Ćosić⁵ and others). He thinks

5 Dobrica Ćosić is a Serbian writer, and a Serb nationalist theorist who strongly influenced the national revival movement in

that the ICTY should not cease its operations until the key ideologues of the war are brought to justice.

The representative of the HDZ does not agree with some of the ICTY's judgments. In spite of this, he insists that its work should be supported. But he also suggests that the ICTY should be "more aggressive" towards Serbia, which started the war. In his view, the domestic courts must take responsibility for further prosecution of war crimes: Serbia, which seeks to take up cases before anyone else does, should not be allowed to have primacy in this. He is convinced that numerous war crimes committed against Croats have never been prosecuted, which requires an urgent resolution by the courts.

With regard to fact-finding commissions, the interviewees also express different assessments. The work of fact-finding commissions was negatively appraised by the interviewees in the RS. They stress that these were driven by the international community, or their operation was subordinated to needs dictated by the current political agenda. In contrast, all party representatives in the FBiH express positive assessments of the work of the commissions and state that they have acquired important documents.

Assessments of the potential of a regional fact-finding commission (REKOM)

Opinions in the RS

The representative of the PDP is convinced that the legacies of the wars can only be comprehended in a regional context. At the same time, he recommends that a regional commission can only go public with well-established facts. Furthermore, he warns that it must not be a platform for public self-promotion of persons who present themselves as moral arbiters. Such initiatives require credible personalities and people who are unburdened by the war events and politics.

The representative of the SDS welcomes REKOM as a home-grown initiative. He is convinced that people in the region know best what was happening during the war. The DP representative deems the initiative to be essential for transitional justice but he is also convinced that NGOs cannot carry this process to its end. Instead, the states and the legal institutions should take over.

The representative of the SNSD shares this view. He thinks that individuals receive large amounts of money for promoting this initiative, but soon lose broader support. He mentions as an example that the most significant victims' organisations in the RS and the FBiH have left the REKOM coalition. He suggests that the process of transitional justice needs a "bottom-up" approach, starting from the victims themselves, the ordinary people, as well as a "top-down" approach, meaning that these initiatives would from then on be run by the governments.

Opinions in the FBiH

The representative of the SDA thinks scholars should play the leading role in the operation of REKOM, and civil society should only be included to the extent that is necessary. He is concerned that NGOs "run out of breath" when trying to complete such projects and that support from governments is needed. These should provide all necessary resources for a regional commission, but without any political interference in its operations. This interviewee reports that the president of the SDA himself signed the Statute of REKOM,

Serbia in the 1980s. He was President of the Federal Republic of Yugoslavia in 1992/93. He was strongly committed to Tito's vision of a united Yugoslavia and clearly opposed to more decentralised development of the country. In particular, he argued against aspirations to grant greater autonomy to Kosovo and Vojvodina and therefore broke with the regime. He was an active member of the Serbian Academy of Sciences and Arts, and supported the regime of Slobodan Milošević in Serbia 1989. His literary work includes many historical novels and essays about the tribulations of the Serbs, and dealing with the danger of decline of Serbia. He supported the Serbian operations when the war started in 1991, and issued statements warning that the Serbian people were threatened by a "Muslim hegemony". Later on Čosić turned against Milošević and had to leave his post. In 2000 he joined the resistance movement against the Milošević regime. See www.spiegel.de/politik/ausland/0,1518,druck-549978,00; www.spiegel.de/spiegel/print/d-13855523.html. Today he continues to blame "Muslims" for having planned to eliminate Serbs from the Republic of Bosnia-Herzegovina (http://www.helsinki.org.rs/tjsrebrenica_t10.html) and denies that the massacre in Srebrenica took place (<http://www.n-tv.de/politik/dossier/Voelkermord-spaltet-Serbien-article735661.html>).

thereby making a clear statement towards reconciliation.⁶

The representative of the DNZ appreciates the initiators' good intentions to document and collect factual evidence and preserve this for future generations. She also welcomes the concept that the victims have a right to speak out on what happened. However, she is concerned that the drivers of the campaign have lost their way as personal disagreements emerged, and the process increasingly lacks transparency.

The SDP representative highlights the potential of NGOs and the pacifist civic sphere, and of the media, which have all contributed a great deal to dealing with the past in the countries of the region. However, in his view, a regional commission should also include politicians (Members of Parliament, members of the BiH Presidency or presidents of states, prime ministers etc.). At the same time he expresses concern that there is not much space for a dialogue based on facts, in particular in Bosnian reality, due to frequent election campaigns and many parties employing polarising rhetoric as an instrument for gathering votes. Therefore REKOM should not set objectives that are too ambitious from the outset. However, it could help to resolve the question of compensation for war victims, which is of exceptional importance in the process of reconciliation. Furthermore, this interviewee suggests that apart from the regional level, the local level should also be addressed.

The president of the NSRZB supports the REKOM initiative but strongly recommends that it should remain outside the sphere of politics, particularly in a situation where democratic institutions do not have the capacity to deal with such challenges.

The SBiH representative welcomes the regional approach but also shares the view that the local level should be involved. He believes that only civil society, free from political impacts, can successfully deal with the task of regional fact-finding. Nevertheless, he expresses reservations towards the campaign, due to disagreements that emerged among the leaders of the initiative.

In contrast to the above-mentioned voices, the representative of the HDZ BiH thinks that the existing institutions provide a perfect basis for transitional justice and no additional mechanism is needed. He is opposed to any regional commission as he believes that the experiences of the different countries cannot be covered by one and the same approach. In particular, he points out that Serbia, for instance, did not experience war on its territory; moreover, all of them should first of all resolve the disputed issues in their respective states.

7.1.4 Understanding the concepts of truth, justice, and reconciliation

Opinions in the RS

In the opinion of the representative of the PDP, the concepts of truth, justice, and reconciliation (in this order) constitute the substance of the process of coming to terms with the past. There is no justice without truth, nor reconciliation without justice. What happened cannot be repaired but establishing the facts can form a first step on the path towards reconciliation. The SDS representative highlights that each side in BiH and the region has its own political truth about the past. All sides should respect this. Getting to the common core of all these truths – as a basis for reconciliation – requires time and patience, and a relaxed atmosphere between nations. The DP representative fully shares this view, as does the SNSD representative, but in contrast to the aforementioned view he believes that all the different truths must respect and tolerate each other.

Opinions in the FBiH

For the interviewed politicians from the Federation of BiH, the relationship between the concepts (truth,

⁶ The president of SDA, Sulejman Tihić, signed the REKOM initiative on 26 April 2011, arguing that it is important for the past, and particularly for the future. Tihić also said that he was a victim of torture in five camps during the war in BiH and witnessed numerous crimes (Oslobođenje, Sarajevo, 27 April 2011).

justice and reconciliation) is more complex.

According to the SDA representative, the order is clear (truth comes first, followed by justice, and finally reconciliation), however this is an ideal model. He thinks that implementing these concepts requires political will, time, and resources. He believes that if the international community helps the countries in the region on their common path towards the EU, perhaps in a few decades, it may be possible to talk about reconciliation.

The SBiH representative also agrees with the prioritisation, to establish first the factual truth, and, second, to accomplish judicial justice, which is then followed by reconciliation as a painstaking process. For the DNZ representative, truth is necessary for reconciliation, and only once real reconciliation is accomplished does it become possible to accomplish justice. Thus, truth comes first, as satisfaction for victims, followed by the process of reconciliation, and with it the ability of people to accept justified statements about the past events.

According to the SDP representative, justice is only possible through the judicial process. These must be based on facts and their analysis, which is also the basis for reconciliation. The NSRZB representative is convinced that all of these processes (serving justice, truth recovery and reconciliation) run in parallel. However, he is convinced that striving for a “common truth” is a waste of time. Instead, it is necessary to work and create conditions for normal life and institutions that people will trust, and afterwards, these processes will go on, following their own logic.

The HDZ BiH argues that those who were involved in war events must confront the past, and truth must be established. He is convinced that justice cannot be served “without truth that is accepted by all of us”. Only then will the process of reconciliation be opened.

Preconditions for and obstacles to reconciliation

Opinions in the RS

According to the PDP all states and all national groups share the guilt for what happened in the past. Thus, all of them must first reconcile with themselves, and then with all the others. The joint activities of the Presidents of Serbia and Croatia, Tadić and Josipović, are mentioned as a good example of initiatives that might enhance reconciliation, as they demonstrate that dialogue between two sides that were in a war is possible. Finally, this interviewee states, one must visit one’s neighbours and pay respect to their victims. Members of the BiH Presidency, members of the Council of Ministers and other institutions on all political levels should set an example for citizens.

In the view of the SDS representative, reconciliation is necessary and possible. He thinks that people still have vivid memories of the time when they used to live together, and the cultures permeate each other. However, the rhetoric of the war is kept alive and wartime topics are overemphasised by the media; this should be changed. Members of Parliament should exemplify the culture of dialogue instead of making public apologies on behalf of “their” peoples. This interviewee believes that the process of reconciliation is inevitable but takes time. The main obstacle comes from politics, which is full of hypocrisy. Citizens, victims’ organisations, and media must distance themselves from such politics.

The SNSD believes that one of the most important obstacles to reconciliation is that the media are controlled, and that politicians have no vision of what to do, “especially politicians based in Sarajevo”. He thinks that more positive examples should be presented to the public. One should show, for instance, how people live in Zvornik, a municipality that suffered the gravest inter-ethnic conflicts during the war, but is no longer in conflict today, as people meet each other, trade, and work together. Furthermore, he believes that politicians must learn not to use belligerent arguments and distance themselves from the disgraceful practice of counting victims for political purposes. This interviewee is convinced that there is a prospect for reconciliation, because peace is necessary for continuing normal life. The DP representative also points out that there are already sound inter-ethnic relations established among people in everyday life, both in

BiH and the region, but there is a lack of political concepts to support this.

Opinions in the FBiH

According to the representative of the SDA, politics in BiH are a continuation of the war and this is the basic obstacle to reconciliation. This person insists that the hate speech in politics and media must be stopped. The citizens need economic and social conditions for normal life, and particular support has to be provided for returnees and others who changed their places of residence. This interviewee is concerned that without economic prospects, frustrations will increase, as will the space for political manipulation. Reconciliation should proceed in parallel to the process of Euro-Atlantic integration: Young people should learn from European politicians, and not from people who intend to win votes through warmongering propaganda. This interviewee is convinced that all citizens in the region want to join the EU, which may provide the ground for a process of reconciliation. At the same time, this person insists that – as a precondition for reconciliation – some differences need to be acknowledged, in particular with regard to the numbers of victims. For example, the number of approximately eight thousand Bosniaks from Srebrenica who were killed cannot be equated with the number of several hundred that were killed (in this municipality) on the other side. Such equation is dangerous and questions the collective dignity of a people to which most of the victims belong. Crimes should not be equated in an unprincipled way, and perpetrators have to be named. Nations are not guilty; individuals are.

The DNZ representative shares this view and suggests that a declaration should be drafted in order to spell out a political rejection of any collective guilt of nations in the region. Parliaments in all the states in the region should cooperate on that. Furthermore, the interviewee sees a need for a generational shift of politicians in order to achieve enduring peace and reconciliation between peoples and states.

The NSRZB representative comes to a very similar conclusion. He believes that as long as mono-ethnic parties are in power in BiH and in the broader area, it will be hard to achieve reconciliation: “In multi-ethnic societies, mono-ethnic parties are a source of conflict.” As time goes on, younger generations will come to understand this and start building more inclusive institutions that will accommodate “every man and woman, in each part of BiH. That is when reconciliation will be achieved.” For the time being, this interviewee very much appreciates that parliaments are passing acts which confirm that crimes have been committed (such as the Declaration on Srebrenica in the Parliament of Serbia).

According to the SBiH representative, reconciliation includes tolerance and peaceful co-existence, and this has to be based on economic cooperation. As a positive example, this interviewee points to the relations between France and Germany. Thus, there is a real chance for reconciliation, although it takes time for everything to “settle down”. Civil society should help to establish tolerance and constantly criticise politicians who turn state institutions and parliaments into warmongering podiums.

The HDZ BiH shares this view and believes there should be no room for such politics. Civil society and other forces should raise their voice against the language of hatred. Politicians should give an example of civilised dialogue and make parliaments a model of tolerance. Debates on the past should be based on facts: “Every victim has a name, and the exact number of victims must be known. Now, while we are still searching for mortal remains, unethical manipulation goes on; this is inappropriate for anybody in a public position.”

7.1.5 Contributions of the political parties: programmes and cooperation in the field of dealing with the past

Neither in the Federation of BiH nor in the RS has any of the political parties explicitly addressed dealing with the past, peacebuilding or reconciliation in its programme. Some of the parties maintain relations with war veterans’ unions, victims’ associations, refugee organisations or other civil society actors. The PDP representative outlines how the party promotes reconciliation through the public activities of its

leading figures. The PDP maintains contacts with veterans' associations, and cooperates with these on a sporadic basis, as the need arises.

The SDS representative states that the position of this party is specific in that it "carried the war on its shoulders", as the former president was Radovan Karadžić, and the party had to deal with this legacy. Still, this person reports that the SDS left the war behind and is a party of peace now, open to dialogue and supporting all processes that contribute to reconciliation. Furthermore, it cooperates with veterans' organisations, families of killed combatants, and relatives of civilian victims (via correspondence, in order not to interfere with these organisations' activities).

The DP representative reports that the greatest ethical capital of this party is the political and human statement of its president Dragan Čavić about the crimes committed in Srebrenica.⁷ He was the first to make such a great step forward. Due to this position, the party was punished at the next elections. The DP does not have much experience in cooperating with organisations that deal with the past.

The SNSD representative reports that his party does not undertake particular activities with respect to the issues of truth, justice, and reconciliation. He is convinced that this process should be driven by individuals "from below".

The SDA, as its representative points out, advocates the normalisation of the situation on the inter-state level in the whole region, and thus contributes to the process of reconciliation. Cooperation with victims' associations is one of its top priorities, although the party is not in a position to support them financially. The SDA also actively supports the return of refugees and displaced persons.

The HDZ BiH also actively supports war veterans' unions and victims' associations.

According to the representative of the DNZ, this party maintains special cooperation with the veterans' organisation of "People's Defence" ("Narodna odbrana"). With support from the Helsinki Committee for Human Rights, the DNZ succeeded in securing the judgment of the Constitutional Court that gave the members of Narodna odbrana equal social rights to those of the combatants of other armed units in BiH. They help civilian victims to have their status recognised.

The SDP representative states that his party aims to create a positive environment in which the process of coming to terms with the past would advance more smoothly. The party aims to establish dialogue based on facts. Given that numerous members of the SDP are civil society activists, the SDP maintains close contacts with CSOs.

The SBiH representative concedes that this party has come to realise that it lacks substance in this respect, and he is convinced that his party is going to increase relations with civil society associations in the future.

As the representative of the NSRZB outlines, this party has contributed to the process of reconciliation in BiH and in the broader area, in particular by virtue of its multi-ethnic internal structure: NSRZB operates in both entities, involves members from all ethnic groups, provides support to all vulnerable groups in BiH and thus serves as a paradigm for reconciliation.

7.1.6 Further perspectives: indemnity for war victims

In order to come to terms with the past, several interviewees elaborate explicitly or implicitly on the problem of indemnity for war victims. In the RS, the PDP engages for the needs of returnees, refugees and displaced persons. This includes in particular the demands of Serbs in Croatia regarding property restitution. To give

⁷ In 2004, under pressure from the High Representative Paddy Ashdown, the Government of Republika Srpska established the Commission for Investigation of the Events in Srebrenica. The Commission published its report in October 2004, where it confirmed that 8,731 persons from the area of Srebrenica were missing or killed. The President of Republika Srpska, Dragan Čavić, went on TV and said that the Serb forces killed several thousand civilians in Srebrenica, in violation of international law; he also pointed out that Srebrenica is a dark chapter of Serb history. In his television statement he used the term "massacre" instead of the word "genocide". On 10 November 2004, the Government of Republika Srpska delivered its official apology in which it said: "The report clearly shows that enormous crimes were committed in the region of Srebrenica in July 1995." Suad Smajić, "O jeziku mržnje i dvostrukog smisla" ("On the language of hatred and double meaning"), *Slobodna misao* no. 4, Tuzla 2005, 46).

back to people what was taken away from them is seen as the first step in the policy of restitution. The SDS representative insists that a permanent solution to the status of the war veterans, invalids and civilian victims needs to be found, and the governments ought to deal with such issues. The representatives of the SNSD and the DP also think that states and governments should find solutions through judicial and welfare systems, but given the current relations between the states it cannot be expected that victims could soon receive fair compensations.

In the FBiH, political parties are more specific on this issue. The SDA representative first of all insists on coherent implementation of Annex 7 of the Dayton Peace Agreement, which contains provisions on the return of displaced persons and refugees to their homes and fair compensation for all damages suffered by anybody during the war. As reported, with international assistance the housing stock for returnees has been partially reconstructed and property returned, but their living conditions have not substantially improved. According to this interviewee, neither entity authorities nor the state institutions have done enough for the returnees and victims to have a dignified life. The representative of the DNZ also insists that victims should receive restitution of their property and the right to return to their places of residence from before the war, as well as normal economic and social conditions for everyday life. This interviewee points to the problem that as time passes, the issue of compensation becomes less and less significant because people lose the will to struggle for their rights. Furthermore, many victims and their families went to live in foreign countries and are not going to return. The representative of the SDP also points to the need for compensation, without further elaborating on the specific mechanisms through which the victims would receive this. The representative of the SBiH thinks along similar lines, stating that, apart from material indemnity, it is important for each victim to find their peace, which is only possible if they are understood as victims, if the truth about their suffering is both publicly asserted and accepted, and if perpetrators are punished. The NSRZB advocates economic development, after which it will be possible to find a long-term solution to the issue of victims' compensation.

7.1.7 Summary and conclusions

Representatives of political parties in the RS and the FBiH agree that a process of addressing the past is necessary, but there are differences regarding the conditions for its successful initiation. Opinions range from the view that the judgments of the Hague Tribunal and the domestic courts in the countries of the region provide a good basis to start such a process, to the proposal that democratic institutions, a culture of dialogue and a common value system need to be developed before such a process can start.

Assessments of TJ mechanisms

The assessments of the courts reveal some differences. Three party representatives from the RS think that the ICTY has largely succumbed to political influence and that there is distrust towards the court and its rulings among the public, particularly among Serbs from all the countries of the region. This group of interviewees believes that the domestic courts are politicised, hypocritical, and insufficiently professional, but all in all, the work of domestic courts has somewhat improved in the last two years. In two cases, the opinion is that Serbia is the most advanced in this respect, while BiH lags behind. Representatives of parties from the FBiH think that the Hague Tribunal is the best mechanism established by the international community and that its operation constitutes the basis for any further activity in the field of dealing with the past and reconciliation. In three cases, there were objections that the Tribunal was subject to different kinds of political influence. In two cases, there were complaints regarding its slowness, and in one case regarding the inconsistent penal policies of the Tribunal and its lenient attitude to some countries of the region. Party representatives in the FBiH also express mostly positive opinions on the domestic judiciary, although complaints are voiced concerning its slowness and insufficient technical and human resources. The cessation of the activities of the Hague Tribunal is seen in one case as a great threat; in another case, it was suggested that the Hague Tribunal should somehow monitor the domestic courts after the end of

its mandate, while in four cases there is a unanimous opinion that domestic courts in the countries of the region should take over the remaining cases.

The fact-finding commissions that have been established in the past are negatively appraised by the interviewees in the RS, and seen either as internationally driven projects or as subordinated to the needs of the current domestic political agenda. In the FBiH, the work of the commissions is positively assessed. It is argued that they have acquired important documents.

The REKOM initiative was rated as good and desirable in the RS, but all interviewees in this group express doubts concerning the moral credibility of the drivers of this campaign and concerning the ability of these “NGO elites” to bring the process to a conclusion.

The representatives of parties from the BiH Federation all appreciate the regional approach, provided that certain prerequisites are respected. They are also convinced that NGOs alone cannot carry out the process, and politically independent scholarly elites should be at the forefront; governments should give external support to the process, but without putting any political pressure on the actors. One person suggests that Members of Parliaments and government officials should also be included. Only one party representative explicitly opposed the regional approach, arguing that not all countries have experienced war on their territories.

Understanding the concepts of truth, justice, and reconciliation

All party representatives from the RS think that there is a pluralism of political truths both in the region and in BiH itself; they believe that the “common minimum of truth” (DP) about the events in the past should be reached by establishing the undisputed facts, but the “specific truths” (DP) of every collective should still be respected and mutually tolerated.

The party representatives from the FBiH present the following ideas: In one case, the threefold pattern of truth, justice and reconciliation is considered ideal but impossible to achieve. Two persons see justice based on facts as the sole precondition for reconciliation. In one case, the opinion was that truth and justice go along with each other, while the reconciliation process will be much slower, and needs to be facilitated by the accession of the countries of the region to the European Union. Another opinion suggests that a strong focus should be put on the economy and development, after which reconciliation would follow by itself. Apparently, in Republika Srpska there is more emphasis on the need to tolerate three different truths about the past, while in the BiH Federation there is a greater insistence on the process of establishing facts, and judicial justice.

The process of reconciliation is seen as a continuing challenge by all interviewees, but there are different ideas of how to approach it. In the RS, political parties insist more on the view that all parties involved bear some guilt for what happened in the past. They are convinced that guilt for war crimes has to be established but on an individual level. Furthermore, they insist on non-interference of foreigners in local matters, and suggest advancing social and economic development.

Beyond truth recovery, different notions of “indemnity for the victims” are discussed. All parties from the RS think that state institutions should deal with this issue. The parties from the FBiH suggest consistent implementation of policies of return (of refugees and IDPs to the places of pre-war residence) and property restitution, providing jobs and “economic and social dignity” (DNZ) for the victims and their families; paying compensation to the victims; and, as moral indemnity – punishing the perpetrators of the crimes and public condemnation of the crimes. Furthermore, politicians from the FBiH suggest that a strategy of reconciliation must include establishing the exact number of victims and respecting the total number of victims of each ethnic community. They are convinced that the process needs to be based on the activities of civil society as well as state authorities in the region. It is also suggested that a single regional court for war crimes should be established

The interviewees insist on neutrality, moral credibility and the expertise of the drivers of the process of dealing with the past, liberated from political influences; while as to the focus of this process, most

of the party representatives interviewed believe that it lies in the institutions of the judiciary, academia, and civil society. In one case, there was a proposal to include Members of Parliaments and other political officials as well among the actors who deal with these issues. No political party has specifically addressed the issues of dealing with the past in its programme or strategy documents, nor do the parties believe that these issues need special elaboration in their programmes.

Keeping in mind the complex political situation in Bosnia and Herzegovina and the pronounced ethnopolitical divisions, the author is positively surprised by the similarity, or even overlap, of the views on some key questions of facing the past and reconciliation in the region:

- ≡ everybody considers the process of dealing with the past to be essential and inevitable;
- ≡ with minor exceptions, there is a conviction that the domestic judiciary is able to take over the further processing of war crimes;
- ≡ there is agreement that victims and perpetrators of crimes must be named, and that individual responsibility has to be established, instead of holding collectives guilty;
- ≡ there is agreement that establishing the truth in the factual sense is the basis for any dialogue;
- ≡ there is an awareness of the different notions of truth and narratives about the past, but there is an opinion that the different discourses do not preclude the possibility of agreement about a “minimum of common factual truth”;
- ≡ there is a consensus about the significance of truth, justice, and reconciliation in the overall project of transitional justice. However, the positions on how these notions relate to each other differ across the entities. The same applies to assessments of the roles that citizens, peoples, and political actors can take in the process of reconciliation.

At the same time, several differences have also emerged:

- ≡ the results of the activities of the Hague Tribunal are not entirely acceptable for the majority of the interviewed party representatives from the RS, while for those from the Federation the facts and evidence established by the ICTY are an historic achievement and basis for a dialogue about the past;
- ≡ politicians in the RS insist on “calming down” any major public discussion about the past and prefer to focus on economic development and normalisation of everyday life, while leaving work in the domain of the past and reconciliation to professionals (e.g. academia and the judiciary); in contrast, the interviewed representatives from the FBiH insist on intensive engagement with the issues of the past in public discourse;
- ≡ parties in the Federation invest more trust in civil society and cooperation with CSOs in the process of transitional justice, while parties in Republika Srpska express their distrust, or even argue that some of the NGOs that are drivers of current initiatives in the domain of dealing with the past have put a question mark over the credibility of the whole process.

The similarity and overlap of positions can serve as a basis on which to build a framework for a joint strategy in dealing with the past and to develop a dialogue that would ease the political relations in the region, thus contributing to the reconciliation process. Still, one has to keep in mind the fact that no party programme specifically determines the modes of action in this field, and apparently some parties are reluctant to address these issues as they would have to give up the space for ethno-nationalistic and populist manoeuvring. Nevertheless, civil society associations that engage in dealing with the past should feel encouraged to proactively start dialogue with the relevant political parties instead of merely selecting collocutors to fit with their project objectives. As centres of political life in BiH, political parties must be pushed to get involved in the processes of facing the past and make their contribution to reconciliation.

Analysis of Interviews with Representatives of Political Parties in Serbia

Katarina Milićević

chapter 7.2

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7.2.1 Introduction

The analysis is based on interviews with representatives of six parties: *Slavica Djukić Dejanović* (PS-1), Speaker of the National Assembly of the Republic of Serbia, vice-president of the Socialist Party of Serbia; *Suzana Grubješić* (PS-2), vice-president of G-17 Plus¹; *Konstantin Samofalov* (PS-3), Member of the National Assembly of the Republic of Serbia, member of the Democratic Party and member of the Committee for Defence and Security of the National Assembly of the Republic of Serbia; *Aleksandar Čotrić* (PS-4), vice-president of the Serbian Renewal Movement and Member of the National Assembly of the Republic of Serbia; *Nenad Čanak* (PS-5), president of Social Democrats' League of Vojvodina and Member of the National Assembly of the Republic of Serbia; *Dujo Runje* (PS-6), vice-president of the Democratic Federation of the Croats in Vojvodina and Member of the Assembly of the Autonomous Province of Vojvodina.

The interviews were conducted in Belgrade in November and December 2010. It is important to note that in this period, Serbia had still not arrested the prominent war crimes suspects Ratko Mladić and Goran Hadžić. The political context in which the field research was conducted was marked by several rather contradictory developments. In March 2010, the Parliament of Serbia had adopted the Declaration on Condemnation of Crimes in Srebrenica, with support from 127 of 250 MPs who voted in favour of this resolution.² This met with great opposition from right-wing and extremist groups in Serbia.³ In October 2010, around 6,000 members of right-wing organisations attacked the Gay Pride parade in Belgrade, and were countered by strong police forces. During the riots 160 persons (including 124 police officers) were injured and 249 anti-gay protesters (among them many hooligans) were arrested⁴, of whom 100 were taken into custody and 80 were convicted⁵. During the riots, the premises of the Democratic and Socialist Parties of Serbia (parties constituting the governing coalition) were set on fire.⁶ Several days later, at the football match between Italy and Serbia in Genoa, there were further violent incidents involving extremists from Serbia. The riots were accompanied by statements glorifying Ratko Mladić and chants of 'Knife, wire, Srebrenica'.⁷ In this atmosphere it was very difficult to schedule an interview with members of the political parties who supported such views. Whilst representatives of the democratic parties and ruling parties accepted the invitation immediately, interviews with representatives of the Serbian Radical Party, the Serbian Progressive Party and the Democratic Party of Serbia could not be conducted.

1 In the new government established in July 2012, Suzana Grubješić became Deputy Prime Minister.

2 See www.parlament.gov.rs.

3 See www.b92.net/info/vesti/index.php?yyyy=2010&mm=03&dd=31&nav_id=421440; www.b92.net/info/vesti/index.php?yyyy=2010&mm=03&dd=30&nav_category=11&nav_id=421185; www.rts.rs/page/stories/sr/story/9/Srbija/599831/%22Srebrenica+-+ne+u+moje+ime%22.html.

4 See www.blic.rs/Vesti/Hronika/211575/U-pritvoru-66-od-71-osumnjicenog-za-nerede; www.blic.rs/Vesti/Hronika/213683/Jos-traje-istraga-o-neredima-na-Paradi-ponosa

5 More details at www.blic.rs/Vesti/Drustvo/211212/Parada-ponosa-završena-huligani-pljackali-grad-uhapsen-vodja-Obraza; www.blic.rs/Vesti/Drustvo/211264/Divljenje-huligana-nakon-Parade-ponosa-Hronologija-dogadjaja

6 See www.blic.rs/Vesti/Politika/211374/LDP-trazi-vanrednu-sednicu-DS-u-nasilju-vidi-politicku-pozadinu-SRS-SNS-i-DSS-optuzuju-vlast

7 See www.b92.net/sport/fudbal/vesti.php?dd=13&mm=10&nav_id=465117&yyyy=2010; www.b92.net/info/vesti/index.php?yyyy=2010&mm=10&dd=13&nav_category=11&nav_id=465085; www.b92.net/info/vesti/index.php?yyyy=2010&mm=10&dd=12&nav_category=12&nav_id=464913; www.blic.rs/Vesti/Politika/211728/Djukic-Dejanovic-Ne-iskljucujem-povezanost-nereda-u-Beogradu-i-Djenovi; <http://www.blic.rs/Vesti/Politika/211701/Homen-Cilj-ekstremnih-grupa-da-se-zemlja-ne-promeni>

7.2.2 The relevance and dynamic of dealing with the past

All of the interviewed politicians shared the opinion that processes of dealing with the past are necessary for peace in the Western Balkans. As Aleksandar Čotrić (Serbian Renewal Movement) states, “dealing with the past is primarily necessary for the sake of the future”. Therefore, he and his party “are in complete agreement that it is necessary to carry out the process in a candid and all-encompassing way (...) in order to re-examine what happened, but also in order for some ugly things (...) never to occur again.” (PS-4) Nenad Čanak (Social Democrats’ League of Vojvodina) believes that remembrance is necessary to counter the trend for relativisation of crimes:

“Writing on a wall in Dachau reads: ‘Whoever works towards forgetting this works towards this happening again’. In this regard, dealing with the 1990s in the region of South-East Europe is in fact a modest but significant pledge that evils from that period will not happen again.” (PS-5)

In order to understand the causes of the wars, he recommends starting with 1985, when the Memorandum of the Serbian Academy of Science and Arts was written, “an ideological platform from which everything started (...), which doesn’t mean there is no responsibility on other sides as well, but there is, naturally, far, far less of it.” (PS-5) Čanak also suggests reflecting on the role of the Serbian Orthodox Church, as well as the authorities (“both federal ones and those of the Republic of Serbia”; PS-5), which contributed to fuelling the conflict. Čanak is convinced that it is necessary to bring people who took part in these activities to justice before the courts, and he suggests that a documentation centre should be dedicated to the period of 1985-1995.

