



NO-OBLIVION

Promoting Universal Jurisdiction while Evoking the Crimes Committed within Former Yugoslavia

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Editor's Note

We are pleased to present the inaugural edition of the **Memory Lane Online Journal**, developed in the framework of the **NO-OBLIVION project**. NO-OBLIVION “Promoting Universal Jurisdiction while Evoking the Crimes Committed within the Former Yugoslavia” aims to promote the use of universal jurisdiction as a tool for addressing crimes committed during the conflicts in the former Yugoslavia. The project seeks to preserve the lessons learned from these conflicts and ensure that the legacy of respect for human rights, the rule of law, and justice remains integral to European society.

The articles featured in this journal have undergone a rigorous review by the Kosovo Center of Diplomacy (KCD) to ensure academic integrity and quality. This journal has been edited and curated by the dedicated team at IPS_ Innovative Prison Systems (IPS), bringing together diverse perspectives on the legacy of the ICTY and related themes.

We hope this journal contributes meaningfully to ongoing discussions about justice, memory, and accountability.

The NO-OBLIVION project is led by the [European Association of Social Innovation](#) (Romania) and partnered by [IPS Innovative Prison Systems](#) (Portugal), [Victim Support Europe](#) (Belgium), [Camino](#) (Germany), [Documenta](#) (Croatia), the [Helsinki Committee of Human Rights in Serbia](#), the [Centre for Security Studies](#) (Bosnia and Herzegovina), and the [Kosovo Center of Diplomacy](#). For further information about the NO-OBLIVION project, please visit: <https://www.no-oblivion.eu/>.

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THE 2024 UN VOTE ON THE SREBRENICA GENOCIDE: A COMPARISON OF REACTIONS AND THE LEGACY OF THE ICTY IN SHAPING POLITICAL NARRATIVES

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Abstract

This paper explores reactions to the 2024 UN resolution recognising the Srebrenica genocide, focusing on Bosnia, Serbia, Croatia, and Kosovo. The resolution reaffirms the ICTY's classification of the 1995 Srebrenica massacre as genocide. While Bosniaks within Bosnia welcomed the decision, leaders in Serbia and Republika Srpska, like Aleksandar Vučić and Milorad Dodik, opposed it, viewing it as a political attack. Croatia's response was reserved, and Kosovo highlighted parallels with its own history. The paper emphasises the persistence of political divisions despite strong evidence for genocide, reflecting the difficulties in achieving reconciliation. Although international recognition is crucial, this study argues it is insufficient to bridge the region's deep divides. Nonetheless, for survivors and victims' families, the resolution represents an important moral victory and acknowledgement of their suffering.

Keywords: *ICTY, UN, Srebrenica, Reconciliation, Narratives.*

1. Introduction

“The denial or distortion of history is an intentional assault on truth. Understanding the past is crucial to how people understand themselves, their society, and how to achieve their common goals.” These words, spoken by Judge Carmel Agius, President of the International Criminal Tribunal for the former Yugoslavia (ICTY), during a 2017 address at the Potočari Memorial Centre, resonate deeply in the region of former Yugoslavia. They capture the essential struggle over historical memory and truth that continues to shape political narratives, and reconciliation efforts in the region.

On May 23, 2024, the United Nations passed a resolution formally recognising the massacre in Srebrenica as genocide, reaffirming the ICTY’s findings. The massacre, which occurred in July 1995 during the Bosnian War, saw the systematic killing of over 8,000 Bosniak men and boys by Bosnian Serb forces. The ICTY played a pivotal role in prosecuting those responsible. Among others, the landmark case *Krstić* (2001) classified the massacre as an act of genocide. This recognition set a powerful international legal precedent, shaping global understanding and regional memory of the atrocities (Asuncion, 2009).

However, the ICTY’s classification of the massacre as genocide provoked diverging political and societal reactions. While many in Bosnia and Herzegovina, especially within the Bosniak community, viewed the ruling as a long-overdue acknowledgment of their suffering, reactions in Serbia were more

contentious (Subotić, 2009). Serbia has resisted recognising the Srebrenica massacre as genocide, reflecting a broader struggle over national identity and memory. Croatia, which has a complex historical relationship with the Yugoslav Wars, offered a more cautious response. It sought to balance national narratives with its aspirations for EU membership, promoting justice and regional reconciliation (Subotić, 2009). Another interesting factor is Kosovo, whose struggles for independence are tied to the broader Yugoslav conflict. Kosovo historically aligned with Bosnia on issues of victimhood and justice and viewed the ruling as another milestone for truth and accountability in the region (Bami & Kurtić, 2023). The recent 2024 UN vote on the designation of an “International Day of Reflection and Commemoration of the 1995 Genocide in Srebrenica” is an interesting case to explore how the political narratives and reconciliation efforts in the region developed until now.

Therefore, this paper examines the political reactions in Bosnia, Serbia, Croatia, and Kosovo to the 2024 UN vote, analysing how these responses reflect the legacy of the ICTY’s jurisprudence. By examining the 2024 vote in light of ICTY rulings, particularly regarding Srebrenica, this paper will address the research question: How do the reactions to the 2024 UN vote reveal the lasting impact of the ICTY on regional post-conflict narratives and reconciliation efforts? Through a comparative approach, this paper will highlight the ongoing challenges of

reconciling differing national perspectives on the past.

2. The ICTY: No Room for Denying Genocide

The ICTY defined the Srebrenica massacre as genocide, a term strictly defined under international law. Popular understanding of genocide often equates it with organised and planned mass murder motivated by race, ethnicity or religion (Milanović, 2006). However, the legal definition, codified by Article II of the 1948 Genocide Convention is much more specific. It defines genocide as any of five concrete acts, committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group. These acts include:

- A. Killing members of the groups
- B. Causing serious bodily or mental harm to members of the group
- C. Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part
- D. Imposing measures intended to prevent births within the group
- E. Forcibly transferring children of the group to another group

The legal definition of genocide requires a dual threshold of intent and scale. The *actus reus* – the objective acts – must be accompanied by the *men's rea*, the specific intent to destroy, in whole or part, the targeted group. As Milanović (2006) emphasises, this specific intent to destroy a group distinguishes genocide

from other atrocities, such as crimes against humanity, which do not require such an extreme mental state. In the case of Srebrenica, the ICTY had to determine whether the massacre met this stringent definition of genocide. The ICTY's rulings, particularly in the cases of *Krstić*, *Blagojević & Jokić*, *Popović et al.*, and *Zdravko Tolimir*, cemented the above legal framework in the context of the Bosnian War, giving the term "genocide" a precise and significant application in international criminal law.

The first major ruling on the Srebrenica genocide came in *Krstić* (2001). Krstić, a General-Major in the Army of Republika Srpska (VRS), was charged with genocide, crimes against humanity, and war crimes for his role in the massacre¹. The Trial Chamber found that the VRS, under Krstić's command, had acted with the intent to destroy the Bosniak population in Srebrenica. It was the first conviction that authenticated that genocide was perpetrated against the Bosnian Muslims of Srebrenica, and thereby solidified the Srebrenica massacre as a legally recognised act of genocide. A key finding in the case was the determination that the Bosnian Serb forces specifically targeted the Bosniak men of military age in Srebrenica to physically destroy the community's future. This established that the intent to destroy part of a group—rather than the

¹ In 2004, the ICTY Appeals Chamber found Krstić only guilty of aiding and abetting genocide.

entire group—could still meet the legal threshold for genocide.

Following the Krstić ruling, other ICTY cases further reinforced the legal recognition of the Srebrenica genocide. In *Blagojević & Jokić* (2005), the tribunal convicted Vidoje Blagojević and Dragan Jokić for their roles in the Srebrenica killings. Blagojević, commander of the Bratunac Brigade, was found guilty of complicity in genocide, underscoring the role of military leaders in facilitating the mass killings and the forced transfer of Bosniak civilians. The *Popović et al.* (2010) case was one of the largest trials related to Srebrenica and involved seven high-ranking Bosnian Serb military and police officers. The tribunal found that these men had conspired to commit genocide. It emphasised the logistical planning that went into the killings, reinforcing that the Srebrenica massacre was a deliberate, organised effort to

destroy the Bosniak community. In *Zdravko Tolimir* (2012), the tribunal convicted Zdravko Tolimir, a close associate of General Ratko Mladić. He was instrumental in coordinating the military operation in Srebrenica. His case was important because it linked the planning of the Srebrenica genocide directly to the highest levels of the Bosnian Serb leadership.

The ICTY's jurisprudence has had profound implications for post-conflict justice in the region. The tribunal's work is the foundation for transitional justice efforts, including the documentation of atrocities, the establishment of historical truth, and the recognition of victims. However, the tribunal's rulings have also sparked ongoing debates over the application of the genocide label, particularly in Serbia and among segments of the Bosnian Serb population.

3. National Reactions to the 2024 UN Vote

The UN vote on recognising the Srebrenica genocide in May 2024 has sparked various political and media reactions, particularly from countries within the region. The vote was 84-19, with 68 abstentions. While many countries acknowledged the importance of this recognition, the responses from Serbia, Bosnia, Croatia, and Kosovo were shaped by their unique historical experiences and interpretations of the ICTY's verdicts. These reactions reflect national political dynamics but also highlight the tensions surrounding the legacy of Srebrenica.

3.1. Serbia

Serbia's response to the 2024 UN vote was marked by strong opposition. President Vučić spearheaded a diplomatic campaign to block the resolution, interpreting it as a direct assault on Serbia's national image (RFE, 2024). Vučić criticised the resolution as a stigmatisation of the Serbian people. In Belgrade but also during protests in the Republika Srpska the slogan “We are not a genocidal nation” was popular already before the vote (Stojanović, 2024). However, contrary to this narrative, the resolution does not talk about national

collective responsibility. Its goal is to declare 11 July an ‘International Day of Reflection and Commemoration of the 1995 Genocide in Srebrenica’ and to condemn genocide denial as well as the glorification of war criminals (Wankiewicz, 2024; Hajdari, 2024). Vučić’s statements underscored his belief that the resolution would “reopen old wounds” rather than foster reconciliation in the Balkans (UN Press, 2024). His rhetoric touched on nationalist themes, positioning Serbia as a victim of international moral lecturing, particularly in comparison to how Western powers have dealt with their historical atrocities, such as the holocaust (Huseinović & Arbutina, 2024). This nationalism is also depicted by Vučić sharing a photo of him carrying the Serbian flag at the General Assembly and stating, “I am proud of my Serbia” (Ozturk, 2024). He succeeded to establish his leadership over all Serbs and animating nationalist sentiments through the resolution.

Media in Serbia echoed the nationalist sentiment. The Serbian Orthodox Patriarch Porfirije gave a sermon on television, in which he declared that the resolution is “an attempt to declare that Serbs are a nation that committed genocide” (Kurtić, 2024). The nationalist press focused heavily on the idea that the resolution unfairly targeted Serbia, and that it ignored the complexities of the war. However, independent voices within Serbia, including civil society groups like the Youth Initiative for Human Rights, supported the resolution, arguing that it was about memorialising victims rather than collective blame (Todorović, 2024, as cited by Hajdari, 2024).

However, Vučić’s narrative is not just about nationalism but also about gaining weight as a regional player. The UN voting served Serbia as a diplomatic chance to explore its influence in the UN. Vučić lobbied for UN members to vote against, abstain or not participate at all in the vote (Wankiewicz, 2024). He did so by offering economic inducements such as visa liberalisation or financial aid and capitalising on historical connections with other countries (Brajshori, 2024). He managed to undermine EU cohesion by convincing Orbán to vote against the resolution and even though the resolution was adopted he presented it as a “moral victory” since it did not receive a simple majority and therefore lacked international legitimacy (Wankiewicz, 2024).

Serbia’s reaction, shaped by a longstanding refusal to confront the war crimes committed in its name, reflects the broader political narrative in the country, where the ICTY’s findings are often dismissed or undermined (Trbovc & Petrović, 2017). Despite eight separate convictions for genocide by the ICTY, Serbian leadership continues to reject the term “genocide”; instead framing such resolutions as part of a broader international conspiracy against the country. Additionally, the UN vote was abused to aggravate nationalist sentiments and to establish Serbia at the international level.

3.2. Bosnia

In Bosnia and Herzegovina, the reaction to the UN vote was split along ethnic lines, with Bosniaks largely welcoming the resolution and Bosnian Serb leaders

rejecting it. The Bosniak member of the country's tripartite presidency, Bećirović, praised the vote, emphasising that it was a necessary recognition of the atrocities committed in Srebrenica and that "the truth and justice won today" (Nichols & Sito-Sucic, 2024). The Bosnian media, particularly those aligned with Bosniak interests, framed the vote as a victory for truth and memory, focusing on the importance of international recognition of the genocide. It also focussed on the fact that the adoption of the resolution would end the shameful practice of genocide denial (Wankiewicz, 2024).

Conversely, Bosnian Serb leaders were quick to denounce the resolution. Dodik, President of Republika Srpska, called the resolution a failure, claiming it was part of a broader attempt to impose collective guilt on the Serbian people. He went so far as to deny the genocide, which remains a criminal offence in Bosnia and Herzegovina (Huseinović & Arbutina, 2024). His statements highlighted the deep-rooted ethnic divisions that continue to plague the country and underscored the rejection of the ICTY's findings among Bosnian Serbs. Serbian nationalist rhetoric continues to be a dominant force in Republika Srpska, where the genocide is frequently denied or downplayed in political discourse. (Huseinović & Arbutina, 2024; Hajdari, 2024). Furthermore, the report "sufferings of all peoples" was adopted by the Republika Srpska (Kurtić, 2024). This can be interpreted as an attempt to downplay genocidal crimes committed against the Bosniaks. In line with Vučić, Dodik deemed the resolution unsuccessful since only 84 countries

voted in favour (Ozturk, 2024). Dodik encouraged citizens to wave the Serbian flag and express opposition against the resolution (Hajdari, 2024). Finally, he carried his campaign so far as to threaten that Republika Srpska would secede from Bosnia (Wankiewicz, 2024).

This stark division in Bosnia illustrates how the legacy of the ICTY continues to inform national politics. For Bosniaks, the tribunal's findings provide a foundation for the international recognition of their victimhood, while for Bosnian Serbs, they are viewed as politically motivated distortions of history. The resolution offered an opportunity to capitalise on nationalist claims and fire up divisions. This divide is symbolic of the broader struggles over historical memory in post-conflict Bosnia.

3.3. Kosovo

Kosovo strongly supported the UN vote, with its leaders using the occasion to emphasise their own struggles for recognition and justice. President Osmani praised the resolution on X as a significant step toward reconciliation and combatting genocide denial (Stojanović et al., 2024). She also acknowledged the suffering of the survivors and the victims' families. Similarly, Prime Minister Kurti welcomed the adoption of the resolution and emphasised Serbia's responsibility for peace in the Balkans (Huseinović & Arbutina, 2024). He also called for additional efforts to bring all perpetrators to justice (Garić, 2024). For Kosovo, the vote was an opportunity to draw parallels between the Srebrenica genocide and the

war crimes committed by Serbian forces in Kosovo during the late 90s. However, in the northern part of Mitrovica, Serbs protested against the resolution with a convoy of dozens of cars with large Serbian flags (Ozturk, 2024).

Kosovo's support for the resolution reflects its broader political strategy of aligning itself with Western European and international norms on human rights and justice. By supporting the resolution, Kosovo positions itself as a champion of post-conflict justice in the Balkans, while continuing to advocate for accountability for the crimes committed against its population during the Yugoslav Wars. The UN vote on Srebrenica offered Kosovo a blueprint for its own goals of independence and justice. It was a chance to identify possible allies but also issues and present itself at the international level.

3.4. Croatia

Croatia's response to the 2024 UN vote was more reserved compared to Kosovo, reflecting its own complex role in the Yugoslav Wars and the subsequent ICTY trials. The Croatian government supported the resolution, consistent with its official stance of recognising the Srebrenica massacre as genocide (Huseinović & Arbutina, 2024). The

Croatian foreign ministry declared that "Croatia bases its position on respect for international law." (Ozturk, 2024). This positioning is less personal and emotional than that of Kosovo for example and also displays Croatia's alignment with EU standards. Croatian President Zoran Milanović emphasised that the resolution was necessary for justice and reconciliation in the region (Koha, 2024).

However, the resolution of Srebrenica also sparked a debate on adopting a resolution on the victims of the Jasenovac concentration camp in Croatia during World War II (Visnjić, 2024). Croatia heavily condemned this suggestion as a manipulation of the Jasenovac victims an attempt to divert attention from the genocide in Srebrenica. In that line of arguing, a member of the Croatian parliament also emphasised that the Srebrenica genocide is still ongoing because of continuous denial of the crimes committed (Croatian Parliament, 2024).

The Croatian response illustrates the country's desire to balance its recognition of the Srebrenica genocide with a broader narrative of victimhood and resilience. Croatia's support for the resolution reflects its commitment to international norms and post-conflict justice.

4. The ICTY's Complex Legacy in Reconciliation

The ICTY had a big impact on the politics of the region, particularly regarding reconciliation efforts. While the ICTY was instrumental in establishing accountability for crimes

committed during the Yugoslav wars, including the Srebrenica genocide, its rulings have also provoked mixed reactions across the region, often reflecting the deep-seated ethnic and

national divisions that persist today. The 2024 UN vote on recognising the Srebrenica genocide offers a compelling lens through which to analyse the lasting legacy of the ICTY's rulings and their role in either advancing or hindering reconciliation in the region.

4.1. Far from Reconciliation

The 2024 UN resolution recognising the Srebrenica genocide intended to advance the reconciliation process between Bosniaks and Serbs. From a moral and legal standpoint, the resolution was grounded in the rulings of international courts, such as the ICTY, which have long recognised the Srebrenica massacre as genocide. Yet, the resolution's implications suggest that reconciliation remains a distant objective. Although the resolution sought to foster understanding and clarity, its late adoption reignited old tensions. Croatian analyst Gjenero (2024) noted that resolution's passing could have profound political implications, even leading to a reconsideration of the Dayton Peace Agreement, which has governed post-war Bosnia since 1995 (as cited by Al Jazeera, 2024). Ker-Lindsay, a Balkan expert, noted that the politicisation of the Srebrenica genocide hindered genuine efforts to come to terms with the past (RFE/RL, 2024). He emphasised that the tragedy of Srebrenica is often instrumentalised for political gain, preventing a clear acknowledgement of the genocide's horror and impeding reconciliation.

The resolution's symbolic weight did not facilitate reconciliation, but became another tool for political posturing, as nationalist leaders like Vučić and Dodik

framed the resolution as an attack on Serbian national identity. These leaders have consistently resisted acknowledging the full extent of the crimes committed by Serbian forces. Not just the recent UN vote but the ICTY's rulings in general are portrayed as part of a broader international campaign to demonise the Serbian nation. Vučić's and Dodik's stance on the UN vote mirrors the broader pattern of historical revisionism and denial in Serbia and Republika Srpska (Wankiewicz, 2024). Attempts to criminalise genocide denial, as seen with the amendments to the BiH criminal code in 2021, have faced enforcement challenges, and reconciliation remains elusive (Wankiewicz, 2024). As a result, the goal of reconciliation, though supported in international forums, remains largely unfulfilled in practice. The resolution has become another symbol of the deeply entrenched divides between Bosniaks and Serbs.

4.2. Weak Support

Vučić and Dodik also attempted to frame the resolution as a victory and leveraged the lukewarm international backing. Although these leaders were criticised for undermining the resolution, the global consensus supporting it was not as strong as expected. Garić (2024) argued that the vote signalled a decline in the influence of major powers within the UN, stating that the resolution passed with "less than half the support" of member states. This demonstrates that smaller and less powerful nations are no longer as willing to accept directives from global powers without question. This also applies to sensitive geopolitical

matters such as the recognition of the Srebrenica genocide.

The European Union's divided stance on the resolution further underscores the lack of consensus. While Bosnjaks found their strongest ally in the West, EU member state Hungary voted against the resolution. Hungary's position was likely influenced by the close personal relationship between Vučić and Orbán (Wankiewicz, 2024). This reveals how personal political alliances can disrupt efforts at international unity, particularly in areas related to historical accountability. This lack of strong support for the resolution reflects broader geopolitical trends where smaller and emerging states can leverage changing balances of power to their advantage (Brajshori, 2024). The divisions within the EU and the international community suggest that many states chose to abstain or vote against the resolution not necessarily out of denial of the genocide, but due to their reluctance to back Western.

The uneven response to the 2024 vote exposes the fragility of historical consensus, even when it concerns events as well-documented as the Srebrenica genocide (Brajshori, 2024). Despite the overwhelming evidence presented by the ICTY and other international bodies, the reluctance of numerous states to support the resolution shows that political interests, rather than historical truth, often dictate how these events are remembered and acknowledged on the world stage.

4.3. A Moral Victory for Survivors

Despite the political complexities surrounding the 2024 UN vote, the resolution recognising the Srebrenica genocide carries significant personal meaning, particularly for survivors and the families of victims. While much of the discourse surrounding the resolution centres on national and regional reconciliation efforts and even international dynamics, its impact is deeply felt on an individual level. For many survivors, the resolution represents an essential step toward healing and acknowledgement of their suffering.

Bosnian war victims' associations, including the Association of Victims and Witnesses of Genocide and the Mothers of the Srebrenica and Zepa Enclaves, appealed to UN member states to adopt the resolution (Kurtić, 2024). They argued that the vote honours the victims of severe violations of international law and serves as an important reminder of the need for global justice. These organisations have long fought for the recognition of their suffering, viewing the resolution as a crucial victory in their ongoing struggle for justice.

Azir Osmanović (2024), a survivor of the Srebrenica genocide explained, "Our struggle, unfortunately, is far from over. Daily, we are subjected to rampant and ruthless genocide denial, historical revisionism, and the threat of renewed violence." (as cited by Al Jazeera, 2024). Osmanović added that international recognition of the genocide would help prevent similar atrocities in the future by raising global awareness and ensuring that "no other community, anywhere in the world, comes to share our fate". For survivors, the resolution is not just a

symbolic gesture, but a necessary tool in the fight against ongoing denial. By affirming the truth of the Srebrenica genocide on an international platform, the resolution provides a foundation from which victims and their families can demand accountability and justice.

Similarly, Mehmedović, another survivor, expressed relief at the passage of the resolution, stating, “No one would be able to deny that genocide happened in Srebrenica again like they do now despite the court verdicts, and everyone would have to respect our pain and the lives that have been lost”. His words

underscore the emotional significance of the UN’s acknowledgement, offering a degree of recognition.

Ultimately, while the resolution might be limited in its immediate reconciliation impact, it represents an important moral victory for victims and their families. It is a clear acknowledgement of the atrocities they endured and a critical step in addressing the ongoing campaign of denial and revisionism. This resolution has helped to centre the voices of survivors, affirming their experiences and offering hope that the international community will continue to seek justice for the horrors of Srebrenica.

5. Conclusion

The 2024 UN resolution recognising the Srebrenica genocide underscores both the power and limitations of international legal rulings in shaping post-conflict narratives. Despite overwhelming evidence established by the ICTY and other international bodies, it is striking that deep divisions persist across the region. These divisions highlight the enduring challenges in achieving reconciliation, as political leaders and national narratives in Bosnia, Serbia, Croatia, and Kosovo continue to clash over historical memory. While the resolution serves as an important moral

victory for survivors, offering recognition and validation of their suffering, it also reveals how entrenched political interests, and revisionism can undermine the pursuit of justice. The fact that these disagreements endure, even in the face of irrefutable evidence of genocide, speaks to the complexities of post-conflict recovery and the significant work still needed to bridge historical divides in the Balkans. The ICTY’s legacy, while crucial in prosecuting war crimes, thus leaves the region grappling with unresolved tensions and the need for further dialogue.

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REFLECTIONS ON JUSTICE: EXAMINING PAST CONFLICTS THROUGH THE LENS OF THE ICTY AND THE INTERNATIONAL CRIMINAL COURT

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Abstract

This paper explores the application of Marxist theory in International Relations, focusing on the historical evolution and diplomatic relations of Yugoslavia. It examines the three distinct Yugoslav states, their interactions with the International Criminal Court and International Court of Justice, particularly in cases involving the United States, Bosnia and Herzegovina, and the role of the International Criminal Tribunal for the former Yugoslavia (ICTY). The study also analyzes Yugoslavia's relationship with NATO, culminating in recommendations for future diplomatic strategies. The conclusion synthesizes these findings, offering insights into the complexities of Yugoslav diplomacy and international justice.

Keywords: *Marxist theory, Yugoslavia, International Relations, International Criminal Court, International Court of Justice, International Criminal Tribunal for the former Yugoslavia, NATO, Diplomatic relations, International justice.*

1. Introduction

Yugoslavia, a multi-ethnic state in Southeast Europe, existed from 1918 to 2006 and experienced significant political and ethnic transformations. Initially formed as the Kingdom of Serbs, Croats, and Slovenes, it faced ethnic tensions, leading to a royal dictatorship in 1929. During World War II, the Axis invasion prompted resistance under Josip Broz Tito, who later established a socialist federation with a non-aligned foreign policy and relative prosperity. Following Tito's death in 1980, rising nationalism led to the Yugoslav Wars in the 1990s. The country eventually split into Serbia and Montenegro, with Montenegro's

independence in 2006 marking the end. The ICJ later addressed Yugoslavia's political situation (Judah, 2011). In this essay, aims to analyze problem questions i.e. what were the underlying causes of the ethnic tensions that led to the breakdown of Yugoslavia, and how did historical legacies contribute to these tensions? To what extent did the economic disparities among the Yugoslav republics contribute to the rise of nationalist movements and the eventual disintegration of the state? Lastly, what role and influence did international organizations play in the Yugoslav conflict?

2. Marxist Theory in International Relations

Marxist theory in the context of Yugoslavia, particularly from mid-20th century onwards, reflects a complex evolution influenced by both internal dynamics and external intellectual currents. Initially, Marxist thought in Yugoslavia emerged from a critique of both Western capitalism and Soviet socialism. After breaking away from the Soviet bloc in 1948, Yugoslavia under Josip Broz Tito adopted a unique form of socialism characterized by self-management and a non-aligned foreign policy (Kurowska & Stachowitsch, 2024).

During the 1960s and 1970s, the Korcula Summer School, organized by Marxist humanists, became a hub for exploring alternative interpretations of Marxism. This period saw a blend of critical theory and Marxist thought, emphasizing

personal autonomy, freedom and creativity. Intellectuals from Yugoslavia engaged with existentialism, personalism and other philosophical movements, critiquing both capitalist and socialist systems. They argued that true socialism should ensure human dignity and autonomy rather than merely focusing on economic efficiency. However, by 1980, Yugoslavia's Marxist humanism faced increasing strain. Rising nationalism and economic challenges led some intellectuals to adopt ethnonationalist positions, diverging from their earlier humanist ideals. This shift revealed the tensions between universalist aspirations and particularist national interests. The fragmentation of Yugoslavia in the 1990s, marked by violent conflicts and the eventual dissolution of the federation, highlighted the limitations of

the Marxist humanist framework in addressing the complex realities of ethnic and national identities (Kurowska & Stachowitsch, 2024).

Overall, Marxist theory in Yugoslavia illustrates a transition from a focus on humanist ideals and collective social

transformation to the rise of ethnonationalist ideologies. This evolution underscores the challenges faced by Marxist thought in reconciling universal humanist goals with the practical demands of political and social realities (Kurowska & Stachowitsch, 2024).

3. History of Yugoslavia

Historically, three separate federations have been named Yugoslavia, meaning "Land of the South Slavs." The first was the Kingdom of Yugoslavia (Kraljevina Jugoslavija), officially declared in 1929 and existing until World War II. This kingdom spanned 247,542 square kilometers (95,576 square miles). After the war, the Socialist Federal Republic of Yugoslavia (Socijalistička Federativna Republika Jugoslavija) was established, covering 255,804 square kilometers (98,766 square miles) and housing approximately 24 million people by 1991. It comprised six republics: Serbia, Montenegro, Slovenia, Croatia, North Macedonia, Bosnia and Herzegovina. The "third Yugoslavia" began on April 27, 1992 and included only Serbia and Montenegro, which constituted around 45 percent of the population and 40% of the territory of the former federation. This union continued until 2003, when the country was renamed Serbia and Montenegro, eventually splitting into two independent nations in 2006 (Lampe, 2024).

3.1. The First Yugoslavia

The Kingdom of Serbs, Croats and Slovenes was established after the Balkan Wars and World War I,

incorporating Serbia, Montenegro, Croatia, Bosnia, Slovenia and other regions. The state grappled with challenges stemming from its diverse population and conflicting aspirations. Croats favoured a federal system, while Serbs pushed for centralization, leading to the creation of a unitary state under the 1921 constitution, governed by the Serbian Karadjordjević dynasty. Political tensions escalated, culminating in King Alexander I's 1929 declaration of a royal dictatorship and renaming the state to Yugoslavia, aiming to consolidate power and address internal divisions. During 1940's the economy struggled with outdated infrastructure and regional imbalances, as industrial growth concentrated in the north, leaving much of Yugoslavia rural and underdeveloped (Lampe, 2024).