Konstantin Samofalov (Democratic Party) believes that “if we wish to build a shared future within Europe that is ultimately based on the concept of reconciliation, (...) it is necessary for us to take this responsibility, but this must involve all the sides who took part in the conflicts, without having a single side judged as the only perpetrator.” (PS-3)

Suzana Grubješić (G-17 Plus) believes that “without dealing with the past one cannot move towards building normal societies in the region of the former Yugoslavia.” However, she is critical of many of the activities carried out so far. She observes “a hyperinflation (...) of commissions, boards, work groups, (...) in each one of the states of the former Yugoslavia” addressing the past, but “results are next to non-existent”. In particular, she deplores that political leaders are not ready “to simply state certain facts”. At the same time she warns that such a process cannot be imposed from the outside: “It is only us, who live in these regions, who can do it. Otherwise, if it is imposed from the outside, it immediately causes tensions in parts of the former Yugoslavia.” (PS -2)

Slavica Djukić Dejanović (Socialist Party of Serbia) believes that passing the Act on Srebrenica was a particularly important step in the process of dealing with the past in Serbia:

“In my capacity as the Speaker of the Parliament, I was able to take a step which I considered to be a very important one, to condemn members of our people who committed atrocities in the entire region in the past. (...) I believe we should make an effort to voice criticism of members of our own people, and apologise to families who have lost their loved ones. And if we manage to do it, and by that I really do mean all of us, then it is a great contribution to creating an atmosphere of being able to move forward.” (PS-1)

7.2.3 The potential, legitimacy, and acceptance of TJ mechanisms: assessments of the work of the ICTY

Assessing the work of the International Tribunal in The Hague, the interviewees agree that it has helped to establish the facts and gather evidence of crimes that were committed and to hold individuals accountable for them. Concerns are expressed regarding the slowness of the trials:

“The trials take too long; people are held in custody for a long time, with no indictments. The indictments are very thin, I could even say quite unfounded too, and miss the essence to a great extent.” (Nenad Čanak, PS-5)

Suzana Grubješić also doubts the efficiency of the ICTY, and points to the case of Ramush Haradinaj. She reports that during this trial, witnesses were intimidated, which resulted in his being released and then later remanded again. She warns that in Serbia, the general belief is that the ICTY is biased, and “when the Hague Tribunal releases Naser Orić, (...) or when it releases Ramush Haradinaj, then they actually confirm these claims. (...) No one needs to convince me of the impartiality of the court, but, I repeat, justice must be done a lot faster, because everything that is delayed raises more doubts.” (PS-2)

Echoing the criticism of inefficiency, Aleksandar Čotrić maintains that there is disproportion in the number of indicted and convicted when it comes to the Serbian side:

“There is a far greater number of Serbian people, regardless of whether the indicted and convicted are from Serbia, Croatia or Bosnia and Herzegovina, which simply does not correspond with the facts and conditions in the field. Meaning, almost all of the indicted are Serb(ian) leaders. In Croatia, Bosnia and Herzegovina and Serbia, there were no indictments for those most responsible on the Croatian and Bosniak sides.” (PS-4)

He also points to the verdicts in the case of Naser Orić, accused of crimes in Srebrenica and its vicinity, and criticises the Tribunal’s practice of releasing indicted Kosovo Albanians. He is convinced that these decisions have contributed to a lack of public support for the Court and its poor credibility.

Slavica Djukić Dejanović shares the opinion that the Hague Tribunal is “slightly selective”, as “not all criminals from all peoples were represented in court procedures” (PS-1), and Konstantin Samofalov also agrees that the above-mentioned cases may raise concerns about the Tribunal’s objectivity. At the same time, he insists that Serbia should continue to cooperate with the ICTY until all its obligations are fulfilled, and in particular to search for suspected war criminals Ratko Mladić and Goran Hadžić. (PS-3) This view is strongly supported by Suzana Grubješić, who sees a need for the Hague Tribunal to continue its work in order to bring these two men to justice. After accomplishing this task, she believes, the ICTY could close. (PS-2)

Dujo Runje points out that in Serbia and other states of the former Yugoslavia, many people still regard some convicted war criminals as heroes, and there is still a balancing of who has more of their people in The Hague. Therefore, every state should be interested in ensuring that “every single person responsible is taken to The Hague.” (PS-6)

Nenad Čanak is convinced that apart from holding individuals responsible for war crimes, accountability should be established in a broader sense. He thinks that

“the Hague Tribunal has, with its good and honest intention, which I do not want to doubt, actually done a great evil, which is, narrowing the guilt to war criminals alone by [attributing] crimes committed in the war, (...) to a very small number of people, whereas those who participated were far more numerous and far less visible, and hence much more dangerous. (...) Let me remind you that the Hague Tribunal has never convicted a single journalist. And journalists were propagandists. (...) These crimes too must be prosecuted. (PS-5)

He believes that the domestic judiciary should be pushed to address all those broader criminal acts that are excluded from the ICTY's mandate. Furthermore, he recommends that the domestic courts should learn from some mistakes that have been made by the International Tribunal. He thinks that bad public relations policies have contributed to the negative reputation of the Tribunal in Serbia: "People don't get to see the digested versions of the trials that would help them understand what this really is about". He argues that when it comes to PR matters, work must be done with the judiciary in Serbia, too. (PS-5)

Assessments of the work of the domestic courts, prosecutors, and official fact-finding commissions

Most of the interviewees agree that the specialised Chamber for War Crimes in Serbia fulfils its mandate very well. Slavica Djukić Dejanović points to the positive assessment issued by the European Commission in 2010. Konstantin Samofalov is satisfied with the work of this court (PS-3) and Suzana Grubješić is convinced that "Serbian War Crimes Prosecutor Vladimir Vukčević in particular does a responsible, difficult and occasionally very dangerous job. (...) He is one of the persons in this country I trust most." (PS-2)

Nenad Čanak believes that "the prosecutors are trying their best, but they don't have the opportunities to really fulfil their function." (PS-5) Aleksandar Čotrić thinks that the domestic court should have been established much earlier, for then there would have been no need to establish the ICTY. He believes that compared to all the other countries in the region, Serbia has done the most in the field of war crimes prosecution, despite many difficulties.

Unlike the overall positive estimates of the work of the Chamber for War Crimes, the interviewees are not content with the work of the fact-finding commissions established so far. "When you want to delay something, you create a commission, a work group, a task force, whatever (...) So, no, I am not content with their work," says Suzana Grubješić (PS-2), recalling the poor effects of commissions in Serbia. Aleksandar Čotrić shares this view. He particularly singles out the Commission for Truth and Reconciliation (formed in 2001 by the then President of SR Yugoslavia, Vojislav Koštunica), which never presented any results. (PS-4) Nenad Čanak, too, assesses the work of the commissions as "poor", "not because they comprise incompetent people, (...) but because there is no willingness on the part of the state to establish facts." (PS-5)

Assessments of the potential of a regional fact-finding commission: REKOM

The overall assessment of the REKOM initiative is positive, although many of the interviewees concede that they are not very familiar with the campaign. Aleksandar Čotrić thinks that "such a commission needs to be formed, although its establishment is delayed yet again. A lot of time has gone by, some of the evidence has been misplaced, many of the witnesses – victims and perpetrators – are no longer alive, but better late than never." (PS-4).

Slavica Djukić Dejanović also welcomes the initiative: "This is the only way it could make sense for people from all war afflicted regions to come together and try, with the greatest possible impartiality, to determine facts, and on the basis of the facts – the truth." (PS-1)

Dujo Runje completely supports the foundation of REKOM given that "the fate of over 16,000 missing persons is still not clarified, many victims are forgotten, some war criminals are in hiding, and many crimes remain undiscovered." He thinks that the campaign that started in 2006 fell on fruitful soil with most people, and he appreciates that it was supported by the Serbian President Boris Tadić and his Croatian colleague, President Ivo Josipović, and by religious organisations, the European Commission and the European Parliament, the Parliament of the Republic of Serbia, many non-government organisations, and intellectuals from all the countries of the Western Balkans. (PS-6) Runje sees a need for "every single victim to be named", in order to prevent further manipulation with numbers of victims. Furthermore, he sees a need for "all missing persons to be able to rest peacefully in their graves. (...) If a single missing person is found, a single new victim, or a single new criminal is discovered, then REKOM has fulfilled its purpose." (PS-6)

With regard to the composition of REKOM, Aleksandar Čotrić suggests that government representatives of all the countries of the former Yugoslavia should be a part of it, as well as Members of Parliaments, representatives of the prosecutors' offices, the courts, the non-government sector, the media, and historians. Representatives of the international community should also join in and serve as mediators ("I'm afraid we ourselves wouldn't adequately fulfil this role."). Apart from this, Čotrić thinks that "a certain number of professionals are needed who must be paid for this work, so that they are able to engage to the full; then we can expect some results." (PS-4)

However, critical voices are also raised. Nenad Čanak is concerned that establishing a commission on a regional level would require "too many internal compromises that would damage its credibility". Instead he recommends that independent commissions should be installed in every single state, in Serbia, Croatia, Bosnia and Herzegovina, and Kosovo. After completing their work, these commissions should meet and exchange their respective data and "get an idea where these coincide and where they don't coincide. And then on the basis of the non-coinciding data, they should (...) clarify the influence of politics." (PS-5)

Even though most interviewees agree that a regional commission should be implemented, their expectations differ regarding the question whether this endeavour could count on broader political support. Slavica Djukić Dejanović expects some support, but at the same time concedes that there is a danger of such a commission being doomed to fail from the outset. She thinks that the success of REKOM very much depends on how professional its members are and whether it will work in line with objective parameters: "Perhaps people who might even be the most suitable in terms of their intentions (...) should not be elected. I think some new faces should be elected." (PS-1) Suzana Grubješić believes that success also depends on the commission's capacities to collaborate with the courts, with policy-makers, and with the media. Her recommendation is "to go ahead and give it a try, by all means, for there is nothing to lose." (PS-2).

Unlike the above-mentioned interviewees, Nenad Čanak believes that REKOM will not get sufficient political support at this point. Konstantin Samofalov is also sceptical. At the same time, he is convinced that such a commission will only fulfil its true purpose if it is based on a broad consensus. Aleksandar Čotrić states that his party (Serbian Renewal Movement) would support the idea of establishing REKOM by all means. However, he personally has reservations about this project, due to his experiences as a member of the commission for finding the burial site of Draža Mihailović. As a positive example to be learned from, he points to the commission formed in Slovenia that undertook research on the fate of victims of the communist regime, and was firmly backed by the Ministry of the Interior and the Prosecutor's Office.

7.2.4 Understanding the concepts of truth, justice, and reconciliation

All the interviewees were asked to comment on the notions of truth, justice and reconciliation. Suzana Grubješić explains that all of these terms express universal values. She puts these notions in the following order: "Truth first, establishing facts, then justice, court verdicts, or whatever, and then, in the end, reconciliation." (PS-2) Aleksandar Čotrić agrees with this order and also believes that all of these concepts are in a causal relationship. This means that it is necessary to find the truth first, and then dispense justice, which is a "prerequisite for reconciliation." (PS-4)

Nenad Čanak emphasises that the sense of justice and truth cannot be separated anyway:

"I believe the sense of justice being met to be the most important, the perpetrators being punished. The truth is extremely important for this process of justice being met, because justice is not even possible if it were to be met based on untruths. So these are two inseparable things where the truth (...) is merely a tool, a condition for justice being met. (...) Dealing with the fact of who produced evil, that's the truth." (PS-5)

In contrast to the concepts of truth and justice, reconciliation "is not something that can be commanded." According to Čanak, reconciliation will be achieved when people face each other "in lasting stability and

when they come closer to each other through shared communication, based on shared interests.” (PS-5)

For Aleksandar Čotrić, talking about reconciliation is a “phantom” discussion, as it is assumed that the peoples in the region were in conflict with each other. He is convinced that

“the story about conflicts between peoples is nonsense. Because they had lived with each other for decades, not side by side, but together. Every third marriage in Vojvodina used to be multinational. There is no conflict, where’s the conflict in that? No, it’s something completely different.” (PS-5)

Čotrić is convinced that once the political leaders in the newly formed states move towards integration, there will be “no need for any kind of talk of reconciliation.” However, he concedes that there are exceptions, due to distinct degrees of direct war experiences:

“The only parts [of the region] where we can talk about reconciliation are, for instance, Bosnia and Kosovo, because there the relationships were contaminated to the level of personal intolerance. The issue is only to make a lasting life in peace and stability possible.” (PS-5)

For Slavica Djukić Dejanović, truth requires “gathering of relevant facts for each specific situation”, and justice means “acting in compliance with international law, but applied equally to every individual when it comes to crimes.” She thinks that reconciliation is necessary and will “go much faster through professional relations and through establishing certain other forms of collaboration.” (PS-1) In her view, reconciliation follows economic and cultural collaboration between states, after decades, and progress in this field will largely depend on the combination of initiatives by state institutions and civil society.

Dujo Runje explains that the notions of truth, justice and reconciliation cannot be separated from each other. Only together can these concepts unfold their full meaning. Establishing the truth means to “objectively determine what had really happened, when and under what conditions.” However, mere facts need to be put in a context. Truth has to be followed by justice and acknowledgment for the victims, and “reconciliation means acceptance of recognising truth and justice as a guarantee for future co-existence.” (PS-6)

For Konstantin Samofalov, the notion of truth entails “clearly defining what is true and what is simply not true, what really happened”, in order to prevent denial or relativisation of crimes:

“We cannot relativise what happened in Srebrenica, we cannot allow representatives of some political parties to say that just a few hundred people were killed there. Ultimately, it is very dangerous, manipulating numbers in this manner. If there had been a single person killed in the name of something that had not been Serbian politics, then that is a horrible thing, but in fact there were people standing behind it who claimed they had done it in the name of the Serbs.” (PS-3)

Samofalov believes that reconciliation means that every side should take their share of responsibility and accept that crimes were committed in their name. As long as all three sides in the conflict do not accept their responsibility, reconciliation cannot be achieved:

“That’s why I say that I hope representatives of all three peoples will, in their own parliaments, adopt decisions similar to ours. I by no means attempt to equalise responsibility or to say who is more or less guilty. Ultimately, history might make better analyses. But in terms of what responsibility is, I hope everyone will do their share of the work.” (PS-3)

Preconditions for and obstacles to reconciliation

With regard to the possibility of reconciliation in the Western Balkans and who should reconcile with whom, Suzana Grubješić explains:

“For a start, we should all apologise to each other for what we did to each other, and Serbs and Bosniaks, Serbs and Croats, Bosniaks and Croats should reconcile, and eventually, Serbs and Albanians.” (PS-2)

As a main obstacle to reconciliation, she sees “the attitude that we are good, and all others are bad, and we have done good things, and others have done bad things; this needs to be changed in order to move forward.” (PS-2) She thinks that “the film about the ‘Scorpions’ caused a shock in Serbia, and the film of Srebrenica too, the famous liberation of Vukovar is slowly starting to be broached, and the siege of Sarajevo and all the things that were happening... Slowly, public opinion is opening up.” (PS-2)

Aleksandar Čotrić says he always feels fear when he reads anonymous comments in internet portals, and sees how much hate is reflected by these forums, how much prejudice, and desire to repeat some conflicts (PS-4). He believes that for the process of reconciliation it is most important to establish dialogue, with as many encounters with representatives of the Bosniak and Croat(ian) peoples as possible, and to include representatives of governments, non-government sectors, the media, and historians. He is convinced that “these societies simply have to interweave more, they have to get in contact and communicate and get to know each other better.” (PS-4) He also points to the important role of cultural initiatives:

“In the field of the arts, through films, series, through literature, there should be contributions to objective writing on these events, and then, of course, that involves taking one’s own share of the responsibility.” (PS-4)

Nenad Čanak perceives the lack of will of the “political elites” in all regions as the main and fundamental obstacle.

“The whole thing is about this dealing with the truth being very painful. That’s why political elites must demonstrate it as desirable, important, useful. And until that happens, nothing will come out of it.” (PS-5)

Čanak maintains that the greatest problem of the wars on the territory of the former Yugoslavia is “that there are no defeated actors”, and thus, there are “no defeated ideas”. In comparison, “the defeat of Germany in World War II gave the opportunity, through the defeat of the Nazi idea, for Germany to be organised as a democratic, decentralised, modern, and economically powerful state. Serbia never got this chance, as it has never been defeated.” (PS-5)

Konstantin Samofalov considers political demagogy, populism and irresponsibility of political actors to be the greatest obstacles to reconciliation. He observes that politicians adopt such attitudes in order to gain some extra votes at elections. (PS-3) Therefore, he thinks that the performance of “political elites” has to change, and “persons such as, say, Tadić or Josipović” are needed, “who are prepared to (...) make a step forward for the sake of the future, rather than for the sake of preserving their own positions.” (PS-3)

Slavica Djukić Dejanović also points to the problematical performance of the “political elites”. She suggests that politicians should not take advantage of people’s individual pain, but, rather, work on reconciliation. Furthermore, she adds corruption and criminal networks to the list of obstacles that prevent peoples from reconciling with each other, as those who benefit from the fact that people are fighting are also opposed to processes of reconciliation. She believes that “shared economy and shared global politics within the region” would actually offer “the best way towards reconciliation.” (PS-1) Furthermore, politicians should contribute to reconciliation by resolving questions of status or languages of minorities in the region.

The experience of victimhood

Nenad Čanak outlines the problem of narratives of victimhood that can contribute to relativisation of crimes and denial of responsibility:

“The official doctrine in Serbia was that Serbs did not take part in the war. But they helped the ‘ethnic Serb’ side in Bosnia. Then we come to the position that this help actually happens through arming and paying officers and they’re practically commanded from Belgrade. And then you have a Belgrade command over something that is called the Army of Bosnian Serbs, and at the same time, people are dying there, who are the victims of ethnic cleansing, the local population. And then this same army proclaims them to be victims on their side. These are not victims on their side – it’s some local people who got killed. That’s why all this talk of sides is very simplified.” (PS-5)

Slavica Djukić Dejanović thinks that people in the region should become aware that

“we are all victims and persecutors and saviours at the same time. When you only look at individual cases, every one of us is a victim at some point, a persecutor at another and an attempt at being a saviour at yet another. And making clear distinctions about only one people, or only one nation, being victims, or (...) being persecutors, is just not realistic. (...) Roles were shifting in this small area of ours, and in this rugged Balkan landscape it is very difficult to say, through history, (...) who has always been a victim and who has always been a persecutor. And in that sense I think it’s important for all of us to realise that in some circumstances in the past we were victims, and in some others we were persecutors. Rarely were we saviours, it was always someone else who showed up as a saviour, and in fact, we are now mature enough to be saviours ourselves.” (PS-1)

Konstantin Samofalov thinks that it is important to emphasise that “all victims are equal”. He adds some details from his own biography:

“As my mother is from Bosnia, I lived with both Muslims and Croats, as I used to spend a lot of time there. I grieve equally for my neighbours who belonged to the Muslim, Catholic or Orthodox religions. I make no distinction between them.” (PS-3)

Suzana Grubješić agrees with the view that all victims are equal and therefore deserve compassion: “There should be no gradation whatsoever, everyone’s sacrifice is the greatest to each people.” (PS-2) Aleksandar Čotrić also criticises the fact that there is still a strong tendency on all sides to compete in order to determine whose sacrifice was the greatest. He believes that the only way to overcome this phenomenon is to look for exact data as a basis for establishing the facts. According to Dujo Runje this includes “finding and identifying each victim, each perpetrator and all missing persons regardless of where they are and who they belong to.” (PS-6)

Furthermore, the interviewees point out that in order to counter narratives of victimhood, it is important to create empathy for different views on history and to establish alternative systems of education that offer space for this.

The need for alternative education and creating empathy for different views on history

Nenad Čanak is convinced that education has to change, at schools, and in particular in the teaching of history:

“We had fourteen generations that have studied from an atlas containing a map of genocide against Serbian people, with six genocides against Serbian people listed. Auschwitz and Jasenovac were listed as the two largest concentration camps in World War II, and, as a part of the curriculum, children had

to learn all the sites in Jasenovac where mass murder was committed and mass graves were discovered.” (PS-5)

Čanak also points to the negative influence of the Orthodox Church in the past conflicts, and claims that religion should be separated from the state and education (“The church cannot have classes at state schools, because this is the clearest example of the church’s involvement in the state”). (PS-5)

Dujo Runje sees the role of religious communities in a different way. He believes that reconciliation needs “as many multilateral meetings of scientists, government and non-government sectors as possible, bringing the positions on some issues closer together. The meetings should be held at various places: meetings with victims, families of the missing. Traditional churches in particular could get involved in this.” (PS-6)

Konstantin Samofalov also believes that reconciliation work has to be done primarily through education, to change the awareness of the new generations: “You can bombard them with ideas of reconciliation, but if they listen to one kind of truth from the first grade at primary school and in their families (...), it is very difficult to convince them of something quite the opposite.” (PS-3)

Aleksandar Čotrić emphasises that processes of dealing with the past have to be based on inclusive concepts of remembrance and empathy for the suffering on all sides. At the same time, he points out that this needs a cautious approach:

“No one should feel like a part of a winning or a losing side, but rather, truth should be reached in this gradual process. I believe we had some non-government organisations whose way of speaking of these things was inappropriate, which had a counter-productive effect. This is not the way. It then provokes resistance, lack of confidence and an a priori refusal to accept one’s own share of responsibility.” (PS-4)

According to Čotrić, activities that address the past first need to sensitise people to “realise that this is in our own interest, that we’re not doing this for the other side, that we’re not doing this for the international community, that we’re doing it for ourselves, so to speak.” (PS-4)

7.2.5 The potential of different actors in the field of dealing with the past and reconciliation

The role of government institutions

The interviewees agree that government institutions have the most important role and influence in the field of dealing with the past. Dujo Runje thinks that without support from the governments, progress will be impossible. (PS-6) Slavica Djukić Dejanović highlights the work of the Commissions for Missing Persons as a good example of collaboration between authorities in Serbia, Bosnia and Herzegovina and Croatia. Suzana Grubješić finds that the government and its institutions can do a lot, much more than civil society, but that this calls for political will. (PS-2) However, assessments of what has been achieved so far by government institutions are critical. Aleksandar Čotrić suggests that the Government of Serbia should develop a more “serious” and systematic approach:

“However, there is no organised work on it [dealing with the past]. It’s done in a fairly random and uncontrolled way and under pressure from abroad. What had been preventing us from adopting a parliamentary resolution condemning these crimes? Why did it take fifteen years? [Why] did so many other parliaments do it first, with us following suit much later? (...) It shows that international influence was yet again a crucial factor. Little is done without it around here (...). We need more of our own initiatives.” (PS-4)

Nenad Čanak believes that the government has to support and reinforce the activities of the courts. He suggests increasing the activities of the judiciary and local institutions dealing with war crimes cases and to provide them with the necessary means to carry out trials “promptly, efficiently and frequently. This is where the state can help most.” (PS-5) Slavica Djukić Dejanović agrees with this view and thinks that the most important task is to “allocate both funds and staff to these issues.” (PS-1)

The potential of parliaments

Commenting on the possible achievements of parliaments in processes of dealing with the past, Aleksandar Čotrić suggests closer cooperation between Members of the parliaments of the countries in the region:

“[This could include] activities of parliamentary bodies and MPs’ friendship groups that should have more contact with Bosnia and Herzegovina and Croatia. Joint sessions of Members of Parliament should be organised, as well as conferences and visits that would also include visiting mass murder sites and places where atrocities took place.” (PS-4)

Nenad Čanak suggests that parliaments in the region should insist on passing laws that would prohibit relativising crimes or denying the existence of victims from another ethnic group. (PS-5) Slavica Djukić Dejanović believes that parliaments “can do more than anyone”, in particular through their “inter-parliamentary friendship groups (...): they can take some extraordinary steps”, and she is convinced that the most important formal acts in this area are those adopted by parliaments. (PS-1) Suzana Grubješić also emphasises that the parliaments have an important influence and that they should raise their voice and make clear statements:

“We passed the Declaration on Srebrenica, after much struggle; fifteen years had passed. It hadn’t been easy, and again it was an expression of a compromise, in terms of the word genocide not being mentioned in the Declaration text, but instead only the verdict of the International Court. It is known what that relates to, but the governing coalition itself was not prepared to use this difficult foreign word, genocide. But it is much more than I had expected to be achieved.” (PS-2)

Konstantin Samofalov regrets that the Declaration on Srebrenica was not met with more support in the Assembly of the Republic of Serbia.⁸ In particular, he regrets that the BBC reported on the event under the headline: “Serbs divided on Srebrenica”:

“I was sorry about that. From their point of view, this was probably objective. I wish we had ensured that the headline was different, for the majority [in Parliament] to be larger (...). I wish we had done it with the full backing of the Assembly (...) but fifteen years after the conflict, too little time has obviously passed.” (PS-3)

Suzana Grubješić reports that she received threatening messages after her speech in the Assembly on the occasion when the Declaration on Srebrenica was adopted:

“all sorts of messages (...) and curses. And then there were different right-wing organisations around the parliament – ‘Srebrenica must not go through’ (...). We had expected that, we were prepared. But I was horrified that fifteen years later someone is still prepared to deny it ever happened. The very debate was nauseating.” (PS-2)

⁸ 127 of 250 Members of the Parliament of the Republic of Serbia voted in favour of the Declaration condemning the crimes in Srebrenica. See www.parlament.gov.rs.

The contributions of civil society

Slavica Djukić Dejanović points out that, apart from official political roles, informal parliaments and citizens' associations can make important contributions to dealing with the past, in particular students' parliaments, or cultural associations in all countries. She suggests that the state should harness the enthusiasm of those who are not operating in institutions, "but within various different associations; there are such people everywhere and they can be the best bridges." (PS-2)

Most interviewees believe that CSOs have the potential to promote efforts for dealing with the past. (PS-1, PS-2, PS-3, PS 6) Views on the effectiveness of their activities vary, however. Aleksandar Čotrić is convinced that they can contribute a great deal, but that they also have to change their performance in order to increase credibility:

"Because nowadays, when this civil sector, or non-government sector, is mentioned, people primarily think of two or three such organisations with an unpopular image, and I believe this needs to be changed. Some changes should be made in the leadership of these organisations, or new ones should be formed that would have more credibility. Of course, I'm not talking about all of them (...). There are probably thousands of organisations. But the ones that are the most prominent have not fulfilled their mission in the most adequate way." (Aleksandar Čotrić, PS-4)

Nenad Čanak believes that NGOs should raise topics that governments are not responsive to, and that they serve as "society's conscience". At the same time, he concedes that "conscience as such is not enough. It has to be transformed into action." (PS-5) Čanak observes: "Practically, apart from people fighting for the rights of the LGBT community, I have hardly seen anyone who has achieved a sufficiently high profile in their advocacy on a specific issue for them to be taken seriously enough to be involved in discussions with government." (PS-5) He sees a need for CSOs to further develop their influence.

In the opinion of Aleksandar Čotrić, NGOs should engage in "gathering information, processing, systematisation, creating studies", in order to better inform policy-makers. He believes that "there hasn't been enough of this in our society and many decisions by political bodies are made without previous research." (PS-4) At the same time Čotrić points to the limitations of civil society. He is convinced that initiatives for dealing with the past are more likely to be accepted if endorsed by respected political representatives than launched by NGOs who are "immediately suspected of doing it on behalf of the international community". He thinks that local political actors, representatives of the state and government, leaders of political parties, and Members of Parliament have the most responsibility in this field. (PS-4)

Nenad Čanak shares this view. He thinks that civil society actors "can propose a subject. But as for achieving anything? This can only be done by government action, through the state-controlled mass media and education system." (PS-5)

Finally, it is suggested that civil society actors and state institutions must find more convincing ways of cooperating and must ensure that there is no duplication of efforts. According to Slavica Djukić Dejanović:

"A single conductor should get unified data from all members of the orchestra called 'Concern for truth, reconciliation' (...) and these data should be networked, so that everyone can use them and move on. (...) Anyone who starts to work in this field starts all over again and wastes an enormous amount of time and money (...) instead of continuing [and making use of] the results that either non-government organisations or state institutions have already achieved." (PS-1)

In the opinion of Dujo Runje, collaboration should unfold in a horizontal and vertical direction (PS-6). Suzana Grubješić adds: "We are very open and ready to collaborate." (PS-2)

7.2.6 Further perspectives: The need for international support for processes of dealing with the past and reconciliation

Aleksandar Čotrić is convinced that further international support is needed for processes of dealing with the past to make progress. In his view, the most important step for the region and Serbia would be to join NATO and the European Union as “then the possibility of new wars or conflicts emerging would be postponed for a longer period of time, because we would be in the same military alliance, with the same command, in the body in which decisions are made through consensus, unanimously.” (PS-4)

Nenad Čanak considers further international support particularly necessary for the work of legal institutions in order to make progress on war crimes prosecution. (PS-5) Slavica Djukić Dejanović also sees a need for ongoing external assistance (PS-1), as does Dujo Runje, who believes that Europe and the UN should encourage regional collaboration. (PS-6)

By contrast, Konstantin Samofalov believes the time has come for the dialogue between the states of the Western Balkans to take place without mediators:

“I think we are already becoming capable of dealing with it on our own, (...) I believe that eventually we will have to define our own shared future by ourselves, for despite the best intentions of the international community, if we ourselves do not want to do it, we won’t. We ourselves have to be mature enough to be able to deal with it ourselves.” (PS-3)

Suzana Grubješić appreciates the ongoing international support, but recommends that it should be more focused on those who are prepared to cooperate and to work on reconciliation. (PS-2) Furthermore, she warns (addressing all “professional deal-with-the-past-ers” who “irritate with their aggressiveness”) that such a process cannot be imposed. “It has to come from within the society: you have to create the right climate, with the right education, books and media, in order to get a result.” Furthermore, she argues that patience is required: “If it took fifteen years for the Declaration on Srebrenica to be passed, fifteen years for some people in Serbia to even hear that Srebrenica took place, not to mention hearing what had happened, well, then I believe it’s going to be very slow.” (PS-2)

7.2.7 Conclusion

Surprisingly, all interviewed representatives of political parties clearly state that Serbia has to deal with its recent past. This is more apparent in the interviews than in everyday life and the media. Also remarkable are the views expressed about the need to arrest Ratko Mladić and Goran Hadžić and that Serbia has to continue on the path towards dealing with the past in cooperation with countries in the region. In most cases, there is an awareness that such initiatives have to address needs, both in Serbia and in the entire region, and create empathy towards the victims on all sides.

The responses showed a complete focus on conflicts that took place on the territories of Croatia and Bosnia and Herzegovina. Not one of the interviewees broached the issue of Kosovo on any level in the processes of dealing with the past. It is also important to note that none of the interviewees mentioned the NATO bombing of Serbia, not even in the context of casualties.

It is remarkable that the representatives of political parties are distancing themselves from the position (still very present in the public discourse), that Serbia had never been at war and that it had only “defended” itself. However, one has to remember that such attitudes are still expressed by the parties that belong to the nationalist or right-wing block, although such voices were not captured by our interview series. These groups maintain the rhetoric of the 1990s that justifies war crimes as “defence” and points to the suffering of Serbian people in World War II. Among these parties, the notion of “dealing with the past” is not very popular.

Even though all interviewees consider dealing with the past and peacebuilding as crucial for the future of Serbia, their answers reveal that no strategy has been determined for such processes and there are no clear plans for the allocation of funds for this purpose. It is clearly stated that progress in this field can only be achieved by policy-makers and societies in the region. Nevertheless, international assistance is seen as necessary in the future. One of the messages is that the non-government sector should put pressure on the state to progress the process of dealing with the past, and that at the same time collaboration between CSOs, state institutions and parliaments is needed. Cooperation with war veterans' unions or victims' associations is not explicitly mentioned in this context. All interviewees emphasise the significance of regional cooperation for processes of reconciliation, in particular economic and cultural collaboration.

Analysis of Interviews with Representatives of Political Parties in Croatia

Srđan Dvornik

chapter 7.3

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7.3.1 Introduction

The analysis is based on interviews with representatives of seven parties: the Croatian People's Party (HNS), the Independent Democratic Serb Party (SDSS), the Croatian Democratic Alliance of Slavonia and Baranja (HDSSB), the Croatian Labourists – Labour Party, the Croatian Party of Rights (HSP), the Social Democratic Party (SDP) and the Istrian Democratic Assembly (IDS). *Vesna Pusić* was interviewed as vice-president of the HNS; *Milorad Pupovac* as vice-president of the SDSS; *Vladimir Šišljagić* as president of the HDSSB; *Nikola Vuljanić* as vice-president of the Croatian Labourists; *Daniel Srb* as president of the HSP; *Šime Lučin* as a member of the SDP managing board, and IDS policy advisor *Nedjeljko Tomić*.

The interviews were conducted between 23 March and 13 September 2011. In this period, political developments in Croatia were marked by three important events:

- 1) the pronouncement on 15 April 2011 of the first instance judgment of the ICTY in the case against the former military commanders Ante Gotovina, Ivan Čermak and Mladen Markač, which sentenced Gotovina and Markač to 24 and 18 years in prison respectively, while Čermak was acquitted;¹
- 2) the finalisation of the negotiations with the European Commission on Croatia's accession to the European Union; the negotiations were concluded in late June, and the signing of the accession treaty was set for 9 December 2011;
- 3) the parliamentary elections were scheduled for 4 December 2011. The pre-election campaign was accompanied by a revival of contested topics and attitudes concerning the recent history of conflict in public discourse. The political climate of the coming elections increased the difficulty of gaining access to leading figures in some parties (despite repeated efforts, it was not possible to talk to a representative of the then governing party Croatian Democratic Union, HDZ).

The Hague Tribunal's judgment on Gotovina and Markač caused a major furore and attracted a great deal of public attention, triggering something of a revival of the collectivist and nationalistic discourse. Despite experts' interpretations that it pertains to a specifically defined group of persons, the Tribunal's ruling on what the formal indictment described as the defendants' "joint criminal enterprise" was interpreted almost exclusively as a collective indictment of Croatia as a whole and the Croatian people, or at least anyone who participated in the defensive war. This interpretation dominated social protests, media reports and the statements of the majority of politicians. Consequently, the opinion that international war crimes prosecution is politically biased and hostile towards Croatia has regained momentum in the public debate. The protests that were organised around 15 April 2011 attracted 10,000-15,000 people. However, the number of protesters was much lower than it used to be at previous events some years ago², and the support of the wider public for nationalistic reactions was neither all-encompassing nor unanimous. Nevertheless, it became evident that the nationalistic understanding of the state, politics and history is still dominant – if not as an explicit attitude, then certainly as a "basic narrative".

Although the election campaign only kicked off in mid-November 2011, it increased the intensity of political rhetoric months in advance, frequently characterised by statements which directly or indirectly addressed the recent past of conflict and a certain regression towards collective self-justification with regard to the war in the 1990s. What is significant here is not the increased presence of otherwise marginal and fragmented right-wing parties, but the position of the governing party HDZ, best exemplified by the effusive and public tributes made by HDZ party president and the then Prime Minister Jadranka Kosor to the Croatian generals convicted in The Hague while celebrating the anniversary of the military operation

¹ See <http://www.icty.org/sid/10633>

² In 2001, for instance, between 100,000 and 200,000 demonstrators (estimates vary) gathered at the waterfront in Split to protest against the trial of the then general Mirko Norac. Road blocks were set up, and special police units threatened to defy the chain of command.

“Storm”, on 5 August 2011. In repeated statements she expressed her belief in the commanders’ innocence. With the opinion polls showing that in voters’ preference the HDZ was seriously lagging behind the main opposition bloc (around 20 % against 40 %), the HDZ reverted to topics of national identity. This indicates that hushing up crimes committed by the Croatian side in the war still has not been entirely discredited.

7.3.2 The relevance of dealing with the past

The basic question in the interviews with party representatives concerns their position on the need for post-Yugoslav societies to deal with the recent past. It was not specified whether this meant the past 20 years or a longer period. Even though most of the interviewees referred to the conflicts during and after the break-up of the SFRY (late 1980s and early 1990s), several persons explicitly related them to the events of the Second World War and its aftermath. All the interviewees gave positive answers. However, they did so from different perspectives and with various implications. Moral reasons are asserted on the one hand and pragmatic reasons on the other.

Moral reasons relate to the *need for social catharsis*, which would come about if the crimes committed in the name of society were reckoned with and condemned (SDP). It is argued that society will never be able to take the civilised step towards a democratic order based on the rule of law if this is not accomplished. Instead, it will remain blind to the hidden continuations of wartime politics in seemingly peacetime political relations, which are manifest in the perpetuation of ethnic divisions and tensions, as well as in the breaches of human rights based on ethnic discrimination (SDSS). Also, unless all the past significant acts are brought to light, the responsibility of all those whose decisions and actions or inaction contributed to these events cannot be understood. In this, it is implicitly or explicitly presumed that it is not only the national political leaderships which are regarded as responsible, but that the responsibility also lies with significant circles and spiritual and intellectual institutions (academies, national intellectual elites, churches), as well as the media, and to a certain extent also ordinary voters (SDSS, Labourists). Interviewees are convinced that all the societies of the post-Yugoslav region should face up to their responsibility with respect to their “own” crimes. The majority of interviewees refer to the conflicts which arose during the Second World War which were never discussed afterwards, and the failure to recognise the crimes committed and bring perpetrators to justice, as an example of how not dealing with the past can lead to a rekindling of conflict.

Moral reasons are linked to pragmatic ones, as some interviewees believe that politics must be free from the legacies of the past in order to enable the construction of stable states and just systems (HNS). In this respect, the views of the HNS, SDP, SDSS, Labourists and IDS largely coincide. The representatives of the HSP and HDSSB also recognise the importance of dealing with the past in order to prevent the “unfinished chapter” of the 1990s conflicts from serving as a basis for new conflicts. Moreover, it is the HSP’s view that the fundamental danger lies in the invidious message conveyed by these events that it is possible to kill with impunity. Nevertheless, the reasons to support dealing with the past are different from those previously mentioned. Specifically, the position of the HSP is that the message of impunity stems from the deficiencies of the General Amnesty Act³ that enables numerous war crimes suspects to go unpunished. The HDSSB representatives are convinced that it is necessary to face the whole truth about events that took place during wartime and in the period up to the finalisation of the peaceful reintegration of the Croatian Danube region in January 1998. Without facing up to these events, there is a danger of warping the image of the “Homeland War”, which would mean that Croatia’s status as a victim in this war would be lost from sight. It is not denied that there were crimes committed on the Croatian side as well, and that innocent people perished. But these crimes are considered to be individual excesses, unavoidable in the chaos of war. According to this view, the guilt for ethnic cleansing and genocide on Croatian territory lies with Serbia.

3 Official Gazette, no. 80, 27 September 1996 - http://narodne-novine.nn.hr/clanci/sluzbeni/1996_09_80_1390.html

The interviewees also mention various concrete steps for dealing with the past. Investigating and prosecuting war crimes takes first place for most interviewees. The SDSS, whose view on this issue is the most elaborate, points out that all essential factors that led to mass wartime suffering, discrimination, forced migrations, etc. have to be investigated and analysed. The laws that allowed such practices, the political attitudes, programmes and measures that led to them, and the ideas, media communications and the discourse of key political figures who incited and justified violence have to be recorded. The HNS also emphasises the need to analyse the politics that led to this. A judgment on such politics means calculating the full, not just material, price that was paid for it. For this reason, all victims and sites where war crimes were committed have to be treated equally, instead of denying minority victims and suppressing the symbolic marking of the sites of their suffering (SDSS).

The legal component is also significant to the HSP, which believes that the application of the General Amnesty Act has to be reviewed. It should be established whether the beneficiaries of the amnesty are responsible for war crimes. In contrast, the HDSSB does not deny that war crimes were committed on the Croatian side as well, but believes that command responsibility is unacceptable. This is the reason why its representatives do not recognise the sentence handed down to the president of this party, Branimir Glavaš.⁴ Some interviewees are convinced that a comprehensive approach to dealing with the past requires a critical evaluation of the politics that led to the events and that politicians should actively engage in such a process. The Labourists believe that a political consensus on what really happened has to be reached. It is suggested that the IDS should adopt a resolution requiring the parliamentary parties to jointly appraise and resolve the legacies of conflict from the recent past. This would mean that nations should neither be collectively accused nor defended, and instead, the guilt of individuals and organisations would be ascertained.

7.3.3 The potential, legitimacy, and acceptance of TJ mechanisms

Assessments of the work of the ICTY

The opinions on the activities of the *International Criminal Tribunal for the former Yugoslavia* (ICTY) are divided.

The HNS considers the Tribunal to have been partly successful, and that its activity was of the greatest benefit to Croatia. In sensitive periods (the second half of the 1990s and early 2000s), it helped transfer dealing with the conflict-ridden past into a space where opportunity for political mobilisation is reduced. The impending termination of the ICTY's activities is seen as a chance for both the Croatian judiciary and for society at large to take responsibility. In the SDSS's view, the Tribunal has underachieved with regard to informing public opinion and the national judiciaries in the post-Yugoslav countries. Nevertheless, it concedes that thanks to the ICTY, the legal norms and standards have been changed and progress has been made in the development of international humanitarian law, in comparison to earlier wars. However, the SDP representative criticises the inefficiency and slowness of the trials. Furthermore he believes that the politicisation of the proceedings was inevitable, as the events themselves had strong political connotations. Political pressure was not brought to bear on the proceedings themselves, but was in some cases expressed by the actions of the prosecution.

Both the Labourists and the IDS give very positive marks to the role of the ICTY. What it has achieved is that the existence of war crimes has become an undeniable fact on all sides, and that all have come to realise that the responsibility for these crimes cannot be avoided.

⁴ Branimir Glavaš was commander in East Slavonia. In May 2009 he was sentenced to eight years of imprisonment by the County Court of Zagreb for torture and murder of Serb civilians.

The HSP judges the work of the ICTY to have been superficial, and believes that it evidently wanted to condemn “phenomena, and not crimes”. Its limited capacity meant that it prosecuted a minimal number of cases. Indirectly, it even frustrated the prosecution of certain crimes in national courts, as Croatia had conscientiously handed over documentation pertaining to those crimes, and the Tribunal did not initiate trials (although its jurisdiction was established), nor did it return the cases to the Croatian courts. Abolishing the Tribunal should reaffirm the role of the permanent International Criminal Court, but lessons should be learned from the functioning of the ICTY in order to secure its authority and independence from pressure. The HDSSB’s assessment is largely tied to the sentence for Gotovina and Markač.⁵ The statement about the joint criminal enterprise indicated that the ICTY had extended this accusation to Croatia itself, a victim of aggression. This equates both sides’ guilt. For this reason, the HDSSB representatives consider the ruling to be political. The trial was dominated by the prosecution, which had the additional advantage in that Croatia’s progress towards accession to the European Union depended on its reports. They do not believe that the winding up of the ICTY will bring any significant change; the awareness has already developed that everything can be resolved in domestic courts, and the sooner the ICTY is finished, the better.

Assessments of the work of the domestic courts and prosecutors

Only the HDSSB gave full marks to the county courts in Osijek, Rijeka, Split and Zagreb, which are fully equipped to work on war crimes. The interviewees appreciate that proceedings were initiated in a large number of cases. What is vital, in their view, is not speed, but that all persons found guilty are punished, which must include citizens of both Croatia and Serbia. They believe it was a mistake that the Croatian State Attorney’s Office (DORH) only recently brought charges relating to the excessive shelling of Vukovar, Osijek, Dubrovnik and other Croatian cities, which was far more evident than what the ICTY prosecution had argued about the shelling of Knin.

The HSP and the SDSS express very negative assessments of the domestic courts. The HSP believes that the judiciary has insufficient capacity, given that there is, for example, only one state attorney (prosecutor) in Slavonia. The SDSS states that the courts were the long arm of wartime politics and served to suppress minority objections. Although now less evident, the bias has not been eliminated entirely. The interviewees are convinced that the state attorney’s offices and police also need to be appropriately equipped and made to work professionally and impartially, and not arbitrarily.

The HNS and the SDP believe that the quality of work of the specialised war crimes courts can bear comparison with the Croatian judiciary in general. Despite many deficiencies, judgments are reached, and the quality is improving. The SDP believes that the State Attorney’s Office is responsible for the relative improvement.

A number of interviewees (SDP; Labourists; IDS) point to the still significant political pressure influencing the functioning of the courts. The SDP points out that for this reason, in several important cases (Brodarac⁶, Glavaš and others), trials had to be delegated beyond the area where the crimes had been committed. However, the interviewees believe that there is a positive climate for the courts’ functioning and that this has improved as a result of external political influence during the process of accession to the EU.

Assessments of the potential of a regional fact-finding commission (REKOM)

The SDP and the HNS consider fact-finding commissions to be an expression of inadequate functioning of state institutions. The SDP warns that such quasi-state institutions may serve as an excuse for the official bodies not to carry out tasks which fall within their responsibility. The interviewees insist that the judicial

⁵ The interview was conducted six days after the sentence was made public.

⁶ General Đuro Brodarac was Head of the Sisak-Moslavina County Police and had command responsibility in the Sisak area in 1991 and 1992. He was suspected of being responsible for the death and disappearance of Serb civilians, and died in investigative custody in Osijek several weeks after he had been arrested in 2011. <http://www.croatiantimes.com/index.php>.

institutions should fulfil their task. The HSP and the HDSSB emphasise the value of systematic investigation of facts. The HSP, SDSS and IDS believe that this is where Croatia lags behind Bosnia and Herzegovina and Serbia. The HDSSB warns that fact-finding that is driven by NGOs can be subjective; any facts which they uncover must be investigated by proper judicial institutions. The interviewees further discuss the mandate, composition and potential of a regional commission, as well as the prospects of political support.

Mandate

The majority of the interviewees agree that it is REKOM's primary function to identify cases of war crimes, which would provide the basis for the domestic judicial institutions to take up prosecutions. The HNS considers a regional commission for establishing facts to be important, and suggests that it should put pressure on domestic judicial bodies to fulfil their responsibilities. The HDSSB also believes that the commission might help to establish facts and provide material for judicial proceedings; this would correct the warping of facts caused by the ICTY. For the IDS, REKOM is an opportunity to appraise the past through an institution which involves a greater number of different people and is not politicised. It is also stressed (HNS) that the visibility that is given to victims who speak out at such a commission is of greatest value also in terms of witness protection: witnesses the public knows about are more difficult to hurt.

Composition

The HNS insists that REKOM must on no account be allowed or be able to replace judicial institutions. Although it needs an investigatory apparatus, it must not act as the police and prosecution agency. It should nevertheless enjoy the support of expert groups (SDSS). The cooperation with the judiciary and with state commissions for missing persons will be important, according to the SDP. It is also underlined that the members of the commission should be nominated through a legitimate procedure, and not be left to an arbitrary system characteristic of NGOs (HDSSB). The IDS suggests involving persons who have parliamentary backing and persons who had worked before on uncovering truth of war crimes, in order to bring in some experience.

Potential

As a regional institution, REKOM would be an adequate expression of the fact that the wars themselves were regional (SDSS). Furthermore, such a commission is also necessary because the states themselves were profoundly involved in these wars, and did not act to protect rights, but were agents and instruments of a collective "justice" – the protection of "their own" and retribution against "others". The SDSS believes that the function of REKOM should not only be to identify victims and the misdeeds that brought them suffering, but also to sensitise the public, to analyse the background to the crimes, and to mediate between different memories and interpretations of the recent past.

For the SDP, the ambition to establish the truth is understandable on the one hand (as national parliaments cannot be expected to do so), but on the other, it is set too high, which can imperil the entire idea. In the SDP's view, it is practically impossible to achieve the goal of common truth, so it is better to limit the goal to discovering facts. However, the formation of REKOM itself would send out an important political and social message. Its effect on the societies would be greater if it were to identify previously unknown cases (SDP).

The discoveries made by this type of institution in a regional context would be more convincing than investigations that are conducted separately, in just a single country, and would have a sobering effect. This would positively affect reconciliation, as well as inducing the collective consciousness to accept the negative sides of recent history (IDS).

The Labourists express concern that the capacities of a joint commission will be very limited as long as all the societies focus on the guilt of the other side. There is a danger that each of the states may emphasise a larger number of their "own" victims. At the same time, it is observed that members of majority communities in places where crimes were committed against minorities are still not ready to speak about what they know.

The HSP is the only party that clearly rejects the REKOM initiative. It is not opposed to the idea itself, but to the persons and institutions carrying the initiative forward. It believes that they are not operating independently, but are backed by a hidden political agenda. They are convinced that such an institution will not be able to record the suffering of people in these regions.

Prospects of political support

The interlocutors believe that the establishment of REKOM in Croatia is more likely to gain support in Parliament and among the political elites than in society at large (HNS). If this initiative, which was started as a civic initiative, develops into inter-state cooperation, this will be an indicator of the maturity of the states and societies in the region. In the view of the interviewees, it is quite doubtful whether it will succeed at all. The distrust among the nations is seen as a main obstacle. Furthermore, the interlocutors assume that for many political leaders, accepting REKOM would mean recognising that the state institutions cannot live up to the task. This issue was particularly emphasised by the SDP. This party also criticises the fact that the Coalition started gathering signatures for REKOM without adequately informing the public about the goals. Due to a lack of public debate, public support in Croatia remains low. The SDSS estimates that there is a chance that REKOM might gain the support of more than 50% of the Members of the Croatian Parliament, but believes that this will depend on a number of political contingencies, and that it may be lower in the future (as it had been in the past) than it is now. Although they believe the national parliaments will give support to the initiative, the Labourists believe that readiness to deal with the past must nevertheless be developed above all within each nation. Contrary to the others, the IDS believes that the odds are better on the initiative getting support within societies than among the political elites (especially on the eve of elections); the elites will claim that formal institutions are enough, whereas the public finds dealing with the past intriguing.

7.3.4 Understanding the concepts of truth, justice, and reconciliation

According to the interviewees, the basic concepts of *truth*, *justice* and *reconciliation* need to be defined. In abstract terms, they are “positive utopias” (V. Pusić). In practical terms, truth signifies the situation in which citizens no longer have the feeling that the government is telling lies. Justice means that the courts proceed according to the law, without prejudice, within a reasonable period and without corruption (HNS). Once these criteria have been fulfilled, communication across national boundaries becomes easier and societies may reconcile gradually, by removing obstacles to movement and communication and through practical projects and activities. The interviewees from the SDP and the Labourists believe that reconciliation will be achieved through the normalisation of relations in everyday life. Truth and justice are preconditions for this. Truth is understood as the establishment of all significant facts from the periods of conflict, and justice consists in admitting the mistakes on one’s own side, punishing those who committed the crimes and expressing remorse and compassion for the victims.

In the IDS’s view, the precondition to establishing factual truth is justice, and both are necessary for achieving reconciliation. This view is based on the multi-ethnic experience of the Istrian region, where society has understood that a minority cannot imperil the majority, and that co-existence of different groups is possible. The president of the HSP has reservations concerning conversation about all of these concepts, which can be abused, and which are too complex to be explained in the relatively short answers given within the confines of an interview of this kind. The HDSSB prefers the concepts of cooperation and co-existence with one’s neighbours, and of renouncing hate, rather than reconciliation. However, truth and justice must precede this.

Preconditions for and obstacles to reconciliation

The majority of interviewees believe that the logical order would be to establish the truth, then to determine what constitutes justice, and finally reconciliation. However, a reverse flow may have more practical benefits: the normalisation of relations, which means, above all, at least an initial pacification, is a condition for implementing judicial procedures that would bring some kind of basic justice, as well as for taking stock of the most important facts. Normalisation does not mean that the conflicts of the recent past are solved, but it does bring about the renewal of economic and political links and communication among neighbours. All interviewees, with the partial exception of the HSP, agree on this point. For example, the representatives of the HDSSB and the SDP both point out that citizens of Serbia can reside in Croatia, and vice versa, without experiencing difficulties or harassment. They see this as a visible sign of reconciliation. According to the HNS and the Labourists, accession to the European Union offers another chance for reconciliation, by providing a settled institutional framework. It is argued that as violence and the threat of violence are removed from everyday life, it also becomes possible to initiate legal proceedings under less pressure. In the long term, legal processes bring about a public recognition that certain acts are crimes regardless of which side committed them.

However, some interlocutors warn that other efforts are needed to achieve reconciliation. For M. Pupovac of the SDSS, “reconciliation is addressing one’s own experience in the experience of the other”, and he recommends holding conversations and debates where different, even opposed memories and narratives would be discussed. Conflicted symbolic fields (places where the other is excluded) and closed discourses also need to be opened up to public discussion. Until that is achieved, this interviewee sees a risk that people will remain prisoners of a politics based on national identity as the continuation of the war.

The SDP believes that if the state parliaments were to accede to REKOM, it would send a message that there is political will for reconciliation through dealing with the crimes of the recent past (although such a statement alone would not suffice). The Labourists believe that it is important to oppose the balancing of victims and “weighing of collective guilt”; in order to confirm that we are not dealing with a collective conflict of nations, it should be accepted that a crime committed against several persons is just as dreadful as a crime committed against hundreds. In the view of the IDS, it is important to establish why 400,000 members of the Serb minority had to leave Croatia; an apology for the suffering inflicted on others is merely the first step.

In the opinion of the HNS and the SDP, the fact that nationalist emotions can still be used for political mobilisation and homogenisation poses obstacles to reconciliation. For that reason, an ill-chosen political statement or call for boycott can seriously damage relations. The interviewees emphasise that people are not sufficiently informed. In the Labourists’ and the SDP’s view, another obstacle is presented by the political elites, which are turning into economic elites. The Labourists also see a risk that the judiciary is permeated with politically appointed cadres, and is therefore neither fully independent nor unbiased. For all these reasons, they all accept that there is a possibility of regressing.

The HSP believes that, in spite of some progress towards a more normal understanding of recent history, lethargy currently prevails in Croatia, making it impossible to adequately comprehend either past or possible future events. With respect to the future, the HSP is particularly concerned that Serbia’s international position will be strengthened, and its responsibility for the war not addressed, and that Serbia will be taking strategic positions, all of which may lead to a new war. It is mentioned that in Croatia, such a trend is also expressed by the policy of the SDSS. There is criticism that this party could secure many concessions, thanks to its participation in the ruling coalition. The HSP believes that the SDSS promotes the segregation of Serbs in Croatia, which the HSP opposes.

In this context, the interviews also reveal very *different experiences and interpretations of victimhood* that impact on the conceptual assessments.

The SDSS considers that in the Croatian collective consciousness, Croatia is simultaneously taken to be both victim and victor – neither of which can be put on trial. This type of collective consciousness works as a defence against responsibility for the pain inflicted on others. The SDP has a similar interpretation,

with a simple formulation: greater victim – greater rights. This kind of attitude is not specific to a single nation, or just a few of them. The Labourists' representative warns of the strength of myths of collective victimhood (expressed by historical events such as Jasenovac, Bleiburg, and Kosovo). The president of the HDSSB criticises the fact that if Serbia is also presented as a victim, this has to be considered as a continuation of Milošević's politics. In other respects, Serbia may be a victim, but in the Homeland War, the Croatian people, not Serbia, were the victims. This interviewee warns that repeating the hypothesis that Serbia too was a victim may lead to equating the aggressors with the victims, which was the policy of the Hague Tribunal.

Interviewees from the HNS, Labourists and IDS put a greater emphasis on the need to perceive that others were the victims of the Croat majority community. One of the key experiences for Vesna Pusić was her visit to Mostar, when she crossed the river Neretva via the improvised suspension bridge, put up where the Old Bridge had been destroyed. This was the moment where she realised that this act of wanton destruction was committed "in the name" of her nation and that nothing similar can be allowed to happen again. The Labourists and IDS also believe it is important to be aware that internal repression against minorities and policies of exclusion can develop in a country that has been attacked.

Other concepts and approaches

Several interviewees suggest other norms and guiding concepts as an alternative to replace the notions of truth, justice and reconciliation. The HNS believes that the practical *project of preparing for EU membership*, as well as EU membership itself, is favourable for this region and helps to overcome the legacies of the recent conflict. Furthermore, EU accession policies support the process of putting the state in order and stabilising institutions. In the course of this development, attitudes towards the state will also change. Instead of being a point of reference for powerful collective emotions, it becomes a functional body that is assessed rationally, according to how useful it is.

In a very similar spirit, the SDP and the Labourists emphasise normalisation, which can be enhanced *by institutional and economic development*; the latter is seen as important because a sense of justice, togetherness and forgiveness cannot develop if people are victims of economic injustice. The *building of informal, social relations* is of importance for the SDP, while the Labourists value the *establishment of a civic state*, in which relations do not depend on ethnic affiliation. The HDSSB puts cooperation, across both ethnic and state boundaries, at the forefront. The highest value for the SDSS is freedom, which is viewed in opposition to the politics of collective identity (on various sides). The highest values for the IDS and the HSP are respect for others and tolerance, while accepting the differences in understanding history.

7.3.5 Assessments of the role and potential of different actors in dealing with the past

In short, it is mainly non-governmental actors – be they civil or international – from whom the interviewees expect some kind of special intervention that helps to achieve reconciliation. The interviewee from the Croatian Labourists explicitly said that dealing with the past cannot be organised by the executive power, but that it is a task for the judiciary, civil society organisations, researchers and the academic community. Vesna Pusić (HNS) is convinced that intellectuals and journalists are also important and can, up to a certain point, contribute to changing relations. Milorad Pupovac (SDSS) suggests that an institute or faculty should be established somewhere in the region, if the REKOM initiative succeeds, which would pursue a more thorough study of wartime and political events, and also of the ideology and cultural patterns that co-produced and reproduced the conflicts.

The SDSS, Labourists, HNS, SDP and IDS also attribute a significant role to civil society organisations. The SDSS even believes that it would be good if some of them (potentially REKOM) were to expand their field of operation, and tackle the problems of overcoming the legacy of past conflicts in the domains of research, culture

and education as well. The SDP notes the fragmentation and divisions of the “non-governmental sector”, which it ascribes partly to the personalisation of relations but also – and to a significant extent – to the manner of allocating government financial support for these organisations selectively, and by means of discretionary decisions, and not by equal criteria. This approach introduces divisions and reduces effectiveness.

Among the regular institutions, it falls to the judiciary to address the legacy of the conflicted past, while everything else will contribute indirectly to overcoming the legacy of past conflicts and to eventual reconciliation by means of gradual normalisation, consolidation of the rule of law and stable working of the institutions. Governments and administration are expected to express basic political will for overcoming the legacy of the past, and to secure the acquisition and storage of relevant information. Both are responsible for adopting and implementing laws that would ensure that justice is satisfied, not only concerning accountability for war crimes, but also with regard to property restitution and compensation for damage and the fulfilment of all other rights that were violated in the course of wars and conflicts.

Asked about *the potential of political parties and their engagement* for dealing with the past and reconciliation, several interviewees have noted their parties’ specific contributions. The SDSS reports that it is active in all areas: peace politics, politics of reconciliation, human and minority rights, safeguarding identities, rights to memory and preserving fundamental values that make this all possible – the freedom of the individual, protection of minority rights and the values of anti-fascism and the European tradition. Its work proceeds by shaping a different political discourse, by encouraging political participation (including resistance to the politics of exclusion) and affirming minority politics and politics of remembering. The SDSS representative considers it a success that the party made strides in this respect, even while in coalition with a party which has no such inclinations. The result of this persistence in its work is that today it is respected even by those who had previously furiously opposed it.

The HNS emphasises that it has contributed to the reconciliation process through several forms of action: the public expression of positions critical of Croatian policies in Bosnia-Herzegovina in the 1990s; support for the functioning of the ICTY; advocating a civic state and confronting nationalism in institution-building; and opening up all relevant topics as political issues, even though they are incompatible with populist politics. The HSP reports that it has systematically warned of the omissions of the state institutions and judiciary in prosecuting war crimes, and that it has gathered documentation, which has been delivered to the relevant bodies, demanding prosecutions related to civilian victims. Furthermore, it emphasises that HSP representatives visited places where mass murders of civilians had taken place between 1991 and 1995.

Many interlocutors believe that *international actors* exert great influence over attitudes towards the conflicts of the recent past and that their assistance is still needed. However, these interlocutors are also convinced that this assistance will be reduced in the future, once negotiations between the European Union and Croatia are finished. However, the interviewees also believe that in any case, long-term changes will very much depend on local actors.

7.3.6 Summary and conclusion

All the interviewed representatives of political parties agree that the recent past has to be addressed. Moreover, most are aware that if the legacies of the violent conflicts of the 1990s are not addressed, they may lead to new, future conflicts. However, the interviews reveal different interpretations of the violent conflicts that took place in the past two decades. Basically *two different views* became apparent: One approach emphasises that even during wartime, a polity (Croatia) must guarantee the safety and equal rights of all citizens. Therefore it must charge all those who commit crimes. If it is not capable of doing so, this has to be done by an international body such as the ICTY. The state itself and the ethnic majority bear responsibility for showing that crimes must not be committed in their name, and that they protect minorities. The other approach, adopted by nationalistic parties, sets out from the notion that the recent past was marked by a conflict between nations, where one nation (Serbia) was the aggressor, and the other

(Croatia) the victim. These voices neither deny nor justify crimes committed on the Croatian side, but they reject the interpretation according to which these crimes express the attitude of the Croatian state and ethnic majority towards the minorities, above all the Serbs. These crimes are considered to be the excesses of individuals and groups, the likes of which will inevitably occur in every war, and which must be tried before the courts, as with any other crime. However, this view rejects any attempt to link responsibility for these crimes with state institutions and governmental policies, as this is considered to be an unacceptable equation of aggressor and victim.

Both approaches agree in one aspect, as they both consider that addressing war crimes means establishing individual guilt, and holding accountable persons from all sides involved in war, including their own groups. In one view, by confronting the crimes committed and finally condemning all the guilty persons the judiciary is capable of processing, the nation goes through a catharsis, overcoming its own nationalist chauvinism that led to the crimes. In the other view, the legal-judicial confrontation with the legacy of ethnic conflict is not sufficient, for two reasons: First, it does not reach the bystanders but merely the direct perpetrators and their superiors, whose responsibility can be proven in court. Therefore, all those who formulated and pursued the militant and exclusionary politics that supported such crimes, and those who helped to declare the members of the Serb minority in Croatia as part of the “enemy” group, are left untouched. Second, the juridical confrontation with the past cannot extend to the implicit ideology of a generally accepted nationalistic world-view. Therefore, even when it has convicted “its own” criminals, the society can continue to live its myths portraying the polity as the collective victim and attributing problems to “alien” actors (the “others” in our midst).