3.2. The Second Yugoslavia

The Socialist Federal Republic of Yugoslavia was established in 1946 under Josip Broz Tito after the country was liberated from German occupation. It included six republics and two autonomous provinces within Serbia, Kosovo and Vojvodina. Initially, the state was highly centralized, but subsequent constitutional reforms

gradually decentralized power to local governments and economic entities. The 1974 constitution introduced a complex governance structure with multiple chambers representing different social and political groups. During 1974, Yugoslavia's economy was characterized by a system of workers' self-management, allowing workers to participate in the management of enterprises. Although this system initially spurred significant economic growth, it later led to inefficiencies, inflation and unemployment, especially in the 1980s. Economic challenges and regional disparities ultimately contributed to the dissolution of the federation (Lampe, 2024).

3.3. The Third Yugoslavia

In 1946, Socialist Yugoslavia was established following liberation from German occupation in 1944–45, led by Josip Broz Tito and his communist-led Partisans. This iteration of Yugoslavia encompassed much of the same territory as the previous kingdom, with additional lands from Italy in Istria and Dalmatia. The kingdom was replaced by a federation of six republics: Croatia, Montenegro, Serbia, Slovenia, Macedonia, Bosnia and Herzegovina. Serbia also included two autonomous provinces, Kosovo and Vojvodina, to address the specific interests of ethnic Albanians and Magyars (Lampe, 2024).

Since 1950, the communes were responsible for most government revenue collection and social services provision and have been a significant aspect of the political system of Yugoslavia. Although the federation was

nominally equal, it initially operated under a highly centralized system both politically and economically, dominated by Tito's Communist Party of Yugoslavia. The governance structure closely followed the Soviet model. However, constitutional changes in 1953, 1963 and 1974 gradually decentralized power, shifting it to local governments, economic enterprises and the republic-level Communist Party apparatuses, later renamed the League of Communists of Yugoslavia. The Yugoslav government operated on three levels: the communes (opstine), the republics and the federation. (Lampe, 2024).

The 1974 constitution redefined governance structures, including assemblies with three chambers at the commune, republic and autonomous province levels. These included the Chamber of Associated Labor, the Chamber of Local Communities and the Sociopolitical Chamber, which represented various social and political groups. The federal assembly (Skupstina) had two chambers: the Federal Chamber, comprising delegates from work organizations and sociopolitical bodies and the Chamber of Republics and Provinces, with delegates from republican and provincial assemblies. Moreover, executive powers were vested in the Federal Executive Council, which included a President, officials from administrative agencies, representatives from republics and provinces. In 1974, Tito was made President for life and after his death in 1980, the presidency became a rotating collective of regional representatives (Lampe, 2024).

Following a split with the Soviet Union in 1948, Yugoslavia began to incorporate market mechanisms, culminating in a unique system of “workers’ self-management.” This system, formalized in the 1976 Law on Associated Labor, allowed workers to participate in enterprise management through work organizations. These organizations were governed by workers' councils, which elected boards of management. While managers technically answered these councils, in practice, their training and access to resources often gave them more control. Workers' councils sometimes increased wages beyond sustainable levels, with local banks and political officials often complicit, leading to inflation and unemployment, particularly in the 1980s. These issues were exacerbated by significant foreign borrowing and by 1983, the International Monetary Fund demanded extensive economic reforms as a condition for further support. The ensuing debates revealed deep regional disparities, with wealthier northern and western areas resenting subsidies for poorer southern

and eastern regions, which often went to inefficient enterprises or unproductive projects. These tensions contributed significantly to the eventual breakup of the second Yugoslavia (Bassiouni, 2018).

Following the declarations of independence by Slovenia and Croatia in 1991 and later North Macedonia, Serbia, Montenegro, Bosnia and Herzegovina formed a new federation in 1992, under a new constitution. This new state retained centralized control over key functions like defence and foreign policy but granted significant autonomy to the republics. The Kosovo conflict in the late 1990s, coupled with international intervention, culminated in a peace agreement in June 1999. In 2003, the country was renamed Serbia and Montenegro as part of an EU-brokered deal to prevent further conflict. This arrangement persisted until Montenegro declared independence on June 3, 2006, bringing the Yugoslav era to a close (Bassiouni, 2018).

4. Yugoslavia-Serbia Diplomatic Relations

The constitutional reforms in 1953, 1963 and 1974 gradually decentralized power, shifting authority to local governments, economic enterprises and republic-level Communist Party structures. The government functioned on three levels: communes (opstine), republics and the federation. Post-World War II, the government nationalized major resources and pursued ambitious industrialization. Following a split with the Soviet Union in 1948, Yugoslavia

adopted market mechanisms and developed a unique system of “workers self-management,” formalized by the 1976 Law on Associated Labor. Despite initial economic growth, issues such as unsustainable wage increases and heavy foreign borrowing led to significant reforms demanded by the International Monetary Fund in 1983 (Nations, 2024).

Following the declarations of independence by Slovenia, Croatia, Bosnia and Herzegovina and North

Macedonia in 1991, Serbia and Montenegro established a new federation on April 27, 1992, under a revised constitution. This new federation retained centralized control over key areas such as defense and foreign policy, while granting significant autonomy to the republics. The Kosovo conflict in the late 1990s, coupled with international

intervention, led to a peace agreement in June 1999. In 2003, the federation was renamed Serbia and Montenegro as part of an EU-brokered effort to mitigate further conflict. This arrangement continued until Montenegro declared independence on June 3, 2006, marking the end of the Yugoslav era (Nations, 2024).

5. International Criminal court

5.1. Case on Bosnia and Herzegovina v. Yugoslavia

On March 20, 1993, the Republic of Bosnia and Herzegovina initiated legal proceedings against the Federal Republic of Yugoslavia, accusing it of violating the Genocide Convention, adopted by the United Nations General Assembly in 1948, along with other related issues. Bosnia and Herzegovina cited Article IX of the Genocide Convention to establish the Court's jurisdiction. Immediately following this, Bosnia and Herzegovina requested provisional measures under Article 41 of the Court's Statute, and on April 1, 1993, Yugoslavia responded with its observations, also suggesting provisional measures against Bosnia and Herzegovina. On April 8, 1993, the Court issued an Order indicating provisional measures to protect rights under the Genocide Convention, reaffirmed on September 13, 1993 (ICCJ, 2024).

Yugoslavia later raised preliminary objections regarding the admissibility of Bosnia and Herzegovina's Application and the Court's jurisdiction, but these were rejected by the Court on July 11, 1996, which confirmed its jurisdiction under Article IX of the Genocide

Convention. Following this, Yugoslavia filed its Counter-Memorial, which included counter-claims accusing Bosnia and Herzegovina of committing genocide against Serbs. The Court ruled these counter-claims admissible in December 1997. However, in 2001, Yugoslavia withdrew its counter-claims and the Court subsequently dismissed its Application for revision of the 1996 Judgment (ICCJ, 2024).

Public hearings took place in 2006 and the Court delivered its final Judgment on February 26, 2007. The Court upheld its jurisdiction, emphasizing the principle of Res judicata. It examined whether the atrocities committed in Bosnia and Herzegovina constituted genocide, determining that while many atrocities occurred, only the killings in Srebrenica in July 1995 met the specific intent required for genocide. The Court found Serbia violated its obligation under Article 1 of the Genocide Convention by failing to prevent the genocide in Srebrenica and its duty to cooperate fully with the International Criminal Tribunal for the former Yugoslavia (ICTY), particularly regarding the trial of General Ratko Mladic. The Court did not grant Bosnia and Herzegovina financial

compensation but declared that Serbia's failure to prevent and punish the genocide was a violation of its

obligations under the Convention (ICCJ, 2024).

6. International Court of Justice

6.1. Yugoslavia v. the USA

On 29 April 1999, the Federal Republic of Yugoslavia initiated legal proceedings against Belgium, Canada, France, Germany, Italy, the Netherlands, Portugal, Spain, the United Kingdom and the United States, alleging violations of the obligation not to use force against another state. In its cases against Belgium, Canada, the Netherlands, Portugal, Spain and the United Kingdom, Yugoslavia invoked Article 36, paragraph 2, of the Statute of the International Court of Justice (ICJ) and Article IX of the 1948 Genocide Convention as the basis for the Court's jurisdiction. For its cases against France, Germany, Italy and the United States, Yugoslavia also cited Article IX of the Genocide Convention, alongside Article 38, paragraph 5, of the Rules of Court (Justice, 1999).

Yugoslavia additionally submitted requests for provisional measures on 29 April 1999, demanding that each respondent state immediately cease the use of force against it. After hearings from 10 to 12 May 1999, the ICJ delivered decisions on 2 June 1999. In the cases against Spain and the United States, the Court rejected the request for provisional measures and concluded it lacked jurisdiction, leading to the removal of these cases from the List. In the remaining eight cases, the Court declared it lacked *prima facie* jurisdiction and, therefore, could not

indicate provisional measures (Justice, 1999). Subsequently, the respondents in these eight cases filed preliminary objections to the Court's jurisdiction and the admissibility of the applications. In its judgments on 15 December 2004, the ICJ addressed a fundamental question: whether Serbia and Montenegro were a party to the ICJ Statute at the time the proceedings were initiated. If Serbia and Montenegro were not a party, the Court would not have jurisdiction unless the conditions of Article 35, paragraph 2, of the Statute were met (Savoie, 2007).

The Court needed to determine whether the Applicant met the requirements under Articles 34 and 35 of the Statute before considering the conditions under Articles 36 and 37. The Court confirmed that Serbia and Montenegro were a state for the purposes of Article 34, paragraph 1, of the Statute. However, certain respondents argued that Serbia and Montenegro did not meet the conditions of Article 35, paragraph 1, because it was not a UN Member State at the time of filing the applications. After reviewing the legal status of the Federal Republic of Yugoslavia within the UN from 1992 to 2000, the Court found the situation ambiguous and open to different interpretations. The ambiguity was resolved in 2000 when Yugoslavia requested UN membership and was admitted on 1 November 2000 (Savoie, 2007). However, this admission did not retroactively grant Yugoslavia the status

of a UN Member State when the applications were filed in April 1999. Consequently, the Court concluded that Yugoslavia was not a UN Member State and, thus, not a party to the ICJ Statute at the time of the proceedings (Justice, 1999).

The Court also examined whether Serbia and Montenegro could access the Court under Article 35, paragraph 2, of the Statute. The Court interpreted "treaties in force" as referring to treaties in effect when the ICJ Statute itself came into force. Since the Genocide Convention only became effective in 1951, after the ICJ Statute, the Court ruled that Article 35, paragraph 2, did not provide a basis for jurisdiction. Lastly, in the cases

against Belgium and the Netherlands, the Court considered whether dispute settlement treaties from the 1930s could provide jurisdiction under Article 35, paragraph 2. The Court clarified that Article 35 pertains to the current ICJ and not its predecessor, the Permanent Court of International Justice (PCIJ). Since Article 37, governing the transfer of jurisdiction from the PCIJ to the ICJ, applies only to parties under Article 35, paragraph 1, and Serbia and Montenegro was not a party to the ICJ Statute at the time of the application, Article 37 could not confer jurisdiction. Therefore, the Court ruled that the conventions from the 1930s did not provide a basis for jurisdiction in these cases (Justice, 1999).

7. International Criminal Tribunal for the former Yugoslavia (ICTY)

The Statute of the International Criminal Tribunal for the former Yugoslavia (ICTY) is a foundational document that established the legal framework for prosecuting individuals responsible for serious violations of international humanitarian law during the Yugoslav wars of the 1990s. Adopted by the United Nations Security Council in 1993, the Statute empowered the ICTY to address war crimes, crimes against humanity and genocide. It outlined the Tribunal's jurisdiction, including its authority over grave breaches of the Geneva Conventions, violations of the Laws and customs of war and the responsibility to ensure that those who committed atrocities in the former Yugoslavia were held accountable (Justice, 1999).

The Statute also defined the ICTY's structure, including the composition of

its chambers, the roles of judges, and the functioning of the Prosecutor's Office. It established procedures for fair and impartial trials, ensuring that defendants received due process while allowing the victims' voices to be heard through the presentation of evidence and testimony. The document also detailed the Tribunal's relationship with national courts, specifying how cases might be referred to domestic judicial systems when appropriate. The Statute's provisions were crucial in setting a precedent for international criminal justice, demonstrating that the international community could take collective action to address egregious human rights violations (Justice, 1999).

The impact of the ICTY Statute on the former Yugoslavia was profound. It provided a legal mechanism to address

the atrocities committed during the conflict, bringing justice to many victims and contributing to the broader process of reconciliation in the region. By codifying the principles of accountability and the Rule of Law, the Statute helped establish a framework for addressing War crimes that influenced

future international tribunals. The ICTY's work, guided by its Statute, laid the groundwork for the development of International Criminal Law and the ongoing global effort to prevent and punish serious violations of human rights (Justice, 1999).

8. Yugoslavia and NATO Alliance

During the Cold War, Yugoslavia occupied a unique and strategic position by maintaining a non-aligned status, a stance that allowed it to navigate the rigid bipolar world dominated by the United States and the Soviet Union. Under the leadership of Josip Broz Tito, Yugoslavia avoided aligning with either superpower, instead positioning itself as an independent actor in international relations. This non-aligned policy was a deliberate move to safeguard Yugoslavia's sovereignty and assert its autonomy, balancing the threat of Soviet expansionism with the desire to remain free from Western influence (Smith, 2017).

Despite its non-aligned status, Yugoslavia engaged pragmatically with NATO, driven by a need to counterbalance Soviet influence and secure military and economic support. The interactions between Yugoslavia and NATO involved a strategic exchange of military and technological knowledge, reflecting a calculated approach that allowed Yugoslavia to

modernize its defence capabilities without formal alignment with the West. This relationship was complex, as NATO had to navigate the challenges posed by Yugoslavia's unique position while also recognizing the opportunities it presented, such as the potential for cooperation and mutual benefit (Smith, 2017).

NATO's response to Yugoslavia's manoeuvres was characterized by a cautious approach, aimed at understanding Yugoslavia's strategic objectives and mitigating the risk of it being drawn into the Soviet sphere of influence. Smith's analysis reveals how Yugoslavia exploited its non-aligned status to gain advantage from both sides of the Cold War divide, securing economic aid and military support while maintaining its independence. This dynamic underscore the intricate nature of Cold War diplomacy, where Yugoslavia, a non-aligned state played a pivotal role in shaping the geopolitical landscape (Smith, 2017).

9. Recommendations and suggestions

The international community holds a clear responsibility to maintain peace in Bosnia and Herzegovina. This mandate necessitates proactive measures to prevent any potential escalation of violence, especially in light of the risks posed by a conflict supported by Russia near NATO's borders. The situation is delicate, and the consequences of inaction could be severe, making it imperative for global actors to step up their efforts to preserve stability in the region. Moreover, NATO plays a crucial role in promoting stability, security and cooperation throughout the Western Balkans. To counter any outside interference in the region's democratic processes, NATO must remain vigilant and responsive. However, NATO's ability to act is constrained by the directives and consensus of its member states, which means that unified and decisive action is essential for the alliance to effectively fulfill its mission (McGee, 2021).

Furthermore, the European Union faces the challenge of building a unified stance among its 27 member states to take meaningful action in Bosnia-Herzegovina. Achieving consensus within such a diverse group may require significant concessions on other issues to secure the necessary support. Nonetheless, the EU's political will is vital for any substantial and coordinated effort to address the situation in Bosnia-Herzegovina and to prevent further destabilization. Also, in response to the ongoing threat of secessionist movements, particularly those led by figures like Dodik, EU member states should consider enacting unilateral

sanctions. Such measures would exert pressure on these leaders and help to prevent further destabilization in Bosnia-Herzegovina. Targeted sanctions could serve as a powerful tool in the EU's broader strategy to maintain peace and deter actions that threaten regional stability (McGee, 2021).

Additionally, given the failure of diplomacy in the 1990s, there is a strong case for reevaluating current approaches to conflict resolution in Bosnia-Herzegovina. The international community should consider more assertive measures, such as sanctions and treating secessionist actions as a European security challenge. By adopting a firmer stance, the international community can demonstrate its commitment to preventing a repeat of the devastating conflicts of the past. Moreover, it is crucial for powerful Western nations to prioritize the situation in Bosnia-Herzegovina. The risks of delaying action are too great, and the lessons of the 1990s should serve as a reminder of the consequences of inaction. By acting swiftly and decisively, these nations can help to ensure that Bosnia-Herzegovina does not slide back into violence, but instead remains on a path toward stability and peace (McGee, 2021). Finally, the UN Security Council, must find ways to navigate the challenges posed by potential Russian obstruction. Russia's influence has already undermined the credibility of peacekeeping efforts in Bosnia-Herzegovina, making it essential for the Council to identify alternative strategies to maintain peace and security in the

region, even in the face of such opposition (McGee, 2021).

10. Conclusion

In my view, the fervent defense of Marxism is deeply connected to the complexities of Yugoslavia's history. This advocacy is not driven by an idealistic vision but by the conviction that Marxism still deserves a place in contemporary discourse, despite its historical failures. The contradictions in this stance reflect the paradoxes of a

homeland, which was once a powerful, multi-ethnic nation that no longer exists. The work, shaped by Yugoslavia's tumultuous legacy, embodies the tensions between ideology and reality, challenging us to reconsider the simplistic dismissal of Marxism in modern times.

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PUTTING TO REST THE BURIED GIANT: 25 YEARS AFTER THE END OF WAR IN THE FORMER YUGOSLAVIA

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Abstract

25 years after major violent conflicts in ex-Yugoslavia ended, the region is still stuck in a vicious circle of recreating national narratives about the wars, its causes and effects. This article reviews ex-Yugoslav states transitional justice track record to determine whether the end goal of sustainable peace and consensus on never again has been achieved. In doing so it examines efforts made towards ending impunity, providing comprehensive reparations and establishing genuine elements of truth seeking. In spite of some positive developments, such as establishing the ICTY, most of the criminal trials, reparation programs and truth initiatives undertaken across the region proved either inadequate or insufficient. It concludes that fostering narratives that stress solidarity with the victims and survivors irrespective of their ethnicity, nationality or religion offer the best chance for shifting the present paradigm.

Key words: *Transitional justice, Reparations, Truth, Criminal justice, Survivors*

1. Introduction

Nobel Literature Laureate Kazuo Ishiguro wrote a novel *The Buried Giant* (Ishiguro, 2015) prompted by the atrocities in the former Yugoslavia which resulted in about 140 000 people killed, 4 000 000 displaced and tens of thousands traumatized survivors of sexual violence, torture, persecution, extermination and ethnic cleansing (International Center for Transitional Justice, 2009). He wondered how it came about that groups of people, living in peace and relative prosperity for 50 years started slaughtering each other in the blink of an eye. This question and, more importantly, how to prevent the past from repeating stands at the centre of any transitional justice effort.

Transitional justice refers to the ways countries emerging from periods of mass violence address systematic human rights abuses for which the regular justice system is not able to provide an adequate response (International Center for Transitional Justice). It has been also described as coming to terms with a legacy of large-scale past abuses to

ensure accountability, justice and reconciliation (UN Secretary-General, 2004, p. 4). Beyond this wage terminology, several concrete pillars emerge, including criminal prosecutions, truth seeking, reparations and memorialization. But, what is transitional justice really for? In addition to providing a measure of truth, justice and redress to affected individuals and communities by holding perpetrators to account and repairing, as much as possible, the harm done to victims, the main goal is to create preconditions for sustainable peace. Put differently, it is the best answer international law came up with on how to prevent future atrocities by forging a post-war consensus on never again allowing such crimes to transpire and creating an enlightened narrative fostering restoration of severed social bonds. I will be reviewing transitional justice processes in former Yugoslavia chiefly through this lens: whether they created conditions under which a relapse into conflict would be if not impossible then at least unlikely?

2. Criminal Justice

Obligation to prosecute grave international crimes has the status of customary international law norm (IHL Database, rule 158). Therefore, every state, irrespective of whether it ratified core human right treaties, the Geneva Conventions and their Additional Protocols or the Rome Statute of the International Criminal Court, must, at the very least, investigate grave crimes committed by their nationals or armed

forces, or on their territory, and, if appropriate, prosecute the perpetrators. In the wake of the Cold War, lack of willingness of parties to the former Yugoslavia conflicts to abide by this obligation led to unprecedented developments within the UN Security Council. Namely, the first international war crimes tribunal after Nuremberg and Tokyo, the International Criminal Tribunal for the former Yugoslavia

(ICTY), was established by a Security Council Resolution in 1993 (United Nations, n.d.). Quite ambitiously, in addition to trying individuals accused of core international crimes committed in former Yugoslavia from 1991, ICTY's goal was also to "contribute to the restoration and maintenance of peace in the region." (UNSC, 1993)

Whereas its contribution to ending impunity and furthering international criminal law is formidable (Hazan, 2018), the assumption that it will contribute to peace in the region proved false. Quite the opposite, ICTY's legacy seems to have fuelled tensions and resentments among former Yugoslavian peoples rather than relax them. One could, therefore, plausibly argue that the ICTY left a stronger legacy on international stage by advancing international criminal justice, than on the regional level as it failed to contribute to lasting peace.

As the ICTY was mandated to prosecute and try high-level political, military and police leaders only (ICTY, n.d.), the national criminal systems needed to take over mid and lower-level perpetrators cases. If we go beyond a minimalistic argument that a mere fact that national war crimes trials in Serbia, Croatia, Montenegro, Bosnia and Herzegovina and Kosovo took place and led to some convictions is in and of itself a success, the results of national efforts to end impunity for international crimes committed in former Yugoslavia are rather problematic (OSJI, 2018, pp. 485-587). In addition to a slow progression in dealing with cases (for instance, though there is a 1700 cases strong backlog at the Serbian War Crimes Prosecutor's

Office, only 34 indictments have been raised from 2016 to 2020) (Stojanovic, 2021), selectivity towards those investigated and indicted, there is a lack of regional judicial cooperation necessary for more effective processing of cases (European Commission, 2020, p. 23). Moreover, a number of those indicted, holding dual citizenships, absconded from justice by hiding in a neighboring country which prohibits extradition of their citizens in genocide, crime against humanity and war crime cases (OSCE Mission to Serbia, 2015, p. 33) (Sorguc & Stojanovic, 2021). National courts, to some extent, even reinforce the existing victimhood and patriarchal narratives of their own respective nations. For instance, Kosovo judiciary is hesitant towards investigating, indicting and trying Kosovo Liberation Army members for war crimes committed during the 1998-99 armed conflict with Serbia. (European Commission, 2020, p. 23). It has been documented that Croatian courts have been more lenient towards Croatian defendants as they interpreted participation in the Croatian War of Independence as a mitigating circumstance (Milekic, 2018). Serbian courts cited family related conditions, such as parenthood and marriage, as particularly mitigating circumstances justifying handing down lower punishments in war crimes cases (OSCE Mission to Serbia, 2021, p. 69). More generally, efficiency of judicial cooperation in war crimes cases in the region depends largely on the nationality/ethnicity of the defendants as "countries have shown themselves to be more eager to provide assistance in cases in which their citizens are victims and,

conversely, less eager to co-operate when the defendant is their own national.” (OSCE Mission to Serbia, 2015, pp. 33-35) Serbian Constitutional Court in its 2020 ruling in effect outlawed the use of command responsibility on the non-retroactive application of laws ground, thus shielding all senior military officials (Ristic, Stojanovic, & Haxhijaj, 2021).

3. Reparative justice

Notion of reparations in this text is to be understood as comprising following entitlements of atrocity crimes victims: compensation, restitution, rehabilitation, satisfaction and guarantees of non-repetition (UN General Assembly, 2005) . The so-called war reparations, payments the defeated country is occasionally forced to make to the winning state (Marxsen, 2019, p. 4) such as those Germany was obliged to pay under the Treaty of Versailles (Crossland, 2010) or Iraq for illegal occupation of Kuwait (United Nations, 2022) are not meant. But precisely this second notion of reparations, paying the entire costs of war, seems to loom over the Balkan states, particularly Serbia, solidifying their utter rejection towards any form of reparations whatsoever.

ICTY neither envisaged reparations for victims in its Statute nor dealt with it in its judgments. Several initiatives submitted to the UN Security Council to establish reparations counterpart to the ICTY failed (ICTY, 2013, p. 54). Dayton peace accords are also silent on the issue of reparations (WILPF, 2016, p. 4). Reparations for wartime victims, in general, may be delivered through courts

With the passage of time, the window for meaningful processing of atrocity crimes before courts of law, due to ageing of defendants, witnesses and survivors, is gradually closing. It is thus of utmost importance to improve the regional judicial cooperation in war crime trials and make the most of the upcoming 10 years

or a specially designed administrative reparations program. In the case of widespread crimes, it is simply not possible to provide redress through a judicial procedure only due to a large number of victims. Furthermore, this redress, in addition to satisfaction of seeing their tormenters being brought to account, can, at best, only facilitate monetary compensation.

None of the Ex-Yugoslav countries had put in place a comprehensive administrative reparations program to address war induced harms in a systematic and holistic manner. Path towards realizing rights and benefits that have been made available is paved with obstacles including but not limited to residency related restrictions, short application deadlines and unfavorable evidentiary rules (IOM, 2013, p. 13).

Access to reparations through courts is dependent on criminal prosecutions before national courts or separate civil proceedings. Though cases have been recorded where courts granted compensation to victims, sometimes, however, an unreasonably low one (Stojanovic, 2021), these make just the

tip of the iceberg and thus cannot be considered a viable means for ex-Yugoslav states to discharge their obligation to provide reparations. This being said, some developments before courts in Bosnia and Herzegovina, ordering the perpetrators to pay the compensation to survivors of wartime sexual violence, do seem promising (TRIAL International, 2021).

Further advancements have been made concerning reparations, mostly monetary awards, for survivors of conflict-related sexual violence (CRSV) as Croatia, Bosnia and Herzegovina and Kosovo introduced separate or amended existing legislation to that end (Trivic, 2017). However, even if a commendable step, these reparation procedures for CRSV survivors leave much to be desired. From 20 000 estimated survivors of wartime rape in Bosnia and Herzegovina only 1000 receive some form of reparations due to “the multitude of obstacles that are discouraging them from seeking or hindering them from accessing their rights.” (Hanušić Bećirović, Mahmić, Hujdur, & Tiro, 2021, p. 7) It appears that survivors from minority communities (to be precise, those belonging to a “wrong” ethnic group) are deliberately left out (Vladisavljevic, Lakic, & Begisholli, 2019) (Humanitarian Law Center (HLC) Kosovo, 2016, p. 88). In addition to this, forms of reparations, application and verification procedures fall short of international standard (Amnesty International, 2017, pp. 34-42).

More generally, monetary compensation that has been made available, is provided and delivered through a social welfare system. However, shattering consequences of mass killings, torture,

wartime sexual violence bordering with or amounting to genocide cannot be rectified through welfare system benefits only. Put differently, they are simply not designed to remedy dire consequences of such harms. Moreover, in order to obtain civilian victims of war status, one usually needs to evidence a high percentage (50 or even 60%) of bodily damage. Note, however, that victims of CRSV in Bosnia and Herzegovina and Kosovo have been exempted from this requirement (Mlinarević & Porobić, 2021, p. 106). It follows that all those with mental health problems—like post-traumatic stress disorder, anxiety, and depression—due to war trauma or bodily damage bellow that prescribed by law cannot obtain compensation. It has been estimated that in Serbia alone 15 000 victims have been excluded from accessing reparations (Amnesty International, 2023).

Finally, reparations as a way of making good, as far as possible, the harm inflicted upon victims presupposes obliging a wrongdoer, be it a state agent or a private perpetrator, pay for compensation, medical and mental health services. A state, which, if not acquiesced then at least failed to prevent the atrocities committed on territories under its control, is second in line. In the Balkans, this is not the case. States are financing, if at all, compensation for their citizens (usually members of a predominant ethnic group) that were harmed by other parties to the conflict. These are, therefore, strongly conflated with welfare benefits. None of the states entitled those harmed by member of their armed forces, irrespective of nationality/residency of survivors or

territory where such crime took place, to claim and receive reparations.

4. Truth Seeking

Criminal justice professionals are meant to establish the facts of a particular case at hand in order to verify that an impugned event indeed took place and that it may be qualified as an international crime. This crime then needs to be attributed or linked to individual perpetrators by utilizing the “beyond reasonable doubt” standard of proof typically applied in criminal justice settings. For this very reason criminal trials are not suited to be the main source for establishing unison historical account on what happened exactly and which circumstances led to the outbreak of hostilities. Precisely this should be the main task of truth and reconciliation commissions: “official, nonjudicial bodies of a limited duration established to determine the facts, causes, and consequences of past human rights violations.” (International Center for Transitional Justice, 2013, p. 9) These commissions consist of impartial and independent individuals of impeccable moral standing able to create an enlightened, balanced and truthful narrative about the past. They have a strong and well-defined mandate provided by state authorities, and employ clear and transparent methodologies. Final findings and recommendation may contribute to accountability efforts or suggest reparations. Their main contribution, however, is to provide a credible historical account fostering dialog, empathy and solidarity towards the victims and survivors and thereby

prevent recurrence of violence. In other words, they should facilitate realization of the right of victims and their relatives to truth: the entitlement to seek and obtain information on the causes and conditions that led to abuses, reason for and circumstances of their perpetration, fate of those killed and still missing and identity of perpetrators (OHCHR, 2006, p. 38).