The interviews also reveal that even within the liberal circle of political parties, there are three different approaches to dealing with the past. The first, *pragmatic approach* speaks of the need to process and condemn crimes, while the rest will gradually and mostly tacitly be resolved in the course of the normalisation of relations, economic prosperity, opening of communications and stabilisation of institutions and procedures. The second, *moral approach* points to a collective responsibility to admit that crimes were committed on the Croatian side, not in order to declare collective guilt, but precisely the opposite – to show that the national majority will not back these evil deeds but condemns them, and feels compassion for the victims. The third approach, which might tentatively be called *historically transformational*, aims to use critical research and analysis to define the paradigms of politics and culture which contributed to the violent conflicts of the past decades.

The HSP and HDSSB representatives’ words about respecting the rights of all, rejecting ethnic discrimination, and the great value of tolerance and co-existence in diversity are positive beyond expectations. One might consider this to be mere rhetoric rather than a serious shift of attitude. However, it is still remarkable that, for instance, the crimes for which Branimir Glavaš (president of the HDSSB) was convicted are not denied by the interviewees, although – according to the official position of this party – he is believed not to be guilty. This indicates that even though some doubt is expressed that the verdict is justified, at least the facts of the crimes and suffering of the victims have become established knowledge. But it must be conceded that, unfortunately, this study cannot reveal the full picture as it was not possible to secure an interview with a representative of the HDZ. This party is of extraordinary political relevance, first of all, as it dominated the coalition which was in power until 2011, and second, because in the 1990s it had complete domination over Croatian politics, and actively promoted persecutions and “cleansing” by the Croatian side. Following the death of Franjo Tuđman (in late 1999) and the first electoral defeat (in early 2000), the HDZ made a strategic decision to turn towards the European Union, accepting all the reforms demanded by accession to the EU but officially never breaking with the notion that the (ethnic) national state is above all norms. It would have been highly informative to include the view of HDZ representatives on issues of dealing with the past in order to test the extent to which the norms adopted under strong external influence have been internalised.

The conclusion of the negotiations on Croatia’s accession to the European Union has two consequences that are essential to the subject of our research: On the one hand, in the long run, the Croatian authorities

will come under less scrutiny and be under less pressure to abide by rule-of-law principles and prove that they give equal treatment to all crimes committed in the recent past, regardless on whose “side” they were committed. Therefore the issue of how committed they really are to this approach to dealing with the past will take a far more prominent role. On the other hand, the European Commission has made it clear that it will continue to monitor the extent to which Croatia is fulfilling the obligations agreed on even after all the negotiation chapters have been closed.⁷ Of special significance here is Chapter 23, on the judiciary and fundamental rights, which also pertains to the processing of war crimes.

In conclusion, the interviews reveal some encouraging findings. However, it is doubtful whether political parties can be expected to play the leading role in confronting the past in a way that contributes to peacebuilding and conflict transformation. In Croatia, political parties are still accustomed to simply adapting their positions to dominant trends in the media or external pressure, in a very pragmatic or even opportunistic manner. Political options and policies are not developed in a public discourse but within closed circles. Therefore the author is convinced that impetus for change has to come from the society. If based on plausible facts and findings, civic actors’ work can influence the discourse and create an atmosphere in which it is possible to demand historical research, symbolic commemoration, and more appropriate initiatives for education about the recent past, social relations, common values, human rights, the meaning of human security and equality.

It is remarkable that all parties largely recognise civil society organisations as significant agents of change. In the area where state institutions are the most active, i.e. the judicial system, there is also constant reaffirmation of the importance of the impetus provided by civic organisations – from documentation of facts and finding witnesses, to monitoring trials, which serves to some extent to offset political pressure. The responses of party representatives also reveal that the attitude towards the REKOM initiative is positive. However, this does not guarantee the success of the campaign. Most of them are just aware of the general features of this initiative, and even those who are better acquainted with it have reservations regarding its potential success, which means that the efforts of the REKOM promoters to engage the general public in a debate on dealing with the past conflict have not been sufficient. Nevertheless, it is encouraging to note that interviewees from left- and right-wing parties, and followers of liberal and collectivist approaches agree that such a commission is needed, and conclude that all work on gathering information and testimonies is useful. It can then be expected that further work both by the domestic judiciary, as well as, in time, REKOM itself will highlight the dark side of the formation of the Croatian state in the 1990s. However, we must be mindful that it is only through interpretation that factual information leads to an understanding of historical events and their meaning. Good media coverage is a necessary, although not the sole precondition for awareness-raising. TJ institutions therefore need transparent and well-crafted information policies and editors should instruct journalists to investigate further, beyond what the prosecution and defence present in the courtroom. At the same time we have to be aware that provoking open public debate cannot be reduced to PR strategies and proper media coverage. Efforts by historians, lawyers, educational authorities and teachers are needed as well to contribute to constructive processes of dealing with the past. Historical research and interpretation should be liberated from nationalistic myths and patriotic commitments, and educational authorities should ensure that the findings of critical historical research are presented in education without national bias. In any case, it is important to consider the wider and deeper causes of the conflicts and violence of the 1990s and to deal with their legacy. This task, which requires more comprehensive long-term efforts, has yet to be addressed in Croatia.

7 See <http://www.entereurope.hr/page.aspx?PageID=16>

Summary Analysis

Martina Fischer

chapter 8

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8.1 Coherence and compatibility of concepts and approaches

The interviews with protagonists of transitional justice (representatives of legal and fact-finding institutions, local CSOs, and international actors) reveal that more than 15 years after the Dayton Peace Accords, the signatory countries in the Balkans are still facing a variety of war legacies as people continue searching for missing relatives, struggle for recognition as victims of war-related crimes, for redress, or for durable solutions after displacement. Others have to cope with painful memories or insecurity and mistrust, particularly if they are facing parallel societies or divided communities, as reported from Bosnia-Herzegovina and war-torn areas in Croatia.

TJ protagonists have observed some progress towards political reconciliation between **Croatia** and **Serbia**, due to public gestures of remembrance and recognition such as the visit by the then President of Serbia, Boris Tadić, and the President of Croatia, Ivo Josipović, to Vukovar. Tadić's participation at the commemoration in Srebrenica in 2010 and the Srebrenica Declaration adopted by the Parliament of Serbia are seen as positive developments, although critical CSO activists and international representatives also point to the ambivalence of official gestures. One particular point of criticism is that high-ranking Serbian politicians tend to avoid explicit acknowledgment of existing borders (regarding Kosovo and the Republika Srpska in BiH). However, international actors conclude that ethno-nationalist arguments apparently no longer attract a broader audience in Serbia.

By contrast, in **Bosnia** the picture is less encouraging. A positive move, from the international actors' perspective, is that a strategy for transitional justice has been developed by UNDP and state ministries in consultation with civil society actors in BiH. Representatives from the UN, OSCE and EU express high expectations that this step will help to further advance the process of dealing with the past in this country. Local civil society experts are less optimistic. As outlined in Chapter 5.1. by Ljubinka Petrović-Ziemer, they see many obstacles to the implementation of such a strategy, due to the fragmentation of institutions and dominance of ethnopolitics. The findings of the field research in this country reflect the phenomena described for social reality after ethnopolitical war (Bloomfield et. al 2003): a lack of identification with the political structures, inter-generational transmission of trauma, negative interdependence and polarisation. Tensions in divided communities, selective forms of commemorations, and manipulation of victims, refugees or IDPs for political polarisation are important expressions of the "presence" of the past in this society. Some of these problems are also reported from war-torn regions in Croatia. Questions of return and durable solutions for settlement and property restitution for refugees and IDPs (mostly in Bosnia and Serbia) are still pending and depend on the involvement of authorities in all three countries.¹ Although TJ protagonists see some progress in the dynamic of dealing with the past in the region, they observe that cultures of denial are still powerful in some sections of politics and society, and that they are often combined with the tendency to point to the victims of one's own side in order to avoid recognising those of the others. Apparently, this pattern is most dominant in Bosnia, but also exists in the other countries.

It is noteworthy that many local CSOs perceive the dynamic of dealing with the past in the region as too slow. Most of them are convinced that policy-makers and governments in the region still show a very low degree of willingness to face the past (see Chapter 5.1), whereas international actors express a different view on this. Most of the latter, while agreeing that more could be done, are convinced that the countries in the region of former Yugoslavia are already rather advanced in this field, compared to developments in other post-war situations (see Chapter 6.1). This view is particularly emphasised by organisations from Germany (which compare the dynamic in the Balkans to the stages of memorialisation of the Holocaust and World War II in German society). International actors also point to the achievements of the ICTY and the domestic war crimes chambers in accountability and documentation, which have substantially

¹ For an in-depth analysis of obstacles and dilemmas that property restitution faces in the region, see Carlowitz 2005. He considers the property-related interventions and the mechanisms that have been set up for the protection of the rights of refugees and IDPs in BiH (and Kosovo) as important contributions to post-conflict justice and fostering the rule of law. However, property restitution has not been fully successful in re-establishing multiethnic societies.

contributed to advancing the dynamic, together with CSO activities in this field. In particular, international interviewees believe that EU conditionality has also significantly contributed to a positive dynamic. In contrast, CSOs have a more critical view of the EU conditionality policy according to Ljubinka Petrović-Ziemer (see Chapter 5.2.1): in their opinion, this concept has contributed to politicising the role of the ICTY.

8.1.1 TJ protagonists' assessments of TJ mechanisms, concepts and approaches

Accountability: ICTY and domestic war crimes chambers

Among the protagonists of transitional justice, all interviewed actors (representatives of legal and fact-finding institutions, local CSOs, and international actors) regard war crimes prosecution as indispensable, and all of these largely acknowledge the contribution of the ICTY. The Commissions for Missing Persons point to the ICTY's assistance in disclosing information on sites where atrocities were committed. Domestic legal institutions mention, on the one hand, the Tribunal's role in setting norms and reforming judicial proceedings. On the other hand, they state that some of its practices (in particular elements of common law, and the practice of plea bargaining) have proved to be problematic (see Chapter 4.2.1. by Ljubinka Petrović-Ziemer). Among CSOs, divergent opinions are expressed. Most of them are convinced that the International Tribunal has established evidence and important archives, despite some serious criticisms of its legal practices, effectiveness, and information policy. In contrast, representatives of war veterans' and victims' associations express more negative assessments, suspecting that the Tribunal operates with an ethnic bias and treats criminals from the "other side" more leniently than those of "their own" constituency. Assessments of the performance and potential of the domestic courts are diverse as well. CSOs – although they acknowledge improvements in the practice of the domestic courts, and see progress on sentencing in important cases (i.e. Ovčara, Scorpions, Glavaš, Norac/Ademi) – express less confidence in these institutions (see Chapter 5.2.2), by comparison with international representatives and representatives of TJ institutions, who place more trust in them and assess them more positively (see Chapters 4.2.2. and 6.2.2). Ethnopolitical bias and politicisation of the domestic judiciary, as well as slowness and a lack of witness protection are the deficiencies that are most frequently mentioned by CSOs in all countries. International actors, in contrast, are convinced that the legal institutions have overcome at least some of these problems, pointing in particular to the revision of in absentia trials, to increasing numbers of indictments and sentencing in cases where crimes were committed by members of the "own" constituency, and to more advanced cooperation among courts in the region.

The field research reveals that CSOs, TJ institutions and international actors all see a need and have a strong preference for legal accountability. Thus the **first hypothesis** (assuming that peace organisations are more sceptical towards retributive justice) has not been proved. Representatives of the judiciary, Commissions for Missing Persons, local peace practitioners, human rights activists, representatives of victims' associations, and international organisations are all convinced that impunity cannot be tolerated, in view of the gross human rights violations committed in the 1990s. In this respect, there is a clear consensus and no incompatibility of goals can be observed. However, all TJ protagonists also clearly recognise the limits of legal prosecution and propose additional approaches to complement the work of the courts.

Fact-finding and truth recovery: The potential of REKOM

The REKOM initiative appears to offer potential for additional approaches and also for engaging a variety of different actors: peace practitioners and human rights activists (including women's and youth groups), journalists and intellectuals, and also veterans' and victims' groups (although only a small number of the latter are involved). Most of the interviewed CSOs and international actors welcome the regional approach.

Those who promote the initiative all agree on one common denominator: that a regional commission should complement or even support the courts' work and that it should mainly focus on fact-finding.

However, a number of human rights activists and victims' representatives are convinced that REKOM should also give a voice to the victims of war-related crimes. But the hearings that have been held during the campaign have aroused controversy and are criticised by some of these actors (see Chapter 5.2.3). In particular, the question of how to provide psychological support and protection for those who tell their stories in a public setting remains unresolved. The same applies to the question of how their testimonies can be verified and transformed into "facts" that cannot be denied, so that they receive official acknowledgment.

Among peace practitioners and human rights activists there is another strand of debate, based on the expectation that a regional commission would also enhance societal debate and dialogue on the past and help to establish an inclusive culture of remembrance. International promoters of the REKOM campaign also share this expectation. Options expressed by the international promoters of a regional commission range from (a) establishing a shared view on the past, to (b) providing a climate that enables people to accept that different views exist, to c) developing empathy for opposing narratives, and (d) providing a forum for alternative learning and debating of history.

To sum up, TJ protagonists in all three countries see a need to establish a set of undeniable facts relating to the recent war events, as a point of reference for a "shared truth" and as a means to counteract denial of war-related crimes. Others argue that the societies in the region should also critically reflect on the misguided policies of the former Yugoslav regime which paved the ground for a selective politics of remembrance, by honouring partisans as heroes, silencing discussion of crimes committed in the Second World War and its aftermath, and largely ignoring the victims. Many interviewees suggest that earlier periods of history (World War II, and even before) have to be considered.

Among those interviewees who advocate for a regional truth commission, different opinions are expressed as regards its tasks, mandate and composition. But against the assumption made in our **third hypothesis**, the promoters of REKOM do not consider the purpose of establishing dialogical and societal truth to be the first priority on the agenda of a regional commission. Instead, documenting the missing persons and gathering facts about the events of the war are clearly seen as preconditions for dialogue and societal debate on the past, and are therefore considered to be the most crucial task by all promoters of REKOM. Most of the interviewed peace practitioners and human rights activists regard a regional fact-finding commission as a useful mechanism to be established in addition to the war crimes chambers, in order to complement and support the efforts of the courts. The same applies to the international actors. This shows again that there is no major controversy on the priorities of justice vs. truth among these groups. Nevertheless, the interviews reveal that so far, no detailed concepts have developed for the form that cooperation among legal and fact-finding institutions should take.

The majority of the interviewed international actors in all countries support REKOM. Some actively fund the campaign while others do not provide financial assistance but support the aims and idea of establishing a cross-border commission. Only a minority doubts the sense or practicability of such a mechanism. Nevertheless, international representatives are most reluctant to express precise expectations or models for a regional commission. They emphasise that the process is as important as the goal, that REKOM is a "home-grown" initiative, and that the local organisations should own both the process and the final decision on the scope of the commission. The principle of "local ownership" is highlighted as a must for advancing the field of dealing with the past by almost all of the interviewed donors.

Representatives of the ICTY also welcome an additional, non-judicial mechanism for fact-finding on a regional level, as revealed in Chapter 4.2.3. They are convinced that a regional commission can complement judicial proceedings and provide an open space for debate on different interpretations of the past. Representatives of the domestic judiciary are much more reluctant or even critical towards the

idea of establishing a regional commission. They point to the archives and facts that have been gathered already both by the ICTY and domestic courts, and they see a risk that establishing a REKOM might lead to a duplication of efforts. They recommend that instead of creating another mechanism, the right way forward is to start to systematise and analyse the existing material. Finally, they warn that the setting of public hearings that involve elements of story-telling might confuse and disappoint the victims. They see a risk that victims who speak out in this context might expect that legal prosecutions and compensation will result from this process (see Chapter 4.2.3).

Thus we can conclude that the assumption expressed in the **fifth hypothesis**, namely that legal representatives would regard a regional fact-finding commission as a competing or disruptive mechanism, applies in the case of the domestic judiciary but not for the representatives of the International Tribunal. Instead, the most critical opinions towards REKOM are expressed by the Commissions for Missing Persons from all three countries (see Chapter 4.5.2). They all share the view that efforts are duplicated. They are convinced that the establishing of a regional commission will question and undermine the efforts that the CMPs have undertaken together with the courts, police and victims' organisations. Furthermore, they see a risk that victims could be overloaded and involved in too many parallel activities that urge them to tell their painful stories again and again.

Although the REKOM initiative is very much supported by most of the TJ protagonists, they also express conflicting assessments of the *campaign* as such. Some criticism is voiced with regard to the performance of the lead agencies and representatives. The most critical voices can be found in the group of interviewed CSOs, both the members of the REKOM coalition and non-members. Many of these interviewees perceive the process as highly conflictive. International actors share this view. They observe that some of the leading personalities lacked the skills and sensitivity needed for dealing with conflicts among different stakeholders (i.e. controversial positions and tensions among competing faith communities). There is also criticism of the formats chosen for the NGO consultations, which did not meet the standards of inclusivity (see Chapter 5.2.3). CSOs report that as a consequence of such deficits, several organisations that had co-initiated the campaign have meanwhile left the coalition. International supporters are aware that the coalition faces a great deal of fluctuation as some organisations are leaving while new groups join in. But they believe that such a fluid dynamic is normal for civil society engagement and will not harm the campaign or put its aims at risk. Furthermore, they regard it as a positive sign that leading politicians (i.e. the Presidents of Croatia and Montenegro) have signed the REKOM statute, and therefore are fully confident that the campaign will maintain or even gain momentum. However, several international actors also make proposals for improvement. They suggest that the REKOM team should involve more experts from academia and also from other conflict regions, in order to better prepare decisions on the scope and mandate for a commission to be established in the Western Balkans (see Chapter 6.2.3).

Guiding concepts and approaches

Representatives of the Commissions for Missing Persons (CMPs) consider forensic truth to be the first priority, as outlined in Chapter 4. Representatives of the legal institutions emphasise that the verification of facts ("prove beyond reasonable doubt") is an essential precondition for serving judicial justice in the context of war crimes prosecution. Accountability is therefore at the top of their agenda, but at the same time these actors point out that legal prosecution does not necessarily lead to acknowledgment and redress for the victims. Compensation is urgently needed and still lacking in the region. Representatives of the ICTY regard this as a prerequisite for reconciliation (in the sense of trust-building, shared values and common visions for a peaceful future). Representatives of the domestic courts explicitly state that reconciliation is not part of the legal institutions' mandate, and, as several interviewees from this sample also outline, is far too ambitious a concept. They do not expect people in the region to reconcile but rather to tolerate each

other and to cooperate. Representatives of the CMPs also avoid the term “reconciliation” and prefer the concept of trust-building, in addition to forensic and factual truth recovery.

CSO representatives in all countries agree on the priority of establishing a set of undeniable facts, and regard this as a prerequisite for serving both justice and trust-building, as analysed in Chapter 5 by Ljubinka Petrović-Ziemer. Yet they are aware that a “shared truth” can hardly be established in the region of former Yugoslavia, where so many diverging perspectives and interpretations of the past exist. Furthermore, CSOs in all three countries agree that justice has certainly not been sufficiently served as there are still many war crimes not being prosecuted and prominent legal cases pending. Moreover, they emphasise that to date, state institutions have largely ignored the claims of the victims, as reparation programmes have not been developed. This issue is most strongly emphasised by victims’ organisations.

It can be concluded that – in accordance with the **sixth hypothesis** – the guiding concepts and approaches among TJ protagonists vary, according to their different mandates. However, all of them accept that fact-finding and accountability are mutually interdependent and form an important basis for trust- and relationship- building in the societies of the former Yugoslavia. At the same time, it is noteworthy that local CSOs, in comparison to international actors, express much more reluctance to use terms like “truth” and “justice” in their grassroots activities in local communities or cross-border encounters. As shown in Chapter 5.3, many of these interviewees come to the conclusion that all of these concepts are contested. Peace practitioners and human rights activists report that the terminology arouses controversy or misunderstandings among participants in their workshops or campaigns, and therefore they do not use it in their daily communication. The *concept of reconciliation* is also a controversial issue in the debate among CSOs.

As reported by Ljubinka Petrović-Ziemer in Chapter 5.3.3, several human rights activists concede that they use the term “reconciliation” mainly in funding applications in order to fulfil the donors’ expectations, but avoid using the term explicitly in their daily work. They point to the specific understanding of the term in the Bosnian/Croatian/Serbian language, according to which reconciliation is linked to the interpersonal level, where individuals restore a relationship after a quarrel. Alternative concepts used by human rights activists are: *empathy, solidarity, normalisation, stability* and *peaceful co-existence, peacebuilding, or engagement for social change based on nonviolence and respect for human rights*. Representatives of victims’ organisations also doubt that the term “reconciliation” is appropriate in view of the mass atrocities which occurred.

Peace activists, in contrast, use the term “reconciliation”. In their view, it is important to facilitate a process in which persons can accept the view and narrative of the other, in order to provide the ground for reconciliation; at the same time they voice assurances that changes in the social and political power structures and governance mechanisms are a prerequisite as well, along with effective war crimes prosecution, fact-finding and acknowledgment of the victims on and from all sides. In particular, local peace practitioners and international actors in Bosnia and Croatia stress the urgent need for relationship-building and trust-building in divided communities.

International representatives see reconciliation as a consequence of factual, narrative and dialogical truth and re-establishment of human values, as a process of *bridge-building* and *restoring relationships, healing, and creating respect and empathy for different interpretations of the past* (see Chapter 6.3.3). They see a need for reconciliation between people of different ethnic and religious constituencies within and across the countries. Some of them emphasise the relationship between minorities and majority groups in the region of former Yugoslavia, while others also stress the need for individuals’ reconciliation with themselves and their identity. In their view, compensation for victims of war crimes, durable solutions for refugees and displaced persons, and property restitution are necessary preconditions for reconciliation. Furthermore, they regard economic development as crucial in establishing a favourable climate for this process. However, a couple of international actors also share the scepticism expressed by the critical CSOs,

and suggest replacing “reconciliation” with less ambitious concepts like dialogue, pacification, social trust, and regional cooperation; international actors in Bosnia in particular observe a tendency for people to feel they “betray those who have lost their lives if they join the reconciliation discourse” (interview I-18, see chapter 6). Others warn that in a context where a substantial part of the population is Muslim, the concept must not be guided by a Christian notion. In particular, it should not be overloaded with a claim for “forgiveness”.

To sum up, the field research reveals different notions of truth, justice and reconciliation. Local actors – in particular human rights activists and victims’ groups, but also the representatives of legal institutions – are more reluctant to join the reconciliation discourse than international actors, and they propose using less ambitious terms. But despite these differences in the use of terminologies, no fundamental incompatibility of strategies – or proposals on how to approach the past – can be identified among the different protagonists of transitional justice. When it comes to the question of *preconditions and obstacles* for reconciliation / trust-building, or relationship-building, most of these actors come to very similar conclusions.

Learning processes and modification of strategies

As Chapter 5.4.1 reveals, peace practitioners and human rights activists in all countries have very positive assessments of their own achievements in the period during and after the wars of the early 1990s. They are convinced that their engagement helped to maintain space for dialogue between people from different sides. However, assessments of the following two decades are more ambivalent. Peace practitioners and human rights activists in **Croatia** are quite self-confident. They are convinced that they have substantially contributed to the reintegration of the Krajina area (a territory that was severely affected by war operations and crimes against Serb civilians), and to positive development in Eastern Slavonia and the former UNTAES region around Vukovar.²

In contrast, CSOs in **Serbia** and **Bosnia** are not so satisfied with their achievements. Peace practitioners regret that trust-building has not significantly advanced in the region and no broader movement for peace has emerged. In Serbia, CSOs express frustration at the lack of willingness of both politicians and society to face up to their own active involvement in war operations in the 1990s and to take responsibility. Activists in Bosnia have the most pessimistic assessments. In their view, not even the Strategy for Transitional Justice adopted by the BiH Council of Ministers in consultation with civil society actors can be considered a significant achievement, and serious doubts are expressed, that the state authorities are going to implement it (see Chapter 5.1).

Along with the critical self-reflection at the grassroots level, international actors also concede some failures from past activities in the field of peacebuilding and dealing with the past that require (or have already led to) a modification of strategies. This applies in particular to experiences in **Bosnia** regarding policies for the return of refugees and IDPs, and education. As outlined in Chapter 6, international organisations, together with Bosniak leaders right after the war, have strictly followed a strategy which aimed to return people to their pre-war place of residence, in order to reverse “ethnic cleansing”. It took many years for the international organisations to realise that this strategy ignores the needs and rights of many vulnerable groups (refugees and IDPs who do not want to re-migrate to their pre-war communities) and therefore had to be revised. However, it took even longer to convince the Bosniak political representatives, as they regard such a shift of strategy as an endorsement of “ethnic cleansing”.

International actors who work on educational issues in Bosnia also admit that they failed in their struggle for peace education to be extended to the school curricula, due to different regulations within the RS and FBiH. Furthermore, they report that the existence of three educational systems, each teaching different

2 For an overview of the policies of protection of national minorities in Croatia after 1995, see Talalović 2008, 31-88.

views and narratives on the past, is a serious obstacle to reconciliation. They stress that it was a wrong strategy for the international community to support a system that provides school education for children of different (Croat, Bosniak and Serb) communities in separate classes and separate shifts in one building (“two schools under one roof”). This system was introduced in 2003, in order to replace the previous practice of teaching children of different ethnic groups in separate establishments. It was particularly promoted by the OSCE and intended as a temporary measure, to allow families who returned after the war to educate their children in proper facilities. It also aimed to put students in the same building in order to pave the way for the creation of mixed classes. But this expectation was not fulfilled, as more than 50 schools in Bosnia remain divided today.³ Several international representatives therefore conclude that the concept that was initially promoted as a means of integration has ultimately further deepened the divide. They therefore see an urgent need for a revision of this approach. They also propose a critical analysis of this experience in order to learn more about the dynamics and peacebuilding potential of divided communities.

8.1.2 Political parties’ assessments of TJ mechanisms, concepts and approaches

The interviewed politicians share the TJ protagonists’ view that impunity cannot be accepted with regard to the war-related crimes committed in the 1990s. They also acknowledge the Hague Tribunal’s contribution to establishing evidence and facts, although some very critical stances can be found, in particular among politicians from the Republika Srpska (BiH). In general, politicians who express the most critical views of the ICTY also regard the domestic courts as problematic, outsider-driven, politicised or biased (see Chapter 7.2. by Katarina Miličević and Chapter 7.3. by Srđan Dvornik). Thus the **second hypothesis** (assuming that the domestic legal institutions have more legitimacy than international courts) could not be proved with regard to the interviewed political representatives. In Bosnia, the politicians’ lack of trust of TJ institutions correlates with the lack of acceptance of state structures. Given that the state-level institutions are not seen as legitimate, especially in the RS, it is not surprising that the Court of BiH which has overall responsibility for war crimes prosecution is also viewed critically by all interviewed politicians from this entity.

Unlike the CSO activists interviewed, the politicians do not express reservations towards the terminology of truth, justice and reconciliation. Having said this, it must be reiterated that political parties which follow an explicit nationalist agenda were not included in the sample of interviews in Serbia and that the influential Croatian Democratic Union (HDZ) was not included in Croatia. They largely subscribe to the view that justice has to be based on truth, and that both justice and truth need to be served in order to pave the way for reconciliation. However, they express diverging opinions regarding the preconditions and framework for reconciliation.

In **Bosnia**, different views are expressed by politicians in both entities, as analysed by Ismet Sejfića in Chapter 7.1. Politicians from the FBiH argue that truth and justice have to be served right now and simultaneously, while the reconciliation process will follow on much more slowly and can only unfold in the long run, in the framework of the integration of all countries of the region into the EU, and together with strategies for fostering economic development. While politicians in the FBiH insist on establishing facts and serving judicial justice, their colleagues in the RS put much more emphasis on tolerating three different views on the past, given that a variety of truths and political interpretations of the past that exist both in the region and in Bosnia. One proposal is to establish a “common minimum of truth”, a set of undisputed facts, but at the same time make sure that the different “specific truths” (DP) of the distinct

³ The Parliament of the FBiH recently adopted a resolution to establish multi-ethnic schools. But many local municipalities oppose such a change (see <http://news.bbc.co.uk/2/hi/8596904.stm>). On 27 April 2012 a court in the city of Mostar ruled that the ethnic separation of students amounts to discrimination (www.rferl.org/content/bosnian_court_rules_against_ethnic_segregation_schools/24565464.html).

constituencies are acknowledged. While representatives from the FBiH insist on facing the past in public discourse, RS politicians suggest that dialogue on the past should be left to professionals from academia and the judiciary. The latter also explicitly state that all sides have to take responsibility for what happened in the past, and that individuals – not nations – should be held accountable for crimes. Furthermore, they emphasise that economic development and social policies need to be advanced.

Finally, politicians from both entities strongly advocate for reparations for victims of war-related crimes and their families. Politicians in the FBiH in particular focus on implementation of policies that secure the return of refugees and IDPs to their places of pre-war residence. Furthermore, they push for property restitution for those who were forcibly displaced, in addition to prosecution and public acknowledgment of war-related crimes.

In **Croatia**, the field research reveals that three different approaches to dealing with the past can be found among the liberal spectrum of political parties (see Chapter 7.3). The first approach regards prosecution of war-related crimes as the key priority and suggests that measures for economic development are a prerequisite for a normalisation of relations, institution-building, and dialogue. The second approach emphasises that it has to be acknowledged that crimes were committed and that members of the Croat majority should demonstrate in a public gesture that they condemn crimes committed in their names against the Serb minority. The third approach advocates for robust analysis of the political and cultural patterns which fuelled the violent conflicts in the past decades.

As outlined in Chapter 7.3. by Ismet Sejfića, even the representatives of the Croatian Party of Rights (HSP) and the Croatian Democratic Alliance of Slavonia and Baranja (HDSSB) express the need to respect human rights and oppose ethnic discrimination. They also emphasise the significance of tolerance and co-existence in diversity. Furthermore, the HDSSB representative does not deny war-related crimes for which Branimir Glavaš (the president of this party) was convicted, although the official party position continues to assume that he is not guilty. This may be taken as an indicator of a shift of discourse, as Srđan Dvornik states, in the sense that some facts “have become established knowledge that is no longer denied” (Chapter 7.3.6). But in this context, we should reiterate that this study cannot reveal the full picture as it was not possible to conduct an interview with the HDZ.

In **Serbia**, all the politicians interviewed insist that political and legal institutions and society have to deal with the recent past in close collaboration with the other countries. Most interviewees agree that the needs of victims in the region need to be much more seriously addressed, and empathy needs to be created towards the victims on all sides. All of the interviewed politicians distance themselves from discourses that state that Serbia had never been at war, or that it only “defended” itself. However, as Katarina Milićević reminds us (see Chapter 7.2), such a discourse is still powerful and expressed by some right-wing parties. They continue to justify war crimes committed during the 1990s as an inevitable side-effect of a “defensive war”, pointing to the suffering of the Serbian people in the Second World War. Unfortunately, these voices are not included in the sample.

Politicians’ assessments of REKOM

The interviewed politicians, in general, appreciate the idea of a regional fact-finding mechanism. As outlined in Chapter 7.3. by Srđan Dvornik, the interviewees in **Croatia** largely endorse the REKOM initiative (although most of them have only a rough idea of its purpose). Representatives from left- and right-wing parties, and followers of both liberal and collectivist approaches share the opinion that a regional commission could make a useful contribution by gathering information on missing persons and testimonies on war-related crimes. They suggest that a regional commission should complement the domestic legal institutions, provide incentives and push them to take up investigations and prosecutions. However, critical voices warn that such a commission should not be composed of NGOs alone, as facts established by NGOs might be too subjective and need to be verified by legal institutions.

As analysed in Chapter 7.2. by Katarina Milićević, politicians in **Serbia** focus primarily on the need to trace and name the missing persons. They insist that REKOM should closely collaborate with the courts. They all support the idea of a regional commission, with the exception of one person who believes that setting up one commission for all countries would require too many compromises; this policy-maker suggests that instead, truth commissions should be installed in every country, and that intensive cross-border cooperation should start.

In **Bosnia**, opinions are more diverse (see Chapter 7.1), as politicians in the RS appreciate the regional concept of REKOM, but at the same time doubt that the persons and agencies that initiated the campaign are able to advance a process of dealing with the past. RS politicians want to see state institutions in the driving seat. Policy-makers from the Federation of BiH also welcome a regional mechanism (with the exception of one person who questions this approach given that not all countries have experienced war on their territory). They acknowledge the achievements of civil society actors but at the same time believe that NGOs alone cannot carry the process. Some interviewees suggest that scholars and legal experts should be the main drivers of the process, and preferably political independent personalities, in order to guarantee that it will not be dominated by a specific political agenda. Others also recommend that Members of Parliament and government officials should be included. Political representatives in both the FBiH and RS see REKOM's function not only in the field of forensic and factual truth but also in advocating for redress for the victims of war-related crimes. Politicians from the RS in particular argue that in order to regulate compensation, state representatives have to be involved.

8.2 Interaction of different actors and linkages across levels

8.2.1 Cooperation among TJ protagonists

CSOs in all three countries point to some positive effects of their work on community-building and also to successful campaigning with other NGOs (see Chapter 5.5.1). Networking on the community level is judged to be more effective than regional cooperation, although the latter is maintained for specific campaigns. But they are rather self-critical about their achievements with regard to alliances beyond the NGO sector. In all three countries, several CSO representatives believe that they were not able to communicate their agenda to a broader society. They also concede that they focused too much on collaboration with like-minded people, and on urban areas while neglecting rural regions. Human rights activists think that victims' associations were not sufficiently involved in community-building. Human rights activists and peace practitioners in all three countries suggest that there should be more systematic involvement of war veterans who can effectively support processes of dealing with the past as they are held in high esteem by society.

CSOs also mention that for a long period they focused too much on networking with international experts, thereby neglecting collaboration with local academics at universities and research institutions (Chapter 5.5.4). The field research reveals that while peace practitioners and human rights activists are eager to broaden the scope of cooperation, victims' groups and veterans' associations are more reluctant and network primarily among themselves. Victims' organisations from Croatia, Bosnia and Serbia have established stable cross-border cooperation on a regional level. Moreover, some veterans have engaged in cross-border/regional peace work, but in general, veterans' associations' regional networking activities cannot compare with those of victims' groups. Victims' organisations and veterans' unions alike still have difficulties in developing valuable partnerships with other CSOs, and vice versa. Cooperation between these associations and peace practitioners and human rights activists is the exception rather than the rule. Victims' organisations in all countries maintain close cooperation with international and domestic legal institutions and Commissions for Missing Persons.

As described by Ljubinka Petrović-Ziemer, local CSOs have established diverse forms of cooperation with international actors, ranging from close partnerships that include exchange of expertise, up to more formalised collaboration that is largely limited to financial support (see Chapter 5.5.4). CSO representatives from all three countries criticise the fact that international funding strategies often focus on short-term projects and do not sufficiently consider the non-linear and long-term dynamic of peacebuilding. CSOs complain that many donors apply efficiency criteria that aim to measure short-term success and do not enhance self-reflection, learning and adjustment of strategies. They suggest that local and international actors should hold more strategic discussions that reflect the dynamic of peacebuilding in a realistic manner, and ensure that programmes are shaped in line with social needs. Furthermore, CSOs recommend that international actors should carefully assess past experiences, in order to better coordinate future grant-making; in particular, they should learn from failures in Bosnia where, according to the interviewees, funds have been wasted, partners were not selected appropriately, and civil society organisations were overloaded with unrealistic expectations regarding their capacities (in a period when state institutions were considered obstructive and international agencies shifted the focus to CSO actors, seeing them as agents of change).

International actors in all three countries acknowledge the contributions of CSOs (see Chapter 6.4.2). They are convinced that their work has substantially contributed to fact-finding, war crimes documentation, and court monitoring. In Croatia and Serbia, international actors maintain stable cooperation with CSOs that engage in monitoring of war crimes trials and supporting victims/witnesses. International actors also positively acknowledge the contribution of CSOs to dealing with the past. But some interviewees in Serbia are ambivalent in their assessments of the cooperation among CSOs in the context of the REKOM campaign (as shown in Chapter 8.1.1). They assert that some of the lead agencies lack transparency and diplomatic skills in their actions and therefore are not backed by wider society.

Several representatives of international NGOs report that their engagement focuses more on partnerships and joint activities rather than funding, which sometimes disappoints local CSOs who expect that each international agency will offer financial support. For the international actors, a particular challenge is to shape cooperation in such a way that it will enhance sustainability and not end up in long-term dependency. From Bosnia in particular, international actors report that the external funding has reduced CSOs' individual initiative and that many of these have adapted their agenda to donors' expectations and often stop working on these issues once the funding ends. International actors believe that this is a hindrance to effective networking and contributes to a credibility gap (i.e. the problem that CSOs lack acceptance in society). Furthermore, the international interviewees observe that strong competition for resources limits cooperation among civil society actors.

Although they voice a great many critical remarks, the international interviewees are convinced that CSOs need to be supported in the future too. They believe that initiatives on the grassroots level of society are needed as a counterweight to ethno-nationalism in all countries of the ex-Yugoslav region. However, international interviewees from Serbia recommend that support should not be limited to the professionalised NGO sector: they believe that there should be a stronger focus on academics and journalists, who are more critical towards the political mainstream and are open to debating alternatives, and therefore deserve much more support.

Furthermore, stable forms of cooperation have been established among the Commissions for Missing Persons and the legal institutions. Commissions for Missing Persons cooperate on a daily basis with legal institutions and victims' organisations (families of the disappeared) both on a local and regional level (see Chapter 4.5.2). ICTY officials assess the cooperation with the domestic courts as very effective (although marked by conflictive issues, one example being the practice of "in absentia" trials), and vice versa (although the latter are not entirely convinced of the need for the reform of their previous practices). As reported in Chapters 4 and 6, the cooperation between the war crimes chambers in all three countries has significantly improved in the past few years, and the prosecutor's offices in Croatia and Serbia even managed to base their collaboration on an official agreement that regulates the exchange of evidence on war-related crimes. In contrast, cooperation with and among the courts in Bosnia is seen as less effective.

TJ protagonists report that the fragmentation of the judicial institutions reflects the political divide and hinders effective in-country and cross-border cooperation.

8.2.2 Linkages across levels

In general, TJ protagonists from all actors' groups (legal and fact-finding institutions, international actors, and civil society organisations) agree that activities for dealing with the past are needed, both on the political level and on the interpersonal, small-group level. Indeed, some cooperation has developed across different levels and actors' groups. In all three countries under review, human rights activists and victims' associations maintain contact with the police and legal institutions (see Chapter 5.5.2). The same applies to several peace groups that engage in war crimes monitoring and assist victims. Interviewees from Bosnia very much appreciate the cooperation with the ICTY's outreach office. Although several of them express some disappointment with the work of the domestic courts in the region, CSOs are committed to supporting their work as well.

CSOs' cooperation with state institutions

In all three countries close relations exist between victims' associations and the Commissions for Missing Persons which were established as state institutions in the 1990s. It is reported that this cooperation is based on regular regional meetings and is helping to establish an understanding that there are victims to be mourned in all constituencies involved in the war(s) (see Chapter 4.5.2). Victims' organisations also closely cooperate with the courts and prosecutors' offices in all three countries. The field research reveals that victims' groups and veterans' unions began to engage in close cooperation with state institutions right after the war, while peace practitioners and human rights activists have focused exclusively on international actors rather than cooperation with governments in the region (see Chapter 5.5.1). As CSO activists further outline, the cooperation with governments, parliaments and local authorities has improved today, if compared to the situation right after the war. In all three countries, diverse forms of cooperation have been developed, and in particular the cooperation with local authorities in smaller municipalities is considered as very productive. But activists in all countries still believe that many civil society actors still have negative attitudes towards politicians and that they need to find a way to better cooperate with governments, parliaments, and state institutions, in order to advance policies for constructively dealing with the past.

While CSOs in **Croatia** and **Bosnia** report that their cooperation with authorities is slowly advancing, reports from **Serbia** show that the relations between civil society and state institutions remain distant in this country. CSOs consider the government led by the Democratic Party (DS) and the Socialist Party of Serbia (SPS) to be more trustworthy than former governments, but a high degree of distrust still marks their attitudes towards governmental institutions (see Chapter 5.5.3). All interviewees from Serbia confirm that they cooperate very sporadically with state institutions as many government officials see NGOs merely as service agencies to carry out specific, predefined tasks. CSOs that engaged for refugee return to Croatia and Bosnia report, for instance, that this was obstructed by authorities in Serbia. Despite these negative experiences, they are fully aware that successful advocacy work for vulnerable persons and minorities very much depends on close cooperation with state institutions.

Governments' cooperation with international institutions

International actors also express ambivalent assessments of the cooperation with governments and authorities in the region. Cooperation with governments in all three countries on war crimes prosecution has significantly improved in the past five years, according to IGO representatives (see Chapter 6.4.1). In terms of cooperation with the ICTY, the **Government of Bosnia-Herzegovina** has an excellent record, and

the performance of the Croatian and Serbian Governments has also improved. This development is seen as a consequence of conditionality and pressure from the European Union. The cooperation with government institutions on domestic TJ programmes is also positively assessed. This applies in particular to the Action Plan for War Crimes Prosecution adopted by the **Government of Croatia**, and the Strategy for Transitional Justice adopted by the **BiH Council of Ministers**, whose purpose is to address judicial reforms, reparations, support of victims and veterans and reintegration of vulnerable persons. At the same time, international actors emphasise that the ambitious elements of the Bosnian TJ strategy can only be implemented if constitutional reform is completed in this country; at present, different bodies of legislation exist in the two entities that would pose a serious obstacle to most of the proposals agreed during the consultations facilitated by UNDP.

In **Serbia**, international actors report on good experiences of cooperation in internationally driven education initiatives together with the Ministry of European Integration and the Ministry for Human Rights. Some progress has been made with regard to the use of new history books for primary schools. Their publication was supported by an international organisation and generally rejected by the Ministries of Education throughout the region, but recently accepted by authorities in Serbia and officially recommended by the Ministry of Education. However, the interviews with international actors reveal that the cooperation with authorities and governments is still facing a great many difficulties in all three countries, especially when it comes to issues related to history teaching. They are convinced that a more pro-active approach by authorities is needed to achieve more openness to different views on the past in the classrooms.

Furthermore, international actors point out that the cooperation with governments and local authorities on refugee return and solutions for IDPs faces many obstacles (see Chapter 6.4.1). Improving life for refugees and returnees and for the specific group of IDPs who do not want to return and still live in uncertain conditions is seen as crucial. International interviewees report that it is difficult to convince authorities and governments in the region to cooperate and search for solutions besides return. This applies first of all to Bosnia, where authorities of the Federation, after a long period of pushing for return and refusing to assist people in their current places of residence, now need to shift their policy by closing the remaining collective accommodation and offering possibilities for the integration of IDPs and refugees in the respective communities. This applies also to Serbia, where refugees from Croatia and Kosovo face a similar dilemma. International actors see an urgent need to push all governments to cooperate on solutions in order to avoid increasing frustration among refugees and IDPs, which in their view forms a constant source of political radicalisation and destabilisation.

Political parties' willingness to cooperate with civil society

In **Bosnia**, party representatives in the FBiH believe that civil society plays an important part in the process of reconciliation and that there is a need for cooperation with CSOs on issues of transitional justice (see Chapter 7.1. by Ismet Sejfija). In contrast, politicians in the RS express more sceptical opinions, arguing that some of the NGOs that are drivers of current TJ initiatives lack credibility and damage the process. They insist that processes of dealing with the past need personalities of high moral credibility and political independence. Interestingly, most of the interviewed politicians in Bosnia believe that the main responsibility for initiatives on dealing with the past lies with the judiciary, scholars, and civil society. Very few express the view that parliaments and government officials have an obligation to deal with these issues. In fact, as the politicians report, no political party has explicitly mentioned issues of dealing with the past in their programmes, and they do not believe that these issues need special elaboration in their strategy documents.

In **Croatia** the interviewed politicians also recognise civil society organisations as important drivers of change (see Chapter 7.3. by Srđan Dvornik). They emphasise that political actors and the judicial institutions alike need impetus from CSOs and that they should complement the work of the courts by documenting facts and monitoring trials. The interviewed politicians in Serbia emphasise that initiatives

both by policy-makers and CSOs are needed (see Chapter 7.2. by Katarina Milićević), but civil society actors should put pressure on the state to develop constructive policies for dealing with the past. They also stress that collaboration between CSOs, state institutions and parliaments is needed. Even though all political representatives consider dealing with the past and peacebuilding to be crucial, their respective parties have not determined explicit strategies or policies for such purposes. Furthermore, several politicians from Serbia stress that progress in this field can only be achieved by the societies in the region themselves; nevertheless, international assistance is still seen as necessary in the future.

8.2.3 Conclusion

The field research revealed that there is continuous interaction among the courts in the region and that the cooperation of judicial institutions across countries has improved. The same applies to the work of the Commissions for Missing Persons (CMPs) that have also institutionalised regional collaboration. There is also close interaction and cooperation among victims' associations and human rights activists, and all these groups also cooperate with the courts and the CMPs. Some interaction and cooperation have been observed between peace practitioners and human rights organisations (and in a very few cases, organisations combine both agendas), although this is the exception rather than the rule. There is also some ongoing cooperation among peace groups and veterans, and between peace groups and victims' organisations. In this context, it is noteworthy that the campaign for REKOM has encouraged networking among CSOs across very diverse agendas and many countries in the region. This campaign therefore offers a great many opportunities for debate among different actors and within wider society. The question is whether it will maintain or even gain additional momentum and finally materialise as an institutionalised mechanism for documentation and exchange of information on war events that is endorsed by the governments.

Furthermore, it can be concluded that apart from internationally facilitated ad hoc consultations (i.e. in the development of a national TJ strategy in Bosnia), there is not much institutionalised cooperation among CSOs and political actors. In all three countries under review, CSOs still have reservations about collaboration with government institutions and local authorities, although many of them express a belief that such interaction is necessary in order to advance dealing with the past and peacebuilding. At the same time, many politicians, although acknowledging the need for grassroots activities, do not become actively involved in cooperation and partnerships with CSOs. While CSOs actively strive for new alliances, politicians do not see themselves as having an obligation to take an active role in this field. It is noteworthy (and contradictory) that, although representatives of the political parties in all countries see a need for dealing with the past (and many of them even claim a leading role for state institutions in a REKOM), none of the parties has outlined explicit measures, aims or policies in their programmes, according to the analyses presented in Chapter 7.

The field research also reveals that strategies for dealing with the past in the region face several open questions: (1) How can truth recovery be advanced, and (2) what exactly are the potentials and limits of a regional truth commission? (3) How to deal with deep-rooted notions of victimhood, and competitions on victimhood? (4) How to deal with imbalances of suffering, and at the same time avoid attributing collective guilt? (5) How can a process of reconciliation advance in settings where statehood and political status are contested and the legitimacy of institutions is questioned?

8.3 Open questions

Shared truth vs. empathy for different views on the past?

TJ experts have argued that processes of dealing with the past have to address different dimensions of truth recovery, and need to take into account that many versions of the “truth” and contrasting interpretations of history are likely to be expressed in war-torn societies. Memory politics, e.g. commemoration efforts or initiatives for schoolbook revision⁴, thus face the question: which particular version should be taken as the “official” truth? And another question arises: does the search for a generally agreed and acceptable version of history actually lead to reconciliation? Several authors doubt this (Broun us 2008; Gibson 2006), or see no evidence to either confirm or deny this relationship (Alidu et al. 2009). The sceptical scholars argue that selective forms of remembrance cannot be challenged by a simple call for a “shared truth” in a situation where many different truths exist. In certain contexts and stages it may be more important to encourage people accept the existence of contrasting narratives and to enhance understanding of the other’s views. However, certain questions remain unanswered, namely how far such insight can go, whether besides acceptance of facts, a deeper understanding of the viewpoints and of the suffering of the “others” is possible and can be expected, and to what extent attempts to confront people with different truths are regarded as an unreasonable and excessive demand.

What are the potentials and limits of a regional truth commission?

In the literature, it is repeatedly pointed out that recognition of the suffering of victims and the acknowledgment that there were victims on all sides are extremely important for processes of dealing with the past and reconciliation. That being the case, investigating the fate and determining the whereabouts of the dead or missing are key challenges. Against this background, the current efforts to establish a regional truth commission in the Balkans are understandable. It is likely that a regional truth commission – if it comes into being – will help to complement fact-finding and documentation and give names to the victims. It is more difficult to imagine that such a mechanism may offer space for cross-border dialogue on different experiences and interpretations of the wars of the 1990s. The question is whether and how a commission of experts from the various countries can contribute to learning experiences within and across the societies of the Western Balkans. How can a mechanism which operates on a cross-border basis and is established from the top down, i.e. by governments, reach wider society and facilitate cultural reconciliation (Bloomfield 2006)? How can the activities of such a commission relate to efforts to create inclusive cultures of remembrance at the local level?

In this context, the potential and limits, advantages and disadvantages of a regional approach need to be discussed. Is it possible to ensure that a regional commission has access to national archives (of the police, the courts, military and intelligence services)? Or would this conflict with the principle of state sovereignty? To what extent can it impose transparency and cooperation obligations on national state institutions? How should such a commission be constituted and mandated in order to ensure effective investigation of the facts and appropriate treatment of the findings? How can restorative aspects be strengthened? Are hearings of victim testimony from the various countries an appropriate approach for this? How can it bring influence to bear on national decision-making bodies in a manner which ensures that they develop TJ programmes which include reparations for the victims of violence and human rights violations? How can a regional commission influence the requisite legal frameworks in the respective countries?

It is also an open question whether (and how) it is possible to proceed from individual hearings to institutional change in the scope of a regional mechanism. As outlined by theorists of transitional justice (see

⁴ See Dimou 2009; see publications of the Joint History Project at the Center for Democracy and Reconciliation in Southeast Europe http://www.cdsee.org/jhp/download_eng.html.

Chapter 3), the success of truth commissions primarily depends on the ability to support transformation of institutions that have contributed to violence or human rights violations. The question remains whether a regional body can be granted the authority and mandate to initiate institutional reforms in the diverse countries.

How to deal with notions and competitions of victimhood?

The interviews reveal that many different notions of victimhood exist in all three countries under review, and competition on the question of who is the bigger victim complicates any dialogue on the past. Local CSOs and international actors have stressed in our interviews that a lack of acknowledgment of the victims' experiences can form a strong obstacle to reconciliation. However, they also observe that deep-rooted victim identities may also hinder rapprochement.

In **Serbia**, notions of victimhood go hand in hand with the tendency to relativise war-related crimes (see Chapters 6 and 7.2). From **Croatia**, it is also reported that, with regard to Croatia's role in the war in Bosnia and crimes related to Operation Storm in the Krajina in 1995, there is a strong tendency of denial. The interpretation that Croatia was a victim of the aggression of the Yugoslav People's Army and the Milošević regime and that it fought a "Homeland Defence War" is very hermetic and supports a discourse that rejects Croatia's own responsibility for past violence, both in Croatian politics and society. This discourse is followed closely by veterans' associations (see Chapter 7.3). This discourse was also nurtured and became even more powerful in Serbia when the Appeals Chamber of the Hague Tribunal, on 16 November 2012, ruled that the military commanders Ante Gotovina and Mladen Markač were not guilty of killings, deportation and inhuman acts during "Operation Storm", arguing that there was no evidence proving the prosecution's claims that the attacks on Krajina were illegal and intended to target civilians. The verdict aroused considerable debate in all three countries. Peace and human rights activists⁵ in the region fear that it may foster the perception in Croatian society that they can close the chapter of dealing with the past and facing their own responsibility for crimes and human rights violations committed in the 1990s.⁶

In **Bosnia**, victim identities are particularly dominant and continue to fuel ethno-nationalist discourses and tensions. Apparently, experiences during and after the war have helped to establish a deep-rooted *culture of victimhood* that fosters stereotypes and collective blame in this country. Sometimes this can also lead to victims' overblown expectations or difficulties in accepting positive steps that are undertaken by those who are considered perpetrators. As stressed by an international observer, apologies by Serbs or Croats are often not sufficiently acknowledged by Bosniaks: "If they are accepted at all, this is always accompanied by comments that these steps are not sufficient" (interview I-2, see Chapter 6.3.2). Social psychologists have stressed that it is typical, in societies affected by ethnopolitical violence, for identities often to remain locked in a notion of victimhood.⁷ They have argued that ascribing the role of victim to individuals or groups by dominant societal discourses can turn the experience of being a victim into one of collective and mythologised victimhood. In the worst case, even war criminals cast themselves as victims as a way of denying crimes. Victim identities can be adopted by those who have suffered from violence, and by those who have committed violence. Both versions form a serious obstacle to reconciliation, as remembrance focuses exclusively on the victims of the own constituency, and ignores the others. Therefore multi-level approaches by media and education are needed to facilitate questioning and reshaping of victim discourses.

In the region of former Yugoslavia, notions of victimhood consist of diverse dimensions. People feel that they are victims of "the others" whom they confronted as enemies in the recent wars, who are often

⁵ See <http://www.faz.net/aktuell/politik/ausland/nach-gotovina-freispruch-nicht-nur-nationalisten-11964570.html> (accessed on 19 November 2012).

⁶ In his speech in Zagreb's main square, Ante Gotovina addressed the public as follows: "This is a joint victory. We had "Storm" in the war. But this was a legal kind of "Storm". We won. This is the finishing touch. War belongs to history; let's turn towards the future all together." See <http://www.bbc.co.uk/search/?q=getovina> (accessed on 19 November 2012).

⁷ See Enns 2007; 2012; on the impact of victim identities on societies in the region of former Yugoslavia, see Nikolić-Ristanović 2008; Popović 2003; Žižek 1991.

blamed also for all the consequences of the war; another notion relates to the feeling of “dependence on “one’s own” politicians, and a lack of self-confidence to influence their own fate and also feelings of dependence on international decisions” (CNA 2007, 438). This perception is particularly widespread in Bosnia, and was addressed by a (remarkable) statement that Sulejman Tihić, president of the Bosniak party, the SDA, and a victim of war crimes, gave at a press conference on 28 December 2008 in Sarajevo: he called upon citizens in Bosnia, “to abandon the philosophy of victimhood and self-pity” and to liberate themselves from the pattern of claiming that the international community should solve the problems of this country (International Crisis Group 2009, 6). However, as peace activists from the region explain, the “role of the victim is one of the *most comfortable ones*, because it frees us from any kind of responsibility whatsoever: for our own destiny (...), but also for the society we live in (...). It is clear there will be no substantial change in this region as long as we stay buried in the role of the victim” (CNA 2007, 438).

How to address imbalances in suffering and avoid discourses on collective guilt?

Conflict transformation scholars argue that it is a necessary prerequisite for reconciliation after violent conflict that the parties involved recognise the imbalance in suffering (see Kriesberg 2007). Our field research reveals that politics and societies in the region of the former Yugoslavia have not yet reached a stage of debate where such acknowledgment could take place.

Important progress has been made in the sense that all interviewees – not only protagonists of transitional justice, but also the representatives of political parties – acknowledge that crimes have been committed by all sides involved in the war, including their own constituency. It is important to raise awareness that people in all countries and on all sides have suffered, and every single victim deserves recognition, regardless of the origin, ethnicity or political affiliation. However, the statement that “all sides have suffered” or “all sides were guilty” has to be carefully assessed according to the specific context in which it is expressed. Such statements can definitely not be accepted if they are made in a discourse that aims to obscure the fact that the region of former Yugoslavia faces a huge imbalance of suffering: Bosnia counts nearly 100,000 war-related deaths – many more than the war-related deaths in Croatia and Serbia.

Furthermore, documentation by independent NGOs has proved that the vast majority of civilians killed in the Bosnian war were Bosniaks, and Bosniaks were also in the focus of “ethnic cleansing” that was applied systematically in particular by Bosnian Serb militias.⁸ It is therefore understandable that victims’ associations in this country point to imbalances of suffering. This problem was explicitly mentioned by some interviewees in the context of the REKOM consultations (see Chapter 5.2.3). At the same time it has been criticised that more than 250,000 Serbs who fled from Croatia and the civilians victims killed during and after the operation “Storm” have not received an appropriate acknowledgment (chapter 6.3.2). Different countries and areas have experienced different degrees of violence, atrocities and forced migration. It remains an open question whether and how imbalance can be addressed, without at the same time entering a discourse of balancing “own” victims against the victims of the “others”. Competition on the question who is the “greater victim” primarily serves to enshrine victim mentalities that oppose dialogue and critical reflection and support selective policies of remembrance, or discourses in which collective blames are made.

The question is how to facilitate a debate on political responsibility and at the same time avoid debates on collective guilt. The fact that troops of the former Yugoslav People’s Army and paramilitary troops from Serbia were actively involved in the war and committed atrocities in Bosnia should be recognised and publicly addressed by political leaders, but it should not lead to a general accusation against the citizens of Serbia, nor should it attribute moral responsibility to them. This problem was highlighted both by political party representatives (see Chapter 7.2) and by international representatives (Chapter 6). They also point to

⁸ For an analysis of the dynamic and background of Serb “ethnic cleansing” campaigns in former Yugoslavia, see Suljagić 2010.

the problem that people who feel they are being held responsible for crimes committed in their name tend to reject such (personal) responsibility and develop even stronger mechanisms of denial.

As the field research reveals, peace practitioners and human rights activists from Serbia insist that state authorities must acknowledge their involvement in the recent wars and take full responsibility for war crimes and injustice committed in the 1990s. At the same time political representatives from this country insist that no collective blames should be made. This discussion is ambivalent: on the one hand, it is an important precondition for reconciliation to insist that individuals – not groups or nations – be held responsible for crimes; on the other hand, it is problematical if political representatives proclaim that no collective blames are made in a situation where official recognition of crimes and human rights violations is still lacking and where political gestures of apology remain a matter of public controversy. The claim for “not blaming collectives” and the argument that “all sides have suffered” should not be used as a way of evading responsibility for the atrocities and violence committed in the 1990s. As long as politicians are not able to explicitly distance themselves from those events, the claim for “not blaming collectives” and for “individualisation of guilt” does not sound entirely convincing. It is important that policy-makers from Serbia, Croatia and Bosnia take political responsibility for crimes that were committed in the names of collectives and that they find appropriate gestures that express empathy with the victims on all sides. It is obvious that many policy-makers in the region still shy away from expressing public gestures of apology as they fear a loss of authority among their audience or legal consequences. However, this reluctance forms a significant hindrance to constructive forms of dealing with the legacies of the war. Due to a lack of initiative on the political level, no framework currently exists for civic trust-building and political reconciliation. This makes it difficult for bottom-up approaches driven by grassroots actors to advance trust- and relationship-building on an interpersonal and small-group level.

The empirical findings prove what has been outlined by theoretical approaches in the literature (see Chapter 3): As long as institutions and policy-makers deny responsibility or downplay the extent of atrocities, it is not surprising that victims do not express interest in reconciliation. The most prominent example is the statement by the recently named Serbian President Tomislav Nikolić⁹ that no genocide has been proved in Srebrenica – starkly conflicting with the judgments of the ICTY and International Court of Justice, which both classified the massacre as genocide. International actors should take such contradictions into account and be modest in their expectations when they design programmes on the basis of categories such as “reconciliation”.

Advancing reconciliation while statehood and legitimacy of institutions are contested?

Although the wars of the 1990s created a strong dynamic of division among societies in the three countries under review, in fact, relations today are undergoing progressive normalisation. People are travelling and crossing the borders for private visits, business or studies, often on a daily basis. In **Croatia**, although parallel societies continue to exist in some war-torn areas, important steps for peaceful reintegration and transformation have been taken, as reported by CSOs and international actors (see Chapters 5 and 6). In **Serbia**, although the conflict with Kosovo is still exploited by nationalist groups and incidents from this border still feature in the daily news, the reality in other parts of this multicultural society is not necessarily marked by tensions. In **Bosnia**, in contrast, ethno-nationalist polarisation forms an important obstacle to reconciliation, as talks with TJ protagonists revealed. This country experienced the most brutal forms of violence and the war dynamic has created extraordinarily harsh forms of mistrust and hatred between former neighbours who were either willing or forced to align themselves to different so-called “ethnic”

⁹ Nikolić told Montenegrin state television that “there was no genocide in Srebrenica”, although conceding that “grave crimes were committed by some Serbs who should be found, prosecuted and punished” <http://www.bbc.co.uk/news/world-europe-18301196?print=true>.

constituencies in the course of the war operations. Yet it seems that many adults still vividly remember the multicultural lifestyle from before the war. This might explain why some normalisation is taking place at the level of daily life and in some places steps for cooperation are taken on a community-level or even gestures for rapprochement¹⁰ that try to bridge the existing borderlines. However, relevant actors on a political level do not support or even undermine such processes, which proves the thesis on contradictory developments (Kriesberg 2007a, 253) outlined in Chapter 3.2. Bosnia's crucial problem is that relevant parts of the population and policy-makers who define themselves as Croat and Serb do not – or do not fully – identify with Bosnia-Herzegovina as a nation-state. Furthermore, a particular problem is that the post-war generations have grown up in the recently established separate political and educational structures and many youngsters are also affected by trans-generational traumas.

Segregation is most visible in relation to interpretations and commemorations of the war events of 1990s, and when it comes to elections. Once people in Bosnia start to vote, many of them continue to opt for candidates who declare that they represent “their” ethnic group, as there is a strong belief that “the others” would do the same anyway. Diverse fears of being outvoted, and insecurity on the question of “who presents whom?” in a system of consociational democracy are apparently quite powerful. Ethno-nationalist discourses and fearmongering during election campaigns, political manipulation of victims, refugees and displaced persons, institutional segregation, and ethnic teaching are still an enormous burden. Several international actors (see Chapter 6) even blame the entire political system that supports separation based on ethnopolitical identities.