There were few attempts to establish a national Truth and Reconciliation Commissions in Former Yugoslavia successor states, (namely Federal Republic of Yugoslavia and Bosnia and Herzegovina), but both initiatives failed to materialize. A regional initiative, led by a coalition of NGOs, to establish fact-finding commission on the 1990s wars (RECOM), though through comprehensive victim consultations to an extent “repaired torn interethnic relations” (Kostovicova, 2023, p. 19), also failed to deliver due to lack of commitment on part of the prospective founding states: Croatia, Slovenia, Serbia, Bosnia and Herzegovina, Kosovo, Montenegro and North Macedonia (Milekic, 2018). This is hardly surprising as former Yugoslavia successor states simply have no incentive to compromise their well-established one-sided national narratives about the war: why and what exactly transpired; who was the victim, whose fault it was/is etc.

Convicted war criminals are in their home states by many hailed as national heroes, thus cultivating hate speech, glorification of violence, revisionist narratives and divisive rhetoric in public space. A good example of that is the case of war criminal Ratko Mladic being depicted on a residential building in downtown Belgrade with an inscription “We are thankful to your mother”. This came as a reaction to confirmation of ICTY ruling declaring Mladic guilty, among other things, for killing 8 000 Muslim men and boys in Srebrenica (UN News, 2021). The mural was guarded by right-wing nationalist against an attempt of human rights activists to remove it (Brezar, 2021). State authorities are officially taking a neutral stance, but are implicitly supportive under the guise of safeguarding public order. Images featuring Mladic and Karadzic, both convicted for genocide and crimes against humanity, can be seen in many towns in both Serbia and Republika Srpska (the Serb-majority entity that makes up part of Bosnia-Herzegovina). After Slobodan Praljak, Bosnian Croat general, committed suicide by swallowing poison in the ICTY courtroom, Croatian Prime Minister spoke of great injustice towards him and the Croatian people (Reuters, 2017), whereas Croatian media portrayed him as a martyr (Milekic, 2019). Glorification of war criminals is not uncommon elsewhere in the region as well (Youth Initiative for Human Rights, 2019).

Finally, neither party to the conflict unconditionally and publicly acknowledged responsibility for crimes committed and offered a full and sincere

apology to survivors, other victims and their families. For example, apologies made by Serbian politicians are considered flawed, insincere and prompted by Western influence rather than outcomes of a genuine reckoning with the past (Orentlicher, 2018, p. 255).

Though two international courts (ICTY and the International Court of Justice) explicitly characterized massacre committed in Srebrenica as a crime of genocide (only case where commission of genocide was verified by two international courts) this fact is still not acknowledged in Serbia and Republika Srpska. Quite cynically, Serbia’s 2016 Criminal Code amendments introduced penalties for denial of genocide, but only if determined by a final verdict of a Serbian court or the International Criminal Court (Serbian Criminal Code, Article 387, para.5). The question of why wartime atrocities committed in the name of their respective nations are not acknowledged by majority or at least sizable part of that very population goes beyond the scope of this article. A plausible explanation is that official narratives aggressively propagated via mass media were uncritically adopted by majority of the people and then continually used in forming an opinion (Orentlicher, 2018, pp. 227-29).

Not to paint an entirely black picture, regional efforts to end the protracted displacement of refugees and IDPs (the so-called Sarajevo Process) through durable housing solutions have yielded results, though, truth be told, 83% of funds has being secured by foreign donor countries (Regional Housing Programme, 2024).

5. What is to be done?

Finally, I am going to go back to Ishiguro who said: “the battle over how a nation remembers is really a battle over what a nation is going to do next” (Ishiguro, 2015). If this is true, then the best chance to turn the tide of denial or justifications of atrocity crimes and glorifications of war criminals is to foster construction of a common narrative about the Yugoslav conflicts and their consequences revolving around solidarity with the victims, their experiences and perspectives.

If we look at the other post-conflict societies, we can see that there is no example of a country that dealt ideally with the past. The most common example of successful dealing with the past is probably Germany, but in Germany, criminal accountability and reparations were far from comprehensive and successful policies implemented across the board. War crimes trials after the Second World War in both West and East Germany were sporadic, flawed and did not bring to justice even a fraction of perpetrators (United States Holocaust Memorial Museum (USHMM), 2020). Reparations efforts of postwar Germany focused on holocaust survivors, whereas other victims were in some measure compensated, if at all, more than half a

century after the infliction of the harm. However, Germany made great strides in constructing a national narrative and a near societal consensus on never again. Airing of the US series Holocaust in 1979 by the public broadcaster WDR (Westdeutscher Rundfunk) in then West Germany, arguably, contributed more to construct common memory of Germans about the Holocaust than criminal and reparative justice (Axelrod, 2019). In Serbia, airing an amateur video on national TV in 2005 showing members of a Serbian paramilitary unit “Scorpions” in 1995 shooting six Muslim men and boys in the back shocked the public thus challenging the dominant narrative of Serbian victimhood and righteous war (Williams, 2005).

Therefore, the best chance for re-shaping the mass consciousness about the conflicts lies in the victim-centered reporting about atrocities and creating materials that can foster empathy and solidarity. Unfortunately, best European film in 2021 and an Oscar nominee “Quo Vadis, Aida?”, about the 1995 Srebrenica genocide and its aftermath, was still not aired on any Serbian TV channel, nor was it made available for public viewing in cinemas. Let us hope this will change.

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JUSTICE AND MEMORY: THE INCLUSION OF VICTIMS IN THE INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA

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Abstract:

The role of victims in the judicial proceedings of the International Criminal Tribunal for the former Yugoslavia (ICTY) is of historical and judicial importance and has led the way for the recognition and reparation of victims of serious crimes. Even so, the role of victims in the judicial proceedings was limited, participating mainly as witnesses without the possibility of active intervention in the proceedings or of obtaining direct reparations. This paper analyses the participation of victims in the court, its impact on the development of the trials and its influence on international criminal justice. It also assesses how the ICTY set precedents for other international tribunals, contributing to greater inclusion of victims' voices in subsequent judicial proceedings. Finally, it examines the ICTY's legacy in building a justice system that promotes truth, historical memory and reconciliation.

Keywords: *International Criminal Tribunal for the former Yugoslavia, Victims, International Criminal Justice, Human Rights, Historical Memory.*

1. Introduction

The International Criminal Tribunal for the former Yugoslavia (ICTY) marked a turning point in international criminal justice. This ad hoc tribunal, a pioneer in the prosecution of crimes committed in the armed conflicts of the former Yugoslavia, initiated a process that not only sought to punish those responsible for war crimes, crimes against humanity and genocide, but also raised the voices of the victims of these crimes.

Throughout its history, the ICTY stood out for its inclusion of victims' testimonies as fundamental elements in substantiating the charges. However, their participation in the process was

very limited compared to more recent international tribunals. In many cases, victims took the role of mere witnesses, without having an active role in the proceedings. Despite this, the testimony of victims was crucial, not only for the conduct of the trials, but also for historical memory and reconciliation in the Balkans.

This paper explores the role of victims at the ICTY and the court's influence in other European contexts as a benchmark for creating a more inclusive system that includes the voice of those who have suffered gross human rights violations.

2. Historical Background

2.1. Conflict and the establishment of the ICTY

The Federal Republic of Yugoslavia was created after the end of World War II and the victory of the military Marshal Tito and the National Liberation Movement against the fascists, supported at the time by Moscow. Known for bringing together different ethnicities, religions and nations, during the 1990s Yugoslavia positioned itself as one of the most politically, economically and culturally developed states on the European continent.

After the fall of the Berlin Wall in 1989 and its negative economic consequences for the country, old ethnic and religious disputes between the constituent republics - Slovenia, Croatia, Bosnia and

Herzegovina, Serbia, Montenegro and the autonomous provinces of Kosovo and Vojvodina - began to surface.

Disagreements grew, with Slovenia and Croatia accusing the Serbian republic of unfairly dominating the government. Serbia, meanwhile, accused them of separatism. On 25 June 1991 Croatia and Slovenia declared their independence and began the process of dissolving what was known as the Federal Republic of Yugoslavia. This triggered the start of a civil war in the area.

Sarajevo, the then capital of the republic, was besieged by Serb forces for four long years, killing around 8,000 Bosnian Muslim citizens. This, along with the Srebrenica genocide, was one of the bloodiest episodes of the conflict¹,

¹ José Carlos Cueto. (2021, June 25). Por Qué Se Desintegró Yugoslavia. *BBC News*

Mundo. <https://www.bbc.com/mundo/noticias-internacional-57318555>

leaving in its wake some 200,000 dead and 2.7 million refugees and internally displaced persons².

2.2. Consequences of non-participation of victims in international criminal justice proceedings

International criminal justice, until the tribunal in the former Yugoslavia, attributed victim status to all of humanity, treating states as the only subjects in international law.

In the well-known trials of the ad hoc tribunals of Nuremberg and Tokyo after the Second World War, despite the fact that they brought unprecedented progress in the prosecution of war crimes and crimes against humanity, the victims were not given any kind of consideration, nor did they occupy a relevant space in the judicial process, limiting themselves to mere spectators. The focus was placed on the accused and the documentary evidence provided by the Allied forces, while the voices of those affected by the crimes committed were ignored.

Until recently, international law has focused on the ‘offender’, be it the state or the individual, leaving aside the victims. This has led to the use of these criminal proceedings as an instrument for the realisation of the so-called *ius puniendi*, i.e. law is used to punish the commission of a criminal offence. But it is necessary that criminal law also bases its foundations on the reparation or

redress of the victims, in addition to the fact that their participation in the process can contribute to the recovery of the victim and increase the effectiveness of the criminal process by giving greater meaning to the sense of ‘justice’.

The exclusion of victims in these processes had both legal and social consequences. On the one hand, by not considering the direct testimonies of the victims, the courts ignored a fundamental source of testimonial evidence, which could have helped to introduce a more humane and close approach to the horrors committed. The vacuum of testimonies and personal experiences led to a depersonalisation of millions of victims, turning them into mere figures and events narrated by third parties.

On the other hand, this exclusion led to the phenomenon known as ‘re-victimisation’ of victims, as they were denied the possibility to recount their experiences and seek justice directly. As noted above, criminal justice based its accusations on satisfying one main objective: to punish the perpetrators. This resulted in victims feeling that their suffering had not been recognised and validated in the courts of law.

Moreover, this had an impact on the public perception of the events and the trials. A discrepancy was created between the legal results obtained in the outcomes, and the moral, emotional and symbolic needs of the victims. Criminal justice was based primarily on the victors and vanquished, but without focusing on

² *Recordando el sitio de Sarajevo 20 años después.* (2012, April 3). ACNUR España. [https://www.acnur.org/es-es/noticias/notas-](https://www.acnur.org/es-es/noticias/notas-de-prensa/recordando-el-sitio-de-sarajevo-20-anos-despues)

[de-prensa/recordando-el-sitio-de-sarajevo-20-anos-despues](https://www.acnur.org/es-es/noticias/notas-de-prensa/recordando-el-sitio-de-sarajevo-20-anos-despues)

those who actually endured the horrors committed.

Thus, only very recently has the victim begun to be taken into account³, revised after decades, as happened with the establishment of tribunals such as the International Criminal Tribunal for the former Yugoslavia, where victims took a more central role, and achieving a better balance between punitive justice and reparation for victims.

2.3. The 2000s. Recovery of memory and the role of the victim in criminal justice

From the 2000s onwards, following the establishment of tribunals such as the Yugoslavia and Rwanda tribunals and the creation of the International Criminal Court in 2002, a period of greater awareness and commitment to the recovery of historical memory began, deeply linked to the recognition of victims as central actors in the search for justice, reconciliation and reparation. Thus, Article 68 of the Statute of the International Criminal Court, after various discussions with experts, representatives of states and members of NGOs, recognised the right of victims to participate in judicial proceedings, not only as witnesses, but also as active participants with their own interests in the results of the process. This is a breakthrough in guaranteeing victims

access to justice⁴, and in the official narratives of many European countries, which tended to silence and minimise the suffering of victims of war crimes, genocide and political repression.

As the former Special Rapporteur on truth, justice and reparation, Pablo de Greiff, put it in his 2013 report on the promotion of truth, justice, reparation and guarantees of non-repetition, *‘The last two decades have seen a steady increase in the establishment and use of various truth-seeking mechanisms, such as state-backed truth commissions and “informal” truth-seeking processes carried out by civil society groups, including victims’ organisations. Truth has also been sought at the international level through international commissions of enquiry and fact-finding missions’*⁵. Thus, the increased recognition of victims was accompanied by a growing interest on the part of European states to promote historical memory initiatives that would strengthen truth, justice and reparation.

Thus, in addition to their recognition in the courts, monuments, museums, memorial days and educational programmes were created to highlight the importance of remembering and honouring the victims of massive human rights violations. Examples include the Holocaust memorial ‘Shoes on the

³ Carlos Fernández de Casadevante Romani. (2009). las víctimas y el derecho internacional. *A.E.D.I.*, 25. https://dadun.unav.edu/bitstream/10171/21360/1/ADI_XXV_2009_01.pdf

⁴ Luisa Fernanda Villarraga Zschommler. (2023). *La apuesta por la voz de las víctimas en procesos judiciales: Análisis de los modelos de participación en la Corte Penal Internacional y la Jurisdicción Especial para la Paz* [Master's

thesis]. <https://repositorio.uniandes.edu.co/server/api/core/bitstreams/0baf2cc2-0f42-4be2-928c-4ddc6da183d1/content>

⁵ *Informe del relator especial sobre la promoción de la verdad, la justicia, la reparación Y las garantías de no repetición, Pablo de Greiff: Misión a España.* (2014, July 22). <https://www.refworld.org/es/ref/informision/cdhu/2014/es/101894>

Danube’ in Hungary in 2005⁶, or the establishment of 23 August as the European Day of Remembrance for the Victims of Stalinism and Nazism at national and EU level by the European Parliament in 2019⁷.

Historical memory served not only the moral recognition of the victims, but also their recognition within justice. The legal and political narrative was transformed,

allowing spaces for victims not only to be remembered, but also to be empowered in their quest for reparation and criminal justice. This not only allowed for a more comprehensive approach to the crimes of the past, but also laid the groundwork for a more inclusive criminal justice system, where the voices of those who suffered human rights violations have a place.

3. Victim’s Participation in the ICTY

3.1. Participation of the victim in the ICTY as a witness and its relevance in the different phases

Witnesses and victims played a key role in all ICTY trials since, as noted above, unlike the Nuremberg trials, where convictions were based on documentary evidence, the ICTY relied primarily on the testimonies of victims and witnesses to obtain the information needed in court proceedings. Even so, the participation of victims in these trials was limited compared to more recent international tribunals. However, the ICTY marked a significant step forward in recognising the role of victims in international criminal justice, even if they did not play a central role in the judicial proceedings.

Moreover, their testimonies helped the judges to render a fair judgment, contributing substantially to the restoration of justice and reconciliation in the region⁸.

Even so, the victims were considered as mere witnesses, in particular prosecution witnesses. This meant that the statutes of the ICTY did not recognise the active legitimacy, either individually or collectively, of the victims of the crimes to directly initiate criminal proceedings before this criminal tribunal or to become a party to the proceedings once they had been initiated. This resulted in a lack of direct reparation mechanisms, as the court did not award compensation or financial reparations to the victims. Instead, the Statute of this court provided for a protection mechanism for victims as witnesses known as the ‘Victims and Witnesses Section’, providing them with psychological and social assistance and protection measures, but it did not contemplate a particular status for victims.

According to Jorda, the former president of the ICTY, there were reasons for this. Among other things, the priority was to

⁶ *Zapatos a la orilla del Danubio*. <https://www.budapestinfo.hu/es/zapatos-a-la-orilla-del-danubio>

⁷ European Parliament. (2019). *Importancia de la memoria histórica europea para el futuro de Europa*. https://www.europarl.europa.eu/doceo/document/TA-9-2019-0021_ES.html

⁸ *Witnesses - FAQs*. International Criminal Tribunal for the former Yugoslavia | United Nations International Criminal Tribunal for the former Yugoslavia.

<https://www.icty.org/en/about/registry/witnesses/faq#1>

prioritise the repression of crimes, which in the field of international criminal justice mainly involves identifying, investigating and prosecuting those responsible in order to punish or acquit them. In addition, the aim was to protect the fundamental rights of the accused, which led the Statute to consider that the recognition of the victim's role could slow down the proceedings.

This situation gave the court an advantage: proceedings were speedier due to the absence of a third actor (the victim) in the trial, especially in an adversarial procedure. However, it had the disadvantage that the interests of the prosecution did not always coincide with those of the victim⁹. In this respect, two phases can be distinguished when testifying: the investigation phase and the trial phase. In the investigation phase, many witnesses are interviewed for the reconstruction of the facts. However, not all of those interviewed will participate in the trial phase and will be able to testify in court. The prosecution and the defence selected the witnesses to appear before the judges¹⁰.

Ultimately, victims in the ICTY trials were not protagonists in procedural terms. Even so, the inclusion of victims as witnesses satisfied the right of victims and their families to be heard publicly and to have their testimony made public and used as a basis for the indictment of

those responsible¹¹. Victims' testimony was crucial to historical memory and reconciliation efforts in the region, and was key to the international community and local societies' understanding of the magnitude of the horrors suffered.

3.2. Influence of the ICTY in other regions

The ICTY did not limit its influence to the borders of the former Yugoslavia, but played a key legal, political and social role.

Following the constitution of the tribunal and the establishment of jurisprudence and precedents, as stated by Secretary-General Antonio Guterres in 2017, the ICTY 'pioneered the creation of the contemporary architecture of international criminal justice. Furthermore, the Secretary-General stressed that *'The tribunal gave a voice to the victims, to people who experienced appalling violence and tragic losses, including women and girls. They had the opportunity to tell their stories, to officially record their experiences and to see those responsible for the crimes brought to justice'*¹².

The success of the ICTY, as well as the International Criminal Tribunal for Rwanda, helped catalyse the creation of the International Criminal Court for the prosecution of serious international

⁹ Carlos Fernández de Casadevante Romani. (2009). las víctimas y el derecho internacional. *A.E.D.I.*, 25. https://dadun.unav.edu/bitstream/10171/21360/1/ADI_XXV_2009_01.pdf

¹⁰ *Witnesses - FAQs*. International Criminal Tribunal for the former Yugoslavia | United Nations International Criminal Tribunal for the former Yugoslavia. <https://www.icty.org/en/about/registry/witnesses/faq#1>

¹¹ F. Javier Quel López. Reflexiones sobre la contribución del tribunal penal internacional para la antigua Yugoslavia al desarrollo del derecho internacional humanitario. https://dadun.unav.edu/bitstream/10171/21519/1/ADI_XIII_1997_09.pdf

¹² *Tras 10.000 días de juicio, Cierra el tribunal penal Internacional para la ex Yugoslavia*. (2017, December 21). Noticias ONU. <https://news.un.org/es/story/2017/12/1424142>

crimes, such as genocide, war crimes and crimes against humanity. The Rome Statute, which constitutes the Court's treaty, was adopted in 1998, and the Court began its work in 2003, succeeding the ad hoc tribunals created in the 1990s mentioned above¹³. These tribunals demonstrated the possibility of prosecuting individuals responsible for very serious crimes, which served as a guide, as well as an impetus, for the creation of a permanent institution of international criminal justice.

The tribunal represented a significant and irreversible change in the 'culture of impunity' and highlighted the importance of accountability as a key element in international relations. Since then, the pursuit of such accountability has been seen as central to post-conflict peacebuilding and reconciliation. The ICTY was not only a pioneering and symbolic institution, but also established itself as an important reference point for the international community¹⁴.

Specifically, in Spain, despite the fact that recently policies, laws and measures for the reparation of the victims of Franco's dictatorship have been developed, the reality is that the victims of crimes under international law committed during the Civil War and Franco's regime (1936-1975) still do not see their rights to truth, justice and reparation fulfilled¹⁵.

Even so, the effect of the ICTY in Spain was significant, as it brought about a change of course that we are recently experiencing. The Tribunal's work promoted the consolidation of Universal Jurisdiction as a new basis to alleviate the limitations of the International Criminal Court¹⁶. Spain was one of the pioneering countries in the application of this principle. The Organic Law of the Judiciary allowed Spanish courts to investigate and prosecute international crimes with virtually no restrictions. The Pinochet case in 1998, in which Spanish judge Baltasar Garzón ordered the arrest of the former Chilean dictator for crimes against humanity, is one of the clearest examples of Spain taking a proactive role in international justice.

In 2007, the country's first Law of Historical Memory was established, influenced by the international context brought about by the ad hoc criminal tribunals. Spain began to assume the need to confront historical crimes and recognize the rights of victims. However, this law focused mainly on the search for symbolic reparation to the victims, so the search for justice and truth were relegated to the background.

It was not until 2022 that the Law of Democratic Memory was passed, one of the greatest achievements in Spain's democratic history. This law contemplates different measures to recognize the right to truth, such as the

¹³ *Corte penal Internacional*. Human Rights Watch | Defending Human Rights Worldwide. <https://www.hrw.org/es/topic/international-justice/corte-penal-internacional>

¹⁴ Ioannis Armakolas, Eleni Vossou. (2008, October). Transitional justice in practice: the international criminal tribunal for the former Yugoslavia and beyond. *UNISCI Discussion Papers*. <https://www.ucm.es/data/cont/media/www/>

[pag-72511/UNISCI%20DP%2018%20-%20ARMAKOLAS%20AND%20VOSSOU.pdf](https://www.unhcr.org/refugees/pag-72511/UNISCI%20DP%2018%20-%20ARMAKOLAS%20AND%20VOSSOU.pdf)

¹⁵ *Víctimas de la Guerra civil Y el franquismo*. Amnistía Internacional España - Derechos humanos. <https://www.es.amnesty.org/en-que-estamos/espana/franquismo/>

¹⁶ *Concepto*. https://jurisdiccionuniversal.org/?page_id=1047

creation of a State DNA Bank of victims, the responsibility of the state to guarantee the right to investigate human rights violations, and reparation measures such as the granting of Spanish nationality to the volunteers who formed the International Brigades¹⁷.

In addition, September 15, 2023, was a historic day for the Spanish state, as a victim of the Franco regime, Julio Pacheco Yepes, testified for the first time before the Spanish justice system¹⁸. However, almost a year later, on September 11, 2024, we received the discouraging news that the 50th Court of Instruction of Madrid filed the case of Julio Pacheco, based on the criteria of the Constitutional Court of another

complaint filed for torture during Franco's regime¹⁹.

The ICTY sought to bring justice, but also to contribute to reconciliation in the former Yugoslavia. In Spain, although it experienced a different historical context, the tribunal's work influenced debates on how to address and deal with the crimes committed, historical and inherited traumas, and the social division caused by the Civil War and Francoism.

The idea that international criminal justice can play a role in healing post-conflict societies resonated in Spain, especially in the growing social demand for truth, justice and reparations for the victims of Franco's repression.

4. Conclusions

The recognition of the importance of victims in judicial proceedings at the ICTY set a precedent for greater inclusion of victims' voices in the justice arena. This was a paradigm shift that allowed victims to express their experiences and contribute to a deeper understanding of the crimes committed and the reconstruction of historical memory.

Moreover, the work of the ICTY served as a reference for the creation of other international tribunals and as a catalyst for historical memory and the

recognition and reparation of victims of atrocity crimes in other states. It demonstrated that justice should not only focus on the punishment of perpetrators, but also on the rights of victims.

This legacy has promoted a holistic approach to judicial processes, where truth, memory and reconciliation are fundamental to building post-conflict societies. However, there is still a pressing need to continue to evolve towards judicial systems that are inclusive and empowering for victims.

¹⁷ MEM4EU: Memoria democrática para una juventud más europea. Cursos de FIBGAR. <https://cursos.fibgar.es/course/view.php?id=6>

¹⁸ FIBGAR. (2024, 9). *Acabando con el Pacto del Olvido franquista*. FIBGAR. <https://fibgar.es/acabando-con-el-pacto-del-olvido-franquista/>

¹⁹ Ana María Pascual. La jueza archiva la única causa viva contra policías torturadores del franquismo. Público. <https://www.publico.es/politica/jueza-archiva-unica-causa-viva-policias-torturadores-franquismo.html>

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A PILOT STUDY EXPLORING THE MOTIVATIONS BEHIND PARAMILITARY MEMBERSHIP DURING THE BOSNIAN CONFLICT THROUGH THE ANALYSIS OF WITNESS TESTIMONY FROM THE INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA (ICTY)

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Author's Profile: Erica's academic interest in international conflict studies were sparked during her Bachelor in Law, where she learnt about the 1990s Balkan conflict and the ICTY as a tool of transitional justice. She took this interest further by attending the International Kosovo Summer Academy and the Belgrade Comparative Conflict Studies Summer School, where she learnt about peace-building processes and heard from civil society organizations working towards recognition of victimhood, redress and social reconciliation. She refined this by doing an internship at the International Criminal Court, taking her first step in her international justice career.

Abstract:

This pilot study examines four witness testimonies from the archive of the case of *Stanišić & Simatović* at the International Criminal Tribunal for the former Yugoslavia (ICTY) to explore the circumstances leading ordinary men to join two paramilitary groups who committed atrocity crimes during the Bosnian conflict. Firstly, I explore the literature on paramilitaries in the break-up of the former Yugoslavia to identify the main motivations for membership in these groups. Secondly, by employing a qualitative data analysis methodology, I examine four witness testimonies from the ICTY to identify whether their experiences as part of the Serb Volunteer Guard (or Arkan's Tigers) and the Skorpions Unit reflect the literature. Although this pilot study's limited research scope means that generalising conclusions cannot be made, it provides insight into multiple factors leading to paramilitary group membership, drawing a picture directly from ICTY testimony. This paper also recognises the power of historical documentation held by the ICTY archive, whilst acknowledging its limitations as a research source.

Keywords: *Transitional Justice, Paramilitary Groups, Yugoslavia, ICTY, Criminology.*

1. Introduction

The armed conflicts following the break-up of the Yugoslav Republic in the 1990s are known for having been the stage of extensive atrocity, seeing perpetration vary broadly in terms of nature, time and location. Some of the atrocious acts committed against civilians are documented in the criminal convictions of members and leaders of armed groups by the International Criminal Tribunal for the former Yugoslavia (ICTY). In this pilot study, I shine a light on these perpetrator groups by analysing ICTY witness testimonies of a number of their members.

My study aims to gain insight and understanding into the realities of intra-ethnic conflict, by exploring how ordinary men came to join groups that committed heart-wrenching crimes. This study focuses on two paramilitary groups, Arkan's Tigers and the Skorpions, who committed international crimes against civilians in the Bosnian localities of Bijeljina, Zvornik, and Trnovo between 1992 and 1995. I explore the circumstances, motivations and, sometimes, pressures, that lead individuals to sign up to these armed groups, whilst acknowledging that these are not on their own sufficient to turn someone into a perpetrator of mass atrocity.

Firstly, I explore the existing literature on paramilitary groups in the 1990s former Yugoslavia conflicts and the circumstances leading men to their membership. Secondly, I conduct qualitative data analysis into four

witness testimonies from the ICTY case of Stanišić & Simatović, of three former members of the Serb Volunteer Guard (or Arkan's Tigers) and one former member of the Skorpions. My objective is two-fold:

- To identify to what extent this sample of four men's witness testimonies reflects the theories on paramilitary membership found in the literature.
- To assess the methodological usefulness of ICTY case transcripts as a source of criminological and historical data analysis, and its possible shortcomings.

I found that a mixture of motivations such as nationalist sentiment and economic gain motivated the four witnesses to sign up. Despite the limited scope of this pilot study and the limitations to the methodology, the significance of this work cannot be understated. The ICTY archive provides a wealth of first-hand insight into the 1990's conflicts and, possibly, an understanding of the perpetuation of the crimes committed. This both signifies the considerable potential for further criminological research using witness testimony (see: [Sabljakovic, 2022](#); [Aydin-Aitchison, 2016](#); [Bećirević, 2013](#)) and a crucial element in transitional justice in preventing re-occurrence (see: [Baker, 2019](#); [Orentlicher, 2018](#); [Van Willigen, 2013](#)).

2. The Literature on Paramilitary Violence in the Break-Up of Yugoslavia

When a geographical area falls into war, a great percentage of the male population is conscripted into an army fighting for its nation. This is what happened to the Socialist Federal Republic of Yugoslavia in the early 1990's when, one after the other, its nations declared independence causing the area to fall into a ten-year-long combination of conflicts (Baker, 2015). Considerable violence, including against civilians, was perpetuated by various armed groups involved in the hostilities. These included irregular armed bands, commonly called paramilitaries or militias, which are non-official military groups often recruited to operate covertly (Alvarez, 2006). They differ from regular armies because, among other things, their loyalty is not fixed to one state (Vukušić, 2019), their training is loosely structured and often lacks a code of honour (Alvarez, 2006), and because they often have no direct links with who is financing them (Vukušić, 2019). This allows states, such as Serbia, to deny accountability for any crimes committed by Serb militias (Vukušić, 2019). The lack of ethos also implies that these units are likely to be employed to conduct operations which regular soldiers might not be willing to do, such as engaging in looting and ethnic cleansing (Alvarez, 2006). In Alvarez's words (2006, p. 17), paramilitaries are "a ubiquitous feature of genocidal violence".