It would be too simple, indeed, to attribute the ongoing conflicts in the region to (historical) quarrels between different “ethnic” or “faith” communities that need to improve their mutual understanding. In fact, no “ethnic” or “cultural” difference existed in this area of the former Socialist Federal Republic of Yugoslavia, as citizens spoke the same language and shared a common history; differences in tradition and faith existed but belonged to the private domain since the end of the Ottoman Empire (see Mujkić 2008). Those traditions were of interest to religious, cultural and artistic institutions, ethnologists, anthropologists and museums, but were never a constitutional principle: “In Bosnia-Herzegovina, then, people are profoundly commingled – they speak a single language that they call by different names, they share the same history and the same economic space, culturally and traditionally, they share the same ‘living space’, and even confessionally (...) history abounds in examples of brothers and cousins switching from one confession to another to preserve their property – that one cannot talk with any plausibility about different cultures that supposedly lived in Bosnia ‘alongside each other’, cohabiting in parallel or ‘consocializing’” (Mujkić 2008, 98).

As people in this area were so profoundly commingled (i.e. by inter-marriage), the effort of constructing a state on the basis of ethnic identity that accompanied the rise of democracy after the decline of the former regime had disastrous consequences. As Mujkić (2008, 99) outlines, “much has been invested in the production of separate ethnic identities in Bosnia and Herzegovina over the past two decades (...): entire armies of ethno-nationalist academics, intellectuals, journalists, doctors and engineers have committed themselves wholeheartedly to the invocatory manufacture of identity differences. Much money and destructive energy have also been invested – the illegal use of force by regular and irregular armies and militia, “ethnic cleansing” and genocide – to produce there compartmentalized ethnic identities each with aspirations to creating their own state, and now expecting their efforts to pay off.” Differences were basically created along confessional lines, with support of “ethnonationalist intellectuals (...) who put themselves at the service of production of ‘sufficient differences’ in language, history, art and tradition (...). The entire production of ethno-identity accompanied the political process of ethnic *crystallization*, which began by singling out and hypostatizing certain practices and then referring to them as eternal (...).” (Mujkić 2008, 98)

¹⁰ For example, on 3 February 2012 it was reported that 1,200 ex-soldiers of the Bosnian army decided to set aside five euros from the € 150 of their monthly pensions for 300 former soldiers from Republika Srpska who have no pension and are living on the brink of poverty, <http://www.balkaninsight.com/en/article/bosnian-war-vets-send-cash-to-former-foes>.

The problem is that the Dayton constitution, drafted to end a brutal war, has meanwhile substantially contributed to cementing this structure and opened additional space for ethno-nationalist dynamics, due to its consociational elements that force citizens to attribute themselves to one or another “ethnic identity”. However, it is an open question how to create a different and appropriate framework in a situation where people do not trust each other and continue to perceive each other primarily as former enemies. This phenomenon was also most convincingly illustrated by studies commissioned by the Friedrich Ebert Foundation. One survey (Puhalo 2009) analyses perceptions in 2009 and comes to the conclusion that the distance between members of the three dominant groups and constitutive nations (Bosniaks, Croats and Serbs) in Bosnia has substantially increased, if compared with results from a survey conducted in 2002. Another analysis looks at attitudes and perceptions during the pre-election campaign in 2010 and comes to the following conclusion:

“that the Croats and the Bosniaks have negative opinion about the Serbs because of the war and violence, and that they perceive them as cruel and nationalistic. The Serbs and the Croats perceive the Bosniaks as hypocritical. The Serbs blame them for the war and violence, while the Croats blame them for excessive influence of religiousness on public life. Both Serbs and Croats perceive them as backward. The Serbs and the Bosniaks also have a negative opinion about the Croats because of the war and violence. Furthermore, the Serbs perceive them as arrogant, while the Bosniaks perceive them as hypocritical. Many respondents within both these peoples perceive them as insincere and cold. Therefore, it is obvious that the war is the greatest generator of mutual mistrust and poor relations among these three peoples, given that most of the aforementioned qualifications arose during the conflict or because of the conflict. It is the war and the war-related trauma that are still very much present in all aspects of life in BiH, and they represent the most significant burden on the relations among its peoples. However, according to the survey, there is no consensus whatsoever about the causes of the war in Bosnia and Herzegovina; instead, each people has its own view of the conflict in the 1990s, and, evidently, its own truth, which is one of the key problems when it comes to the process of closing the pages of the past and turning the pages of the future.” (Friedrich Ebert Stiftung 2010, 2)

The situation in Bosnia differs significantly from other war-torn societies where a ceasefire was followed by peace negotiations. Here, an agreement was signed to end the violence in 1995, but based on a political construction that remains contested by relevant political stakeholders, and a “peace process” aiming at trust-building has never been started. Thus we can speak of a *frozen conflict*. On the one hand, this conflict is enshrined in the legal and political framework provided by the Dayton constitution. It is, on the other hand, constantly fuelled by the way in which different groups remember and construct their past. The meaning of a conflict depends largely on the context (“culture, governance arrangements, institutions, social roles, norms, the rules and codes in place”), and the memories (“each party’s socially constructed understanding of the situation, shaped by culture and learning, and discourse and belief”), as Miall (2004, 76) has pointed out. In addition to this, a lack of security is also contributing to the current political deadlock, as people do not feel a sufficient degree of trust and personal or collective safety to imagine that they could live together without threatening each other. This mirrors what Kriesberg (2007a, 253) described as a frequent phenomenon in war-torn societies after ethnopolitical conflict. It is an open question how a process of (cultural) reconciliation can be enhanced on a broader society level in such surroundings, where the idea of political reconciliation is not yet envisaged or is, indeed, clearly rejected by many relevant political players and institutions. At the same time, there are opportunities for re-connecting on a daily life level. As some of our partners would argue, the situation in Bosnia also offers chances for direct and personal communication between former enemies, whereas in Serbia and Croatia people do not necessarily get in touch with those from the “other side”.

8.4 Further perspectives and challenges

Fostering institutions' capacities for accountability and the rule of law

In the countries under review, many measures have been taken in the field of retributive justice, compared to other post-war societies. The Dayton Accords have provided a basis for this, and in view of a situation where no independent domestic institutions were available to serve justice, the existence of the International Hague Tribunal has paved the way for legal accountability, establishing individual responsibility for mass crimes committed during the wars of the 1990s. In particular, international strategies have put a very strong focus on legal prosecution and retributive forms of justice. However, several thousands of war crimes cases remain to be investigated by local courts in Bosnia, Serbia and Croatia, including killings of civilians during and after the military operation "Storm".

Fostering the capacities for war crimes prosecution, and thereby building on the achievements of the existing TJ mechanisms (Commissions for Missing Persons, international and domestic war crimes courts), remains an important challenge in future too. First of all, there is a need for intensified efforts to resolve the pending cases of war-related disappearance. As outlined in Chapter 6, the question of how to design such solutions will very much depend on the political will of the governments in the region, but also on the willingness of international organisations to provide funding for this process. Secondly, there is a need to build the courts' capacities for prosecution and regional cooperation. Witness protection systems need to be developed and installed in cross-border cooperation. Victims and witnesses who have to testify at the courts in other countries need police protection before, during and after the trials, both in their home country and at the places where they testify (see Ljubinka Petrović-Ziemer's analysis in Chapter 5). Therefore more effective regional cooperation is needed that involves the courts, state institutions, local authorities, and diverse police institutions. Effective witness protection is expensive, as sometimes a change of residence is necessary to guarantee the safety of those who testify. Therefore setting up effective protection measures will require international support.

Strengthening the rule of law and setting up a functioning police are as important as providing the domestic war crimes chambers with the necessary staff, resources and equipment. It is not surprising that reports by the Commissioner for Human Rights of the Council of Europe (CoE) still insists that authorities must investigate and prosecute threats and intimidation against witnesses and ensure witness security in accordance with the recommendations of the Parliamentary Assembly of the Council of Europe (Resolution 1784/2011) that regards the protection of witnesses as a "cornerstone for justice and reconciliation" in the Balkans.¹¹ Effective and reliable police capacities are needed to guarantee that the courts' decisions can be implemented. Providing these state institutions with reliable staff and expertise is a prerequisite for effective accountability. Advancing the domestic institutions that serve accountability remains a particular challenge now and in future, as well as building effective institutions that can establish "the rule of law" as a condition for people to feel safe.

Finally, an ongoing challenge is to find appropriate forms of information and dissemination of the evidence established by the domestic courts and fact-finding mechanisms. As outlined in Chapter 7.3., profound research on war events, causes and dynamics, and good media reporting on the courts' findings and decisions are preconditions for awareness-raising. This requires well-crafted information strategies by TJ institutions and appropriate training for journalists, as well as publishers, radio and TV stations that encourage journalists to go deeper into the cases and "investigate further than what the prosecution and defence present in the courtroom" (Srđan Dvornik, Chapter 7.3).

Beyond strengthening the domestic capacities for prosecution of war-related crimes, more needs to be done in order to establish *restorative forms of justice*, as has been emphasised both by TJ protagonists and by representatives of political parties. Not much importance has been attached so far to redress for

¹¹ See <https://wcd.coe.int/ViewDoc.jsp?id=1904893>.

the victims of war-related crimes and forced displacement. The same applies to *restorative forms of truth recovery*. Initiatives in this field have been taken mostly by CSOs. Multi-level initiatives for establishing an inclusive culture of memory are still outstanding. It is time now to shift the focus and complement the punitive approaches with *measures for restorative justice* and *restorative forms of truth recovery*.

Establishing restorative forms of justice

In his address before the UN General Assembly on 9 October 2009, ICTY President Robinson concluded “that the international community has forgotten [the victims]. Currently, there is no effective mechanism by which victims can seek compensation for their injuries, despite the fact that their right to such compensation is firmly rooted in international law.”¹² He emphasised that compensating victims of crimes in the former Yugoslavia should complement the Tribunal’s efforts, as “justice is not only about punishing perpetrators but also about restoring dignity to victims by ensuring that they have concrete means to rebuild their lives” (ibid.). He called upon the General Assembly to support the establishment of a claims commission.

The field research revealed that more than 15 years after the Dayton Accords that ended the war in Bosnia, not much has been done in terms of compensation of victims of war-related crimes, either by international or by local institutions. National TJ strategies so far have not strongly focused on this issue. If mentioned at all, the issue of reparations remained mostly on the level of announcements. It is therefore not surprising that many of our interviewees insisted that it is time to proceed and take practical initiatives to provide redress for the civilian victims of war crimes. A challenge is to convince policy-makers that this needs to include all victims, regardless of their sex and “ethnicity”, and that this requires social policies and opportunities for psychosocial rehabilitation for war invalids, refugees and displaced people, and families of missing persons.

Regional cooperation on finding solutions for refugees and internally displaced persons has been strengthened through various declarations by governments in the region and facilitated by international actors.¹³ In this context, it is noteworthy and sounds encouraging that at the time of finishing this report, international donors met at a conference in Sarajevo organised by the Governments of BiH, Croatia, Serbia and Montenegro and pledged 300 million euros to help refugees in the Balkans to find durable solutions. The money supports a programme to provide homes for 74,000 displaced people and proper housing and assistance to the tens of thousands who are still living in poverty and dire conditions.¹⁴

Dealing with gender-specific violence and serving gender justice

Gender issues are on the agenda of local and international actors, as our field research revealed. International actors and local CSOs alike very much appreciate the fact that the ICTY has classified rape as a war crime, and that it established new standards and reformed court procedures with regard to sexual violence and gender-specific war crimes. It is reported that these norms have also informed the practice of the domestic war crimes chambers (see Chapter 4). But international observers are convinced that the courts in the region still need to be much more sensitive to the special experiences of victims and witnesses

¹² See <http://www.icty.org/sid/10244>.

¹³ The Sarajevo Declaration of 31 January 2005, the Belgrade Joint Communiqué of the Governments of Serbia and Croatia of 25 March 2010, and the Belgrade Declaration of 7 November 2011. On 25 May 2012, a meeting was held on “Regional Solutions for Displacement: Lessons Learned from the Western Balkans” in Vienna at the premises of the International Peace Institute, bringing together senior government representatives of Bosnia and Herzegovina, Croatia, Montenegro, and Serbia, as well as representatives of the EU, OSCE and the UNHCR. The meeting was organised by Switzerland in its function as chair of the OSCE Human Dimension Committee, and by UNHCR. See <http://www.ipacademy.org/events/panel-discussions/details/360-regional-solutions-for-displacement-in-the-western-balkans.html>.

¹⁴ See <http://www.unhcr.se/en/print/media/news-articles/artikel/faeb953eff2462123f18bc55d8fad581/donors-pledge-more-than-300-million.html>

of such crimes (see Chapter 6). CSOs emphasise (see Chapter 5) that women's groups in all three countries – together with international women's activists – were successful in pushing for rape to be classified as a crime against humanity. International representatives in Bosnia report that the film “Grbavica” (by Jasmila Žbanić) together with NGO campaigns has addressed some of the taboos and helped to ensure that some compensation for raped women has been fixed in legal regulations (see Chapter 6). However, compensation is still outstanding in many cases. Expectations were raised when the EU Delegation in Bosnia together with the UN and the Ministry of Justice and the Ministry of Human Rights announced that they would develop a strategy to support women in claiming reparations. But there are no indicators that the situation improved during the reporting period for this study.

In view of the lack of compensation for victims who have experienced sexual violence, and in particular in view of the poor living conditions for women who were raped during the war, both CSOs and international representatives (Chapters 5 and 6) point to major deficits with regard to gender justice. In this context, it is surprising that gender issues are not mentioned more explicitly by the interviewees in the context of REKOM. Thus, the **fourth hypothesis** – assuming that the supporters of REKOM expect a REKOM to cover this issue area – is not proven. Instead, after finishing the field research of this study, it became obvious that several women's groups in the region intend to address these issues via an additional initiative, proposing the establishment of a “women's court” for the countries of former Yugoslavia that should serve accountability not in a judicial but in a moral sense, following the example of the international Russell Tribunal. Using street arts and performance, women's groups from Croatia, Bosnia and Serbia have started a public campaign for such a symbolic truth commission that would deal with the violation of women's rights during and after the recent wars.¹⁵

CSOs also stress that addressing war-related gender-specific violence still faces a great many taboos. Women's groups in all three countries concede that they themselves had to learn that the scope of assistance should be broadened: Although rape was committed more systematically against women, men (soldiers and civilians) also became targets of sexual violence in the wars of the 1990s (see Chapter 5.4.2), and the impact of these various forms of violence on societies needs further analysis. We can therefore conclude that gender justice will remain a particular challenge for the implementation of TJ strategies on both a regional and a national level. In order to advance policies in this field, it is also necessary to overcome policies of unequal treatment of civilian and military war victims.

Support for trust- and relationship-building

Initiatives for trust-building and relationship-building need to encompass *cross-border activities*, as well as bridge-building efforts *within the countries* in the region, and they need to put a particular focus on divided communities and on youth. As has been shown by the field research, improving relations between young people in the diverse countries of the former Yugoslavia is a particular concern. While those who experienced the war as adults still remember the cultural bonds (or even Yugoslav identities) from pre-war times, post-war generations have grown up with separate group identities and regard themselves as members of different societies. Therefore, initiatives that facilitate cross-border encounters and interaction between young people can help to create new relationships and question stereotypes. Many interviewees in this study have suggested that the “two-schools-under-one-roof system”, established after the war in Bosnia, should be reformed. This proposal sounds very reasonable but at the same time one has to take into account that lack of trust and persisting fears, as well as prejudices against the “others”, form important motivations for people to support and maintain this system. Just changing the system will not transform these perceptions.

15 The project is supported by the Swedish organisation Kvinna till Kvinna, see <http://kvinnatillkvinna.se/en/print/3795>.

However, the task of trust- and relationship-building in divided local communities and contested political structures requires specific approaches. Given that different constituencies construct separate identities, lacking knowledge of and cultivating many stereotypes about each other, learning about the “others” is definitely important. However, in order to foster this kind of learning, opportunities for cooperation in normal life situations (school, workplaces and cultural events) are needed, rather than additional dialogue projects that aim to facilitate personal encounters between individuals from different “ethnic” or “religious” constituencies in seminars. However, training sessions on conflict transformation and dealing with the past can make an important contribution to sensitising multipliers to appropriate ways of addressing different views on the past and war experiences, and help them to actively counter ethno-nationalist stereotypes and exclusive policies of remembrance in educational institutions and media. And finally, as the field research revealed, setting up legitimate and functioning state institutions that guarantee the rule of law *and* advancing economic development is a must and forms the basis for restoring trust and relationships, given that interviewees from all samples have stressed that a lack of security and economic perspectives forms an important obstacle to reconciliation.

Learning in view of diverging memories: questioning exclusive forms of remembrance

Given that memories have a strong influence on relationships and form an important part of a socially constructed understanding of reality, shaped by culture and learning, discourse and belief (Miall 2004), it is quite obvious that the attitudes of people and narratives of different constituencies in the region will not change over the short term, even if an excellent database on past events and effective fact-finding mechanisms are established. However, memory is open to learning in the long run if the institutional and political framework is favourable and supportive of such a process. Learning processes that aim to promote acceptance or even empathy for different interpretations of the past can be enhanced either by cultural initiatives, or media productions, or formal and informal education.

International actors can support this with initiatives in the field of culture and peace education. A particular challenge is to provide spaces where different historical narratives and war experiences can be reflected on and discussed. Such debate might help to break down victim identities and support the search for more inclusive and alternative cultures of remembrance. Another challenge is to further develop and integrate elements of peace education in order to increase skills in nonviolent conflict transformation in formal and informal education for young people and adults. Such education needs to offer alternative forms of communication and interaction and, at the same time, to address identity formation: Offering alternative forms of identification beyond being victimised, beyond ethnic or religious belonging, and also beyond militarised masculinity.

Balancing resources of CSOs in TJ: War crimes monitoring vs. fact-finding

International and local TJ protagonists are convinced that state institutions that are in charge of war crimes prosecution need to be carefully observed and monitored now and in future. CSOs and also several politicians suggest that international actors should continue to ensure at least a minimum of monitoring of legal proceedings and justice reforms in the respective countries. In contrast, international representatives suggest and express hope that civil society actors will take on this role (see Chapter 6.2.2), emphasising their watchdog functions. Some international interviewees are concerned that the monitoring of war crimes trials might cease altogether or become a lower priority on the agenda of human rights activists, as these have started to focus much of their energies on additional TJ mechanisms, such as the campaign for REKOM. This campaign has illustrated that CSOs in the region are able to develop a variety of activities for dealing with the past and to set up effective networking activities across countries and diverse actor groups (peace groups, human rights organisations, including women’s and youth groups, victims’ associations

and veterans' unions). However, the core group that drives the campaign consists of a small number of organisations and activists. A challenge is to further balance limited financial and human resources and expertise in the long run in a way which allows CSOs to stay involved in both the field of justice, providing monitoring of war crimes trials, and truth recovery, advancing fact-finding or story-telling activities in the scope of a REKOM. To avoid gaps, it will be necessary to forge effective alliances with independent media and journalists, and thus establish a division of labour which allows both fields to be covered. During the REKOM campaign, the CSOs involved have already proved that they can set up such cooperation and have thus created a solid basis that can be extended in future. Trial monitoring will remain an important task for CSOs in particular in settings where international oversight has ceased, i.e. in Croatia, where OSCE ended its mandate by December 2011, and 677 murders of civilians in the context of the "Storm" operation have to be investigated and prosecuted by local institutions.

Developing civil society as a realm for top-down and bottom-up initiatives

Civil society is still very fragile in the region (see Dvornik 2010; Stubbs 2007; Belloni and Hemmer 2010). It is apparently more developed in Croatia and Serbia, and remains quite fragmented in Bosnia, where a huge number of NGOs emerged as a consequence of international funding, but very few sustainable civil initiatives and structures have developed (see Sejfića 2007, 2008; Fischer 2010). Nevertheless, numerous efforts for cultural reconciliation are ongoing, driven by local civil society actors, mostly with the support of international actors, both on a local community level and on a regional level through cross-border cooperation. On the political level, some gestures by policy-makers have been reported; these recognise war-related crimes, express apologies, or aim to memorialise the victims on different sides. This can be considered an indicator that some willingness for political reconciliation has developed. Furthermore, state institutions in the countries under review have adopted action plans or strategies for advancing transitional justice. In Bosnia, a National Strategy for TJ was adopted by the Council of Ministers, facilitated by international actors (UNDP and OSCE) and after consultation with human rights activists, victims' and veterans' representatives. Nevertheless, CSOs express limited trust in its practicability and impact. Initiated by local CSOs, the initiative for REKOM can be called a bottom-up initiative as it is intended to put pressure on policy-makers to establish a joint mechanism. It has received support from policy-makers in different countries, including presidents and prime ministers. In this context, grassroots initiatives have shown a remarkable potential to dovetail with initiatives at the top level. But REKOM – although enjoying broad support in the region – has yet to be operationalised and implemented. The news that on 8 May 2012, Croatia's President Josipović received a delegation from the REKOM coalition and announced that he will urge presidents of other countries in the region to delegate legal experts to form a joint regional team to examine each country's constitutional and legal options for the establishment of a REKOM sounds more than encouraging.¹⁶ At the same time the course that was announced by Serbia's new Prime Minister Ivica Dacić seems less promising.¹⁷ It remains to be seen how neighbourly relations and prospects for political reconciliation will develop under this government. It is also an open question whether the impetus and incentives that stem from the process launched by the promoters of a REKOM will link up to a joint initiative and long-term cooperation between political and civil society actors which advances dealing with the past processes and enhances political as well as cultural reconciliation in the region.

¹⁶ REKOM Initiative !Voice, 7/2012, 1.

¹⁷ Presenting his programme in Serbia's Parliament on 27 July 2012, Dacić said: »If they say the word Balkans means blood and honey, there has been enough blood. It's time that we tasted honey. Serbia is extending the hand of reconciliation to all. Let's not dwell on the past, let's think of the future. We want good relationships, with mutual respect of the independence and territorial integrity of all states.« See <http://www.aljazeera.com/news/europe/2012/07/2012726204732785480.html>.

It can be concluded that initiatives at the political level and at the grassroots level still do not dovetail in a way that creates strong synergies, and thus it is questionable whether these activities can actually be captured with the terminology of “bottom-up” and “top-down” approaches, or are just undertaken as parallel endeavours. There are only occasional points of contact between them, mainly facilitated by international funding activities.

For civil society to form a realm for top-down and bottom-up initiatives (White 1996, 186; White 2004), it is important that CSO activists acknowledge that networking across levels and establishing close working relations with alliance partners in parliaments, governments and local authorities are as important as horizontal networking on the grassroots level. At the same time, policy-makers need to learn that efforts for trust-building in the region cannot simply be delegated to civil society initiatives but that they need to take measures that link up with these efforts and provide the framework for advancing peacebuilding and reconciliation at the grassroots level. The field research reveals that most of the interviewed politicians acknowledge that there is a need for reconciliation between nations and societies in the region. At the same time, they continue to see trust-building and relationship-building mainly as a challenge for civil society actors rather than a task for themselves. It is therefore important to raise awareness that restoring trust and relationships must be an explicit item on their own agenda and programmes. It is important to sensitise politicians to the fact that reconciliation needs both cultural and political approaches and cooperation across levels. Although it is not very likely that ethno-nationalists can be won over to such an endeavour, there are moderate and open-minded actors in many political parties who offer the potential for cooperation. Both civil society actors and politicians operating in governments, parliaments and local authorities need to create opportunities for exchange in order to overcome mutual mistrust and advance joint learning.

Continuing but re-focusing international support

Local TJ protagonists as well as representatives of political parties strongly emphasise that processes of dealing with the past and reconciliation have to be owned by the people in the region. Nevertheless, many of them are convinced that international actors should continue to support such processes with funds, partnerships and expertise in the future as well. It is strongly recommended that international actors should continue to assist the government institutions in BiH, Croatia and Serbia in reforming institutions and governance structures in order to meet the legal and human rights standards set by the Council of Europe and the European Union. Furthermore, the interviewees want the EU accession process to be accelerated once those standards are met. They hope that international donors will also help to strengthen civil society activities in transitional justice and reconciliation. And finally they suggest that international strategies should aim to build long-term partnerships that facilitate joint learning, both for local CSO experts and international donors.

Support for civil society will remain an important challenge. Pressure from the grassroots level will be needed to push state institutions and local authorities to take measures in the field of TJ, inclusive forms of memorialisation and gestures of apology. Furthermore, civil society initiatives are needed to monitor accountability mechanisms. However, in view of the deficits mentioned in Chapter 8.4.7., it is essential that international actors particularly support initiatives that aim to promote networking and dialogue across levels, in order to increase the likelihood that bottom-up and top-down approaches will meet. Moreover, programmes have to be balanced in a way that supports both *regional initiatives* for documentation, awareness-raising, peace education and dialogue on the past, and *activities in local communities*.

At the same time, international support programmes need to be guided by realistic assumptions about the potential of grassroots peacebuilding. Considering CSOs as drivers of change in a setting where state institutions and structures are contested, or where the top level lacks any political will for reconciliation, means overloading CSOs with unrealistic expectations. CSOs can neither make up for failed international

strategies of state-building nor compensate for a lack of commitment by state institutions and policy-makers. But CSOs have an enormous potential to support processes of trust- and relationship-building from the bottom-up, and thus foster steps for political reconciliation that are taken on the political level (and vice versa). However, where a political will for such steps does not exist, CSO activities are still most important as they at least open niches and maintain spaces for alternative discourses. Experiences from other post-war societies show that processes of political reconciliation and societal dialogue on the past are mostly a consequence of initiatives undertaken by civil society actors, critical historians and social scientists, and often also by individuals who take courage and commit themselves to challenge the mainstream cultures of silencing and denial.¹⁸ These initiatives often unfold a strong symbolic power and such actors deserve support in order to ensure that their activities are sustainable.

Finally, assisting the antagonistic political actors to establish a process that enables them to find a way for modifications of the constitutional framework and administrative structures remains a crucial challenge for international actors in Bosnia-Herzegovina. As earlier policy evaluations have outlined, in many areas where progress has been achieved, this was only as a result of international pressure, and such pressure will be necessary in order to transform the country into a self-sustaining state: “It goes without saying that the political elites of the three constituent peoples in that country would be even less willing to accept Bosnia and Herzegovina as their common state if there was no prospect of EU membership.” (Calic 2005, 12) In order to advance Bosnia with regard to the establishment of the rule of law, the European Commission established a “Structured Dialogue on Justice” in June 2011 within the framework of the Stabilisation and Association Agreement (SAA) with BiH, aiming at a participatory process to enhance reforms of the justice sector and develop and consolidate an “independent, credible, effective, efficient, impartial and accountable judiciary.”¹⁹ With regard to the National War Crimes Strategy, the Commission expresses “concern about the lack of proper implementation of most strategic objectives”, recommends that sufficient funds and human resources be allocated to the Prosecutor’s Office of BiH to properly perform its task related to exhumations, and urges the Court of BiH and Prosecutor to address problems related to delays of proceedings (ibid., 6).

International support is needed to facilitate a process that enables the Dayton constitution to be brought into line with the standards required by the Council of Europe in a way that can be accepted by all constituencies. Such dialogue must include all relevant political parties and as many actors from society as possible (i.e. peace practitioners and human rights activists, women’s groups, victims’ organisations, veterans’ associations, labour unions, media organisations and faith communities). Such a process should aim to increase the efficiency of state institutions in serving the needs of the citizens, no matter of their “ethnic”, or cultural, or religious affiliation. Movement in this sector is crucial for a constructive process of dealing with the past in this country.

18 „Er hat die Ritualisierung der Erinnerung durchbrochen“. [“He has broken through the ritualisation of remembrance.”] Peter Steinbach comments on Saul Friedländer, online at <http://www.dradio.de/dkultur/sendungen/thema/1889935/> (accessed 16 October 2012).

19 See Report from the Second Meeting on 10-11 November 2011 and Recommendations from the European Commission at http://www.delbih.ec.europa.eu/documents/delegacijaEU_2012022712224213eng.pdf.

Policy Recommendations

Martina Fischer

chapter 9

Content

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9.1 Recommendations for policy-makers in Bosnia-Herzegovina, Serbia and Croatia

In order to establish the **basis for trust-building in the region** of the former Yugoslavia, policy-makers need to

- ≡ resist using ethno-nationalist propaganda and stereotypes to gain votes
- ≡ distance themselves explicitly from discourses in which collective blame is laid
- ≡ make gestures which acknowledge that crimes have been committed (public apologies) and show empathy for the victims
- ≡ advocate for inclusive forms of memorialisation on a regional, national and local level; positive examples are the actions of the Presidents of Serbia and Croatia, with joint commemoration of the victims of war operations around Vukovar. More efforts of this kind would help to provide a framework for political reconciliation within and among the countries in the region.

Furthermore, policy-makers should take the initiative to **establish a full record of those who were killed or forcibly disappeared in the context of the war**. In particular, they should

- ≡ urge the authorities in all countries to resolve the pending cases, in accordance with the Geneva Conventions, the International Convention for the Protection of All Persons from Enforced Disappearance, and the European Convention on Human Rights
- ≡ monitor the efforts of state institutions, in order to accelerate the search for grave sites, exhumations and identification of human remains
- ≡ push for more intensive regional cooperation and information exchange on these issues.

In order to ensure that **justice is served**, policy-makers should take the **initiative to provide the war crimes chambers in all countries** with the necessary expertise, professional staff and resources to work effectively and advance national and regional strategies for transitional justice. In particular, they should

- ≡ push for specific actions that advance gender justice (particularly with regard to war-related sexual violence) and include more women in judicial posts
- ≡ advocate for more effective regional cooperation between institutions responsible for war crimes prosecution and advocate for agreements among governments and for constitutional amendments that allow extradition of war crimes suspects
- ≡ urge the authorities to set up functioning mechanisms for witness protection and ensure that these cooperate on a regional level to guarantee the safety of witnesses in their home countries and in the countries where they testify in court
- ≡ advocate for reform of the judicial systems and the rule of law.

Furthermore, policy-makers should address the **situation of those whose life perspectives were most seriously affected by the war**. In particular, they need to

- ≡ urge the authorities to implement reparation programmes for victims of war-related crimes in line with the principles established in international law (UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law)
- ≡ secure health care and psychosocial support for victims of war-related crimes and provide funds to assist them to bring charges against a perpetrator
- ≡ advocate for victims of rape being officially recognised as war invalids and provide the legal conditions for them to access disability pensions. This means not only advocating for compensation for the many women who were raped in the war, but also for people of both sexes who experienced gender-specific and sexual violence in the context of the wars of the 1990s, and to launch psychological treatment programmes for the perpetrators to prevent any repetition of these forms of violence
- ≡ take measures to safeguard social protection and overcome unequal treatment of civilian and military victims of war
- ≡ advocate for the rights of refugees and displaced persons, and take measures to facilitate the voluntary return of people to their pre-war place of residence, or their voluntary resettlement or integration into the community in which they are currently placed
- ≡ take measures to ensure that such processes are managed in a participatory manner involving refugees and IDPs, and in accordance with the Framework Convention for the Protection of National Minorities
- ≡ take measures in accordance with the Council of Europe's Resolution 1708 (2010), which makes it clear that full implementation of property restitution is crucial to secure a life in dignity for forcibly displaced persons and returnees.

Moreover, policy-makers should take **steps to support relationship- and trust-building in the region**. In particular, they should

- ≡ advocate for the political parties' programmes to make reference to the need for trust-building on a regional, national and local level, and define specific contributions to such a process
- ≡ raise awareness that activities on the political level (political reconciliation) and on the grassroots level (cultural reconciliation) are needed for coming to terms with the past
- ≡ help to establish forums that offer space for cooperation with civil society organisations in order to initiate joint activities which aim to advance inclusive cultures of remembrance

Finally, policy-makers should take appropriate measures to **ensure that the teaching of history avoids one-sided interpretations of war-related events**. In this context, they should

- ≡ push for implementation of the Council of Europe Parliamentary Assembly Recommendation 1889 (2009) on history teaching in conflict and post-conflict areas, which advocate inclusive forms of education in divided communities and critically monitor reforms of the education system
- ≡ support reforms of school curricula as a basis for children to develop tolerance, empathy for different narratives, and skills in non-violent conflict transformation.

Policy-makers in Bosnia-Herzegovina need to **dismantle institutions and procedures that foster ethnic segregation and disintegration of society**. In particular, they need to

- ≡ find a compromise that allows the (Dayton) constitution to be adapted to the standards required by the Council of Europe in consultation with all relevant actors from society
- ≡ find pragmatic solutions for the further development of political institutions and regulations in a manner which guarantees citizens the freedom to choose their own values, instead of forcing them to adhere to value systems based on ethnicity
- ≡ advance policies for dealing with the past and for the effective implementation of the National Strategy for Transitional Justice adopted by the Council of Ministers.

9.2 Recommendations for civil society organisations in the region

In general, it is important that CSOs **balance their resources** and determine the proportion of their capacities which can be spent on the different aspects of dealing with the past. In particular, they should

- ≡ avoid a situation in which spending on fact-finding leads to a decline of war-crimes monitoring activities
- ≡ search for effective divisions of labour with independent journalists in order to cover “watchdog” functions in both fields
- ≡ be aware that besides regional activities, initiatives for inclusive remembrance on the local level are needed, given that numerous atrocity sites are still waiting to be marked (this applies particularly to Bosnia)
- ≡ take into account that establishing inclusive cultures of remembrance needs to be based on participatory long-term processes that involve victims, authorities and neighbours in local communities, as well as experts from the arts and academia.

Members and supporters of the REKOM coalition should **insist that a regional mechanism for fact-finding be established** in a setting that secures the full commitment of all institutions that are relevant for TJ in the countries of the former Yugoslavia. In particular, they should

- ≡ insist that a REKOM gets full access to the archives of the courts and police in the member countries
- ≡ push for a regional commission that will not only focus on forensic, factual, dialogical and social truth, but also includes elements of justice: pushing for redress – compensation for victims of war crimes in the former Yugoslavia
- ≡ extend the scope of their discussion by involving experts from regions that have gone through experiences with truth commissions, in order to arrive at realistic expectations and pragmatic assessments of the potential and limits of these mechanisms.

Beyond this, peace practitioners and human rights activists should **extend their scope of collaboration**.

In particular, they should

- ≡ pay specific attention to the potential of young people in dealing with the past and peacebuilding, search for more systematic forms of addressing issues of the past in peace education and facilitate cross-border encounters in order to advance trust-building and questioning of stereotypes
- ≡ intensify cooperation with war veterans' associations and assess the potential of involving victims' organisations for inclusive memorialisation
- ≡ intensify collaboration with academics (i.e. in the fields of history, law, sociology, psychology and political science) to explore how historical facts and different views on the past can be balanced in formal and non-formal education
- ≡ foster cooperation with artists, film-makers, education experts and journalists, in order to advance creative and inclusive forms of remembrance
- ≡ search more systematically for alliance partners in parliaments and political parties who share their aims and serve as multipliers of their agenda.

9.3 Recommendations for international actors

International actors should continue to assist the governments in order to **help establish a record of war-related deaths and disappearances and close individual case files**. In particular, they should

- ≡ urge state institutions and local authorities in all countries to resolve the pending cases of war-related disappearance, in accordance with the Geneva Conventions, the International Convention for the Protection of All Persons from Enforced Disappearance, and the European Convention on Human Rights
- ≡ provide the funds and expertise, and monitor the process, in order to accelerate the search for grave sites, exhumations and identification of human remains
- ≡ push for more intensive regional cooperation and information exchange on these issues.

International actors should **assist the governments in implementing transitional justice mechanisms** at the national level and support cooperation on a regional level. In this context, they should

- ≡ ensure that the legal institutions in all countries are provided with the necessary means to work effectively and continue to monitor national and regional strategies for transitional justice
- ≡ ensure that the war crimes chambers in the region are equipped with the necessary expertise, staff and resources for investigation, prosecution and victims' protection
- ≡ support efforts by domestic courts to establish cross-border systems for regional cooperation in all the above-mentioned areas
- ≡ secure a minimum of international monitoring and control of TJ institutions via the OSCE (in BiH and Serbia) and EU institutions (in Croatia)
- ≡ continue to push for reforms that strengthen the rule of law and reliability of police institutions in monitoring the implementation of the law
- ≡ take measures to increase security for minorities
- ≡ support domestic TJ institutions in developing convincing information policies and cooperation with media and investigative journalists
- ≡ continue to support independent journalists and media in order to provide unbiased reporting on war crimes proceedings
- ≡ assist domestic governments, legal institutions and CSOs in advancing judicial and non-judicial TJ strategies
- ≡ continue to support CSOs that monitor war crimes proceedings and implementation of TJ strategies.

Furthermore, international actors should **take action to support restorative forms of justice** and improve the situation of those whose life perspectives were most severely affected by the war. In particular they need to

- ≡ urge the authorities in all three countries to provide redress for the victims of war crimes and crimes against humanity; measures need to be taken to ensure reparations for victims of war-related crimes and their families in line with the principles established by international law, to provide social protection and to overcome unequal treatment of civilian and military war victims
- ≡ assist the governments to establish the legal conditions for compensation of victims of war-related crimes, with a specific focus on gender justice: women who have been raped and all victims of gender-specific and sexual violence. Furthermore, they should assist legal institutions to develop psychological treatment programmes for convicted war criminals in order to facilitate their reintegration into society after release
- ≡ continue their pressure on governments and authorities in the region to respect the rights of refugees and displaced persons, to conclude pending cases of property restitution and find durable solutions for refugees and IDPs besides return for those who need assistance at their current place of residence
- ≡ help to provide the funds for programmes aimed at integration and rehabilitation of the above-mentioned vulnerable groups
- ≡ ensure that once the criteria for EU accession and the human rights standards demanded by the Council of Europe are fulfilled, the accession process for the three countries is accelerated and accompanied

by strategies that promote economic development and offer prospects for young people in particular in all countries of the region, in order to create opportunities for regional integration.

International actors should **redefine their agenda and explicitly include steps for social and dialogical truth, trust- and relationship-building in their programmes**. In particular, they should

- ≡ support a REKOM if it comes into being; although decisions on the mandate and design of such a mechanism is a matter for local actors, international actors should monitor the process and push for a pluralist composition that involves legal and judicial experts, historians, journalists, experts from state institutions, parliaments and civil society organisations
- ≡ help to foster initiatives that aim to promote inclusive cultures of remembrance, also at local level (such as oral history projects, acts of remembrance in municipalities and marking of atrocity sites)
- ≡ assist critical intellectuals and academics in their efforts to investigate the war events of the 1990s and previous periods. International actors should provide resources for independent “think tanks” and discussion forums where experts from universities and private research institutions can debate and further develop research on these issues
- ≡ continue to support cultural and arts initiatives (i.e. films, theatre, music and literature) in the field of dealing with the past
- ≡ take into account that complex discourses on victimhood and victim identities exist in the region that are used for diverse political purposes
- ≡ see themselves as facilitators and provide forums for debate where different views on the past can be exchanged, and where discourses that build on collective victimhood and collective blames or relativisation of crimes can be deconstructed
- ≡ continue to support initiatives to develop alternative school textbooks in the region, as well as training for teachers in using such material
- ≡ assist initiatives that transfer knowledge on the potential of non-violent engagement and resistance in order to establish alternative forms of remembrance of recent history and national identity.

Furthermore, international actors **need to modify policies in Bosnia-Herzegovina**. In particular, they need to

- ≡ facilitate a process that enables the constitution to be brought into line with the standards required by the Council of Europe. Such a process needs to involve all relevant political parties and as many civil society actors as possible (peace practitioners and human rights activists, women’s groups, victims’ organisations, veterans’ associations, labour unions, media organisations and faith communities), in order to ensure that the outcome can be accepted by all relevant stakeholders and different constituencies
- ≡ support reforms of the education sector in Bosnia, push for a revision of the “two schools under one roof” system, and facilitate a transformation towards inclusive, pluralist and participatory forms of teaching to counteract ethnic segregation.

In their engagement in the Balkans, international actors should **pursue inclusive strategies**. In particular, they should

- ≡ avoid a discourse that attributes collective blame for war events; interpretations that hold entire nations “guilty” (or “more guilty” than others) do not match the complex dynamics of the 1990s and undermines dealing with the past processes in the region by fostering stereotypes
- ≡ highlight that in all three countries of the region, people engaged in peace movements during the 1990s, and take initiatives to make such actions more visible.

International actors should **critically evaluate their own engagement for peacebuilding in the Balkans** during the past decades to identify successes and learn from mistakes. In particular, they should critically

- ≡ reflect on the consequences and unintended side-effects (so-called collateral damage or spill-over effects) of military interventions
- ≡ acknowledge the limits and contradictions of political power-sharing institutions in multicultural societies
- ≡ assess policies in the field of refugee return and compensation
- ≡ analyse the effects of separated systems of education.



References and Literature



chapter 10

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Annexes

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Acronyms

ARBiH	Army of the Republic of Bosnia and Herzegovina
BBD	Bosnian Book of Dead
BiH	Bosnia and Herzegovina
CDRSEE	Center for Democracy and Reconciliation in Southeast Europe
CMP	Commission for Missing Persons
CNA	Centre for Nonviolent Action
CoE	Council of Europe
CSO	Civil society organisation
DNZ	National Democratic Union (BiH)
DP	Democratic Party (BiH)
DP	Displaced person
DPA	Dayton Peace Accords
DS	Democratic Party (Serbia)
DSF	German Peace Research Foundation (Deutsche Stiftung Friedensforschung)
DSS	Democratic Party of Serbia
DWP	Dealing with the past
EU	European Union
EUFOR	European Union Force in Bosnia-Herzegovina
EUPM	European Union Police Mission
FBiH	Federation of Bosnia and Herzegovina (political entity in BiH)
FRY	Federal Republic of Yugoslavia
G-17 Plus	Liberal conservative party, originally founded in 1997 as an NGO (Serbia)
HDSSB	Croatian Democratic Alliance of Slavonia and Baranja (Croatia)
HDZ	Croat Democratic Union (Croatia)
HDZ BiH	Croat Democratic Union of BiH
HDZ 1990	Croat Democratic Union 1990 (BiH)
HLC	Humanitarian Law Center, Belgrade
HNS	Croatian People's Party - Liberal Democrats (Croatia)
HR	High Representative
HRW	Human Rights Watch
HSP	Croat Party of Rights (Croatia)
HV	Croatian Army
ICC	International Criminal Court
ICG	International Crisis Group
ICJ	International Court of Justice

ICMP	International Commission on Missing Persons
ICRC	International Committee of the Red Cross
ICTJ	International Center for Transitional Justice
ICTY	International Criminal Tribunal for the former Yugoslavia
IDC	Research and Documentation Centre (Sarajevo)
IDPs	Internally displaced persons
IDS	Istrian Democratic Assembly (Croatia)
IGO	International organisation
INGO	International non-governmental organisation
JNA	Yugoslav People's Army
KLA	Kosovo Liberation Army
LDP	Liberal Democratic Party (BiH)
LGBT	Lesbian, gay, bisexual, and transgender
MP	Member of Parliament
MPI	Missing Persons Institute (BiH)
NATO	North Atlantic Treaty Organization
NGO	Non-governmental organisation
NS	Our Party (BiH)
NS	New Serbia (Serbia)
NSRZB	People's Party Work for Betterment (BiH)
NSP	New Socialist Party (BiH)
OECD	Organisation for Economic Co-operation and Development
OHR	Office of the High Representative in Bosnia-Herzegovina
OSCE	Organization for Security and Co-operation in Europe
PDP	Party of Democratic Progress (BiH)
PIC	Peace Implementation Council
PR	Public relations
PTSD	Post-traumatic stress disorder syndrome
REKOM	Regional Commission for Truth-seeking and Truth-telling about War Crimes in the Former Yugoslavia
RS	Republika Srpska (political entity in BiH)
SAA	Stabilisation and Association Agreement
SAO	Serbian Autonomous Oblast
SAO SBWS	Serbian Autonomous Oblast of Eastern Slavonia, Baranja and Western Srymia / self-declared autonomous district on the territory of Croatia (1991)
SBB BiH	Party for a Better Future of BiH
SBiH	Party for Bosnia and Herzegovina
SDA	Party of Democratic Action in BiH
SDP	Social Democratic Party (BiH)
SDP	BiH - Social Democratic Party of BiH

SDS	Serb Democratic Party in BiH
SDSS	Independent Democratic Serb Party (Croatia)
SFRJ / SFRY	Socialist Federal Republic of Yugoslavia
SNS	Serbian Progressive Party (Serbia)
SNSD	Alliance of Independent Social Democrats (BiH)
SPS	Socialist Party of Serbia
SPRS	Socialist Party of Republika Srpska (BiH)
SRS	Serbian Radical Party (Serbia)
TJ	Transitional justice
TRA	Truth and Reconciliation Association
TRC	Truth and Reconciliation Commission
UÇK	Kosovo Liberation Army (see also KLA)
UK	United Kingdom
UN	United Nations
UNDP	United Nations Development Programme
UNHCR	United Nations High Commissioner for Refugees
UNTAES	United Nations Transitional Authority in Eastern Slavonia, Baranja and Western Sirmium
URS	United Regions of Serbia
US/USA	United States of America

Overview on Interviewed Organisations and Institutions

(by Josefina Bajer, Martina Fischer and Ljubinka Petrović-Ziemer)

a) Bosnia-Herzegovina

Organisation/Institution	Mandate and activities with regard to transitional justice, dealing with the past and reconciliation
International Criminal Tribunal for the former Yugoslavia (ICTY) Regional Office Sarajevo	<p>www.icty.org</p> <ul style="list-style-type: none"> - Communicates the relevance of the ICTY, makes the Tribunal's activities accessible to the public and provides information to the media - Supports domestic judiciaries in prosecuting war crimes and provides trainings for legal professionals - Cooperates with CSOs active in this field, educational institutions and local communities
ICTY Victims and Witnesses Section (VWS) Sarajevo	<p>www.icty.org/sid/242</p> <ul style="list-style-type: none"> - Supports and protects witnesses; provides social, legal and psychological assistance - Coordinates security requirements and maintains a witness protection programme
The Prosecutor's Office of Bosnia and Herzegovina Sarajevo	<p>www.tuzilastvobih.gov.ba</p> <ul style="list-style-type: none"> - Investigates and prosecutes criminal offences ('highly sensitive' war crimes, organised crime, and corruption) under the jurisdiction of the Court of BiH - Responds to requests for international legal assistance (extradition of accused persons) - Produces statistical reports on the status of criminality in BiH
The Prosecutor's Office of Republika Srpska Banja Luka	<p>www.tuzilastvo-rs.org</p> <ul style="list-style-type: none"> - The Prosecutor's Office of RS is a "supreme" Prosecutor's Office for five District Prosecutor's Offices in RS - The district offices investigate and prosecute war crimes cases under their territorial jurisdiction when authorised by the Court of BiH (lower- and intermediate-ranking suspects)

Organisation/Institution	Mandate and activities with regard to transitional justice, dealing with the past and reconciliation
Cantonal Prosecutor's Office of the Canton Tuzla Tuzla	www.tuzilastvotk.com.ba - Investigates and prosecutes war crimes with territorial jurisdiction when authorised by the Court of BiH, and is involved in exhumation activities in the Tuzla Canton
MPI - Missing Persons Institute of Bosnia and Herzegovina Sarajevo	www.ic-mp.org/icmp-worldwide/southeast-europe/bosnia-and-herzegovina - State level mechanism to trace and provide a central record of missing persons in BiH - Supports exhumation teams in Serbia and Croatia - Ensures that mass grave sites are protected, catalogued and properly excavated - Addresses the needs of the relatives and pushes for a state law on missing persons
State Commission for Inquiring into the Truth about the Suffering of Serbs, Croats, Bosniaks, Jews and Others in Sarajevo 1992-1995 Sarajevo	No webpage available - Established by the Council of Ministers in late 2006 - Mandated to investigate on the violations of the Geneva Convention during the siege of Sarajevo - So far no results were published
Municipality of Srebrenica Srebrenica	www.srebrenica-opstina.org - Supports reintegration and community building in Srebrenica - Supports families of the victims of war crimes committed in the municipality and engages against the manipulation of victims - Enhances processes of dealing with the past through PR-activities and civil society building
Operational Team of the Republika Srpska for Tracing Missing Persons Banja Luka	www.nestalirs.com - Is involved in tracing missing persons and secures documentation in a database - Helps finding and excavation of mass and individual graves in BiH, Croatia, and Serbia - Submits information to the Prosecutor's Office of BiH

Organisation/Institution	Mandate and activities with regard to transitional justice, dealing with the past and reconciliation
Institute for Research of Crimes against Humanity and International Law of the University of Sarajevo Sarajevo	<p>www.institut-genocid.ba</p> <ul style="list-style-type: none"> - Conducts research and analyses on crimes against peace, genocide and other grave breaches of international law - Provides the international and domestic judiciaries with documentation relevant for war crimes prosecution and disseminates scientific reports
Human Rights Center University of Sarajevo Sarajevo	<p>www.hrc.unsa.ba</p> <ul style="list-style-type: none"> - Advocates the implementation of international human rights through documentation, lectures, expert advice, research and publications
Research and Documentation Center Sarajevo	<p>www.idc.org.ba</p> <ul style="list-style-type: none"> - Documents facts and researches on war crimes, genocide and TJ issues - Maintains databases and archives on war crimes and victims - Provides support to international and domestic legal institutions
TERCA -Training, Education, Consultancy, Resources, Action Sarajevo	<p>www.mirovna-akademija.org</p> <ul style="list-style-type: none"> - Collects and disseminates information on issues of dealing with the past - Offers trainings and seminars on dealing with the past - Supports peacebuilding initiatives and CSO-networking
Network for Peacebuilding Sarajevo	<p>www.mreza-mira.net/node/1</p> <ul style="list-style-type: none"> - Umbrella organisation with ca. 80 members, aims at social and economic reconstruction - Creates a framework for cooperation of NGOs, business, media and state institutions
Center for Nonviolent Action Sarajevo	<p>www.nenasilje.org</p> <ul style="list-style-type: none"> - Promotes the idea and practice of nonviolence, dialogue and trust building - Has developed several training formats for nonviolent conflict transformation, manuals for peace education, books and documentary films dealing with the legacies of the past - Supports war veteran's engagement in peacebuilding

Organisation/Institution	Mandate and activities with regard to transitional justice, dealing with the past and reconciliation
<p>Nansen Dialogue Center Mostar</p>	<p>www.nansen-dialogue.net/ndcmostar</p> <ul style="list-style-type: none"> - Organises dialogue initiatives in order to increase understanding among members of different ethnic and religious backgrounds and assists divided communities in coming to terms with the consequences of war - Promotes the values of human rights and a non-discriminating educational system
<p>Society for Threatened Peoples Sarajevo</p>	<p>www.gfbv.ba</p> <ul style="list-style-type: none"> - Documents violations of human rights - Pushes for compensation of victims and survivors of war crimes and genocide, and property restitution for refugees and returnees - Engages for peaceful coexistence of ethnic groups and religious communities
<p>Women’s Association “Zene Zenama” [“Women to Women”] Sarajevo</p>	<p>www.zenezenama.org</p> <ul style="list-style-type: none"> - Aims at the development of civil society, democratisation and protection of human rights, especially the rights of women - Stimulates the participation of citizens in human rights’ protection and TJ- processes in BiH - Provides trainings and shares information on transitional justice issues with other CSOs
<p>Serb Civic Council Sarajevo</p>	<p>www.humanrightshouse.org</p> <ul style="list-style-type: none"> - Supports the vision of an impartial peace in BiH - Supports refugees and displaced persons and accompanies returnees - Provides legal advice in processes of return and property restitution
<p>Forum of Tuzla Citizens Tuzla</p>	<p>www.forumtz.com</p> <ul style="list-style-type: none"> - Offers legal support to war victims and supports the return of refugees and displaced persons - Promotes the idea of equality - Engages in trust-building on community level

Organisation/Institution	Mandate and activities with regard to transitional justice, dealing with the past and reconciliation
Foundation for Truth, Justice and Reconciliation Tuzla	www.fondacija-ipp.ba - Provides research, collects and preserves evidence about the war in BiH - Disseminates results by publishing books and documentaries - Organises roundtables and public forums dealing with the legacies of the war - Assists national and international judicial institutions in war crimes prosecution
Association “Tuzlanska Amica” Tuzla	www.alexanderlanger.org - Assists women and children survivors of ethnic cleansing in the area of Srebrenica - Provides psycho-social support and trauma therapy for youth and adults - Documents and researches on issues concerning the situation of women - Supports initiatives on dialogue, understanding and tolerance among people of all nationalities
Human Rights Office Tuzla	www.hrotuzla.org - Supports civil society building, education and development of human rights - Promotes a culture of non-violence - Networks with other CSOs in this field, cooperates with local authorities and IGOs
Center for Therapy and Rehabilitation of Torture Victims “Vive Zene” [“Vive Women”] Tuzla	www.vivezene.ba - Provides psycho-social support for traumatised women and families - Conducts programmes for mental health of torture victims
Women’s Association “Snagazene” [“The Strength of a Woman”] Tuzla	www.snagazene.org - Provides psycho-social, medical and legal assistance to refugees, displaced persons, and returnees and advocates for improving authorities’ care for these vulnerable groups

Organisation/Institution	Mandate and activities with regard to transitional justice, dealing with the past and reconciliation
Helsinki Citizens' Assembly Banja Luka	www.omladina-bih.net - Strengthens civil society and pushes for institutional reforms - Implements programmes for women's empowerment and for participation of youth in public life
Helsinki Committee for Human Rights in Republika Srpska Bijelina	www.bh-hchr.org - Monitors human rights and documents transitional justice processes - Advocates for the adoption of the standards of accountability in public life - Claims for the implementation of international law - Engaged in human rights protection
Center for Humane Politics Doboj	www.chpngo.org - Encourages democratisation and fights against corruption; monitors governmental institutions and public administration and discloses malpractice in politics and media - Supports vulnerable social groups
Youth Organisation "Odisej" Bratunac	www.oodisej.org.ba - Supports awareness raising for the needs of youth; provides informal education to young people on dealing with the past issues, as well as training for civil courage and peace building - Initiates cultural activities and meetings
The Association of BiH Journalists Sarajevo	www.bhnovinari.ba - Strives for independent media, and aims at protecting and improving the freedom, rights and responsibilities of journalists - Monitors constitutional rights (freedom of speech, opinion and expression; free access to media)
The Union of BiH Journalists Sarajevo	No webpage available - Aims at protecting and improving the freedom, rights and responsibilities of journalists in BiH
Association of Croat Veterans in Ljubuski, Ljubuski	No webpage available - Offers legal and psycho-social support to war veterans and their families

Organisation/Institution	Mandate and activities with regard to transitional justice, dealing with the past and reconciliation
War Veterans' Association of Republika Srpska Derventa	<p>No webpage available</p> <ul style="list-style-type: none"> - Provides trauma therapy to war veterans, invalids and camp inmates - Legal support to war veterans to claim for their rights - Presses for the improvement of legal regulations concerning war veterans and their families
Union of Associations of Families of Imprisoned and Missing Persons of Republika Srpska Sarajevo-East	<p>No webpage available</p> <ul style="list-style-type: none"> - Collects and documents on war crimes and war victims in Republika Srpska - Offers legal support to war victims - Supports the search for missing persons
Union of Camp Inmates of Bosnia and Herzegovina Sarajevo	<p>www.logorasibih.ba</p> <ul style="list-style-type: none"> - Collects facts on detention camps, camp inmates and war crimes committed in camps - Supports the search for missing persons - Engages in improving the legal framework for war victims, - Presses for reparations to war victims and their families - Supports the national and international judiciary in war crimes prosecution
Croat Association of Camp Inmates of the Homeland War in Bosnia and Herzegovina, Mostar	<p>www.hrlog.ba</p> <ul style="list-style-type: none"> - Collects facts on detention camps, camp inmates and war crimes committed in camps - Supports the search for missing persons and supports the judiciary in war crimes prosecution - Engages in improving the legal rights for war victims and advocates for reparations
Municipality Organisation of Families of Imprisoned and Fallen Combatants, and Missing Civilians Srebrenica	<p>No webpage available</p> <ul style="list-style-type: none"> - Provides legal, psycho-social and financial support for families of missing and killed persons - Collects and documents facts related to war crimes committed in the municipality of Srebrenica

Organisation/Institution	Mandate and activities with regard to transitional justice, dealing with the past and reconciliation
Citizens' Association "Zene Srebrenice" ["Women of Srebrenica"] Srebrenica	www.srebrenica.ba - Involves in fact-finding and investigating on the genocide in Srebrenica - Supports the search for missing and killed persons - Initiated and maintains the memorial center on the Srebrenica genocide - Publishes on the Srebrenica genocide and the postwar situation in Srebrenica
Municipal Organisation of Families of Imprisoned and Fallen Combatants, and Missing Civilians Prijedor	No webpage available - Supports relatives of missing and killed combatants and civilians in claiming their rights for reparations and compensation - Aims at improving the social status of the respective relatives
Association of Woman from Prijedor "Izvor" ["Dwell"] Prijedor	www.izvor-prijedor.org/IZVOR_PRIJEDOR/IZVOR.html - Conducts fact-finding activities concerning camp survivors from the region of Prijedor - Supports the search for missing persons and supports the judiciary in war crimes prosecution - Offers psycho-social support to witnesses and advocates for victims' rights - Organises commemoration events and cultivates an inclusive concept of remembrance
Association of Camp Inmates and Families of Missing Inmates "Prijedor '92" Prijedor	www.prijedor92.tk - Collects facts on war crimes in detention camps and on war victims from the Prijedor region, - Supports the search for missing persons and supports the judiciary in war crimes prosecution - Addresses the needs of former camp inmates and organises memorial meetings - Engages in trustbuilding and interfaith dialogue and networking with other CSOs

Organisation/Institution	Mandate and activities with regard to transitional justice, dealing with the past and reconciliation
<p>Office of the High Representative and European Union Special Representative in Bosnia and Herzegovina (OHR/EUSR) Sarajevo</p>	<p>www.ohr.int</p> <ul style="list-style-type: none"> - Monitors the implementation of the Dayton Peace Agreement (DPA) in BiH - Coordinates activities of the civilian organisations and ensures the implementation of the civilian aspects of the DPA and reports on progress to the UN, EU, US, Russian Federation and other interested governments and organisations
<p>The Delegation of the European Union to the Republic of Bosnia and Herzegovina Sarajevo</p>	<p>www.delbih.ec.europa.eu</p> <ul style="list-style-type: none"> - Helps to establish functioning democratic institutions, rule of law and mechanisms to protect human rights according to the standards of the European Union - Supports inter-ethnic cooperation, reconciliation, return of refugees and displaced persons - Supports reforms through the instrument of Pre-Accession and assesses the cooperation with the ICTY according to the reports of the chief prosecutor
<p>United Nations High Commissioner for Refugees in Bosnia and Herzegovina (UNHCR) Sarajevo</p>	<p>www.unhcr.ba</p> <ul style="list-style-type: none"> - Supports and protects refugees, internally displaced persons, returnees and asylum-seekers - Searches for durable solutions for these groups and facilitation of agreements on these issues with local governments, entity and government institutions - Facilitates cooperation between the governments of different countries in the region of the former Yugoslavia
<p>United Nations Development Programme in Bosnia and Herzegovina (UNDP) Sarajevo</p>	<p>www.undp.ba</p> <ul style="list-style-type: none"> - Promotes socio-economic recovery, development and poverty reduction - Promotes human security and supports vulnerable groups - Gathers and funds victims' associations and veterans' unions - Supports a TJ-strategy together with governmental institutions

Organisation/Institution	Mandate and activities with regard to transitional justice, dealing with the past and reconciliation
<p>Organisation for Security and Cooperation in Europe – Mission to Bosnia and Herzegovina (OSCE) War Crimes & TJ Judicial and Legal Reform Section Sarajevo</p>	<p>www.oscebih.org</p> <ul style="list-style-type: none"> - OSCE oversees and helps developing the country’s ability to establish security and human rights’ protection, civil society building and educational reforms - OSCE’s War Crimes and Transitional Justice Judicial and Legal Reform Section monitors the rule of law and the justice system with a special focus on protecting the rights of vulnerable groups, individuals and trafficking; monitors war crimes proceedings and develops a TJ-strategy with government institutions
<p>Catholic Relief Service (CRS) Sarajevo</p>	<p>www.crs.org</p> <ul style="list-style-type: none"> - Assists impoverished and disadvantaged people - Promotes human development by responding to major emergencies, fighting disease and poverty, and nurturing peaceful and just societies - Conducts seminars on dealing with the past, trauma and reconciliation
<p>Civil Rights Defenders Sarajevo</p>	<p>www.civilrightsdefenders.org</p> <ul style="list-style-type: none"> - Supports dialogue among young citizens from various ethnic groups - Supports human rights groups and CSOs that work with vulnerable people (LGBT-community and Roma) - Supports initiatives for inclusive cultures of remembrance
<p>Heinrich Böll Foundation Sarajevo</p>	<p>www.boell.ba</p> <ul style="list-style-type: none"> - Engages in democratisation, political education and civil society building - Provides spaces for dialogue on socio-political issues - Helps to set up cultures of remembrance on the Srebrenica massacre and disseminates publications on these issues
<p>Friedrich Ebert Foundation Banja Luka</p>	<p>www.fes.ba</p> <ul style="list-style-type: none"> - Supports civil society activities in regional programmes and transnational dialogue - Promotes political and social education in the spirit of democracy and pluralism - Supports international understanding and cooperation; programme: Exchange and communication with the neighbours as well as integration in the region