For example, in the 1990's, Slobodan Milošević allegedly instructed several Serb paramilitary groups, through the use of proxy commanders and therefore using plausible deniability (Vukušić, 2019), to displace Bosnian Muslim

populations from areas acquired by Serb military forces. This often led to atrocity crimes against civilians in the annexed villages and towns in Bosnia. It is also alleged that Serb militias were employed to carry out the atrocities in Srebrenica (Vukušić, 2018).

The reason why I chose to focus on paramilitary groups is two-fold. Firstly, the fact that it is accepted that their members were involved in the committing of atrocity crimes against civilians has driven me to conduct research into their offending, therefore amplifying the civilians' recognition of victimhood. Secondly, most of these groups were made up of individuals who signed up voluntarily (Tanner & Mulone, 2012; Vukušić, 2019), differently from regular armies, therefore providing an insight into varied, complex and often inter-connected reasons for joining due to the element of free will.

It is worth mentioning that the premise of my study is that joining a paramilitary group on its own does not imply an intention to commit atrocity, nor knowledge that members of that group will commit war crimes. There is extensive sociological, criminological and psychological research into how perpetrators come to carry out atrocities, exploring the social dynamics of armed groups, the element of complicity, the emotional neutralization to violence, and the role of military and political leaders in ordering systematic violence, to name a few (see: Browning, 2001; Van Baar & Huisman, 2012; Fletcher, 2007; Malešević, 2017; Vetlesen, 2005; Haslam & Reicher, 2007; Klusemann,

2012). Although essential to achieve a full apprehension of atrocity, I focus on an exploration of the individual

motivations to join these armed groups in the first place.

3. The Path to Membership

Throughout the 1980's, nationalist political sentiment had been rapidly growing in fragile Yugoslavia, leading to considerable ethnic polarization. The heavily broadcasted nationalist propaganda focused on ethnic rivalries and traumas from the 1940's. Oberschall (2000) highlights that these political agendas revived ethnic fear and hatred that had been dormant for 40 years under the leadership of Tito. He calls this awoken socio-political landscape the "crisis frame" (2000, p. 989). Consequently, despite a considerable part of the Yugoslav territory seeing the neutral co-existence of different ethnic groups for decades (Oberschall, 2000), the propaganda messages surely had an impact on most people. The significance of this context is seen in the ICTY case of Tadić where, when mitigating his sentencing, propaganda was considered a contribution to the commission of his crimes²⁰¹ (Clark, 2009, p.432).²¹¹

Taking this context into account, it is likely that some of the men who signed up to fight in paramilitaries did so due to nationalist sentiment and a desire to protect their people from the threat of other peoples. In the words of ICTY defendants Dragan Obrenović and Ivica

Rajić (Clark, 2009, p. 432-3) it became "normal"² and "honourable"³, for every man to take up arms, risking being considered a "traitor"⁴ if they did not. The chain of events leading to armed conflict brought a change in "the entire moral dimension of the land and its people" (Stewart, 2008, p. 182, as cited in Clark, 2009, p. 431). Membership in a group could provide a "normative frame" for its members (Goffman, 1975, as cited in Tanner & Mulone, 2012, p. 51), helping to bring "stability in an unstable environment" (Welzer 2007, as cited in Tanner & Mulone, 2012, p. 51).

Membership in a paramilitary group also promised considerable opportunities. Groups like the Serb Volunteer Guard (SDG), also called Arkan's Tigers, had connections with prominent people in the state of Serbia (Alvarez, 2006), therefore possibly offering their members respect, political capital, and access to resources. Others, like the Skorpions, offered better pay than the regular army (Tanner & Mulone, 2012; Vukušić, 2018). Since it was commonplace for the members to be free to loot from the homes of the civilians who were killed or who fled (Tanner & Mulone, 2012; Alvarez, 2006), it may

¹ *The Prosecutor v. Dusko Tadić*, Trial Chamber Sentencing Judgement, July 14 1997, para. 72

¹ *The Prosecutor v. Dusko Tadić*, Trial Chamber Sentencing Judgement, July 14 1997, para. 72

² *The Prosecutor v. Dragan Obrenović* (IT-02-60/2), Case Information Sheet, p. 3-4

³ *The Prosecutor v. Ivica Rajić* (IT-95-14/1), Case Information Sheet, p. 4

indicate that a significant incentive for joining a militia was the chance of personal enrichment (Alvarez, 2006, p. 6).

Apart from the economic gain, membership also gave to many a sense of purpose. This is particularly true for the SDG, as many recruits were men who were marginalized in society. This included convicted criminals (Totten, 2009, as cited in Vukušić, 2019, p. 262), the unemployed, the unmarried and the uneducated young men, the so-called “alienated youth” (Alvarez, 2006, p. 26). This may suggest that many whose “affiliation with mainstream society (was) marginal at best” (Sudetic, 1998, p. 98, as cited in Alvarez, 2006) joined out of a lack of touch with opportunities in education, workforce and society more generally. In fact, many members of the SDG came from the Red Star Belgrade football fan club, known to provide a sense of identity and membership but, as Alvarez (2006) holds, was made up of people who are vulnerable to indoctrination and radicalisation, regardless of the ideology. Campbell and Dawson (2001, as cited in Alvarez, 2006) further highlight that these hooliganism-driven football fan clubs have a deep-seated territorial drive and an eagerness to assert power over the other, making it easy for some of their members to turn to violence in the name of a nationalist goal. It is suggested that membership in the SDG provided an outlet for violence, a continuation of a sense of identity within a group, and gave power to the powerless (Clark, 2009, p. 431).

Differently from the SDG, it seems that social connections between friends and

relatives were key in bringing men to join the unit of the Skorpions. Most of the group was made up of people who had known each other since childhood (Tanner & Mulone, 2012). This may suggest that some men were influenced by peer pressure due to these connections, and/or appealed by the opportunity to find a position in times of war while being backed up by people they could trust.

As mentioned, I chose to research the SDG and the Skorpions due to the crimes committed against civilians by its members. However, it is worth acknowledging that many paramilitary groups primarily engaged in other kinds of criminal activity, such as smuggling of goods and other forms of organized crime (Tanner & Mulone, 2012), only being required to fight on the war front at a later stage. This is to highlight, as mentioned, that it is not certain that men signed up to these groups with the knowledge that they would later engage in atrocity violence in their operations. I will briefly explore the extent of this knowledge in the research findings section.

3.1. The Methodology

Having explored the literature on two prominent paramilitary groups operating during the break-up of Yugoslavia, the following section analyses witness testimony from one ICTY case and assesses to what extent it supports the theories for group membership explored above.

I identified the case of *Stanišić & Simatović* as the one that would give the most insight into crimes committed by

paramilitary groups. The two accused worked for Serbia's State Security Service of the Ministry of Internal Affairs and have been charged with directing and organizing the financing, training, and logistical support to special Serb units⁵. By reading through the indictment, I found considerable data on the Serb Volunteer Guard and the Skorpions Unit, hence leading me to focus my research on these two groups. Subsequently, I read the details of the perpetration committed in these localities in the case judgement, deeply touched by the descriptions of the harrowing acts of these two groups. According to the *Stanišić & Simatović* judgement, Bijeljina⁶ and Zvornik⁷, two towns close to today's Bosnian-Serbian border, were occupied by the SDG and other Serb militias in April 1992 and were the stage of various crimes against civilians aimed at forcefully displacing non-Serb populations (Alvarez, 2006). These crimes included murder⁸, theft⁹, damage to buildings¹⁰, deportation¹¹, detention¹², and sexual assault¹³. In July of 1995, alongside the Srebrenica massacre, members of the Skorpions murdered six civilian men in Trnovo¹⁴ and recorded the events¹⁵.

By researching the judgement's citations, I identified the page numbers

relating to the transcript sections of four witnesses who used to be members of these groups. The witnesses are three members of the SDG, namely **Witness JF-025, Borislav Pelević** and **Jovan Dimitrijević**, and one member of the Skorpions, **Goran Stoparic**.

From the literature overview, I had a general idea of what terms I would search for in nVivo, a qualitative data analysis software allowing me to identify keywords in court transcripts. Some of the words were: "unemployed", "salary", "looting", "football", and "former criminal". However, before starting the analysis part, I first read through the relevant transcripts and labelled elements which I thought were relevant to my research, allowing me to get a better idea of what was being discussed and tailoring the keywords to the language used by the court. Some new terms that came up were: "nationalist sentiment", "education", and "training". I also took note of instances when I encountered in dealing with the data, which I lay out below.

3.2. Research ethics considerations

The ICTY archive is the most comprehensive and significant source from which one can learn about

⁵ *Stanišić & Simatović*, Indictment, 10 July 2008, p. 3

⁶ *Stanišić & Simatović*, Judgement, Volume 1, 30 May 2013, p. 225

⁷ *Stanišić & Simatović*, Judgement, Volume 1, 30 May 2013, p. 348

⁸ *Stanišić & Simatović*, Judgement, Volume 1, 30 May 2013, p. 226-227; *Stanišić & Simatović*, Judgement, Volume 1, 30 May 2013, p. 348

⁹ *Stanišić & Simatović*, Judgement, Volume 1, 30 May 2013, p. 229-230; *Stanišić & Simatović*, Judgement, Volume 1, 30 May 2013, p. 354 and 358

¹⁰ *Stanišić & Simatović*, Judgement, Volume 1, 30 May 2013, p. 229; *Stanišić & Simatović*, Judgement, Volume 1, 30 May 2013, p. 352

¹¹ *Stanišić & Simatović*, Judgement, Volume 1, 30 May 2013, p. 355

¹² *Stanišić & Simatović*, Judgement, Volume 1, 30 May 2013, p. 230; *Stanišić & Simatović*, Judgement, Volume 1, 30 May 2013, p. 358

¹³ *Stanišić & Simatović*, Judgement, Volume 1, 30 May 2013, p. 231

¹⁴ *Stanišić & Simatović*, Judgement, Volume 1, 30 May 2013, p. 343

¹⁵ *Stanišić & Simatović*, Judgement, Volume 1, 30 May 2013, p. 344-345

paramilitary violence and the Yugoslav conflicts more generally (Ferguson, 2015, p. 22), which shows its value in historical documentation and as a source of further research (see: Sabljakovic, 2022; Aydin-Aitchison, 2016; Bećirević, 2013). Notwithstanding, there are a few limitations to using court testimony for this kind of research. These involve accessibility issues, the nature of court hearing witness testimony, considerations related to perpetrator studies, and political factors related to the context being researched.

The first issue I encountered was related to the characteristics of the criminal trial and consequential accessibility challenges. My chosen case, *Stanišić & Simatović*, sought to establish the chain of command and criminal liability of Serbian state officials about crimes committed by various armed groups. Therefore, the prosecutor's and the defence's questions focused on these elements rather than on the motives for joining certain armed groups. This meant that the discussions on my research focus were limited. Furthermore, another limitation to the availability of data on paramilitaries is a general lack of indictments for members and leaders of militias, as the covert ways militias work mean it is challenging to find hard proof on the chains of command (Vukušić, 2019) - Arkan being an exception¹⁷, though he was assassinated before trial (Alvarez, 2006).

In these situations, more time is required to read beyond the citation references found in the judgement and to infer motives from the answers of the witnesses. Subotić (2021) highlights that historical background reading is useful in making sense of testimony, especially when the answers to your research question are not straightforward.

Another common situation which proves challenging is when data is sought in a case that ended without a judgment. This happened to a case I wanted to look into for its discussion on paramilitaries, the *Slobodan Milošević case*. Without a judgment, it would be an overly long process to try to identify the relevant parts of the transcripts. However, the Decision on Motion for Judgement of Acquittal document¹⁸ could provide somewhat of a replacement for a fully referenced judgment.

Furthermore, due to the witnesses being members of first-hand perpetrator groups, a considerable part of their testimony was redacted from the public record and heard in private session, probably to protect their identity and prevent them from disclosing self-incriminating material. The protection of the witnesses seen at various stages¹⁹ meant that some of the material was inaccessible, posing limits to my research (Aydin-Aitchison, 2020). In the judgement, I had found several statements²⁰ from members of both armed bands which, due to redactions, were not accessible.

¹⁷ *Zeljko Raznjatovic "Arkan" (IT-97-27)*, Indictment.

¹⁸ Decision on Motion for Judgement of Acquittal in the Milošević Case, 16 June 2004

¹⁹ *Stanišić & Simatović*, 8 July 2010, 6236

²⁰ *Stanišić & Simatović*: Svetislav Mitrovic statement at P1383; Goran Stoparic statement at P1702, P1703, P1704; prior testimony of Witness JF-025 at P612, P611, P613

Related to the issue of perpetrator studies, Browning (2001) highlights how each witness brings forward a particular narrative which, in this case, may tend towards avoiding self-incrimination. Regardless of whether a witness is a former perpetrator or not, the courtroom does not present itself as a welcoming or neutral environment, meaning that many things may be left unsaid for various reasons. Due to this, assessments from the analysed data should be approached critically.

When conducting the qualitative data analysis through nVivo, the nature of court hearings meant that a few hurdles were met (Aydin-Aitchison, 2020). A difficulty in reading court testimony is the frequent interruptions by the workings of the legal trial, such as asking to slow down for the language interpreters²¹, clarifications²² of questions or facts, reference to exhibits²², technical difficulties²³, and legal argumentation²⁴. On top of this, there is the issue of memory, explored by Aydin-Aitchison (2020), as the trials often happen years after the events and, in the case of traumatic events, the emotion behind memories may impact one's recollection of the events. In addition, witness questioning is the result of the careful planning and execution of legal professionals, lawyers, investigators, and prosecutors, whose goals are directly linked with the guilt of the accused. Since their aim is not to gain a complete and nuanced understanding of the reasons behind perpetration, the data is already restricted

by the specific questions that were asked (Aydin-Aitchison, 2020).

Subotić (2021) further highlights the importance of political neutrality when conducting research into politically charged events, like the ones of the Yugoslav conflict. In choosing a direction for this pilot study on paramilitary groups, I narrowed my focus to groups associated with Serbian authority because there is more extensive ICTY data than on other groups, such as Bosnian or Croatian (Bassiouni, 1992; Alvarez, 2006, p. 12). The choice of two groups of Serb affiliation should only be interpreted in relation of the availability of data. However, Subotić (2021) highlights that the availability of data and the interpretation of such data may indeed have an impact on the narratives that result.

Concerning perpetrator studies more generally, it must be remembered that seeking to understand perpetrators does not condone them. Criminological researchers do not seek to discuss the guilt of perpetrators, as a legal researcher would. Rather, with this study, I seek to advance an understanding of what makes perpetrators, as “understanding is the barrier to repetition” (Peterson & Djikic, 2003, as cited in Clark, 2009, p. 424). After all, atrocity starts them.

Overall, as Wilson (2011) and De Baets (2003) (cited in Bouwknegt & Nistor, 2019, p. 111) point out, legal trials are not completely appropriate sources for looking into why mass crime occurs, which represents a significant

²¹ Stanišić & Simatović, 26 January 2012, 16485

²² Stanišić & Simatović, 26 January 2012, 16480

²² Stanišić & Simatović, 8 July 2010, 6240

²³ Stanišić & Simatović, 8 July 2010, 6284

²⁴ Stanišić & Simatović, 8 July 2010, 6280-6299

shortcoming to using this data for perpetrator studies that are non-legal. Other kinds of sources are required to give a satisfactory account of the reasons for engaging in violence, such as official reports, perpetrator and survivor testimony, contemporary reportage, and interviews (Bećirević, 2013, as cited in Aydin-Aitchison, 2020).

3.3. The Research Data Findings and Analysis

By conducting qualitative data analysis into the transcripts of the selected testimonies utilizing the previously identified terms, I found evidence of a few of the motives for membership which I expected to find.

I found elements suggesting that men may have signed up to militia groups to defend the Serb people and their freedom²⁵ from the aggressions of other groups. As mentioned earlier, ethnic hostilities were being fuelled by extensive propaganda, such as the speech by Arkan (SDG commander) narrated by **Borislav Pelević**²⁶ calling for Serb unity and telling of atrocities being persecuted against Serbs. From the language used in this speech, it seems that the nationalist sentiment played a key role in motivating members to defend their people against other ethnic groups. **Pelević** mentions his commander spoke of their unit “*liberating*”²⁷ the territories from “*Muslim extremists*” who were “*terrorising*” local Serbs²⁸. Although

unlikely to be an accurate representation of the threat, this may show insight into how members of the SDG justified their actions²⁹. I furthermore noticed consistent use of religious affiliation when referring to the military enemy, possibly highlighting the role that religion, coupled with ethnicity, had in moving soldiers into conflict.

In terms of economic gain, both the SDG and the Skorpions were promised plenty of it³⁰. To their regret, both **Jovan Dimitrijević** and **Borislav Pelević** claim that they were not paid for their services in the SDG³¹. However, what neither of them has mentioned in their testimonies is that they may have been compensated by being allowed to loot. The Skorpions, on the other hand, as confirmed by **Goran Stoparić**’s testimony, were paid handsomely by the oil company NIK (Sabljakovic, 2022), by their commander, and by Serbia³² - although direct links to the Serbian State have not been criminally established. **Stoparić** even got an extra salary because of a personal agreement he had with his commander, and sometimes got paid in petrol or oil³³.

As is mentioned in the literature, **Witness JF-025** said there were rumours that members of the SDG were convicted criminals, who possibly exchanged prison time for work in the unit³⁴. He further mentions that criminal records were not checked by the unit, which may not be surprising considering Arkan

²⁵ Stanišić & Simatović, 24 January 2012, 16324
²⁶ Stanišić & Simatović, 24 January 2012, 16364-16366
²⁷ Stanišić & Simatović, 24 January 2012, 16347
²⁸ Stanišić & Simatović, 24 January 2012, 16347
²⁹ Stanišić & Simatović, 26 January 2012, 16628

³⁰ Stanišić & Simatović, 26 January 2012, 16547; Stanišić & Simatović, 16 December 2010, 10552
³¹ Stanišić & Simatović, 17 January 2012 16098; Stanišić & Simatović, 26 January 2012, 16547
³² Stanišić & Simatović, 16 December 2010, 10552
³³ Stanišić & Simatović, 14 December 2010, 10355
³⁴ Stanišić & Simatović, 8 July 2010, 6242

himself is well-known for his criminal record (Alvarez, 2006)³⁵. **Witness JF-025**'s claim may support the hypothesis that many men who joined the SDG lived on the outskirts of society. The fact that these men would head to the SDG to sign up to a unit despite their criminal record, may suggest an eagerness to take part in the conflict.

Although the money that was promised was a fair incentive to join, the former SDG members whose testimonies I analysed were actually both employed and educated, suggesting that seeking employment was not their main reason for signing up. **Borislav Pelević** had an economics Master's degree³⁶ and was a company manager³⁷, although he did suggest he was one of the only SDG members to hold that level of education³⁸. **Jovan Dimitrijević** also graduated in economics and was a branch director before being sacked shortly after the break-out of the war³⁹. He wanted to join a regular army but was rejected due to his age, and therefore re-directed to the SDG⁴⁰. **Dimitrijević**'s example illustrates how employment and economic gain were not the deciding factors for joining the SDG. Rather, his willingness to join a militia after having been rejected from the regular army suggests his main motivation was a reflection of his values and desire to fight.

I found that none of the witnesses I explored were part of the Red Star

Belgrade football fan club before joining the SDG, showing that Alvarez's claim that many Red Star members joined Arkan's Tigers is indeed an estimation. As to the Skorpions unit, it seems that social influence indeed contributed to men joining, as **Goran Stoparic** mentioned in his testimony that some members were even godfathers to each other's children⁴¹.

In my research, I also encountered motives which I did not predict to find. More than one witness was attracted to the SDG because it was advertised to be a better version of military force than the regular armies⁴²; this related to better uniforms (**Borislav Pelević** and **Witness JF-025**⁴³), better physical training, better organisation, and better discipline (**Borislav Pelević**)⁴⁴. This testimony seems to contradict the militia characteristic of a looser structure explored in Alvarez (2006), suggesting instead that becoming a member of such groups would instead give professional satisfaction⁴⁵ and advancement.

Lastly, it is worth exploring whether the members knew they would be engaging in violence against civilians when they signed up for their unit, when they were being trained and when they were sent to operations. The Skorpions unit started out as a security guard protecting the oil fields of oil company NIK, thus offering an alternative to on-the-front fighting (Sabljakovic, 2022). This may indicate that most members did not envision

³⁵ Stanišić & Simatović, 19 January 2012, 16288

³⁶ Stanišić & Simatović, 24 January 2012, 16319

³⁷ Stanišić & Simatović, 24 January 2012, 16323

³⁸ Stanišić & Simatović, 26 January 2012, 16521, 16523

³⁹ Stanišić & Simatović, 17 January 2012, 16054

⁴⁰ Stanišić & Simatović, 17 January 2012, 16055

⁴¹ Stanišić & Simatović, 15 December 2010, 10465

⁴² Stanišić & Simatović, 8 July 2010, 6251–6255

⁴³ Stanišić & Simatović, 24 January 2012, 16333, Stanišić & Simatović, 8 July 2010, 6253

⁴⁴ Stanišić & Simatović, 24 January 2012, 16321

⁴⁵ Stanišić & Simatović, 16 December 2010, 10526

committing crimes against civilians upon signing up, and rather may suggest a desire to avoid the front-line fighting (Tanner & Mulone, 2012). As mentioned previously, both bands engaged in other activities apart from military operations, suggesting the possibility that members signed up with the impression they would be undertaking these. **Goran Stoparic** mentions that the Skorpions’

activities included the control of bordering territories⁴⁶, which are significant and unstable in times of conflict (Ron, 2003, as cited in Vukušić, 2019, p. 264), and providing security to their commander⁴⁷. **Borislav Pelević**’s testimony shows that SDG members were also tasked with the reparation of damaged buildings⁴⁸ and safeguarding of monasteries⁴⁹.

4. Conclusion

This pilot study gives insight into the political climate of the Western Balkans in the early 1990’s and into some of the pressures and motives leading men to join paramilitary groups to fight in the Yugoslav Wars. I explored the testimonies of three members of Arkan’s Tigers and one member of the Skorpions, two of the 83 different paramilitary groups operating on various sides during the conflicts, 56 of which were Serb-affiliated (Bassiouni, 1992). Considering the abundance and variety of perpetration in this context, often characterised by inter-connected explanations (Fletcher, 2007, p. 29), it is not possible to make general assessments on the motives for joining a paramilitary group in the Yugoslav Wars. In order to gain a complete understanding, a wider research scope looking into different

armed groups, locations and moments in time would be necessary for a comparative and evaluative contribution. However, this study provides an insight into the stories of four men who found themselves in front of the ICTY for the crimes committed by these groups. Each man’s story is unique, often with overlapping motives, and it deserves to be looked into to broaden the scope of the study of perpetrators of atrocity and, hopefully, prevent repetition (Clark, 2009). Luckily, the ICTY archive, if taken alongside other types of sources (Bećirević, 2013), provides a wealth of material to work with, providing the endless potential for criminological research to shine a light on perpetrators and victims who grievously found themselves involved in the events of the break-up of Yugoslavia.

⁴⁶ Stanišić & Simatović, 14 December 2010, 10333-10334

⁴⁷ Stanišić & Simatović, 15 December 2010, 10462

⁴⁸ Stanišić & Simatović, 24 January 2012, 16335

⁴⁹ Stanišić & Simatović, 24 January 2012, 16345

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DE-CONSTRUCTING MUSCULAR HUMANITARIANISM: UNPROFOR AND INSTITUTIONAL BETRAYAL

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Abstract

Using a deductive qualitative content analysis and Institutional Betrayal Theory (IBT) analysing FAMA's "Sarajevo Survival Guide" this study asks how IBT can help understanding the way the humanitarian intervention in Croatia and Bosnia-Herzegovina during Yugoslav Wars is remembered by the civilian population in Sarajevo. This study found that corruption and insufficient humanitarian and military help were major categories of institutional betrayal. Also, the analysis found humiliation to be a major theme for affected people and that it was difficult for the people in Sarajevo to pinpoint the perpetrator. The particularly high dependency of the civilians in Sarajevo on the UN might have reinforced feelings of betrayal. The instances of institutional betrayal found in this study could be categorized as systemic and as acts of omission. Future research could analyse whether some international organizations are more likely to be breeding ground for institutional betrayal than others.

Keywords: *Institutional betrayal, Siege of Sarajevo, Civilian war experiences, Humanitarian intervention, United Nations.*

1. Introduction

International Organizations are the second most underrepresented area in studies concerning political psychology in IR (Kertzer & Tingley, 2018, pp. 6–8). Psychology, on the other hand struggles to extend its focus from individual to systemic factors, making it difficult to examine institutional betrayal (Smith & Freyd, 2014, p. 579). This paper aims bridging this gap by assessing the use of Freyd's Institutional Betrayal Theory (IBT) (Smith & Freyd, 2014) for the context of United Nations' (UN)-authorized Humanitarian Interventions. Specifically, this paper seeks to

investigate the following question: How can IBT help to understand the way the Humanitarian Intervention in Croatia and Bosnia- Herzegovina during Yugoslav Wars is remembered by the civilian population?

This study thereby shifts the focus from the narrative of the intervening forces towards the narrative of those who are dependent on the intervention, helping to de-construct what Orford termed *Muscular Humanitarianism* (Orford, 1999, p. 679).

2. Previous Research

2.1. Civilian Experiences During the Yugoslav Wars

The existing literature on civilian experiences of the Yugoslav Wars was written in the fields of Peace and Conflict Studies (PaCS), Memory Studies and anthropology (Jansen, 2014; Maček, 2009; Povrzanović Frykman, 2008; Sheftel, 2012) mostly focusses on civilian experiences from the Siege of Sarajevo, due to the high media attention there during the conflict (Jestrovic, 2013, pp. 202, 206). A major aspect in the field of Memory Studies is the Bosnian dark humour (Sheftel, 2012). Sheftel analyses oral history, films and monuments and finds humour to be a frequently used tool to talk about the war and its aftermath. Sheftel finds that the “international community” is one of the major actors this humour is directed at (2012, pp. 156–158). The major themes she found emerging when it comes to humour

directed at the international community are: corruption, being complicit in war atrocities, ridiculing the UN's humanitarian assistance (Sheftel, 2012, pp. 156–158). A sarcastic attitude towards the United Nations Protection Force (UNPROFOR) and the United Nations High Commissioner for Refugees (UNHCR) developed amongst the citizens in Sarajevo (Povrzanovic Frykman, 2009, p. 185). In light of the material, it is impossible to separate this paper from the field of Memory Studies and collective memory, referring to the “*distribution* [emphasis by author] throughout society of what individuals know, believe and feel about the past, how they judge the past morally, how closely they identify with it, and how much they are inspired by it as a model for their conduct and identity.” (Tota & Hagen, 2019, p. 10).

2.2. IBT on a Governmental Level and in the UN Context

Most research using IBT focusses on cases of sexual abuse (Pinciotti & Orcutt, 2021). Most research was done in the United States school and university contexts (Smith et al., 2016; Wright et al., 2017), as well as workplaces, mostly the military (Bloeser et al., 2021; Monteith et al., 2022) and healthcare (Brewer, 2021; Smith, 2017). Furthermore, some studies investigate institutional betrayal on a national governmental level, or a specific community setting (Cromer et al., 2018; Hamby et al., 2023; Smidt & Freyd, 2018). Surprisingly, very few studies thematize betrayal in a UN context, and none of them uses the IBT as theoretical framework (Ljubinkovic, 2011; Meffert et al., 2010). The following paragraph will focus only on those studies relevant for the research aim, namely those investigating IBT on a governmental/community level, as well as those related to the UN context.

On the governmental level, Smith and Freyd highlight in an editorial recent cases of government-induced institutional betrayal by the US, mainly the treatment of migrants/ asylum-seekers on the US Southern border (2018, pp. 491–492). A study on institutional betrayal in a rural US community found four recurring categories of institutional betrayal: 1. Mistreatment from employer/ health care provider/ other authority figure; 2. Professional-organizational betrayals where a professional got help from a problematic organizational culture; 3. Corporate malfeasance that involve misdeeds by business entities; 4.

Systematic injustices that stem from the societal sociopolitical architecture (Hamby et al., 2023, p. 655). A study researching American Indian historical trauma through the lens of IBT found that institutional betrayal lies at the heart of the negative impact of historical trauma (Cromer et al., 2018, p. 109).

A study on Sudanese refugees in Cairo assesses how the sense of betrayal by UNHCR relates to symptoms of post-traumatic stress disorder (PTSD), depression, and anger amongst the asylum seekers. Surprisingly, this study does not mention IBT. They found a correlation between greater feelings of betrayal by UNHCR and avoidance and arousal symptoms of PTSD, depression and anger (Meffert et al., 2010, pp. 168–169). I found only one study mentioning IBT in relation to the UN. The study assesses the psychosocial effects of violent instances perpetrated by a UN Humanitarian Intervention, the US-led UNOSOM in Somalia, 1992-1995 (Ljubinkovic, 2011). It underlines that the victims found it difficult to pinpoint the perpetrator – were they individual soldiers, governments, the United States, the UN, the International Community? - and the discrepancy between the humanitarian rhetoric and its violent reality (Ljubinkovic, 2011, pp. 206–207). However, due to its inductive nature, the study only mentions IBT but does not use it as theoretical framework.

Overall, there exists surprisingly little research on the negative psychological effects of UN interventions for civilians. This underlines Kertzer's and Tingley's finding that international organizations (IOs) are underrepresented in studies using

political psychology in IR (2018). Previous studies underline the need to apply IBT to more settings (Hamby et al., 2023, p. 670; Smith & Freyd, 2013, p. 123). This study addresses the gap by

using IBT, which will be presented in the following chapter, in the context of a UN-authorized Humanitarian Intervention.

3. Institutional Betrayal Theory (IBT)

Institutional betrayal is defined as “a description of individual experiences of violations of trust and dependency perpetrated against any member of an institution in a way that does not necessarily arise from an individual’s less-privileged identity” (Smith & Freyd, 2014, p. 577). When an institution harms an individual who trusts and/ or depends on that

institution, institutional betrayal occurs (Smith & Freyd, 2014, p. 578). This kind of institutional (in)action exacerbates the impact of traumatic experiences (Smith & Freyd, 2014, p. 577). Smith and Freyd found four varieties of institutional betrayal alongside two dimensions: *commission* vs. *omission*, and *apparently isolated* vs. *apparently systemic* (Figure 1).

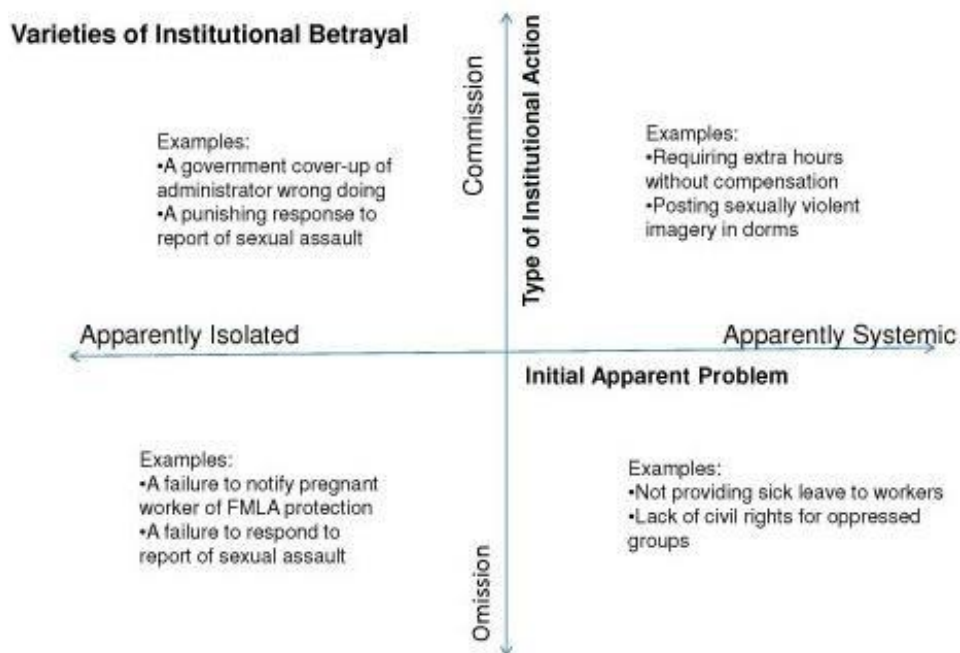


Figure 1: Dimensions of Institutional Betrayal (Smith & Freyd, 2014, p. 578)

An institution can either be a “large system” such as “the military”, “religion” etc. or smaller sub-groups, such as a specific military unit, a specific church etc. (Smith & Freyd, 2013, pp. 121–122).

Considering the research question, the institution as a “large system” behind the Humanitarian Intervention in 1992 in Croatia and Bosnia-Herzegovina is the “International Community”. The sub- groups – which were defined for

this research after a inductive pilot study on a part of the material – are:

- Humanitarian Aid: UNHCR, Caritas, ICRC
- Military Aid: UNPROFOR

4. Method

4.1. Sampling and material



Figure 2: Sarajevo Survival Guide (Prstojević et al., 1993, p. 17)

The Sarajevo Survival Guide (Prstojević et al., 1993) was published by the Sarajevo independent media company FAMA International (FAMA Collection, 2023), and was translated into several languages (FAMA, no date). The FAMA projects are one of the biggest independent multi-media collections aiming to “document facts, preserve human experiences, and transfer knowledge related to the Siege of Sarajevo 1992-96 and different aspects of the Fall of Yugoslavia 1991-99” (FAMA Collection, 2023).

→ The “International Press”

After having defined IBT and how it relates to this study, the following chapter describes how theory and method are instrumentalized in this study.

A convenience sample, such as applied in this study is not ideal. However, the limited time and resources available as well as the limited language skills of the researcher did not allow to conduct interviews with witnesses of the conflict, which is the standard in previous research using IBT (Ljubinkovic, 2011; Smidt & Freyd, 2018). Using IBT on other than interview material, could, however help gaining new insights and adapt IBT to the context of Humanitarian Interventions. Furthermore, the material already proved to be useful in previous studies (Sheftel, 2012), but was, to the researcher’s knowledge, never analysed through the lens of IBT.

4.2. Research Design

In line with the research question, a qualitative research design is applied (Chambliss & Schutt, 2019, pp. 266–268). The material was analysed through a deductive qualitative content analysis (Elo & Kyngäs, 2008, p. 111; Krippendorff, 2019b, p. 2). Based on the theory, the following operational questions will guide the analysis:

1. What are the major instances of institutional betrayal by the international community which are mentioned in the material?
2. Based on Smith and Freyd’s Varieties of Institutional Betrayal

(2014, p. 578), where can we situate those kinds of IB?

In light of the theory, a major decision for the coding process is how to define the *institution*. For that, a pilot study was conducted. Due to the humoristic nature and some hidden messages in the text, the decision was made to code for the *institution* rather than “violations of trust and dependency” (Smith & Freyd, 2014, p. 577) first. Based on previous research and the historical background, a set of preliminary codes for the *institution* (International Community) were applied:

→ INTERNATIONAL
COMMUNITY;INTERNATION
AL ORGANIZATION/S;
UNHCR;
UNPROFOR/UNITED
NATIONS PROTECTION
FORCE; NATO; PRESS;
UN/UNITED NATIONS

During the pilot study, those codes were adapted and resulted in three groups of institutions presented in the previous chapter, here with the respective codes:

→ Humanitarian Aid (CARITAS;
RED CROSS/ICRC; UNHCR/
UNITED NATIONS HIGH
COMMISSIONARY FOR
REFUGEES;
HUMANITARIAN; LUNCH
PACKAGE)

→ Military aid:
(UNPROFOR/UNITED

NATIONS PROTECTION
FORCE)

→ The International Press
(JOURNALIST/S; FOREIGN;
WORLD; INTERNATIONAL;
EUROPE; WEST)¹

The unit of analysis is one or several sentences which refer to the situation in which the institution was mentioned. Then, IBT was applied, asking for each unit whether a “violation of trust or dependency” occurred. Through the pilot study, based on previous research identifying Bosnian humour as important, latent content was included in this step (Elo & Kyngäs, 2008, p. 109). The relevant units are those mentioning institutional betrayal. They were summarized and clustered (Krippendorff, 2019a, p. 24). To avoid bias towards confirming institutional betrayal all the identified units were in a last step checked for positive remarks about the International Community.

A possible shortcoming using those codes is that there is a difference between the three kinds of sub- groups of the International Community insofar as the third group (the International Press) is not a clearly defined IO such as UNPROFOR or the ICRC. Specific news channels were never mentioned in the material, which led to the decision to use a wider range of codes for the international press. For the first group it was also necessary to use some additional codes apart from the IO’s names, due to the abundance of different humanitarian

¹ The coding table in can be consulted in the appendix.

organizations present in Sarajevo.

4.3. Ethical Considerations

Since this study “impinges on the vested interest of powerful persons or the exercise of coercion or domination”, it deals with “sensitive topics” (Renzetti & Lee, 1993, p. 6). Taking Sieber and Stanley’s definition, it has “potential consequences or implications, either directly for the participants in the research or for the class of individuals represented by the research” (1988, p. 49 in Renzetti & Lee, 1993, pp. 3–4). This study focusses on the negative impact of UN-

authorised Humanitarian Interventions, which is contrary to the official purpose and principles of the UN to “maintain international peace and security” (Charter of the United Nations, 1945, art. 1, para. 1) and the idea that Humanitarian Interventions should protect civilians (Seybolt, 2012, p. 2). On the other hand, which we cannot know for sure, is how the war in former Yugoslavia would have ended and how civilians would have suffered without the intervention, a well-known problem when it comes to the evaluation of Humanitarian Interventions (Seybolt, 2012, pp. 32–33).

5. Historical Background

The war in Bosnia and Herzegovina lasted from 1992-1995 in the context of the dissolution of the Federal Republic of Yugoslavia. There were initially three parties to the conflict: The army of the Republic of Bosnia and Herzegovina, Bosnian Croats (supported by Croatia), and Bosnian Serbs (supported by the Federal Republic of Yugoslavia) (Harsch, 2015, p. 39). With an estimation of 100.000-150.000 people killed, and more than 2.100.000 systematically expelled by Serb and Croat forces, the war was the deadliest conflict in Europe since World War Two (Bougarel et al., 2016, p. 5). In the genocide of Srebrenica² ca. 8.000 Bosniac men³ were killed and the women and children abused and expelled by the Bosnian Serb Army of Republika Srpska⁴. The war officially

ended with the signing of the Dayton Peace Agreement in 1995 (Bougarel et al., 2016, pp. 4–5).

In the context of this war, the UN Security Council mandated a peacekeeping force, UNPROFOR, lasting from 1992-1995 (Department of Public Information, United Nations, 1996a). The intervention was framed on humanitarian grounds (Roberts, 2003, p. 81). UNPROFOR’s original mandate was to ensure the demilitarization of the United Nations Protection Areas and the protection of its residents (Department of Public Information, United Nations, 1996b). The original mandate was then gradually expanded, in terms of troop strength, area and tasks (Bougarel et al., 2016, p. 5; Harsch, 2015, p. 40). The major troop-contributing countries for UNPROFOR were Britain, France and

² The International Criminal Tribunal for the former Yugoslavia (ICTY) ruled in 2004 that the massacre of Srebrenica constitutes a genocide.

³ Bosniaks, sometimes called Bosnian Muslims in English.

⁴ Under the commander Ratko Mladic.

the Netherlands (Harsch, 2015, p. 47). The UN was not the only international presence in the conflict; The NATO was another major intervening force (Harsch, 2015). Other important players were humanitarian aid organizations

(UNHCR, Caritas, Red Cross). There seems to be a consent that the UN intervention in Bosnia came too late and was insufficient (Roberts, 2003, p. 71; United Nations Peacekeeping).

6. Analysis and Discussion

In line with the first operational question, this part investigates the major categories of institutional betrayal as identified in the material. The full coding table can be consulted in the appendix. The chapter ends with a discussion of the second operational question.

6.1. A Note on “Membership”

Since this paper defined IBT as “a description of individual experiences of violations of trust and dependency perpetrated against any *member* [emphasis added] of an institution” by investigating the likeliness of UNPROFOR as a breeding ground for institutional betrayal, a quick note on membership is needed. Since previous studies using IBT mostly investigate institutions such as the church or the university, a short discussion is needed whether the term *membership* [emphasis added] applies in this case. Assuming that the civilians in former Yugoslavia were citizens of the Social Federal Republic of Yugoslavia (until its dissolution in April 1992), and afterwards citizens of the newly emerging states, and „membership lies at the heart of citizenship” (Bellamy, 2008, p. 52), those people are thereby members of their states, and since their states were or are members of the UN, whose Security Council controls the UN peacekeeping forces such as the

UNPROFOR, it follows logically, that the civilians UNPROFOR should have protected, were members of the UN (represented in this context by UNPROFOR). They can thereby also be considered being members of the international community in a broader sense.

Corruption and the insufficient and sometimes unpractical humanitarian and military help were major categories of institutional betrayal:

By additions and with a lot of imagination, one USA lunch package can feed five people. (Prstojević et al., 1993, p. 19).

The control procedure of the Blue Helmets is very kind. With a financial agreement, one can pass in the first try. (Prstojević et al., 1993, p. 81).

The water from Sarajevo has always been famous. Today, it is being boiled and cleaned by pills.[...] There is a white pill for two litres and a green for five litres. Problems start when you have a green pill, and you don't have a pot big enough. The source of these pills is a secret which cannot be known. Pills are owned by the military, police,

UNPROFOR, by the civil service... (Prstojević et al., 1993, p. 18).

This confirms Sheftel's findings (2012, pp. 156–158). Sheftel's result, that UNPROFOR is referred to as being complicit in war atrocities (2012, pp. 156–158) is not supported directly by the text analysed in this study, however, her study included more sources than this one, and was not limited to the Siege of Sarajevo. However, taking into consideration the photos in the material (see Figure 2) and all the civilian lives lost during the siege, as well as the depiction of the military aid to be insufficient, this point can be made.

Most of the positive remarks were not necessarily a compliment to the work of the organizations, but rather showing the dependency of the people in Sarajevo on those organizations:

[I]n emergency- look for the locations of Benevolencija and Caritas. (Prstojević et al., 1993, p. 72)

This high dependency – as compared to institutions such as the church, the university, where IBT was mostly applied to – can be explained through the context of war. Previous studies on sexual assault reported by female US war veterans confirm this finding, stating that IBT is likely to be higher “given the military context in which members are highly dependent upon the military for safety and employment.” (Smith & Freyd, 2014, p. 578). Since the present study concerns itself with civilians and not soldiers, there might even be a greater dependency since the civilians in Sarajevo were entirely dependent on the

UN for help. This is, however, difficult to confirm, and again highly dependent on context and individual differences, which is also acknowledged in previous research (Smith & Freyd, 2014, p. 583).

The references to the loss of dignity are also supported by previous findings, such as Povrzanovic Frykman's study, which found an “emotional tension between the feelings of gratitude and humiliation” for the citizens of Sarajevo, when talking about the humanitarian aid they received during the siege (2016, p. 87):

UNHCR supplied the city with a numerous but not sufficient thermal foils for windows. On every window, from the outside, one can read their name: UNHCR – they are now the owners of our lives. (Prstojević et al., 1993, p. 17)

The people of Sarajevo were deeply grateful for the humanitarian aid but this dependency created feelings of humiliation, which explains the findings that the positive remarks about the military and humanitarian aid were mostly connected to remarks about institutional betrayal, such as here:

UNPROFOR, or those who don't know them: United Nations Protection Forces, were awaited as saviours when they first arrived in Bosnia and Herzegovina with their white vehicles and blue berets. As time went on, they proved to be powerless. Now they are helping in repairs of the infrastructure, in cleaning the city. They are also establishing bureaucratic rules

of their own. (Prstojević et al., 1993, p. 66)

Concerning the international press, there are several mentions referring to an unequal treatment in favour of foreigners as compared to the people of Sarajevo, mostly in terms of monetary advantage and freedom of movement:

Exchange functions only between the citizens of Sarajevo. Foreigners don't need to deal with it, for everything for them is paid. (Prstojević et al., 1993, p. 42)

Furthermore, the international press is depicted as being hypocritical, for example by mentioning that the last animal that died in the zoo of Sarajevo was an important piece of international news – thereby indirectly comparing it to all the human lives lost, which do not seem to be as important for the international press:

Animals in the Zoo served as experimental targets for brave snipers on the nearby front line. Others gradually died of hunger and thirst - their guards were too afraid to reach them. All perished - monkeys, llamas, camels, tigers, wolves, lions. The last died on November the third. It was a bear, whose innocent death was shown all over the world. (Prstojević et al., 1993, p. 47)

Ljubinkovic found in her study on UNOSOM that civilian victims of institutional betrayal by UN soldiers found it difficult to pinpoint the perpetrator: was it the international

community as a whole; the UN soldiers; governments (2011, pp. 206–207)? The present study supports this finding: there are so many different actors present in the Siege of Sarajevo, that the whole book reads itself like an accusation to the whole international community, represented by the following quote, which refers to Sarajevo as being in the middle of Europe (and thereby – even if indirectly – asking: If something like this happens in the middle of Europe, why does no one care?):

If you play with lines on the map of Europe, you will (find) Sarajevo. It is revealed where lines cross over the Balkans. First you draw a line from Paris, through Venice and then to Istanbul, the closest East that Europe knew for centuries. A second line starts in northern Europe, goes between Berlin and Warsaw, through the Mediterranean, and then to Africa. These lines meet over Bosnia and Herzegovina. And, in fact, they cross over Sarajevo. (Prstojević et al., 1993, p. 94)

6.2. Smith and Freyd's Varieties of Institutional Betrayal

The second operational question asks to situate the instances of institutional betrayal with help of Smith's and Freyd's Varieties of Institutional Betrayal (2014, p. 578).

On a first glance, the initial problems, such as the corruption and insufficient help, seem to be isolated, when seen in light of the “real” purpose of Humanitarian Interventions and

humanitarian aid organizations. However, this study suggests, that for the Siege of Sarajevo, those problems were systemic and recurring, and happening in humanitarian aid organizations as well as in UNPROFOR. Previous studies in different contexts (Ljubinkovic, 2011; Meffert et al., 2010) suggest, that those problems might also be systematic outside of the context of the Yugoslav wars, in other UN Humanitarian Interventions or situations, were people are highly dependent on humanitarian aid. However, at present, there do not exist enough studies to support this.

The type of institutional action would be placed more into the direction of

omission than *commission*, since major categories of Institutional Betrayal referred to instances where the international community failed to provide enough help, such as food, supplies, military aid, and since the acts of corruption mentioned happened most likely due to omission to address them properly and not because they were officially commissioned by the UN.

To answer the initial second operational question, the instances of institutional betrayal observed in this study would be placed on Smith's and Freyd's Varieties of Institutional Betrayal as being more systemic and acts of omission (2014, p. 578).

7. Conclusion

In summary, IBT proved useful to analyse how the Humanitarian Intervention in Croatia and Bosnia-Herzegovina during the Yugoslav Wars is remembered by the civilian population. However, due to the nature of the material, individual and demographic differences of victims were ignored, which makes the use of IBT on this kind of material not very applicable for practical purposes. However, IBT might help giving a name to a problem, which helps identifying it, and thereby addressing it and giving the possibility to investigate those that already happened and trying to prevent them in the future. Furthermore, this study added a new perspective to the fields of IR and PaCS by using psychological theories to look

at civilian war experiences.

Further research could approach the research aim from a different angle by asking: Is it likely that UNPROFOR, or another UN peacekeeping mission or humanitarian aid organization was a breeding ground for traumatic events accelerated by institutional betrayal? Concretely, in light of the theory and material available, I would suggest deductively applying Smith's and Freyd's list of characteristics of those institutions, which are more likely to be the associated with frequent allegations of abuse (2014, p. 580) to the respective institution, for example through a case-study design.

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Annexes

INSTITUTION	CODE	P. UNIT	ALTERN. CODE	SUMMARY	RELEVANT/IBT?	CATEGORY	ALTERNATIVE CATEGORY	POSITIVE	SUMMARY POSITIVE
1-Humanitarian Aid		Philanthropic organizations are Merhamet, Caritas, Dobrotvor, Adra [...] Although some of these organizations help their members first, and although some of them are based on religious affiliation, Merhamet - Muslim, Caritas - catholic, Dobrotvor - Serbian orthodox, they are open to the members of other groups. 68 Many are on all lists, in this poverty, Caritas and Adra even bring letters to home addresses. 72 in emergency-look for the locations of Benevolencija and Caritas. 62 For some areas communication functions only through the Red Cross.		naming the organizations, their religious affiliations. They help first their own people, but also others. Caritas is catholic Caritas helps in emergencies helps with communication	YES NO NO	CORRUPTION	INSUFFICIENCY YES YES YES	help people getting out help in emergencies help for communication	
		Convoij is the term which equals organized exit, a ticket with no return. For all those journeys there are lists, and time to be spent waiting, filled with uncertainties. They are organized by the Children's Embassy, Red Cross, by the Jewish Community, by the Slovenian government before the elections. Those who entered one of the lists in June, who have all the needed documents, are not sure that they will be leaving the city in December. There is always a new document required, a new rule to obey, a new delay. And, no wonder, each convoij has its own rules: Children's Embassy takes out children, mothers, the very old and the exhausted. The Red Cross is taking out old, sick and children. The Jewish Community took out Jews with their friends, supplying them with false documents. Slovenes took out their citizens and those who could remember one Slovene in their family in the past seven generations. At these sad departures you could often hear anxious questions: "FATHER, what's your name?" "MOTHER, what's your name?" [...] Discreetly, but to noone's surprise, the city was left by wives, children, parents and friends of various officials.		Convoij: Much waiting, uncertain. Different IDs organize them. Rules constantly changing. Red cross takes out children, old, sick. Some organizations prefer people with affiliations to their country religion. This affiliation is taken to ridiculous lengths. Family and friends or officials got out easily.	YES	CORRUPTION	INSUFFICIENCY YES	help people getting out art exhibitions in red cross building	
		86 Exhibitions [highlight by author] Once a week in the partially destroyed Red Cross building in the "Sniper Alley".		Red Cross hosts exhibitions	NO		YES	UNHCR provides foils UNHCR provides foils	
		UNHCR/UNITED NATIONS HIGH COMMISSIONARY FOR REFUGEES		UNHCR supplied the city with a numerous but not sufficient thermal foils for windows. On every window, from the outside, one can read their name: UNHCR - they are now the owners of our lives.	YES	INSUFFICIENCY	HUMILIATION YES	UNHCR provides foils UNHCR provides foils	
		84 Since November [the cafés] re-emerged, protected with big slabs and UNHCR foils, [...]		Cafés with UNHCR foils: in connection to p. 84	YES	HUMILIATION	?		
		8 Humanitarian aid is being distributed. They know the best aid-packages according to their numbers.		women carry and collect humanitarian aid	NO				
		11 Those who are looking for you, will find you on the address where you collect humanitarian aid		collecting humanitarian aid is central	NO				
		11 cardboard boxes left behind from the humanitarian aid. For one resident of Sarajevo, during the first seven months of the war, you couldn't count more than six packages of humanitarian aid. One had to invent ways to preserve and eat for as long as possible for what is normally envisioned for one person, one meal, one use. 22 (cook book) demixasse of oil (from humanitarian aid)		humanitarian aid left behind cardboard which was put to use by citizens not enough humanitarian aid, people got creative recipe mentioning aid	YES YES NO	INSUFFICIENCY INSUFFICIENCY	cardboards useful ?		
		23 (cook book) Brodetto [highlight by author] made of canned mackarel, floating in humanitarian aid. (cook book) Burek - Meat pie [highlight by author]. Today look for meat in the cans from the humanitarian aid.		recipe mentioning aid recipe mentioning aid	NO NO				

		During the fall you could find some pumpkins, potatoes [on the market] from humanitarian aid [...] During November and December appeared cans from the humanitarian aid [sic], home-made stoves - furune, njiion for window protection.		food from humanitarian aid is sold on black market	NO			
		At the end of November, unemployed former postmen appeared in front of houses, bringing old telephone bills, and announcing the distribution of letters which might arrive through humanitarian organizations. People leave letters in the lobbies of different business buildings, at humanitarian organizations (Caritas), in the Adventist Church, with members of the Presidency of Bosnia and Herzegovina. For Belgrade and for the east of former Yugoslavia, all letters have to go first through Croatia, Slovenia and then to Europe in order to be received	CARITA S, EUROPE	letters get into town through humanitarian organizations letters leave town through humanitarian organizations	NO NO			
		81 It is no secret that for 1000 to 2000 DM one can fly out on a humanitarian aid plane.		illegal getting out of town through humanitarian aid planes	YES	CORRUPTION		
		87 Sometimes (at the theatre) there are cocktail-parties where the humanitarian aid is served.		cocktail parties where aid is distributed	NO			
	LUNCH/ AID PACKAGE/	17 Plastic bags, a part of US lunch packages - a leftover from the Persian Gulf War - can heat five litres of water... 19 By additions and with a lot of imagination, one USA lunch package can feed five people.		US lunch package re-used old aid not enough food	YES YES	HUMILIATION INSUFFICIENCY		unclear if plastic spoons were useful or not
		22 (cook book) Mix it all with a plastic spoon which can be found in the USA lunch package. 25 (cook book) (Jelly is sometimes lurking in the aid package)		useless? recipe mentioning aid	?	INSUFFICIENCY	?	toilet paper useful for smoking
		32 [cigarette] [filters are made of toilet paper which comes as a part of lunch packages] [sic].		using aid creatively	?	INSUFFICIENCY	?	
		52 No one plays [cards] for money, but for a lunch packet, canned fish, liter of oil [sic] - that is serious capital!		humanitarian aid is precious	?	INSUFFICIENCY		
	UNPROFOR/UNIT ED NATIONS PROTECTION FORCE/ BLUE	The best (cardboards) for the purpose (of closing the windows) proved to be those smaller sacks for the rice provided by UNPROFOR - the only thing you needed was [sic] good friend who happens to be handling humanitarian aid!	HUMANITARIAN	when you had contacts to humanitarian aid you got old rice sacks to close windows	YES	CORRUPTION		
2. Military aid		The water from Sarajevo has always been famous. Today, it is being boiled and cleaned by pills. One pill for 15 liters! There is a white pill for two liters and a green for five liters. Problems start when you have a green pill, and you don't have a pot big enough. The source of these pills is a secret which cannot be known. Pills are owned by the military, police, UNPROFOR, by the civil service...		pills for cleaning water. Not adapted for situation. Origin unknown	YES	CORRUPTION		
		51 Soccer (highlight by author) often played with the soldiers of UNPROFOR. A bus is running between Alipasino pole to the French Hospital (it was once military), in case it gets fuel from UNPROFOR.		UNPROFOR play soccer often	YES	UNPRACTICAL POWERLESS		UNPROFOR needed for
		58 Gas stations (highlight by author) are not working. Fuel can be found at UNPROFOR, and on the black market where the price per liter is 15 DM. You can get five liters of oil in exchange for a porno video - very appreciated by the Ukrainian members of the UN forces.		UNPROFOR gives fuel to busses, not always UNPROFOR sells fuel, participate in illegal economy	YES	INSUFFICIENT CORRUPTION	YES	UNPROFOR, Caritas, Red Cross and other needed for
		84 Packages, if you are well connected, travel with help of UNPROFOR, Caritas, Adra, Red Cross, Dobrotvor.	CARITA S, RED CROSS	UNPROFOR, and IO's get packages in/out of town, connection needed	YES	CORRUPTION	YES	

		<p>UNPROFOR, or those who don't know them; United Nations Protection Forces, were awaited as saviors when they first arrived in Bosnia and Herzegovina with their white vehicles and blue berets. As time went on, they proved to be powerless. Now they are helping in repairs of the infrastructure, in cleaning the city. They are also establishing bureaucratic rules of their own. In some instances proven to be good merchants, they are driving around in trucks, jeeps, transporters. Children are climbing onto their vehicles, and soldiers are throwing them sweets. They transport wounded, bring humanitarian aid, drive from and to the airport. In short, nothing is done without them. UNPROFOR headquarters is in the building of Communication engineering at alpasino polje. Soldiers are in the barracks which were formerly inhabited by the soldiers of the Yugoslav Peoples Army, the main headquarters of the UNPROFOR's commander is in a private villa. All these successions seem very natural.</p> <p>66</p>	HUMANITARIAN	UNPROFOR awaited as saviors, powerless, they help, are needed, they are nice to children, UNPROFOR commander is in private villa	YES	CORRUPTION	POWERLESS	UNPROFOR help repairing, cleaning, emergencies, infrastructure
		<p>The control procedure of the Blue Helmets is very kind. With a financial agreement, one can pass in the first try. The airport runway is the only city promenade. True, in one night, the Blue Helmets may return less than 260 people, but one can do it somehow. The attempt to run costs between 100 and 200 DM. [...] The runway is equipped with photo-cells and sensors which detect anyone who might be walking by. This trap, installed by UNPROFOR, may surprise you with alarms or spotlights which go on immediately after you are spotted. Different divisions of the UN Force - the Blue Helmets - react in accordance with their national, regional and personal sense of humor.</p> <p>81</p>		fleeing through UN controlled airport possible by bribing	YES	CORRUPTION		UNPROFOR lets easily people out (if money)
3. The International Press	JOURNALISTS/IC	<p>29 People who sell [the newspaper] are the journalists themselves - [...].</p> <p>75 The best known journalist's routes lead to the front lines: [...]</p>		local journalists sell newspaper	NO			
		<p>Officially, there is no such thing as 'going out of town'. Since April 1992, the City has been forced to turn into itself and greet those who come fulfilling their diplomatic, journalistic and humanitarian tasks.</p>	HUMANITARIAN	journalists and humanitarian workers can get into town, Sarajevans can't get out	YES	INEQUALITY		
	FOREIGNERS	<p>15 Foreign currency is needed if you want to bring electricity from the station to the lobby of your house. What can be seen is the growing interest for foreign-language books, and dictionaries. Everybody seems to be interested in the languages of the world.</p> <p>38 Exchange functions only between the citizens of Sarajevo. Foreigners don't need to deal with it, for everything for them is paid.</p> <p>42</p>	WORLD	foreign currency important people are interested in foreign books everything is paid for foreigners	NO			
		<p>51 The game [soccer] is hard, masculine, with lots of injuries. Foreigners lose here, as they always did. Letters should be given to foreign journalists, officers of UNPROFOR, to the ministers who travel the world, or to the passengers of convoys.</p> <p>62</p>	WORLD; UNPROF	foreigners lose in soccer letters travel by foreigners or people getting out	NO		foreigners transport letters	
		<p>Those expensive phones - each about \$ 50,000 - are with foreign correspondents in the Holiday Inn, in the Office of Defense, in the police Ministry, and in two industrial strongholds. [...] some foreign journalists were known for changing their communication favors (i.e. use of satellite telephone, for double the price. As an exchange for foreign currency, or for food and drinks, you can find a guide who takes you to all these places, and more: [...])</p> <p>75</p>	JOURNALS LISTS	foreign correspondents own expensive phones. Sell their use of satellite phone for double the price you pay for a tour guide	YES	CORRUPTION	INEQUALITY	
		<p>Tourism in Sarajevo comes down to foreign journalists and politicians. The latter ones stay in the city only for a few hours and run away. Soldiers and journalists stay longer, but are regularly replaced. Only for the people of Sarajevo there is no exit. They don't live in shifts. Journalists are either in the Holiday Inn, or with friends who have a good basement. They travel the city in protected cars, with obligatory bullet-proof vests.</p> <p>82</p>	JOURNALS LISTS	foreigners can get out, Sarajevans can not, journalists live in fancy hotels, have bulletproof vests	YES	INEQUALITY		
		<p>Guests [of the Holiday Inn] are, of course, foreign journalists. There are some locals, too. These are private businessmen, merchants, people for all times and all imaginable businesses.</p> <p>82</p>	JOURNALS LISTS	foreign journalists live in fancy hotels	YES	INEQUALITY		