Organisation/Institution	Mandate and activities with regard to transitional justice, dealing with the past and reconciliation
Pax Christi Derventa	www.paxchristi-derventa.org - Aims at strengthening the civil society, supports war veterans and youth - Facilitates dialogue on dealing with the past issues on community level and conducts seminars on non-violence and conflict resolution
Party for Democratic Action (SDA - BiH), Tuzla	www.kosda-tk.ba
Party for BiH (SBiH), Sarajevo	www.zabih.ba
Croatian Democratic Union (HDZ), Tuzla	www.hdzbih.org
People's Party Work for Betterment (NSRZB), Sarajevo	www.zaboljita.ba
Social Democratic Party of BiH (SDP), Sarajevo	www.sdp.ba
Alliance of Independent Social Democrats (SNSD), Banja Luka	www.snsd.org
Serbian Democratic Party of Republika Srpska (SDS) Banja Luka	www.sdsrs.com
Party for Democratic Progress (PDP), Banja Luka	www.pdpinfo.net
Democratic Party of Republika Srpska (DP), Banja Luka	www.dp-rs.org
Democratic People's Community (DNZ), Banja Luka	www.dnsrs.org

b) Croatia

Organisation/Institution	Mandate and activities with regard to transitional justice, dealing with the past and reconciliation
International Criminal Tribunal for the former Yugoslavia (ICTY) Regional Office Zagreb	<p>www.icty.org</p> <ul style="list-style-type: none"> - Communicates the relevance of the ICTY, makes the Tribunal's activities accessible to the public and provides information to the media - Supports domestic judiciaries in prosecution of war crimes and provides training for legal professionals - Cooperates with CSOs active in this field, educational institutions and local communities
Supreme Court of the Republic of Croatia Zagreb	<p>www.vsrh.hr</p> <ul style="list-style-type: none"> - Ensures the uniform application of law and equal protection of all citizens before the law - Discusses all important legal issues arising from the court practice - Approves requests for transferring war crimes cases from county courts to the specialised war crimes chambers in Osijek, Split, Rijeka and Zagreb - Hears appeals against county courts' decisions rendered in the 1st instance (including war crimes)
County Court of Zagreb Zagreb	<p>www.sudovi.pravosudje.hr</p> <ul style="list-style-type: none"> - All county courts have jurisdiction over war crimes cases - Since 2003, cases involving crimes under international law can be transferred from a county court to one of the four specialised war crimes chambers
State Attorney's Office of the Republic of Croatia Zagreb	<p>www.dorh.hr</p> <ul style="list-style-type: none"> - Investigates and prosecutes war crimes committed on the territory of Croatia and maintains a data base on pending and concluded war crimes cases in Croatia - The Chief State Prosecutor oversees the work of 20 county prosecutors
County Court of Rijeka Rijeka	<p>www.sudovi.pravosudje.hr</p> <ul style="list-style-type: none"> - see County Court of Zagreb
County Court of Split Split	<p>www.sudovi.pravosudje.hr; www.zupsudst.t-com.hr</p> <ul style="list-style-type: none"> - see County Court of Zagreb

Organisation/Institution	Mandate and activities with regard to transitional justice, dealing with the past and reconciliation
Bureau for Detained and Missing Persons at the Ministry of the Family, Veteran's Affairs and Intergenerational Solidarity, Zagreb	<p>www.mobms.hr/ministarstvo/uprava-za-zatocene-i-nestale.aspx</p> <ul style="list-style-type: none"> - State level mechanism to trace and provide a central record of missing persons in Croatia - Conducts exhumation and supervises the identification of mortal remains - Supports exhumation processes in the region of the former Yugoslavia
Documenta - Center for Dealing with the Past Zagreb	<p>www.documenta.hr</p> <ul style="list-style-type: none"> - Aims to raise awareness for dealing with the past by documentation and research activities - Collects personal memories, organises debates and trainings for alternative views on history - Cooperates with courts and governmental institutions - Maintains a regional cooperation for dealing with the past and is one of the leading promoters of the ReKom campaign
Serbian Democratic Forum Zagreb	<p>www.sdf.hr</p> <ul style="list-style-type: none"> - Advocates the rule of law and focuses on the protection of human, civil and political rights - Provides legal assistance to returnees and vulnerable groups and publishes the magazine "Identitet" for refugees - Supports reconstruction and economic development in war affected areas - Helps to develop interethnic communication and relationships
Youth Initiative for Human Rights Zagreb	<p>www.hr.yihr.org</p> <ul style="list-style-type: none"> - Encourages debates on crimes (prosecution) and monitors human rights violations - Maintains a regional network and offers training on human rights and transitional justice in order to educate young politicians - Aims to empower young people for democratisation and civil society building

Organisation/Institution	Mandate and activities with regard to transitional justice, dealing with the past and reconciliation
Center for Peace Studies Zagreb	<p>www.cms.hr</p> <ul style="list-style-type: none"> - Advocates social change, nonviolence, peacebuilding and human rights - Offers trainings and undertakes research on conflict transformation and social justice - Monitors public policies and supports the re-integration of refugees and returnees
MIRamiDA-Center for Regional Peacebuilding Exchange (Youth NGO established by the Center for Peace Studies), Zagreb	<p>www.cms.hr/mlada-miramida</p> <ul style="list-style-type: none"> - Promotes the role of youth in peacebuilding and supports active participation in the development of communities and society - Provides trainings in nonviolent action, engages in community building
ROSA - Center for Women War Victims Zagreb	<p>www.czzzr.hr</p> <ul style="list-style-type: none"> - Is a feminist, antimilitarist, nongovernmental, nonprofit organisation that supports female war victims and fights patriarchal structures and violence against women - Engages for women's human rights and fosters the influence of women in society at all levels
Civic Committee for Human Rights Zagreb	<p>www.goljp.hr</p> <ul style="list-style-type: none"> - Engages for human rights, democratisation and peacebuilding - Collects evidence and publishes facts about the war - Provides legal and humanitarian aid to victims of human rights violations, refugees and returnees, and vulnerable groups (elderly and disabled persons)
Croatian Helsinki Committee for Human Rights Zagreb	<p>www.hho.hr</p> <ul style="list-style-type: none"> - Assists victims of human rights violations and monitors war crimes trials - Offers trainings in human rights protection for judiciary, police, civil servants, civil society organisations, journalists, parliamentarians and youth - Monitors the rights of information and expression; defends the rights of journalists and supports persons whose rights have been violated by media

Organisation/Institution	Mandate and activities with regard to transitional justice, dealing with the past and reconciliation
Center for Peace, Nonviolence and Human Rights Osijek	<p>www.centar-za-mir.hr</p> <ul style="list-style-type: none"> - Focuses on the promotion of human rights and the rule of law and monitors war crimes trials - Engages in peacebuilding and conflict resolution and offers trainings in mediation - Aims to empower individuals and CSOs for participation in socio-political processes - Educates for tolerance, pluralism, personal responsibility, gender equality and nonviolence
Association for Peace and Human Rights “Baranja” Bilje	<p>www.udruzenje-baranja.hr</p> <ul style="list-style-type: none"> - Multi-ethnic association of citizens aiming to reduce inter-ethnic tensions in the Baranja-district - Offers legal and psycho-social support to vulnerable social groups - Promotes women’s participation and conducts income generating projects for women - Engages in dialogue activities (“Encounters for families and friends”, “Encounters for teachers”, and “The bridge of women”)
European House Vukovar Vukovar	<p>www.europskidomvukovar.com</p> <ul style="list-style-type: none"> - Supports the physical reconstruction of Vukovar and engages in community building - Provides psycho-social and medical support for traumatised persons and elderly people
VIMIO - Vukovar Institute for Peace Research and Education Vukovar	<p>www.vimio.hr</p> <ul style="list-style-type: none"> - Promotes peacebuilding and nonviolence in education and research, and provides training and psycho-social support - Projects shortlist: “Vukovar school of nonviolence”, “Be tolerant, be happy”, “Center for information and counseling of unemployed”, “Institutional support”, “Together Against Violence”
Center for Peace, Legal Advice and Psycho-social Assistance Vukovar	<p>www.center4peace.org</p> <ul style="list-style-type: none"> - Promotes human rights, democracy development and interethnic relationship building - Provides legal advice for people affected by the war - Monitors the human rights situation, and the work of the courts and public administration

Organisation/Institution	Mandate and activities with regard to transitional justice, dealing with the past and reconciliation
Committee for Human Rights Karlovac	<p>www.zamir.net/~dphr/hrv/huridocs/sudionicieng/odbor_karlovac</p> <ul style="list-style-type: none"> - Promotes human rights and engages in protection of minorities, women and refugees - Has engaged in activities for trust building and conflict transformation - Has provided humanitarian aid for refugees and monitored the return process
Dalmatian Committee for Human Rights Split	<p>www.zamir.net/~dphr/hrv/huridocs/sudionici/dalmkom.htm</p> <ul style="list-style-type: none"> - Engages in legal support and promotion of transitional justice - Collected evidence in illegal evictions of families from their homes by Croat soldiers and made a significant contribution to stopping this kind of violence - Deals with ethnic-motivated dismissals, kidnapping cases, torture and murder against Non-Croats committed among others at the headquarters of the Military investigation camp ("Lora") in Split
Altruista - Center for Human Rights Protection and Citizens' Freedom Split	<p>No webpage available</p> <ul style="list-style-type: none"> - Pushes government institutions and legal institutions to establish TJ-mechanisms - Monitors war crimes proceedings and the human rights situation in local communities - Engages in trust building together with other CSOs
Journalist ("Jutarnji List", "Slobodna Dalmacija", "Feral Tribune" et al.) Zagreb/Osijek	<p>www.jutarnji.hr</p> <ul style="list-style-type: none"> - Reports since the outbreak of the war on war victims and war crimes committed by members of the Croatian army or instructed by state authorities - Investigates on the role of media before, during and after the wars of the 1990s
Journalist ("Novi List") Rijeka	<p>www.novelist.hr</p> <ul style="list-style-type: none"> - Monitors and reports on war crime proceedings and promotes transitional justice - Raises awareness on the need for victims protection - Investigates crimes committed by members of the Croatian army or instructed by state authorities

Organisation/Institution	Mandate and activities with regard to transitional justice, dealing with the past and reconciliation
Croatian War Veterans' Association Zagreb	<p>www.zuhrv.hr</p> <ul style="list-style-type: none"> - Supports the social re-integration of war veterans and organises cultural, sporting and recreational activities for war veterans and their families - Engages in commemorations of the “Croatian War of Independence” and World War II
Initiative for Peacebuilding and Cooperation “Izmir” Zagreb	<p>www.udruga.hr/detail.php?ID=40237</p> <ul style="list-style-type: none"> - Initiative for peacebuilding established by war veterans and peace activists - Promotes a culture of peace and supports dialogue between former combatants and peace activists
Association of Homeland War Volunteers and Veterans of the Republic of Croatia Zagreb	<p>www.pgz.udvdr.hr</p> <ul style="list-style-type: none"> - Advocates the rights of war veterans and their families - Offers psycho-social and humanitarian aid to war veterans and their families - Organises cultural activities and commemorations related to the war of the 1990s
Croatian Association of Prisoners in Serbian Concentration Camps Vukovar	<p>www.hdlskl.hr</p> <ul style="list-style-type: none"> - Gathers former war prisoners and camp inmates, and seeks to improve their living conditions - Documents evidence of human rights abuses during the war in Vukovar in cooperation with governmental and legal institutions - Provides psycho-social assistance and seeks to improve the situation of former camp inmates - Co-organises commemoration events in the area of Vukovar with local authorities and CSOs
Association of Parents and Families of Imprisoned and Kidnapped Croatian Combatants “Vukovarske majke” / [“Mothers of Vukovar”], Vukovar	<p>www.suoznhb.hr</p> <ul style="list-style-type: none"> - Engages in finding missing persons, collects information on war crimes and victims and accompanies processes of exhumation and identification - Provides psycho-social assistance for relatives of the missing and killed - Organises commemorations in the area of Vukovar with local authorities and CSOs

Organisation/Institution	Mandate and activities with regard to transitional justice, dealing with the past and reconciliation
<p>The Delegation of the European Union to the Republic of Croatia Zagreb</p>	<p>www.delhrv.ec.europa.eu</p> <ul style="list-style-type: none"> - Helps to establish functioning democratic institutions, rule of law and mechanisms to protect human rights according to the EU standards - Supports inter-ethnic cooperation, reconciliation and the return of refugees and displaced persons - Supports reforms through the instrument of pre-accession and assesses the cooperation with the ICTY according to the reports of the chief prosecutor
<p>United Nations Development Programme in Croatia (UNDP) Zagreb</p>	<p>www.undp.hr</p> <ul style="list-style-type: none"> - Provides development assistance and promotes poverty reduction and human security - Supports vulnerable groups, victims' and veterans' unions - Combats impunity, assists the government in reforms of the justice system and engages for improving witness protection
<p>Organisation for Security and Cooperation in Europe – Mission to Croatia (OSCE) Zagreb</p>	<p>www.osce.org/zagreb</p> <ul style="list-style-type: none"> - Oversees and helps developing the country's ability to establish security and human rights' protection, monitors the rule of law and the justice system - Monitors war crimes proceedings in cases referred to Croatia pursuant to "Rule 11bis" of the ICTY's Rules of Procedure and Evidence on behalf of the OSCE as well as on behalf of the Prosecutor of ICTY (in line with Permanent Council Decision No. 673), and all domestic war crimes proceedings initiated at the local level (OSCE's mission has closed in December 2011)
<p>Heinrich Böll Foundation Zagreb</p>	<p>www.boell.hr</p> <ul style="list-style-type: none"> - Engages in democratisation, political education and civil society building - Provides space for dialogue on socio-political issues including debates on dealing with the past - Engages for environmental rights and responsible attitude towards natural resources, and promotes a critical and affirmative approach to EU-integration

Organisation/Institution	Mandate and activities with regard to transitional justice, dealing with the past and reconciliation
Friedrich Ebert Foundation Zagreb	www.fes.hr - Supports democratisation and EU-integration - Supports civil society building and capacity building for trade unions - Supports inter-ethnic reconciliation and community building (activities in Vukovar)
Konrad Adenauer Foundation Zagreb	www.kas.de/kroatien - Supports processes of democratisation, justice and solidarity, and civil society building - Engages for inter-religious tolerance and dialogue - Cooperates with governmental institutions, political parties and civil society organisations
Social Democratic Party of Croatia, Trogir	www.sdp.hr
Croatsians People's Party Zagreb	www.hns.hr
Independent Democratic Serb Party, Vukovar	www.sdss.hr
Croatian Party of Rights Zagreb	www.hsp.hr
Istrian Democratic Assembly Pula	www.ids-ddi.com
Croatian Labourists Karlovac	www.srp.hr
Croatian Democratic Alliance of Slavonia and Baranja, Osijek	www.hdssb.hr

c) Serbia

Organisation/Institution	Mandate and activities with regard to transitional justice, dealing with the past and reconciliation
<p>International Criminal Tribunal for the former Yugoslavia (ICTY) Regional Office Belgrade</p>	<p>www.icty.org/sid/242</p> <ul style="list-style-type: none"> - Communicates the relevance of the ICTY, makes the Tribunal's activities accessible to the public and provides information to the media - Supports domestic judiciaries in prosecution of war crimes and provides trainings for legal professionals - Cooperates with CSOs active in this field, educational institutions and local communities
<p>War Crimes Chamber at the High Court in Belgrade Belgrade</p>	<p>www.bg.vi.sud.rs</p> <ul style="list-style-type: none"> - Succeeded the Council for War Crimes at the District Court (2003-09) in 2010 - Prosecutes war crimes, grave violations against the international humanitarian law and genocide committed on the territory of the former Yugoslavia - Since 2007 it is also authorised to prosecute supporters of war criminals
<p>Office of the War Crimes Prosecutor of the Republic of Serbia Belgrade</p>	<p>www.tuzilastvorz.org.rs</p> <ul style="list-style-type: none"> - Investigates and prosecutes war crimes committed on the territory of the former Yugoslavia - Has been engaged in tracing fugitive war criminals indicted by the ICTY - Protects victims and witnesses of war crimes and informs the public on war crimes cases
<p>Commission on Missing Persons of the Government of the Republic of Serbia Belgrade</p>	<p>www.srbija.gov.rs</p> <ul style="list-style-type: none"> - State mechanism to trace missing persons that are citizens of the Republic of Serbia or members of the Serb community on the territory of the former Yugoslavia, - Has established a database and cooperates with commissions from Croatia, BiH and Kosovo - Is involved in the processes of excavating, identifying and repatriating of mortal remains

Organisation/Institution	Mandate and activities with regard to transitional justice, dealing with the past and reconciliation
Humanitarian Law Center Belgrade	<p>www.hlc-rdc.org</p> <ul style="list-style-type: none"> - Documents human rights violations and provides facts and evidence in war crimes cases - Monitors war crimes trials in Serbia, supports witnesses and campaigns for the rights of victims - Maintains a regional cooperation on dealing with the past and is one of the leading promoters of the ReKom campaign
YUCOM - Lawyers' Committee for Human Rights Belgrade	<p>www.yucom.org.rs</p> <ul style="list-style-type: none"> - Promotes human rights protection and offers legal advice to victims of human rights violations - Advocates the rule of law and implementation of international and European legal standards
Belgrade Centre for Human Rights Belgrade	<p>www.english.bgcentar.org.rs</p> <ul style="list-style-type: none"> - Promotes human rights and aims to disseminate knowledge on humanitarian law - Advocates the rule of law, reform of state institutions, democratisation and civil society building - Engages in education, research, publication and public human rights activities in cooperation with other CSOs and international organisations
Helsinki Committee for Human Rights in Serbia Belgrade	<p>www.helsinki.org.rs</p> <ul style="list-style-type: none"> - Monitors the human rights situation in Serbia and engages for the implementation of international and European standards in the protection of human rights - Maintains a documentation and research center and has established a “human rights culture” programme
International Aid Network: Center for the Rehabilitation of Torture Victims Belgrade	<p>www.ian.org.rs</p> <ul style="list-style-type: none"> - Provides humanitarian aid for refugees and deals with the consequences of war and political violence - Offers psychological, medical and legal support for persons affected by war trauma and torture

Organisation/Institution	Mandate and activities with regard to transitional justice, dealing with the past and reconciliation
Center for Peace and Democracy Development Belgrade	<p>www.caa.org.rs</p> <ul style="list-style-type: none"> - Engages in peacebuilding, democratisation, civil society building and reconciliation - Supports a culture of nonviolence and has developed educational programmes for youth and young professionals
Center for Nonviolent Action Belgrade	<p>www.nenasilje.org</p> <ul style="list-style-type: none"> - Engages in cross-border peacebuilding and against nationalism and militarism - Has established a regional network of activists and conducts trainings in nonviolent action - Conducts diverse activities in the field of dealing with the past, including public debates with war veterans - Has published documentaries, training material and books for peace education
Victimology Society of Serbia Belgrade	<p>www.vds.org.rs</p> <ul style="list-style-type: none"> - Gathers academics and professionals dealing with victimology and support of victims of crime, war, and human rights violations - Suggests a model for truth and reconciliation for the former Yugoslavia (“The third way”) - Provides information and support to victims, conducts research on victims’ issues
Center for Collecting Documents and Information “Veritas” Belgrade	<p>www.veritas.org.rs</p> <ul style="list-style-type: none"> - Collects evidence and documents on the war in Croatia and facilitates exchange of different narratives on recent wars - Supports domestic and international court proceedings on war crimes - Provides legal aid mainly to Serb victims affected by the war in Croatia and cooperated with diverse commissions for the exchange of war prisoners
Impunity Watch Serbia Belgrade	<p>www.impunitywatch.org</p> <ul style="list-style-type: none"> - Engages for transitional justice and supports civil society active in dealing with the war past - Analyses the consequences of impunity in co-operation with other CSOs - Provides policy recommendations

Organisation/Institution	Mandate and activities with regard to transitional justice, dealing with the past and reconciliation
Center for Cultural Decontamination Belgrade	<p>www.artfactories.net/CZKD-Center-For-Cultural.html</p> <ul style="list-style-type: none"> - Gathers artists, social networkers and political activists and provides a platform for research, action and exchange, and engages against nationalism, hatred and destruction - Connects people from different countries of the former Yugoslavia and maintains international cooperation
Women's feminist-antimilitarist peace organisation "Zene u crnom" ["Women in Black"] Belgrade	<p>www.zeneucrnom.org</p> <ul style="list-style-type: none"> - Feminist organisation that engages in peacebuilding, demilitarisation and for moral and political responsibility - Engages in appeals and campaigns and conducts workshops on feminism; pacifism; nonviolence; interethnic and intercultural solidarity; reproductive rights; and globalization
Regional Women's Initiative "Vojvodjanka" [Woman from Vojvodina] Novi Sad	<p>www.vivisectfest.org</p> <ul style="list-style-type: none"> - Promotes democratic values and human rights, and engages for women's participation in politics - Supports public debates on the legacies and responsibility for the wars in the former Yugoslavia - Supports peace education and organises the Festival on Human Rights in Novi Sad
Center for Regionalism Novi Sad	<p>www.centarzaregionalizam.org.rs</p> <ul style="list-style-type: none"> - Engages for relationship building and reconciliation - Supports initiatives for inter-regional cooperation (Igman Initiative, Civic Dialogue, and Philia Organisation), and organises conferences and publications on regionalism
War Trauma Center Novi Sad	<p>www.wartrauma.org</p> <ul style="list-style-type: none"> - Focuses on peacebuilding and deals with the psycho-social consequences of war - Provides support for traumatised persons and maintains a Center for mental health care
OGI - Committee for Civic Initiative Nis	<p>www.fens.org.rs/eng/organizacije/c28_civicc.htm</p> <ul style="list-style-type: none"> - Advocates for the European integration and for democratisation - Coordinates civic activities on dealing with the past and organises discussions on the question of guilt, responsibility and accountability - Conducts social research and education

Organisation/Institution	Mandate and activities with regard to transitional justice, dealing with the past and reconciliation
NGO “Urban In” Novi Pazar	<p>www.urbanin.org</p> <ul style="list-style-type: none"> - Supports democratisation and participation of youth through educational programmes and civic initiatives in the region of Sandzak - Promotes tolerance and dialogue as the primary means of resolving disputes - Conducts projects for poverty reduction and activities for the strategic development of Novi Pazar through conferences, public forums, cultural events and research
Youth Organisation “Ravangrad” Sombor	<p>www.fens.org.rs/eng/organizacije/ro5_ravangrad.htm</p> <ul style="list-style-type: none"> - Engages for reconciliation and overcoming ethnic tensions through youth work - Advocates educational reform in schools and supports youth exchange programmes on the territory of the former Yugoslavia - Raises awareness about the war and empathy for the victims on all sides in cooperation with youth organisations on a regional and international level
The Independent Association of Journalists of Serbia Belgrade	<p>www.nuns.rs</p> <ul style="list-style-type: none"> - Promotes high professional and ethical standards of investigative journalism - Reports on war crimes and the concerns of victims regardless of their ethnical and religious background - Provides exchange programmes between journalists in the region of the former Yugoslavia, especially with Pristina, Zagreb and Sarajevo - Promotes peacebuilding and dialogue on the violent past
Association of War Combatants in the Wars since 1990 Belgrade	<p>No webpage available</p> <ul style="list-style-type: none"> - Helps war veterans, invalids and their families to cope with war traumas and tries to meet their elementary needs - Engages for the rights of war veterans and participates in improving the legal framework for the war veteran population in Serbia and organises commemoration events
Peace Coalition of War Veterans from the Western Balkans Novi Sad	<p>No webpage available</p> <ul style="list-style-type: none"> - Engages for peacebuilding and reconciliation - Supports fact-finding and awareness raising about the consequences of the war - Provides legal and psycho-social support for war veterans, war invalids and their families - Participates in memory work with other veterans’ unions in the region

Organisation/Institution	Mandate and activities with regard to transitional justice, dealing with the past and reconciliation
Veterans' Association "Veterans of Serbia for Peace" Vlasotince	No webpage available - Supports the social reintegration of war veterans - Trains veterans in activities for peacebuilding and dealing with the past war
Association of Camp Survivors 1991 Belgrade	No webpage available - Supports war victims by offering medical assistance, legal and administrative advice - Serves as liaison office between therapy institutions and victims - Maintains evidence on concentration camps and camp inmates, torture and injuries of individuals of Serb nationality - Organises commemoration events related to the wars in BiH and Croatia
Association of Families of Missing and Killed Persons in Krajina and Croatia Belgrade	No webpage available - Supports the search for missing persons and offers legal and psycho-social support to families of persons that were killed or missing in the war in Croatia - Raises awareness about Serb victims and collects evidence on crimes related to the war in Croatia, organises commemoration events and protest marches
Inter-municipal Organisation of Civilian War Invalids Valjevo	www.facebook.com/pages/Me%C4%91uop%C5%A1tinska-organizacija-civilnih-invalida-rata-Valjevo/154675247877605 - Engages for victims support, protection and acknowledgment on regional level - Raises public awareness for the rights and needs of civil war victims - Fights discrimination and politicisation of civilian war victims
The Delegation of the European Union to the Republic of Serbia Belgrade	www.europa.rs - Supports political and economic relations between Serbia and the EU - Oversees conditionality and assesses cooperation of Serbian authorities with the ICTY according to the chief prosecutor's reports - Oversees domestic efforts for war crimes prosecution (with OSCE), supports civil society building and sponsors the ReKom initiative
United Nations High Commissioner for Refugees in Serbia (UNHCR) Belgrade	www.unhcr.org - Promotes durable solutions for refugees and internally displaced persons on a local and regional level and facilitates cooperation between Governments in the region on these issues - Protects and assists refugees, IDPs, returnees and asylum seekers

Organisation/Institution	Mandate and activities with regard to transitional justice, dealing with the past and reconciliation
Organisation for Security and Cooperation in Europe (OSCE) Belgrade	www.osce.org/serbia - Monitors war crimes prosecution and the functioning of democratic institutions in Serbia - Monitors the rule of law and human rights situation - Assists law enforcement and trains the judiciary
Fund for an Open Society - Serbia Belgrade	www.soros.org - Supports the rule of law and judicial reforms - Raises awareness for issues of dealing with the past - Supports civil society initiatives in human rights, dealing with the past and reconciliation
Balkan Trust for Democracy Belgrade	www.gmfus.org/balkantrust - Was created by the German Marshall Fund of the United States, the US Agency for International Development (USAID) and Mott Foundation, and supports democratisation and good governance in Serbia - Supports civil society initiatives active in dealing with the past in Serbia and at a regional level (including the ReKom campaign)
Heinrich Böll Foundation Belgrade	www.boell.rs - Supports democratic reforms, civil society and ecological policies - Supports CSO initiatives for dealing with the past and reconciliation - Cooperates with CSOs in Serbia and the region of the former Yugoslavia
Friedrich Ebert Foundation Belgrade	www.fes.rs - Supports the dialogue between social democrats in Serbia and supports regional co-operation in the Western Balkans - Cooperates with CSOs, trade unions, media, and research institutes
Konrad Adenauer Foundation Belgrade	www.kas.de/serbien - Supports the values of the German Christian Democrats (CDU) - Aims to establish the idea of democracy and tolerance in Serbia - Supports inter-religious dialogue and reconciliation - Cooperates with the government, political parties and CSOs

Organisation/Institution	Mandate and activities with regard to transitional justice, dealing with the past and reconciliation
The Embassy of the Kingdom of the Netherlands Belgrade	www.serbia.nlembassy.org - Supports initiatives for truth recovery and reconciliation and activities of CSOs from Serbia and the region (i.e. ReKom) - Provides development assistance, promotes the rule of law and protection of minorities - Supports capacity building of judicial institutions in cooperation with the OSCE and implementation of TJ mechanisms together with UNDP
Democratic Party (DS) Belgrade	www.ds.org.rs
G17 Plus, Belgrade	www.g17plus.rs
Socialist Party of Serbia (SPS) Belgrade	www.sps.org.rs
Liberal Democratic Party (LDP) Belgrade	www.ldp.rs
Democratic Alliance of Croats in Vojvodina (DSHV) Belgrade	www.dshv.rs
Serbian Renewal Movement (SPO), Belgrade	www.spo.rs
League of Social Democrats of Vojvodina (LSV), Belgrade	www.lsv.rs

Notes on the Contributors

Martina Fischer is the Deputy Director of Conflict Research at the Berghof Foundation and a co-editor of the Berghof Handbook for Conflict Transformation. She has worked as a senior researcher, Deputy and Acting Director of the Berghof Research Center since 1998. She has conducted practice-oriented research on peacebuilding in post-war societies and published extensively on the role of civil society in conflict transformation. She is a member of the board of the German Protestant Kirchentag, the advisory council of the Centre for International Peace Operations (ZIF), the scientific council of the German Foundation for Peace Research (DSF), and the Working Group for Peace and Conflict Research at the German Federal Foreign Office. She holds a PhD from the Political Science Faculty at the Free University, Berlin (Germany), and has authored, edited and co-edited 12 books and more than 200 articles.

Ljubinka Petrović-Ziemer joined the Berghof Center in 2008. Her peace engagement began in 1992 at the Peace Center in Osijek (Croatia). She was co-founder and Director of the Association for Interreligious Peace Work “Abraham”, which was established in Sarajevo in 1998. Before moving to Germany in 2005, she was a senior assistant lecturer in German Literature and Cultural Studies at the German Department of the Philosophical Faculty in Sarajevo. Since 2007, she teaches at the Studienforum Berlin e.V. on peace and conflict-related issues. Her research and teaching focus on peacebuilding, conflict transformation, gender topics, post-colonial criticism, modern philosophy, modern literature and cultural theory. Ljubinka Petrović-Ziemer holds a PhD from the University of Trier where she submitted her doctoral thesis in contemporary German literature. She also holds a graduate diploma in English and German Studies from the Pedagogical Faculty in Osijek and a post-graduate diploma in Comparative Literature Studies from the University in Sarajevo.

Srdan Dvornik is an independent consultant, researcher, and translator from Zagreb (Croatia). He graduated in philosophy and sociology, and holds an MA in Political Science from Zagreb University. His fields of expertise and interest cover human rights, civil society, and democratic transformation. He recently produced a study on rationalisation of the system of human rights protection for UNDP and the Croatian Ombudsman and he has drafted reports for the Croatian Law Centre as the National Focal Point for the EU Agency for Fundamental Rights. Furthermore, he facilitated the development of the new national strategy for inclusion of Roma in Croatia. He was a co-founder and activist in several civic organisations dedicated to the promotion of human rights and freedom of speech. He has published various books, including *Next Steps in Croatia's Transition Process* (together with Christophe Solioz), Baden-Baden 2007, and *Actors Without Society*, Heinrich Böll Foundation, Berlin 2009. He has also published several articles on social and political topics, and has translated a dozen books from English into Croatian.

Katarina Miličević is a journalist. She lives and works in Belgrade and Kragujevac. After two decades of working in television journalism, during which time she conducted numerous interviews with policy-makers in Serbia, she joined the team at the Centre for Nonviolent Action (CNA) in early 2011. She worked with CNA for many years (i.e. as a collaborator on the set of documentaries produced by CNA and as a panel moderator for the public forums »Four Views« organised in Bosnia-Herzegovina and Serbia, where war veterans from different sides discussed their experiences of the wars in the region of former Yugoslavia). As a coach she also conducted a number of basic and advanced training workshops on nonviolent action. By joining the CNA team, she decided to dedicate her work to peace activities on a permanent basis.

Ismet Sejfi is a Professor at the Faculty of Political Science and Dean of the Faculty of Administrative Science at the University of Sarajevo (Bosnia-Herzegovina). He holds a PhD in Political Science. He has published three books, several scientific studies and numerous articles on the theory of civil society and processes of social transformation in the Western Balkans. His work focuses on the role of civil society organisations in war-to-peace transition and countries undergoing political transformation. His particular interest is the interaction between CSOs and state institutions in the context of democratisation and peacebuilding. He has participated in several regional and international research programmes and has a wealth of experience in consultancy for international organisations (Friedrich Ebert Foundation, Council of Europe, European Union) and maintains close cooperation with local civil society organisations and investigative media in Bosnia and the region.