				YES	INEQUALITY	
	There are places where you can gamble, playing cards. It is convenient for foreigners - payment is in hard currency anyway.		foreigners have advantage in gambling cinema meeting place for foreigners, intellectuals, artists	NO		
	88 The cinema is also a meeting place for intellectuals, foreign newsmen and artists.					
	It (the book) is the picture of civilization that emerges out of catastrophism, which makes something out of nothing, gives some messages for the future. No because the future is necessarily a future of wars and disasters, but because humans are growing older and being born into a world which is ever less secure.		Intro to the book	NO		
WORLD	Animals in the Zoo served as experimental targets for brave snipers on the nearby front line. Others gradually died of hunger and thirst - their guards were too afraid to reach them. All perished - monkeys, llamas, camels, tigers, wolves, lions. The last died on November the third. It was a bear, whose innocent death was shown all over the world.		animals life more worth than humans many play billiard to pass time	YES	HYPOCRISY	
	52 Some of them [the billiard players] might become world champions.		messages between world and Sarajevo	NO		
	64 Messages are sent [...] to the people in Sarajevo from the rest of the world. Television today is no more than a few informative broadcasts, live programs and a press-conference held daily in the International Press Center.		TV in Sarajevo, location of the press-conferences	NO		
INTERNATIONAL	If you play with lines on the map of Europe, you will (find) Sarajevo. It is revealed where lines cross over the Balkans: First you draw a line from Paris, through Venice and then to Istanbul, the closest East that Europe knew for centuries. A second line starts in northern Europe, goes between Berlin and Warsaw, through the Mediterranean, and then to Africa. These lines meet over Bosnia and Herzegovina. And, in fact, they cross over Sarajevo.		History of Sarajevo; it lies in the middle of Europe (indirectly; but noone cares)	YES	HYPOCRISY	
EUROPE	Each person in Sarajevo is very close to an ideal microbiotician, a real role-model for the health-conscious, diet-troubled West.	(HUMANITARIAN)	nothing to eat, so people are very thin, as considered beautiful in the West	YES	INEQUALITY	INSUFFICIENT
WEST	64 They [Ham-radio operators] are a connection between the East and the West		ham-radio operators as connection between East and West	NO		
	75 To Stup, an old neighborhood road to the West.		direction description	NO		



‘THE TRAUMA OF SREBRENICA’ ON THE PRODUCTION OF A VICTIMHOOD NARRATIVE AND EPISTEMIC INJUSTICE

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Abstract

‘Srebrenica’ is a shared memory connecting the Netherlands, and Bosnia & Herzegovina. Yet despite this fact, the Netherlands still struggles with accepting a role of responsibility, and the collective remembrance of the genocide remains behind. Based on a secondary and primary source analysis including the portrayal of Srebrenica in Dutch history education, this paper argues that Dutch institutions frame the genocide as a ‘Dutch national trauma’ from which the Netherlands needs to recover to acquire a victimhood status and gloss over Dutch political failure in Srebrenica. This narrative is further amplified by the portrayal of Srebrenica survivors in Dutch history books, which frequently subjects them to forms of dehumanization and islamophobia in entirely reducing them to their ‘Muslim victimhood’.

Keywords: *Srebrenica, Bosnian War, ICTY, collective memory, genocide*

1. Introduction

Around 29 years ago, Srebrenica, a city in Eastern Bosnia-Herzegovina became a synonym for the most severe genocide within Europe after World War II. Today ‘Srebrenica’ remains a shared history that connects the Netherlands and Bosnia and Herzegovina. This becomes apparent in the fact that the Netherlands still struggles with its role of responsibility and reconciliation. In the year 2019, the Supreme Court of the Netherlands ruled the Dutch state to be liable for the death of 350 Bosnian boys and men in the case ‘Mothers of Srebrenica vs. the State of the Netherlands’ (Hooligan, 2019). Moreover, there are many Bosnian and Bosnian-Dutch people living within and outside of the Netherlands today, who have survived the war or had relatives that were murdered. This strong connection implies that the Netherlands possesses an important responsibility in the process of historical reappraisal and the establishment of justice for those who experienced violence during the genocide. Crucially, establishing justice should include the creation of a collective awareness of what happened in Srebrenica and the inclusion of Bosnian people in a Dutch commemoration of the genocide. In the aftermath of genocide, recognizing the harms suffered by those who experienced violence can importantly establish empathy with the group, while the denial of such recognition can reinforce a distinction between In- and Out-Groups after the conflict (Fuchs, 2017, p. 239).

Nevertheless, the memory of Srebrenica seems to face the risk of becoming a

‘forgotten genocide’ that is excluded from the Dutch collective memory, which entails that the histories of Bosnian people today are largely silenced. In the Dutch public sphere, the commemoration of the genocide remains behind and there seems to be little political willingness to establish a more comprehensive understanding of the topic. Also, within Dutch history education, the issue is scarcely touched upon, and many Dutch students today have never heard of Srebrenica. In 2020 the Dutch peacekeeping organization PAX interviewed a sample of 52 students which showed that only half of the students had learned about Srebrenica in secondary school education, while the other half of the students had never even heard of the genocide (van Berkel, 2020, p. 14). Simultaneously, the discussion around Srebrenica seems to be almost entirely fixated on the suffering of the former Dutchbat soldiers. Within the Dutch discourse, the rhetoric of a so-called ‘Dutch Srebrenica Trauma’ noticeably reappears, which emphasizes Srebrenica as a traumatic event for the Dutch veterans and the Dutch state itself, but paradoxically seems to exclude the experience of Bosnians from this narrative.

In this paper, I aim to investigate the knowledge production about Srebrenica in the Netherlands more closely and examine how the contemporary discourse influences the commemoration of the genocide. Significantly, I will contextualize the discourse of a ‘Dutch Srebrenica Trauma’ as a victimhood narrative that, I argue, is established by Dutch political and educational

institutions, which problematically exclude Bosnian and Bosnian-Dutch people from the dominant creation of

knowledge around the topic to uphold this narrative.

2. The social construction of victimhood

In the process of reconciliation after a violent conflict, the production of a historical narrative can crucially determine how a war will be remembered and who is included in a national identity. Discourses of victimization can importantly illustrate with whom a group might identify and through the production of narrative, provide a sense of unity based on the experience of a shared trauma (Cobb et al. in Demirel, 2023, p. 3). A shared narrative of suffering can thereby emphasize a collective group identity through a subjective distinction of an In-Group of those seen as ‘victims’ and an Out-Group of those considered guilty (Demirel 2023, 1). As wars are usually complex, the status of ‘the victim’ can become a powerful tool, which actors can use to maintain a beneficial self-identity (Jankowitz, 2017, p. 17). The phenomenon of ‘competitive victimhood’ stresses a tendency of actors to highlight that they have suffered more than other involved parties (Noor et al. 2012, 351). In this process groups frequently emphasize their own experiences of suffering to avoid political responsibility or attempt a peaceful reconciliation (bar-Tal et al., 2009, p. 230).

Discourses of victimization frequently involve denial or downplaying the fact that another group has suffered harm (Jankowitz, 2017, p. 4). Determining who classifies as a ‘legitimate victim’

hereby can happen through a rhetoric of ‘the ideal victim’ (Jankowitz, 2017, p. 17), a construct first developed by Nils Christie. It describes ‘which individuals are most readily given the status of being a victim (Christie, 1986, p. 18). The ‘ideal victim’ is “innocent, pure, lacks responsibility, needs rescue and is hence seen as morally superior (Bouris, 2007, p. 32). As frameworks about ‘innocence’ are largely socially constructed, the construction of ‘ideal’ victims are highly biased and often fails to include the experiences of minority groups who might be subjected to racist prejudices (Long, 2021). Claiming the status of an ‘ideal victim’ is often tied to a denial of the actor’s responsibility as this undermines the group’s own ‘image of blamelessness’ (Lawther, 2013, in Jankowitz, 2017, p. 25). A sense of victimhood can be transformed into a more collective sentiment as In-group members may identify with a group even if they have not suffered harm themselves (Bar-Tal et al., 2009, p. 234). The construction of a collective victimhood identity is also often based on an ethnocentric self-image and is also linked to an enhancement of ethnic nationalism (Schnabel et al., 2013, in Demirel 2013, p. 2).

2.1. Nothing as a way to claim the status of ‘the victim’

Implementing an exclusive victimhood discourse within a national narrative can thus reinforce a distinction between In- and Out-groups and hence strengthen forms of exclusion in the present. In the process of distinguishing oneself from an Out-group dehumanization is frequently applied by actors to reduce identification with that group and to establish distance (Halpern and Weinstein, 2004, p. 566). Through framing another party as ‘the Other’, members of that group are deindividualized, largely excluded from a moral community (Kteily et al., 2016, p. 1234), and are further often excluded from measurements of social protections (Rubin et al., 1994, p. 99). Especially after a genocide, whereby dehumanization is often a preliminary step in the justification of violence, it is important to ‘rehumanize’ those who have experienced violence by recognizing them as individuals. If a group is continuously homogenized, no empathy and solidarity can be established, and ‘victims’ are reduced to an essentialized identity. Otherizing groups also prevents effective reconciliation, for which it is necessary to counter stereotypes and create a feeling of ‘emotional connectedness’ (Halpern and Weinstein, 2004, p. 582). A victimhood discourse that includes a clear ‘us’ versus ‘them’ narrative hence diminishes solidarity and denies identification with the Out-group and their histories. Otherizing a group within a narrative can also follow the aim of constructing a single In-group narrative and silencing other competing victimhood narratives (Demirel, 2013, p. 2). In this sense, victimhood narratives

can show with whom a group identifies, as well as help to construct a national self-image and identity.

Binary discourses between ‘victims’ and ‘perpetrators’ thus often uphold existing power hierarchies and thereby reinforce structures of inequality and marginalization. For an actor who was involved in a violent conflict, accepting responsibility often threatens a positive self-image and can lead to a ‘crisis of meaning’ (Hirschberger, 2018). Usually, this extends into the wider society, which might identify with the group and share a collective memory of the event, which threatens their sense of collective identity (Ibid.). Positioning oneself as the ‘victim’ of the conflict can hereby become a powerful tool to re-establish such a positive sense of identity, as a ‘victim identity’ is associated with virtues such as innocence and moral righteousness. One way to reframe a dark chapter in the collective history as a ‘positive event’ is through a drawing on a narrative of a *chosen trauma* (Volkan, 1997), which serves as a form of collective victimization. Narratives of *chosen traumas* present an event as a form of collective trauma, which was meaningful for a group as a way of “walking through the blood that was necessary to establish freedom, independence, and group security” (Hirschberger, 2018). To uphold this narrative, actors might apply strategies to silence competing ‘victims’, whose different accounts of history would not only challenge the dominant narrative but also a sense of collective identity (Ibid.). Strategies to silence competing histories can include denying the event

and reconstructing it in a favourable way (Ibid.).

2.2. Implementing a victimhood narrative in the cultural archive

Historical narrating can thus be immensely powerful in establishing dominance over competing victimhood discourses and systematically excluding people from the knowledge production of the topic. By implementing a victimhood discourse as a historical narrative, this perspective can eventually become universalized and serve as the foundation for the cultural archive. The cultural archive is a concept that Said defines as a “particular knowledge and structures of attitude and reference” (Said, 1993, pp. 52-53) and hence a source of ‘common knowledge’. Importantly, according to Said’s definition, it can also refer to the transmission of collective memory and ideology. In the formation of the cultural archive, narratives are interpreted and sorted out, which highlights that state actors have large control over what will be remembered and forgotten in the future. To more clearly conceptualize how victimhood narratives in the cultural archive can uphold epistemic inequality, it is helpful to refer to Joe Melanson (2020, p. 89). He investigated the creation of archival material after human rights abuse and argues that archives can perpetuate epistemic injustices in two distinct ways. Firstly, through the exclusion of the testimonies of out-groups at the point of the creation of the archive and, secondly, through the transmission of epistemic inequalities as a form of dominant knowledge (Ibid.).

Importantly, Melanson bases his argument upon Miranda Fricker’s distinction between testimonial and hermeneutical epistemic injustice. In this paper, I will concentrate on his analysis of testimonial injustice in the creation of the archive.

According to Fricker (2007, p. 7), testimonial injustice occurs when someone is wronged in their capacity as a knower and is seen as less credible in their testimony due to an identity prejudice. Applying this definition to the production of government documents after human rights violations, Melanson argues that archives often only reflect the testimonies of a dominant group and can be a means to justify the government’s actions and ensure social control (Melanson, 2020, p. 92). In this process, testimonial injustice frequently occurs as the viewpoints of Out-groups are excluded from the historical record, which can manifest itself in silencing specific perspectives or neglecting materials, which are seen as less credible (Ibid.) Concluding from Melanson’s analysis, it thus might be maintained that victimhood narratives can lead to testimonial injustice when actors in power purposefully neglect the counter-narratives of ‘competing victims’ or undermine their credibility by otherizing them. This wrongs them in their capacity as rightful knowers. As a result of this, knowledge production itself can be harmed by including forms of dehumanization as a form of dominant knowledge. Therefore, knowledge production remains highly biased and restricted to a certain perspective.

3. The ‘Srebrenica trauma’ narrative

The phenomenon of a ‘*Dutch Srebrenica Trauma*’ is a media discourse that has first been analysed by Dubravka Žarkov, who fundamentally questioned to whom the notion of a ‘Srebrenica trauma’ is referring. It is an expression that has been increasingly used in Dutch newspaper articles and several TV shows (Žarkov, 2002, p. 185). Exemplary sources include articles with titles such as ‘Srebrenica trauma is difficult to process’, which centre around the individual stories of Dutch soldiers and frequently emphasize this experience as a specifically ‘Dutch national trauma’ (Ibid., p. 184). To make this more tangible, Žarkov argues that the discourse describes “the overwhelming feeling of powerlessness of the Dutch soldiers stationed in Srebrenica and the sense of humiliation of the Dutch nation in the eyes of the world” (Ibid., 188). Instead of incorporating stories of Bosnian survivors, the rhetoric of trauma hence could only explicitly refer to the experience of around 450 Dutch blue helmets (Fink, 2015, p. 277) who were stationed in Srebrenica.

The fact that the discourse nevertheless emphasizes Srebrenica as a traumatic memory from which the whole nation of the Netherlands itself needs to recover represents, for Žarkov, an appropriation of the victim’s status as a form of collective victimhood identity. She highlights this victimhood status as discursively constructed by the media (Žarkov, 2002, p. 188), and as a reflection of power relations in the creation of meaning after the genocide. While there is no specific reason to assume that Dutchbat veterans who

served in Srebrenica are more traumatized than any other soldiers involved in violent Srebrenica is noticeably singled out and framed as a collective Dutch trauma (Ibid., pp.184, 189). In this sense, the expression of a ‘Dutch Srebrenica Trauma’ instead functions as a floating signifier, which does not describe a psychological condition anymore, but according to Žarkov (2014, p. 38) describes a national sentiment of feelings of powerlessness that are attributed to the whole of Dutch society.

Through drawing on the rhetoric of trauma, the narrative hence reframes the genocide as a tragedy that ‘we’ have suffered from, which articulates Dutch innocence and moral blameworthiness. According to Žarkov, ‘Srebrenica’ symbolizes an event that fundamentally threatens a positive Dutch self-image of being seen as just and morally superior, which is amplified by the fact that the involvement in the peace mission became seen as a symbol of the Netherlands’ relevance within international politics (Žarkov, 2014, p. 184). A fundamental consequence of this trauma discourse is that it opens the possibility for a narrative of “remedy and recovery” (Žarkov, 2002, p. 38), as ‘Srebrenica’ is turned into a “universal moral story” (Ibid., p. 38) which detaches the event from its specific political context. More concretely: a discourse of collective trauma frames all members of the Dutch society as equally suffering from this event, which completely erases differences between the different roles of Dutchbat soldiers, Dutch citizens, and Dutch politicians

who share responsibility for the genocide (Žarkov, 2014, p. 38). Simultaneously, this construction of a collective Dutch traumatized subject also highlights Srebrenica as a primarily Dutch collective memory, which can function as a form of legitimization that Dutch institutions produce knowledge about ‘their history’.

3.1. Srebrenica is Dutch history’: the silencing of counter-narratives

In the Dutch public domain, the counter-narratives of Bosnian and Bosnian-Dutch people, which would arguably challenge this dominant discourse, are repeatedly neglected and largely repressed. This is particularly illustrated by the collective *Bosnian Girl*, a group of Bosnian-Dutch women who have launched the campaign ‘Srebrenicaisdutchhistory’. The campaign portrays the stories of Bosnian-Dutch people, who live within the Netherlands and have a personal connection to Srebrenica. One of their core aims is the Dutch government’s implementation of the EU resolution to establish an official Srebrenica Memorial Day within the Netherlands and, for this reason, holds conversations with relatives and organizations who have long worked for more public

recognition (Bosnian Girl, 2020). However, this Memorial Day has still not been implemented and was rejected by the former minister of foreign affairs Verhagen the explanation that ‘Srebrenica already possesses a more extended place in history education within the Dutch canon and hence is not limited to one day a year’ (Verhagen as cited in Rijdsdijk, 2014, p. 143).

Their initiative thus visualizes the exclusion and underrepresentation of people who fall outside the collective ‘we’ that is constructed in the ‘Srebrenica trauma’ narrative. Moreover, the assertion that ‘Srebrenica is Dutch history’ further challenges this narrative by highlighting the entanglement of Bosnian and Dutch histories outside of a binary discourse. The fact that the Dutch government has repeatedly and deliberately ignored the perspectives of relatives and NGOs further highlights the testimonial injustice that the group is experiencing. They are not recognized as ‘credible knowers’, who would highly contribute to the knowledge production of Srebrenica because the topic already is ‘more elaborately discussed’ in the Dutch canon, established by the Dutch Ministry of Education.

4. The portrayal of Srebrenica in the Dutch canon

In this last part, I will investigate the knowledge that is produced about Srebrenica in Dutch school education and therefore draw upon the case study,

Veilig Gebied? Srebrenica in het Nederlands onderwijs, by the historian Marc van Berkel, analyses how the 23 most important¹ Dutch history

¹ For a detailed list of references see van Berkel (2020,77).

schoolbooks narrate the genocide. While doing so, I will especially focus on the different portrayals of Dutch soldiers and Bosnians, and importantly aim to show that Dutch history books follow and transmit the narrative of a ‘Srebrenica Trauma’. Centrally, I will argue that this dominant victimhood narrative is upheld by otherizing Bosnians, which undermines their ‘victimhood status’ and further attacks the credibility of relative and survivor organizations. Moreover, I will also assert that the implementation of this narrative in history books harms the knowledge production of the topic itself, as the body of available knowledge remains largely limited to a specific perspective and an incomplete depiction of the conflict.

4.1. The historical framework

History books might be seen as vital for investigating how a country teaches its historical narrative as they often lay the foundation for a country’s cultural archive. Far from narrating an unachievable ‘objective’ historical truth, they often show how much importance is drawn to a topic and reflect which information a nation wants to highlight. Overall, Dutch history books are primarily focused on producing knowledge about the role of the Srebrenica for the future of the Netherlands rather than providing a thoughtful and comprehensive understanding of the genocide. Teaching about Srebrenica is implemented in the *Canon van Nederland*, which can be seen as a guideline for history education within primary and secondary schools. The discussion around the topic is included as one of 50 windows, which do

not need to be strictly followed by Dutch schools (van Berkel, 2020, p. 43). On average, the space dedicated to discussing Srebrenica amounts to less than one page (Ibid., p. 46). The topic is often further disentangled from its historical context and touched upon in the context of the Cold War, the United Nations, or most commonly in the context of peacekeeping missions (Ibid., p. 46). This entails that the subject is reduced to a very narrow time frame, which leaves no room for a more complex discussion about the events surrounding the conflict. Consequently, Dutch students also do not learn about the ICTY trials or how the genocide is still affecting Bosnia today. On the contrary, the word ‘genocide’ is not even mentioned (Ibid., p. 47). As a result, the severity of the massacre is minimized, and Dutch students learn about Srebrenica as a single ‘event’ in the history of the Netherlands.

Significantly, Dutch history books often follow the rhetoric of highlighting Srebrenica as a ‘Dutch trauma’ and determine that the responsibility for the failed peace mission is primarily a failure of the UN (van Berkel, 2020, p. 10). Within this framework, a lot of the books demonstrate Žarkov’s analysis that Srebrenica is often placed in a context of international peacekeeping and frame the genocide as a traumatic and meaningful event from which the Netherlands itself can move forward. This framing manifests itself in headlines such as “the Netherlands as a guiding nation” or “working towards peace” (Ibid., p. 45). Without explaining who concretely has caused this trauma, one source visually illustrates how the

Dutch state is recovering, and in this regard underlines the passive and helpless position that the Netherlands occupies: “*This traumatic experience with peacekeeping missions left deep scars*, which is why the Netherlands is now more careful with taking over international responsibility” (Ibid., p. 53).

4.2. The different portrayals of Dutch soldiers and the Bosnian population

This victimhood narrative is continued through framing the role of the Dutch soldiers as one of helpless bystanders, who could do nothing to prevent the genocide (Ibid., p. 10). Even though the Bosnian population is sometimes referred to as ‘victims’, the narrative nevertheless only emphasizes the suffering of the Dutchbat soldiers. This happens, for example, through outlying the personal experience of Dutch veterans within multiple personal letters, who “because of the experience of powerlessness can’t sleep at night” (van Berkel, 2020, p. 55). While there is much room to empathize with the Dutch soldiers as a reader, the entire experience of all people who died in Srebrenica is reduced to a category of the “8000 Muslims who were murdered” (Ibid., p. 47). The signifier ‘Muslim’ is further extended in one source which describes that: “the Netherlands had the task to protect *the Muslim city of Srebrenica*” (Ibid., p. 53). The textbooks further interchangeably use the words “Serbs” and “Bosnian Serbs” (Ibid., p. 47). Particularly, one source (Westerbork, 2003) first follows a clear role allocation of portraying the Bosnian Serbs as

perpetrators, but later obscures this narrative by describing: “The thing we were so afraid of has happened. We were hit by a hand grenade by the Muslims, whom we need to protect against the Bosnian Serbs. It was to go crazy. The bastards are shooting at their own helpers!” Furthermore: “*Both parties easily pull the trigger and against the murdering patrols you don’t do much*” (van Berkel, 2020, p. 48) and “Bosnian-Serb troops [...] herded together 8000 Muslim men and boys and murdered them in cold blood” (Ibid., p. 47).

4.3. The production of epistemic injustice through Dutch history books

In the case study, it thus becomes apparent that Dutch history books draw a sharp line between the experience of Dutchbat soldiers and the Bosnian population, which is otherized by Islamophobic and dehumanizing language frames. There are no accounts of grief and trauma such as depicted in the personal letters of the Dutchbat soldiers, and the Bosnians who died in Srebrenica are entirely homogenized and reduced to their faceless victimhood. Language frames such as ‘the Muslim-city of Srebrenica’ cannot be seen as ‘neutral’ signifiers to distinguish the ethnic groups in Bosnia and Herzegovina, but instead, highlight a process of racialization as the religious identity becomes the primary signifier not only of the group but also of the genocide.

This racialized language repeatedly leads to historical inaccuracy. A significant minority of Bosnian Serbs

lived in the city of Srebrenica during the time of the genocide (Toljaga, 2010, p. 1), while also the equation of ‘Serbs’ and ‘Bosnian Serbs’ leads to an incorrect portrayal of the conflict. Depictions such as ‘herding together’ furthermore draw on linguistic frames that are commonly used for animals and dehumanize people who have experienced violence in Srebrenica further. Moreover, by depicting the conflict as ‘bloody’ and the Bosnian Muslim population as partially violent, the narrative draws on Balkanist stereotypes and directly undermines the innocence of the group, which prevents them from being seen as ‘ideal victims’. This black-and-white depiction allows the Dutchbat soldiers, and also the ‘traumatized Dutch state’, to occupy the status of the innocent ‘victim’. This portrayal emphasizes that the histories of Bosnian and Bosnian-Dutch people are not seen as part of Dutch history and simultaneously frames them as an Out-Group of a shared national identity. By depicting Bosnians as a threat to the Dutch soldiers, the narrative implements Islamophobic prejudices that directly attack the credibility of relative and survivor groups as rightful knowledge producers about Srebrenica. Moreover, the misrepresentation of the conflict also causes testimonial injustice in denying

5. Conclusion

In this paper, I have argued that the discourse of a ‘Srebrenica trauma’ can be seen as a victimhood narrative that is established by Dutch institutions, which largely exclude Bosnian and Bosnian-Dutch people from this narrative. This exclusion takes place through neglecting

survivors public recognition for the harm they have suffered during the genocide.

A severe consequence of the exclusion of Bosnian-Dutch people from the knowledge production is that the cultural archive remains largely limited to the ‘Dutch Srebrenica trauma’ narratives as an epistemic resource that can be referred to understand the genocide. As shown above, this narrative is highly politicized in aiming to convey the message that the Dutch state is not responsible for Srebrenica, rather than focused on providing an elaborate discussion on the topic. By excluding important definitions like ‘genocide’ and implementing a one-sided portrayal of the conflict, Srebrenica cannot be fully comprehended. This especially harms survivor-and-reliant groups who advocate for more public recognition. Implementing an Islamophobic portrayal within history books that are authorized by Dutch educational institutions further legitimizes anti-Muslim prejudices and consequentially transmits them as a source of ‘common knowledge’. If the signifier of ‘the Muslims’ is today connected to discriminatory stereotypes, this could be counteracted, especially in school literature, by making education more inclusive and more accurate.

the testimonies and accounts of relative and survivor organizations and through the establishment of a strong binary between ‘our’ and ‘their’ history, which emphasizes that the group is not seen as part of the Dutch national identity. As a result, relative and survivor groups are

subjected to forms of dehumanization within this narrative. Also, the knowledge production itself is harmed, as highlighted by the depiction of Srebrenica in Dutch history education. This education is inaccurate and transmits Islamophobic language frames as common knowledge to Dutch history students. In the second part, I have introduced the initiative ‘Srebrenica is

Dutch history,’ which emphasizes the entanglement of Bosnian and Dutch histories and, thus, proposes a discourse outside of a strong binary framework. It is vital to destabilize rigid binary categories by implementing the narratives of those who are directly affected to allow for a more sensitive commemoration of Srebrenica in the Netherlands.

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THE ECHOES OF TRAUMA: TRANSGENERATIONAL IMPACT OF SEXUAL VIOLENCE IN BOSNIA-HERZEGOVINA

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Abstract

This paper investigates the enduring impact of sexual violence during the Bosnian War on subsequent generations, focusing on how trauma is transmitted biologically, psychologically, and socially. Through an interdisciplinary analysis that draws from psychology, sociology, and cultural studies, this study examines how the trauma experienced by survivors, particularly women, affects their children and society at large. The paper argues that trauma is not only passed through familial ties but also embedded in collective cultural memory, which perpetuates societal stigma and marginalization. Furthermore, it critically assesses the role of transitional justice mechanisms, such as the International Criminal Tribunal for the former Yugoslavia (ICTY), in addressing this ongoing trauma. The findings underscore the need for a holistic approach that integrates mental health support, social inclusion, and economic reparations to break the cycle of trauma transmission and promote genuine societal healing in post-conflict Bosnia-Herzegovina.

Keywords: *Transgenerational trauma, Psychological impact, Sexual violence, Bosnia-Herzegovina, Post-conflict societies*

1. Introduction

The Bosnian War (1992–1995) is widely remembered for its atrocities, particularly the systematic use of sexual violence as a tool of ethnic cleansing. Yet, the long-term consequences of this violence extend far beyond the individual survivors. A growing body of research suggests that the trauma experienced by survivors of wartime sexual violence can be passed down to their children and even further, through what is now understood as transgenerational trauma. This transmission occurs through biological, psychological, and social mechanisms, leaving subsequent generations to cope with trauma they did not directly experience.

This paper seeks to explore the complex ways in which trauma is transmitted

across generations in Bosnia-Herzegovina, with a particular focus on the children of women who survived sexual violence during the war. Drawing on interdisciplinary research, it examines the biological underpinnings of trauma transmission, such as epigenetics, alongside psychological mechanisms like trauma-informed parenting. It also considers the broader cultural and societal dimensions, emphasizing the role of collective memory in shaping the identities of both survivors and their offspring. By using Bosnia-Herzegovina as a case study, this paper critiques the limitations of post-conflict justice efforts, particularly those led by the ICTY, and argues for a more comprehensive approach to healing that goes beyond legal recognition.

2. Theoretical Framework

2.1. Defining Transgenerational Trauma

Transgenerational trauma refers to the transmission of trauma from one generation to the next. In psychology theory, psychological theory, this concept builds on Freud's idea that individual experiences are influenced by the unresolved experiences of previous generations. Research in epigenetics shows that trauma can alter gene expression without changing DNA sequences, a mechanism that allows trauma to be biologically inherited (Franco 2023, p. 187). More than epigenetics, the unresolved trauma of parents can deeply shape their relationships with their children,

reinforcing the transmission of trauma from one generation to another. For instance, a mother's trauma may affect her ability to bond with and respond to her child's needs, which can lead to developmental challenges for the child (Iyengar et al., 2014).

The study of intergenerational trauma was first introduced by Vivian Rakoff (1966). His research found that children of Holocaust Survivors exhibited behavioural and psychological symptoms of traumatism, despite not having directly experienced the trauma themselves his idea has since been expanded to include victims of war and sexual violence, with studies suggesting that extreme stress can alter the

biological makeup of individuals and, in turn, affect their offspring. In the context of the Bosnian War, the trauma of sexual violence experienced by many women has likely been passed on to their children, affecting their mental and emotional well-being.

2.2. Cultural Memory and Collective

Trauma

In addition to familial transmission, trauma is also transmitted through the cultural memory of collective trauma, turning into a collective experience that shapes the identity of an entire community. Collective trauma extends beyond the suffering of individuals, affecting large groups of people who share a common traumatic event, such as war, violence, genocide and so on (Kostova & Matanova, 2024). This collective trauma can not only reshape

identities but also influence societal norms and political landscapes.

In Bosnia-Herzegovina, the widespread use of sexual violence during the war has become emblematic of ethnic cleansing and the brutality of the conflict. This memory of this violence is deeply embedded in the country's cultural narrative, shaping societal perceptions of identity, victimhood, and justice. In particular, it impacts how survivors of sexual violence and their families are perceived and treated in their communities. The way sexual violence is remembered—or ignored—plays a crucial role in either fostering healing or perpetuating the cycle of trauma across generations. In this sense, trauma transmission becomes a broader societal issue, influencing how future generations identify with their history and navigate their collective identity.

3. Case Study: Sexual Violence in Bosnia

3.1. Historical Overview

Scholars like Harsch (2015, p.37) have considered the Bosnian War as one of the deadliest conflicts in Europe since the end of the Second World War, with more than 100,000 people being killed. It opposed Bosnian Muslims (also designated as Bosniaks or Bosnian), Bosnian Serbs (designated in this research as Serbs) and Bosnian Croats (designated as Croats). The war saw systematic and widespread sexual violence, with an estimated 12,000 to 50,000 victims, most of whom were Bosniak women (Bartrop, 2016). Mostly committed by Serb forces (Shoup &

Burg, 1999, p.171), this violence was not caused by isolated incidents; rather, it was part of a wider policy of ethnic cleansing, with rape used as a tool to degrade, demoralize and displace communities (Allen, 1997, p.47; Stiglmayer, 1994, p.95).

Specific to this conflict was also the intent to force women, through rape, into carrying a child from their assailant's ethnicity. As theorised by Fisher (1996, p.93), this strategy forced Bosnian women to bear the children from their aggressors, children who were thus considered to be of Serbian ethnicity due to their paternity. During that time,

women were prevented from bearing children of their own ethnicity, as if their wombs were “occupied.” The weaponization of sexual violence ensured that survivors would carry physical, emotional, and social scars long after the conflict ended.

3.2. Impact on Victims and Society

The psychological and social repercussions of this sexual violence have been profound. Psychological studies have shown that survivors of wartime sexual violence suffer from immediate and long-term consequences, such as severe post-traumatic stress disorder (PTSD), depression, and social phobia, with symptoms persisting for years or even decades after the events (Lončar et al., 2006). In Bosniak communities, cultural and religious

norms surrounding women’s “purity” have compounded the trauma by stigmatising victims of sexual violence. Many survivors thus remain silent to avoid ostracism (Engle, 2005), but this silence also isolates them and their families.

The societal impact is also evident in the collective narrative around sexual violence in Bosnia. In post-war Bosnia-Herzegovina, discussions around rape and sexual violence remain fraught with tension. Just like the victims’ silence, there is also often a collective silence that hinders reconciliation efforts. Indeed, acknowledging the scope and nature of these atrocities is essential for healing both individual and societal wounds. Societal silence thus perpetuates a climate where trauma is passed from generation to generation.

4. Mechanism of trauma transmission

4.1. Biological mechanism

Maternal traumatism can profoundly affect offspring before birth, primarily through biological pathways like epigenetic changes and prenatal stress exposure. Research on Rwandan genocide survivors has shown that prenatal stress can affect the hypothalamic-pituitary-adrenal (HPA) axis, leading to lower cortisol levels and increased vulnerability to PTSD in offspring (Perroud et al., 2014). The same conclusion has been made by Mulligan et al. (2012) in the Democratic Republic of Congo, regarding newborns whose mothers had been exposed to severe stress. This research also revealed that maternal stress caused by warfare

had a superior impact on the offspring. Those studies thus suggest that war-related trauma may disrupt normal gene expression, predisposing children to mental health disorders like anxiety and depression.

In the context of Bosnia-Herzegovina, it is plausible that similar epigenetic effects could have occurred among children born to mothers who survived wartime sexual violence. Although direct studies on Bosnian survivors are lacking, the similarities in traumatic experiences with survivors in Rwanda and the DRC make it likely that the children of Bosnian war survivors could be similarly affected.

4.2. Psychological Mechanisms

The psychological trauma experienced by mothers can significantly influence how they interact with their children, often leading to trauma-informed parenting. Many survivors of wartime sexual violence in Bosnia exhibit symptoms of PTSD, including hypervigilance, emotional numbing, and irritability (Letzter-Pouw et al., 2014, p.427). These symptoms often create an unstable home environment for children by influencing their parents' style of parenting. This may manifest as overprotectiveness or emotional distancing, where mothers are either excessively protective due to fear for their children's safety or emotionally detached due to their unresolved trauma (Danieli et al., 2015). This can hinder children's emotional development and their ability to form healthy relationships.

Additionally, children naturally develop by mimicking their parents' comportment. When parents present signs of PTSD due to past traumatism, their offspring tend to absorb their emotional distress, making them more susceptible to anxiety and trauma-related disorders. Studies on Japanese "comfort women" survivors have shown that their children often inherited their mothers' psychological pain, including hypervigilance and emotional detachment (Lee et al., 2019). While similar studies are limited in Bosnia, the parallels between the experiences of "comfort women" and Bosnian survivors of rape camps suggest that the children of Bosnian survivors likely face similar emotional challenges.

4.3. Social and Cultural Factors

The broader societal context plays a crucial role in how trauma is transmitted across generations. The societal stigma attached to sexual violence in Bosnia exacerbates the trauma faced by survivors and their children. In a society still marked by ethnic tensions, children born of rape are often marginalized because of their mixed ethnic heritage, particularly when the father/rapist is identified as Serbian. These children are frequently seen as outsiders, neither fully accepted by the Bosniak community nor integrated into the broader post-war society.

A study of adolescent girls born of wartime rape revealed that they 'suffered from internalised guilt as well as physical and psychological abuse from families and communities,' due to their association with 'Serbian blood' (Erjavec & Volčič, 2010). Despite the important limitations of this research (the small sample and its ethnic/national and gender homogeneity), its findings show the deep impact of cultural and societal memory on children's mental health. The constant stigmatization and isolation they suffer from reinforce their feeling of alienation and abandonment and impacts their development and psychological well-being (Neenan, 2017, p. 22; Guterres, 2019, p. 8). The lack of economic and social support for these families compounds the trauma, leading to a cycle of poverty and further exclusion (Lee, 2017, p. 157).

4.4. Family Systems

The effects of maternal trauma ripple through family systems, leading to

dysfunction and fractured relationships. In Bosnia, families impacted by war trauma, particularly survivors of sexual violence, struggle to maintain stable family environments. Often, trauma is not openly discussed but is nonetheless deeply felt by children and grandchildren. The unresolved grief, guilt, and shame are internalized by victims permeate the family atmosphere, contributing to increased tension and dysfunction. Children may also have to take on heightened caregiving roles or responsibilities beyond their years, due to their mothers' illness or incapacity to cope with everyday life, which puts a toll on their education and social life (Lee, 2017, p. 170).

For children born of rape during the Bosnian War, additional complexities arise. Many mothers struggle to fully accept their children due to the circumstances of their conception, leading to emotional distancing or even rejection. In extreme cases, this rejection is expressed through violence and can accumulate up to infanticide. As so, studies observed a disproportionate increase in rates of infanticide in the aftermath of the Bosnian war (Lee, 2017, p. 157). Even when violence is absent, the bond between mother and child is frequently marked by a love/hate relationship, in which their attitude towards their children oscillates between compassion and harshness, leaving deep emotional scars on the child (Lee, 2017, p. 156).

5. Implications for Justice and Reconciliation

5.1. The role of International Criminal Justice

Addressing the trauma of children born of wartime rape in Bosnia-Herzegovina poses unique challenges for justice and reconciliation efforts. While the International Criminal Tribunal for the former Yugoslavia (ICTY) played a significant role in prosecuting sexual violence as a war crime, it largely failed to address the long-term psychological and social consequences faced by survivors and the impact on their offspring. As seen previously, these children, whether born of rape or not, bear their mothers' trauma, which deeply affects their mental health and overall well-being. However, they have been excluded from transitional justice mechanisms. The ICTY's emphasis on

legal justice failed to create comprehensive frameworks that could recognise these children as victims and provide support addressing the psychological, social and economic barriers they face.

Yet, reparations and other transitional justice mechanisms can provide opportunities for recognizing the rights of children of survivors and their mothers (Neenan, 2017, p.31). These efforts must go beyond symbolic gestures to create concrete frameworks that ensure access to education, healthcare, and psychosocial support. Without broader policy frameworks that address these issues and include both survivors and their families, reparations alone will not be enough to improve their lives (Neenan, 2017, p. 12). Moreover,

without proper psychosocial support, children currently suffering from transgenerational trauma are at risk of carrying those unresolved issues into future generations, further perpetuating the cycle of violence and suffering. Finally, any attempt to include these children in public justice processes needs to be handled delicately to avoid exacerbating the stigma they already face (Denov & Kahn, 2019).

5.2. The Role of Bosnian Society

Recent progress have been made in Bosnia-Herzegovina towards recognizing the plight of children born of wartime rape. In 2022, the Brčko District became the first region in Bosnia to legally recognize these children as civilian victims of war (Czeszejko-Sochacka, 2023, p.99). This recognition, even if extremely late, is a significant step forward in acknowledging their unique status and their suffering. However, this law remains limited in scope and does not provide additional rights, such as educational support or scholarships, for those children. Furthermore, the law only applies to children whose mothers are officially recognized as rape survivors. Therefore, it restricts significantly the number of children able to benefit from this law. There is no formal recognition or support for children of sexual violence survivors who were not born of rape but still suffer from the psychological transmission of trauma, children whose mothers did not apply for recognition of their status, and children who were abandoned, (Czeszejko-Sochacka, 2023, p.101). Moreover, this law only applies to the Brčko District and has not been

generalized to the entirety of Bosnia-Herzegovina.

The legal recognition of these children, while symbolically important, is insufficient without meaningful support services that address their long-term needs. True reconciliation requires more than legal recognition; it demands that governments provide meaningful resources to address the long-term needs of these individuals and the perpetual structural inequalities they face. This includes ensuring equal access to education and healthcare, protecting their rights, and fostering social inclusion.

5.3. Religious and Cultural Interventions

In Bosnia, religious and cultural interventions have played a mixed role in addressing the trauma of wartime sexual violence. During the war, a fatwa declared raped women to be war heroes and martyrs. This fatwa had some positive impact, leading to cases where rather than being ostracized, women received support and protection from their families (Skjelsbæk, 2012, p.99). However, it remains unclear how well this declaration succeeded in changing public perceptions or if it was enough to meet the needs of the war children in the absence of longer-term economic, psycho-social, and sensitisation initiatives. While religious and civil authorities made efforts to reduce stigma, these initiatives were insufficient without accompanying long-term economic and psychological support. Even decades after the war, women victims of wartime sexual violence and

their offspring continue to face marginalization within their communities, struggling with their identities and societal rejection (Lee, 2017, p. 170).

Other post-conflict countries, such as Uganda, have seen similar initiatives where religious leaders and community figures publicly speak out against the stigmatization of children born of rape. These efforts, while promising, are fragile and require sustained community engagement to be effective (Neenan, 2017). Bosnia could benefit from similar sustained cultural interventions, but they must be coupled with broader policy measures to reduce discrimination and improve social integration.

5.4. The Need for Holistic Approaches

A holistic approach is essential for addressing the needs of children born of wartime rape. This includes legal, psychosocial, and economic support, driven by sustained political will at local and national levels. Legal recognition is essential, but it is only the first step. Comprehensive programs must be

developed to ensure that survivors and their children have access to education, healthcare, and mental health services (Carpenter, 2010, p.134).

Programs in other post-conflict societies have shown that integrating children born of rape into broader community programs leads to greater success in breaking down stereotypes and promoting economic self-sufficiency (Neenan, 2017, p 43). These models could provide valuable lessons for Bosnia. At the core of these efforts, the focus must remain on the best interests of the child. Government policies should prioritize the welfare of children born of wartime rape over nationalist or demographic agendas (Woolner et al, 2018, p. 716). Whether through domestic or foreign adoption, ensuring that these children grow up in environments that provide emotional support, safety, and opportunities for personal growth should be paramount. Long-term success will depend on the implementation of consistent and adaptive policies, ongoing monitoring of programs, and the political will to address the underlying social barriers that perpetuate the marginalization of these children.

6. Conclusion

The legacy of sexual violence in Bosnia-Herzegovina continues to shape the lives of survivors and their descendants. As explored in this paper, the trauma endured during the war has been passed down through biological, psychological, and social mechanisms, leaving deep scars on subsequent generations. Children of sexual violence survivors, whether born of rape or not, face

significant mental health challenges, compounded by the stigma and marginalization that remain entrenched in Bosnian society.

Efforts to address this legacy must go beyond symbolic gestures. While recent legal recognition of children born of wartime rape in the Brčko District marks progress, it is insufficient without the

provision of broader support services, including access to mental health care, education, and social integration. A comprehensive approach is needed—one that acknowledges the full scope of the trauma, supports the mental and emotional recovery of survivors and their children, and fosters societal healing. Furthermore, justice and reconciliation efforts must be carefully calibrated to avoid exacerbating the trauma and stigmatization that already exist. This requires a long-term commitment from both local and

national authorities, as well as the international community, to create policies that not only recognize the rights of these individuals but also address the structural and social barriers to their full inclusion in society.

Only through a sustained, multi-faceted approach can Bosnia-Herzegovina begin to heal the wounds of its past and ensure that future generations are not burdened by the unresolved trauma of their predecessors.

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UNIVERSAL JURISDICTION AND STATE CRIMES: A CASE STUDY OF THE FORMER YUGOSLAVIA

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Abstract

The essay explores the evolution and challenges of applying Universal Jurisdiction in addressing state crimes, using the International Criminal Tribunal for the Former Yugoslavia (ICTY) as a focal point. It highlights the necessity of clear international laws in prosecuting gross human rights violations and the complexities of holding powerful state officials accountable. The paper delves into the atrocities committed during Yugoslavia's authoritarian regime, analysing the criminological factors behind state crimes, and critiques the reluctance of the international community to prosecute such acts as more than "domestic concerns." It also examines the concept of "conventionalised" crimes, where state-led offences often escape due punishment. Through a detailed review of the ICTY's establishment, the essay assesses whether the tribunal succeeded in setting a global precedent for fair and effective prosecution, addressing the broader implications of Universal Jurisdiction in preventing impunity for state crimes.

Keywords: *Universal Jurisdiction, ICTY, State crimes, Human rights violations, Conventionalisation of crime.*

The evolution of our civilized world has encountered many obstacles in clearly conceptualizing and applying the principle of Universal Jurisdiction. From transforming a philosophical theory into a legal framework to allowing each state to prosecute the aftermath of conflicts marked by gross human rights violations, a clear understanding of what Universal Jurisdiction is and how it should be applied is imperative for the collective well-being of the international community.

This essay seeks to explore the importance of clear international laws in cases of state crimes, by analysing the process of establishing the International Criminal Tribunal for the Former Yugoslavia (ICTY) and its success in securing convictions against high-ranking officials. It will also provide a criminological point of view intended to put into practice criminological theories about state crime.

Before understanding the much-needed establishment process of the ICTY, I believe it is essential to have a clear picture of the inhumane acts committed in the regions of the Former Yugoslavia. Rummel (n.d.) managed to produce a concise piece of literature which encompasses the number of civilian deaths caused in times of conflict in the 20th century, be that internal or external. He traced fifteen murderous regimes, with Yugoslavia occupying the third position with an estimated 2.5% killings per year in Croatia alone. The pattern revealed by this study shows how several non-democracies committed the most lethal civilian executions culminating with a massive loss of innocent individuals whose right to live and right

to safety have been breached. This is not to say that in a democratic state people are not subjected to any violations of their human rights, but that this phenomenon is accentuated in the case of regimes such as communism and authoritarianism.

In the particular case of Former Yugoslavia, its authoritarian regime could be blamed for the atrocities registered. To continue the idea of the aforementioned study 'Regimes are in reality people with the power to command a whole society' (Rummel, n.d.). Then, suppose we are to believe that an authoritarian regime is in its most simplistic form just a sum of decisions made by individuals who hold the power, we must also question their intentions and seek any distinguishable psychological traits which would differentiate their crimes from 'typical,' core crimes. From a criminological perspective, it could be deduced that those responsible for gross human rights violations possess cognitive and behavioural traits which classify them in a stereotype such as 'the psychopath,' as a way of separating their actions from core crimes. While this theory may hold some truth, Green and Ward (2017) propose that the same 'criminogenic factors' such as intention and motivation, can be found both in the cases of state crimes and core crimes committed at a singular, smaller level.

Differentiating between types of crimes is urgent because severe violations of fundamental human rights warrant more significant punishment. This highlights the necessity for well-defined international laws that would specify

how to penalize crimes similar to those committed in the Former Yugoslavia.

Moving forward, another reason why the international community needs to pay more attention to historical criminal cases like those committed in Former Yugoslavia and their legal development is because it reinforces that state crimes must not be ‘conventionalised.’

The conventionalisation of criminal acts committed by or with the knowledge of the state refers to those illegal actions for which there exists a legal form of prosecution, but are rarely punished, as suggested by Carson (1979). Even though the author describes the scene of the newly industrialised, capitalist Britain and its difficulty in fighting against child labour and precarious working and resting conditions, I believe the concept of ‘conventionalised’ crime could also be effortlessly applied to Yugoslavia’s situation, immediately after the end of its conflicts.

A notorious example for my argument mentioned above is the obstacles faced in the process of establishing an international tribunal for the sole purpose of prosecuting the crimes inflicted on Yugoslav people. Akhavan (1993) summarised some of the difficulties preventing the officialization of the ICTY. Thus, one of the preventions that stands out the most is the one pursuing the path of ‘internal justice.’ To be more concise, it was believed that the events which led to the death of a considerable amount of people in the former Yugoslavia were a matter of ‘domestic concern’ which should be prosecuted on the territories of the now broken-up federation. Presumably, the

nature of the conflict did not require an international tribunal’s jurisprudence and it was sufficient to try the accused under domestic criminal law.

The reason this indicates a conventionalisation of state crime is simple. At the time of discussing the establishment of the ICTY Former Yugoslavia had just broken up. This means that the former republics were followed by a period of economic, social and judiciary incertitude. Having just escaped from an authoritarian regime it could be safely assumed that the principle of ‘separation of powers’ was not applicable. When the three pivotal powers of any functional state overlap to an alarming degree, the judiciary power cannot be considered an impartial tool in delivering righteous sentences. Thus, qualifying the crimes committed by Yugoslav officials as ‘a domestic matter’ promotes nothing more than an impassible attitude on the part of the international community.

Furthermore, the history of Yugoslavia’s ethnic conflicts would have been another deterrent for the domestic judicial bodies to assume the responsibility of such a complicated task. Even if international professionals were assigned to the cases to ensure a somewhat degree of impartiality, local pressure from the public and the conflicting officialities would have shaped the outcome of the prosecution to an extent (Akhavan, 1993).

If the rebuttals presented are not convincing enough, another strong point is the declared independence of Croatia, Slovenia, Macedonia, and Bosnia-Herzegovina. According to Randy

(1993), Croatia and Slovenia were the first to declare themselves as independent states in 1991, followed by Macedonia later that year and Bosnia-Herzegovina in 1992. These events led to a war unleashed by Serbia's president against Croatia. While it could be argued that the atrocities before 1991 should be tried within the territories of Former Yugoslavia because the former republics were part of the same federation, Croatia's legitimate independence changes this assumption. If Croatia and Serbia are viewed as different, independent, and autonomous states, and if the war between the two is not classified as a civil war, then it is in the best interest of the international community to address this incident from the perspective of breaching international humanitarian law.

However, the reluctance to facilitate justice at a territorial level using international means ended quickly, as the ICTY was successfully established in May 1993. Being the first international tribunal responsible for trying people in cases of war crimes since the Nuremberg and Tokyo tribunals (United Nations, International Criminal Tribunal for the Former Yugoslavia, n.d.), it brought universal pressure to its mission towards justice.

The notable question that follows is: Did the ICTY succeed in overcoming its conventionalisation and shaping the future of fairly prosecuting similar cases? To answer this dilemma, I find it essential to have a clearer understanding of the concept of Universal Jurisdiction and, based on that understanding, analyse the work done by the tribunal.

Before the Second World War, the relationship between domestic and international (or universal) jurisdiction was uncertain. But if the word 'jurisdiction' refers to 'a state's authority to make its law applicable to certain actors, events, or things' (Randall, 1988, p.786) we can begin better to examine a possible relationship of subordination between the two. Usually, domestic jurisdiction rests on a couple of principles, one of them being the universality principle. This principle states that every community finds itself interested in prosecuting cases in which the integrity, safety and property of a group or multiple groups is usurped. With the end of the Second World War the three pivotal breaches of human rights, namely war crimes, genocide, and crimes against humanity have begun to be prosecuted at an international level (Randall, 1988).

As the Former Yugoslavia was affected by this category of crime, the mission of the International Criminal Tribunal for the Former Yugoslavia was not only to be an impartial actor in deciding punitive measures for those involved in 'ethnic cleansing', but also to start a reformation of what was considered up until that point international legislation and to set a precedent for future similar cases.

Because I put to question the ICTY's success in dismantling the state crime conventionalisation machine, I take it upon myself to look at its history of prosecution from an objective standpoint. As revealed by Schabas (2006), the first major impact of the ICTY on the international legal community happened when the first accused, Duško Tadić, challenged the

basis on which the tribunal had been created. Its first act was to question outdated legal doctrines concerning international implications in state-armed conflicts. Thus, it concluded that ‘war crimes could be committed during civil wars’ and ‘it also established that crimes against humanity could take place during peacetime (Schabas, 2006, p. 23)’. This was a strong move on the part of the tribunal because it represented a first step in securing that old law is being challenged when appropriate in order to ensure the optimisation and correctitude of sentencing. Moreover, by agreeing upon the idea that civil wars do not constitute an environment in which civilian deaths are ‘excused’ for the greater well-being of a people, the state loses a great amount of power over its citizens, fostering a more just legal system.

Additionally, the tribunal’s best and most notable piece of work was the implementation of the concept of ‘joint criminal enterprise.’ This allowed the tribunal, and the international community as a whole by precedent, to prosecute suspects even without proof that they had engaged in breaches of the humanitarian law. Rather, if other members of the enterprise had committed the acts, the individual in question was eligible for prosecution, too. This is of utmost importance because earlier in the essay I talked about regimes and how the people in high positions commit the most crimes. But, for a regime to function, the leaders need to establish a carefully planned hierarchy which distributes power. This means that for instance, if a leader wishes to engage in a process of ‘ethnic cleansing,’ just

like in the Former Yugoslavia, he may not wish to get directly involved. He has the possibility of nominating groups of people, such as the National Army, to carry out orders. But by making use of the ‘joint criminal precedent’ the international tribunal has the lawful right to prosecute such people, an action which seeks to redefine state criminal conduct and whose responsibility is to protect the innocent.

Another important development which took place during ICTY’s activity is including untold crimes in Article 3 of ‘Statute Of The International Tribunal For The Former Yugoslavia’, by explicitly using the formula ‘but not be limited to’. Darcy (2010) talks in more detail about this legal measure, highlighting the tribunal’s power to consult a wider range of legal documents and to try individuals for offences such as rape and unlawful labour as part of violations of the laws or customs of war. However, with this decision arose a controversy concerning the tribunal’s power to create new laws. Certainly, an international tribunal’s role is not to punish offenders by creating new criminal charges, but by drawing upon customary and international laws, treaties, conventions and other legal documents that already exist. This problem was particularly visible in the tribunal’s attempt to prosecute crimes of terror as part of its jurisprudence. While it is in the best interest of a tribunal to prosecute people or groups of people who committed breaches of humanitarian law, it is also in its interest to respect an accused rights.

There are many more contributions made by the International Criminal Tribunal

for the Former Yugoslavia, but those highlighted above demonstrate clearly how the tribunal succeeded in fighting against the conventionalisation of the atrocities suffered by the Yugoslav people. Should it not have been established soon, the wrongdoings of Yugoslav officials would have been directed to domestic courts for trying and the legacy of the ICTY would have not continued to impact international law.

It is now evident that the ICTY played an important role in the redefinition of war crimes at an international level. But how did it precisely do that?

Rodman (2017) makes an interesting comment on how politics influenced the implications of justice. More precisely, the ICTY did not play a role only in prosecuting the accused, but it also contributed to the process of peace-making. Its role was observed during the arrests of Radovan Karadžić and Ratko Mladić. What it did was to force political powers like NATO and the UN to change their conflict resolution strategies by combining diplomatic approaches such as negotiation with international criminal prosecution. In other words, instead of pleading for cooperation on the part of the accused, the above-mentioned political powers enforced the eligibility of arrest mandates in times of ongoing ethnic cleansing, pleading a forced, but necessary approach to peace-keeping.

Another important development that has profoundly impacted international law is the establishment of precedents for future cases. As previously discussed, the decisions made by the ICTY serve as precedents for future international

criminal courts. Rather than creating a strict set of rules for specific scenarios, the tribunal strengthened the international legal framework by establishing numerous cases and their conclusions to be followed by future courts.

Additionally, by its bold actions in challenging pre-existing laws, the International Criminal Tribunal for the Former Yugoslavia encourages the constant evolution of law, both at an international and territorial level. Inevitably, more ambiguous crimes will take place in the world, and the scope of justice is to find the right punishment directly proportional to the gravity of that action. By following the example of the tribunal, future judges could reshape current jurisprudence by engaging in critical thinking.

The expansion of the definition of war crimes is another way in which the ICTY shaped the international legal system. By expanding the legislation to include crimes which were not previously classified as war crimes, the tribunal helped in combating crimes such as rape, humiliating and degrading behaviour and taking of hostages. On top of that, it secured certain provisions which clarify the context in which certain crimes should happen as to be prosecuted and punished as part of universal jurisdiction.

Lastly, by expanding what is understood as ‘war crimes’, the tribunal helped in growing the accountability of the accused. This metaphorically gave birth to a widespread fight against the conventionalisation of state crime, promoting rigorous legal measures.

To conclude, the facts presented aim to signal the importance of an international legal community which acknowledges the breaches of humanitarian laws in Former Yugoslavia and whose purpose is to fight against criminal standardisation by having set out a clear set of laws. The legacy of the International Criminal Tribunal for the

Former Yugoslavia reiterates its monumental impact on redefining the concept of 'war crimes', and by analysing its obstacles and contributions from a criminological perspective it is easier to understand what was done right and what could have gone wrong if immediate action had not been taken.

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THE INTRICACIES OF REMEMBRANCE: DIVISIVE AND RECONCILIATORY POTENTIAL OF POST-WAR COMMEMORATION IN THE FORMER YUGOSLAVIA

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Abstract

Commemoration and associated processes of truth recovery and reconciliation form an intricate part of war – and peace. Insofar, memorials both mirror and shape political developments in post-war societies through the negotiation of collective memory. This paper explores the social effects of post-war commemoration on a cross-national level through the comparative study of salient cases of memorialisation in Prekaz (Kosovo), Vukovar (Croatia), and Tuzla (Bosnia and Herzegovina). The processes identified include the ethnicization of shared physical and symbolic space and the hierarchisation of victimhood. As seen in Prekaz and Vukovar, these dynamics of memorialisation curb reconciliation processes as they reinforce divisive ethno-political discourses. However, commemoration in Tuzla illustrates how memorials can also strengthen a community's shared identity, creating a wider positive imaginary for future national reconciliation. War memorials can thus both exacerbate division and antagonistic narratives, as well as to serve cultural strategies to overcome ethnocentrism in collective memory.

Keywords: *Transitional justice, Memorialisation, Collective memory, Reconciliation*

1. Introduction

Though they represent under-researched dimensions of transitional justice, memorials in societies emerging from violent conflict war reflect prevailing socio-political dynamics and embody the “complex interplay between imagining the future and remembering the past in the aftermath of conflict” (Wollentz, 2019, p. 163). Commemoration, linked to truth recovery, institutional reforms and reconciliation endeavours, forms an intricate part of strategies of war – and peace (Barsalou, 2020; Fischer, 2011; Krasniqi, 2013). Insofar, memorials operate as “identification markers” (Krasniqi, 2013, p. 30), both mirroring and shaping political developments in post-war societies through the construction and framing of collective memory (Baliqi, 2018; Clark, 2013).

Memorialisation processes, by rebuilding trust and furthering the processing of traumatic events, hold reconciliatory power in societies that have been subject to political or ethnic violence (Clark, 2013; Fischer, 2011). However, they can also contribute to the maintenance of war-related social structures and divisive dynamics. This paper expands on such intricacies and their divisive and reconciliatory potential to demonstrate why commemoration of violent conflict requires considerable room for nuance and complexity. It will do so by employing three case studies from the former Yugoslavia, which serve as illustrations of the complexity of post-

war memorialisation, and the different forms it can take within the same conflict context.

I argue that the destructive and unifying capacities of memorialisation coexist alongside each other in societies recovering from violent conflict, that the wartime and post-war context, and the nature of violence perpetrated impact the imaginaries produced through memorialisation. The three main social processes studied in this analysis encompass the ethnicization of shared physical and symbolic space, the manipulation and hierarchisation of victimhood, and the restorative processing of a shared past through imagining a shared future. This work contributes to existing debates on war commemoration by exploring their social effects on a cross-national level through the study of salient cases of memorialisation in Kosovo, Croatia, and Bosnia and Herzegovina (BiH).

This paper first identifies and contextualises relevant literature and neglected areas of research regarding the interplay between transitional justice, reconciliation and commemoration before providing a brief overview of the Yugoslav wars and a portrait of current memorialisation trends in the Balkans. It proceeds to analysing the three aforementioned social processes of commemoration through case studies before connecting them to develop their implications for the general endeavour of post-war memorialisation.

2. Conceptual Framework and Academic Debate

Memorialisation involves material manifestations of collective memory, such as monuments and museums, as well as immaterial practices and ceremonies (Baliqi, 2018). Though their presence is made obvious to the ordinary citizen, resident, or visitor, commemoration practices simultaneously comprise strategies of attachment which operate on more subtle or subconscious levels (Wollentz, 2019). Their functions are thus both explicit – honouring and commemorating victims and soldiers and providing evidence of atrocities – as well as more tacit. Memorials, just as the process of remembering, are inherently selective and political, thereby serving the narratives of those dictating a society’s memory landscape (Clark, 2013).

Post-conflict commemoration represents a process linked to the gradual expansion of the Transitional Justice paradigm in peace and conflict studies since the late 1980s (David, 2017; Fischer, 2011). The latter is defined to span “the full range of processes [...] associated with a society’s attempt to come to terms with a legacy of largescale past abuses [...] to ensure accountability, serve justice and achieve reconciliation” (David, 2017, p. 54), including criminal prosecution, truth commissions, reparations, and institutional reforms. Within a growing body of critical literature, this concept has further broadened to encompass a variety of social and political approaches beyond traditional and internationally renowned legalistic mechanisms such as the International Criminal Tribunal for the Former Yugoslavia (ICTY). This paper centres on the commemorative

aspirations and potential of transitional justice, while problematising some of its underlying assumptions and practices.

In existing literature, memorialisation is conceptualised as “a process of remembering the wrongs of the past and honouring [their] victims” (David, 2017, p. 54). Its fundamental assumption holds that public and official recognition of war crimes and atrocities is central for the prevention of future violence in societies emerging from war, translating into a collective “duty to remember” (David, 2017, p. 54) to ensure the non-repetition of violence (Clark, 2013). There is, however, ample debate about whether remembrance constitutes a universally productive and conciliatory force, or whether drawing a line under the past and moving on towards the future is an equally justifiable reaction to past atrocities. Clark (2013, p. 134), to name one of many critics, has argued that “too much memory” can serve as a hindrance to narratives of forgiving, compounding or reigniting rather than abating tensions in post-conflict societies (David, 2017). The much-discussed question of whether to prioritise peace or justice in the aftermath of war thus also unfolds in the domain of memorialisation.

However, there is an emerging consensus transcending this debate, which conceptualises remembering and forgetting as “two symbiotic and mutually reinforcing processes” (Clark, 2013, p. 122). Given that the (collective) past is inevitably remembered in a selective fashion, forgetting likewise forms a central part of nation- and

identity-building processes, particularly so in the wake of violent conflict (Clark, 2013). Similarly, Baliqi (2018) emphasises that – in contrast to *memory* itself – conflicting *cultures of remembrance* are what impedes efforts at reconciliation. This debate should therefore not enforce false dichotomies of forgetting and remembering, but rather, as argued by Wollentz (2019), examine the types of claims assembled through manifestations of heritage and collective memory.

As will be demonstrated regarding memorialisation in the former Yugoslavia, one-sided commemoration practices indeed have the capacity to perpetuate tensions regarding competing truths in divided societies. In comparison to retributive and criminal justice, the concrete spatial and societal impact of

such cultural manifestations and socio-political discourses remains under-researched (Clark, 2013; David, 2017; Fischer, 2011). Post-conflict memorialisation and its associated practices and discourses, however, equally function as insightful reflections of societal dynamics. They inform the sequencing of peacebuilding missions and prove inextricably linked to aspirations of positive peace seeking “the overcoming of structural and cultural violence” (Ramsbotham et al., 2016, p. 47) beyond the mere absence of physical violence. Alongside the above-mentioned debates, this paper contributes to existing publications in its cross-national analysis of three case studies from the former Yugoslavia to illustrate the underexplored intricacies of post-war commemoration.

3. Context and Memorialisation Trends in the Former Yugoslavia

The Balkans and their rich and complex memory landscape represent a thoroughly researched region (Baliqi, 2018; Clark, 2013; Wollentz, 2019). The violent break-up of the Socialist Federal Republic of Yugoslavia throughout the 1990s left in its wake a salient yet fragmented and tendentious patchwork of war commemorations across the six former constituent republics. Decades after the cessation of hostilities, ethnic identities continue to be not only a main “source of political affiliation” (Baliqi, 2018, p. 472) but also a primary determinant of the region’s memorialisation landscape (Wollentz, 2019). War commemoration thus tends to express ethnic exclusivity, legitimating “cultures of denial and

selective remembrance” (Fischer, 2011, pp. 418–419) that trivialise or outright negate war crimes perpetuated against certain groups, spotlighting the victimhood of their own constituencies (Armakolas, 2015).

In such a context, official apologies and acknowledgement of (criminally established) atrocities coexist with discourses by political leaders seeking to fabricate, harness, and capitalise on persistent antagonisms based on ethno-nationalist identities and associated conflict narratives (Baliqi, 2018; Clark, 2013; Fischer, 2011; Grebo, 02/28/2023; Isufi & Stojanovic, 2023; Kurtic, 2023; Sito-Sucic, 09/24/2009). War remembrance, vulnerable to socio-

political and economic power and hierarchies, is thus instrumentalised as a “legitimising tool to gain and keep political power (Baliqi, 2018, p. 472).”

Memory culture in the former Yugoslavia represents a rich context to research the intricacies of commemoration following violent conflict. This paper draws on three distinct case studies – Prekaz (Kosovo), Vukovar (Croatia), and Tuzla (BiH) – that form part of the same temporal and geopolitical context of conflict. They thus exhibit strong comparability, while revealing varying forces and complexities implicated in post-war commemoration. The case selection revolves around infamous theatres of war and their resultant sites of

memorialisation. The localities chosen for this study are comparable in their profile and historical relevance. However, they showcase significant variation in their approaches to commemorative practices, and the underlying experiences, assumptions, socio-cultural and political forces determining said customs. Finally, it is imperative to emphasise that due to the range of existing war narratives in the Balkans, the selected memorials cannot be understood as representative of the respective countries’ more general commemoration landscape. Rather, they serve as illustrative examples to shed light on the various complexities of post-war commemoration, the destructive as much as the reconciliatory potential of memorialisation.

4. Analysis

Existing literature on memorialisation provides evidence for the psychological, political, and moral intricacies it generates in post-war societies, testifying to the need for nuanced and well-orchestrated approaches, particularly following ethno-political conflict (David, 2017; Fischer, 2011). This paper expands on some of these intricacies and their divisive and reconciliatory potential to demonstrate why commemoration for violent conflict requires room for nuance and complexity. It will do so by discussing three empirical examples from the former Yugoslavia.

Firstly, in the wake of war, populations that have been antagonised and mobilised against each other continue to live within the same borders, sharing the

same physical space. Ethnic groups turned antagonists, survivors *and* perpetrators of wartime violence continue to live in close proximity (Fischer, 2011). The implications of such shared spaces marred with conflicting experiences and war narratives will be discussed in light of commemorative traditions in Kosovo (Clark, 2013). Secondly, this paper addresses the particular forms of victimhood produced by ethno-political conflict. This extends not only to the civilian status of individuals and communities targeted in war, and the nature of violence these groups are subjected to, but also to the resultant narratives dominating socio-political life. The city of Vukovar in Croatia will provide the empirical ground for the exploration of such

discursive processes. Finally, this paper engages with more reconciliatory instances of commemoration and the potential unifying narratives unlocked by memorials such as the Slana Banja complex in Tuzla, BiH.

4.1. Sharing physical and symbolic space

The aftermath of violent conflict entails the continued co-existence of its antagonised populations within the same borders, sharing both physical and symbolic space. Victimised groups, many of them having lost loved ones or experienced unspeakable hardships, often end up living with people they know sympathised with the aggressor, or even executed violence themselves (Fischer, 2011). Violence perpetrated under the pretence of negative interdependence – a level of social antagonism wherein the mere presence of the socially constructed Other threatens the existence of the dichotomously constructed Self-group – leaves tremendous trauma in its wake. The resultant grievances and loss of interethnic trust can transcend generations (Fischer, 2011; Laclau & Mouffe, 1985). Establishing common truths in such environments can prove a contentious endeavour, as the confrontation of contrasting wartime narratives may generate further resentment and entrench existing grievances among groups (Fischer, 2011). Conflicting narratives of war also manifest in shared physical space in the form of memorials. Such physical space thereby becomes endowed with different truths about a traumatic past, a process labelled space-making, or the

territorialisation of memory (Björkdahl & Kappler S., 2017; Di Lellio & Schwandner-Sievers, 2006).

In the Balkans, these narratives are heavily ethnicised, as post-war institutional structures cemented existing ethnicity-based segregation in social and political life (Björkdahl & Kappler S., 2017). Commemorative space – utilised as evidence for territorial and historical claims – thereby becomes a “constitutive object of group struggle” (Krasniqi, 2013, p. 48). Insofar, the ethnicisation of space through memorialisation can continue to reinforce group identities and prevent societal debate from moving past ethnic identity as a core determinant of socio-political relations (Krasniqi, 2013). This dynamic, in turn, warrants fertile ground for ethno-nationalist sentiments exploited by political elites.

Kosovar memorialisation politics are a salient example of such inscriptions of ethnic identity onto shared physical and symbolic space (Björkdahl & Kappler S., 2017). Both Albanian and Serb elites pose long-standing and persisting overlapping claims to Kosovan territory. During the Kosovar War (1998 – 1999), this manifested in the destruction of Albanian as well as Serbian cultural objects, the segregation of education, and the “Serbisation” (Krasniqi, 2013, p. 38) of local territory through the renaming of street names and other locations. Following NATO’s airstrikes and the subsequent withdrawal of the Yugoslav National Army (JNA), Albanian nationalists reconfigured the space anew – yet again through ethnocentric memorial construction. War heroes of the Kosovo Liberation Army (KLA) constitute the most

prominent motif for commemoration, with founding commander Adem Jashari as the most recurrent figure. The latter was killed by Serbian forces in 1998 together with his extended family under siege at his home in Prekaz, which today holds a popular memorial complex attracting Albanian tourists from the region and the diaspora (Krasniqi, 2013).

Through continuous mythical reproduction, the KLA – and the Jashari family in particular – have come to embody Kosovar history much beyond the 1990s war, personifying the Albanian nation and liberation struggle (Di Lellio & Schwandner-Sievers, 2006; Krasniqi, 2013). They thus provide a prime example of the segregation and ethnicisation of symbolic space, and the associated territorialisation of memory that upholds war-time structures and the prioritisation of ethnic identity as the primary category ordering public life. Baliqi (2018, p. 480) goes as far as stating that “Kosovo is at an impasse between contested war remembrances,” hindering “the emergence of a common identity that might enhance state legitimacy.” The interaction between the territorialisation of memory and the ethnicisation of such space therefore produce conflictual dynamics in post-war commemoration.

4.2. The hierarchisation of victimhood

The hierarchisation of victimhood through one-sided, simplistic memorialisation practices is closely linked to the divisive potential of the ethnicization of shared space explained above. The former phenomenon has

particular importance when ordinary citizens, rather than soldiers and other (para)military actors, represent the most brutalised group (Cochrane, 2008). Furthermore, the widespread and indiscriminate nature of violence experienced by civilians poses further challenges for post-conflict co-existence, let alone reconciliation. As stated by Fischer (2011), contested responsibilities for atrocities and the oftentimes ambiguous identification of victims and perpetrators represent core dynamics that obstruct post-conflict rapprochement in deeply divided societies. As post-war commemorations are reflective of such contested conflict narratives, their inscriptions can insinuate and amplify moral ambivalence about victimhood, or establish hierarchies of victims, instigating bitterness and division (Cochrane, 2008; Fischer, 2011).

The city of Vukovar in Eastern Croatia is one of the most frequently drawn-upon cases to study the dynamics of post-war commemoration, including the manipulation of narratives of victimhood. A demographically heterogeneous area populated by both Croats and Serbs, the city bore the brunt of the early days of the Croatian war (1991 – 1995) when it was besieged by the JNA for 87 days (Clark, 2013; Schellenberg, 2015). As a result of heavy artillery shelling, the city was almost completely destroyed. Thousands of residents were killed, wounded, and displaced. The Ovčara massacre in November 1991, wherein Serb forces tortured and killed 264 people they had removed from the local hospital, embodies an extremely painful memory.

The victims included wounded soldiers and civilians, the abuse of such vulnerable groups representing a deliberate breach of the customs of war set out in the 1949 Geneva Convention. Similar to the Jashari's house in Prekaz, Vukovar thus inhabits Croatian collective memory as an "emblem of sacrifice" (Schellenberg, 2015, p. 15), "synonymous with Croat victimhood" (Clark, 2013, p. 124). Alongside the well-known war-ravaged water tower, deliberately preserved as such, the hospital's basement serves as a memorial site for one of the worst atrocities committed in Croatia. Clark (2013, p. 119), however, concludes that rather than adequately remembering and honouring the city's victims, most local memorials – and the absence of references to the Serb victims of Vukovar – contribute to a "powerful hegemonic discourse of Croat [...] victimhood." Herein, Serb suffering is obscured or minimised, and "aversive acknowledgement," which entails the "admission that one [...] shares responsibility for wrongs against others" (Clark, 2013, p. 130) remains impaired.

Such arguments are not to be mistaken for attempts to relativise war crimes as perpetrated by Serb forces in Vukovar, nor do they suggest that the mutual recognition of accountability is straightforward to obtain, let alone suitable in every context. Rather, researchers, practitioners, and citizens of post-conflict societies require awareness that narratives of undifferentiated and immutable collective guilt and exclusive victimhood can be employed strategically to inhibit interethnic reconciliation or healing. While it is

imperative that survivors and their communities retain the "right to remember and to grieve" (Clark, 2013, p. 133), these emotions must not be capitalised upon by political elites to crowd out marginalised narratives of suffering. Such "appropriations of collective remembrance" (Clark, 2013, p. 134) and hierarchisations of victimhood additionally serve to entrench dominant, reactionary counter-discourses, further embedding rival narratives and precluding constructive post-conflict dialogue. This divisive dimension of memorialisation gains in significance insofar that Vukovar is far from an isolated instance of a memorial perceived to have cemented, rather than bridged, ethnic division in the former Yugoslavia. Locations like Mostar or Višegrad in Bosnia and Herzegovina recount similar adversarial consequences of local memorial landscapes (Wollentz, 2019).

4.3. Processing a shared past, imagining a shared future

As the previous case studies demonstrate, the idealised effect of memorialisation engendering reconciliation and forgiveness in the wake of conflict often fails to materialise in practice. However, alongside divisive impacts of commemoration, evidence from the former Yugoslavia equally attest to the unifying potential of memorialisation in ways that allow the processing of a shared, painful past, and suggest paths to a shared future imaginary (Clark, 2013).

The city of Tuzla in north-eastern Bosnia offers a stimulating example of an

imagined inclusive BiH beyond ethnonationalist division. This narrative rests on Tuzla's history as a "multi-ethnic city with a long tradition of Socialist and working-class activism" (Armakolas, 2015, p. 226), and a bastion of Bosnian civic nationalism before, throughout, and after the war. (Clark, 2009) The emphasis on civic over ethnic aspects of Bosnian identity alongside the harnessing of Socialist values and inter-ethnic unity continue to be reflected in the city's current-day memory landscape.

Like the previous locales of this study, Tuzla became the site of a wartime tragedy following a Serb offensive in May 1995, when 71 people, most of them aged 18 to 25, were killed in artillery fire targeting the pedestrian centre (Armakolas, 2015; BBC News, 2009; Muslimovic, 05/25/2021). The Kapija Massacre, "one of the largest civilian tragedies of the Bosnian war" (Armakolas, 2015, p. 236) from 1992 to 1995 struck the local community at its core. While they could have given way to ethnicised memorials telling stories of separate victimhoods, local authorities sought to sustain the town's interethnic cohesion and held a common funeral, burying all victims together at the historical Slana Banja memorialisation site. The complex became the renewed setting for anti-nationalist activism seeking to serve the imagination of an independent, multi-ethnic Bosnian civil society (Armakolas, 2015).

This rediscovery and transformation of the long-standing, Socialist era Slana Banja complex demonstrates Tuzla elites' awareness of inherent changes in memory politics, and the flexibility

required to constructively deal with societal trauma. It demonstrates the healing potential of memorialisation both during, and after war by promoting a shared sense of belonging. Beyond this conciliatory force, the complex likewise seeks to fulfil educational purposes, and offer public green space and recreational access (Armakolas, 2015). This case study thus evidences that, even in societies marked by contradicting conflict narratives, there is opportunity for shared memorialisation and prospects of healing (Bjelica-Skrivan, 01/27/2022; Centre for Nonviolent Action, 2022; Tomovic, 01/27/2015). Considering more bottom-up approaches to commemoration, art spaces and youth activism have long-served as channels for people to "gain [their own] authority over the past" (Wollentz, 2019, p. 170). As the corresponding institutional response, Baliqi (2018, p. 471) insists on evidence-based civic education that encourage the young population's "critical inquiry of commemoration practices."

While Tuzla provides a powerful example of reconciliation through remembrance, it is imperative to recognise the limited potential of its approach to be appropriate for other theatres of atrocity. The city's long-standing interethnic cohesion and its location within the Bosnian Free Territory in wartime contribute to its unique memory landscape, raising questions regarding its generalisability (Armakolas, 2015). Despite the shared conflict context, the sites discussed in this paper have witnessed different scopes, levels, and dynamics of ethnic violence. Though both leave behind

tremendous pain and trauma on individual and community levels, large-scale campaigns of ethnic cleansing call for different forms of spatial mediation and commemoration than indiscriminate shelling attacks in places of outstanding interethnic solidarity. Not only do they differ in their scope, but they also leave

behind different demographic compositions and political sentiment. The centrality of this ambiguity represents yet another testimony to the complexity inherent in memorialisation, and the imperative to evaluate both its divisive and reconciliatory tendencies and potentialities.

5. Conclusion

The arguments brought forward in this paper do not form an appeal to ‘forget,’ or to dismiss the endeavour of post-conflict memorialisation. They are a nuanced evaluation thereof, exploring the many context-bound, often unforeseen intricacies surrounding commemoration to further elucidate this under-researched dimension of transitional justice. This paper explored how such complexities enable and enforce the divisive, as much as reconciliatory elements in post-conflict societies.

Firstly, the ethnicization of shared physical and symbolic space constitutes a prevalent dynamic in deeply divided societies. Paired with the territorialisation of memory, and dominant ethnicity-based political discourses, this reinforces ethnic identity as the continued legitimate basis for navigating post-conflict society, as demonstrated by the tensions between Kosovar-Albanian and Serbian memory cultures. Similarly, this encourages the manipulation and hierarchisation of victimhood, resulting in the relativisation, trivialisation, or denial of the suffering of the wartime Other. Collective memory in the Croatian city

of Vukovar illustrates how this further strains interethnic relations and curbs potential healing and reconciliation processes.

In contrast to these divisive manifestations, this paper has demonstrated the concurrent healing potential of memorialisation, which allows for narratives of grief, mourning, and accountability, while refraining from the use of ethnicity-based insinuations of blame and victimhood. Commemoration traditions in Bosnian Tuzla illustrate how post-ethnic memorials can strengthen a community’s shared identity while creating a wider positive imaginary for future national reconciliation (Armakolas, 2015). War memorials can thus exacerbate division and antagonistic narratives, thereby impeding reconciliation and post-conflict peacebuilding. Concurrently, they also carry immense potential: narratives of shared suffering and stories interethnic solidarity can be made to serve “cultural strategies in overcoming ethnocentrism” (Wollentz, 2019, p. 160).

This paper presented a small selection of divisive and reconciliatory intricacies regarding commemoration in the wake

of violent conflict based on empirical evidence from the former Yugoslavia. However, commemoration is inseparable from its social context (Peitler-Selakob, 2014). The specific dynamics drawn upon in this paper therefore do not provide standardised suggestions for general post-conflict memorialisation practices. Rather, they problematise potential effects of existing approaches and expand upon commemorative practices with more unifying, and even reconciliatory potential.

Limitations regarding the underlying assumptions of this work include its emphasis on political elites and institutional structures as main agents of memorial culture. While such a top-down stance critically evaluates the structural component of memorialisation, such authorities do not possess sole control over public memory. Collective memory remains mediated by private individuals, personal connections, and counter-hegemonic acts of agency – aspects which this paper

chose to side-line to address structural questions in greater detail (Peitler-Selakob, 2014). Likewise, the thorough attention paid to discursive and narrational levels of commemoration come at the expense of physical or ceremonial dimensions. Alongside discourses, they make up an interconnected web of memorialisation practices and warrant further research.

Finally, there is a plethora of commemorative trends – within and beyond the Balkans – which merit critical exploration. The increasing remembrance of loss through the materialisation of absence and the construction of unmarked space constitutes one of many promising propositions for addressing trauma (Wollentz, 2019). In response to such “voids,” other actors have suggested that to heal, they seek the reconnection with personal memories of their pre-war “beautiful cities” (Wollentz, 2019, pp. 166–168), further underscoring the complex and context-based requirements for commemoration.

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“THE UNMAKING OF A MAN”: UNDERSTANDING THE CONTEXTUAL DE-LEGITIMIZATION OF MALE VICTIMS OF CRSV THROUGH COURT TRANSCRIPTS OF THE ICTY

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Abstract

Conflict-related sexual violence, sexual violence against men, the conflicts in the former Yugoslavia and the jurisprudence of the ICTY have been extensively analysed. This paper combines aspects of research in these topics and offers an inter-sectional analysis of cultural and gender-based issues which hamper the acknowledgement and understanding of male victimology of conflict-related sexual violence. With a focus on providing an answer to Valerie Oosterveld’s “social gap”, and with the employment of several feminist and ethical frameworks, the aim is to broaden the understanding that language can be altered, reused, and intensified to ensure equality of agency for all victims of this form of violence. To move away from notions of homosexualisation and ostracising feminisation of men, an understanding of the contextual delegitimization is essential.

Keywords: *Conflict-related sexual violence, Sexual violence against men, Gender-based violence, victim, agency, testimony, male.*

1. Introduction

... what would it look like if I were to speak about that?

– *Witness Mehmet Music, Prosecutor v Milosevic, Slobodan*

This testimony from Mehmet Music at the International Criminal Tribunal for the Former Yugoslavia (ICTY) is an example of the reality for many male victims of conflict-related sexual violence (CRSV). Despite a recent surge in academic literature on CRSV and male victimology, there is still a limited understanding of how gendered social norms affect this issue, and how men report it (Leiby, 2018). Research on societal consequences of CRSV is “*still in its infancy*” (Koos, 2017). Constructs of masculinity and the victimised body are often inconsistent, and there is space for a typology of how these inconsistencies interact.

This pilot study suggests that court transcripts of the ICTY help to portray how male victims are contextually delegitimized. It will aim to do this by examining the language used during

proceedings to determine the visibility of the problem, and to suggest what could be done to enhance the agency of male victims. Questions of form and content will be asked and comparisons of delegitimizing language made. Ultimately, this pilot study will offer an answer to Valerie Oosterveld’s “*social gap*”, in other words the inability of men and boys to freely and adequately describe or acknowledge their experiences as victims of sexual violence (Oosterveld, 2014).

The paper will first discuss literature on CRSV and victimhood within the context of the ICTY. *Contextual delegitimization* and *SVAM (sexual violence against men)* will be defined. Chosen frameworks of analysis, methodologies and ethics will next be considered. The paper will conclude with an analytical discussion of the data from the transcripts and their implications. Through this process it will also aim to show that while limited, court transcripts reveal unique inferences about contextual delegitimization.

2. Literature

2.1. Yugoslavia and the ICTY

Between 1991-1999, sexual violence was weaponised by all sides of the conflict in the former Yugoslavia (UN, 1994). The largest number of reported victims were Bosnian Muslims, while the largest number of alleged perpetrators were Bosnian Serbs. At the time, there was a lack of acknowledgement that such abuse

affected females *and* males. Following a UN report and seen as a response to the global outcry, the Security Council authorised the ICTY to investigate and prosecute war crimes (Baker, 2015). This was the first international tribunal to prosecute SVAM (Isaac, 2018), and the first instance of CRSV against males being prosecuted as rape (Viseur Sellers & Nwoye, 2018). It was crucial to the

development of jurisprudence in this area.

Despite this, the jurisprudential legacy is unclear as it was often miscategorised by the tribunal. In some cases, perpetrators were indicted for sexual violence relevant to the charges (P v Todorovic, 2001). However, in others (P v Simic *et al.*, 2001), despite the Chamber acknowledging the sexual nature of the violence it was categorised as *torture* (Sivakumaran, 2010). Charges were not applied uniformly, and while there is need to “*recognise the general – rape as torture*” there is also need to “*recognise the particular – rape as rape*” (Sivakumaran, 2007). Although sexual violence is a form of torture, this meant that many male victims did not have the sexual nature of the violence they suffered acknowledged, reinforcing perceptions that males are only susceptible to sexual violence in extreme cases. Specific examples can be found. In eight out of ten cases examined by one study, forced fellatio was a relevant charge, but in only three was it charged as rape under Article 5(g) (Isaac, 2018).

2.2. Conflict-related Sexual Violence

Literature on male victims of CRSV has recently developed from being “*just a footnote*” to having committed academic attention (Zalewski *et al.*, 2018). Focus has been on inconsistencies in the law and on the behaviour of perpetrators, and definitions of CRSV have developed through studies of other conflicts (Njoku, 2023, Leiby, 2018, Weishut, 2015). From being only associated with “*penile penetration*” of a “*female-marked body*”, the definition of CRSV now has

broader scope, entailing any sex-based violence that has a “*temporal, geographical or causal connection*” to a conflict (Drumond, 2016). In fact, CRSV may now be defined as any behaviour which falls within sexual violence by armed organisations during armed conflict (Koos, 2017).

Ambiguity emerges in the definition of *sexual violence*. Rape is the only form explicitly listed in the statutes of the ICTY, ICTR and ICC (Oosterveld, 2014). While it is defined in a gender-neutral manner, it fails to account for a typology of sexual violence suffered by male victims. Among other categories, this includes blunt genital trauma (BGT) (Leiby, 2018). The frequency of this injury outside of conflict, such as during contact sports, and lack of physically observable consequences often led to the mistaken belief that it was not sexual violence (Stener Carlson, 2006). However, BGT was such a common occurrence during the Yugoslav wars that it has been considered a part of the war-making itself (Leiby, 2018). It has also been seen elsewhere, such as in the Peruvian civil war. These elements are considered in recent definitions, such as that of the World Health Organisation (Solangon & Patel, 2012), and in the ICC’s 2014 Policy Paper (ICC, 2014). But there has been a lack of practical application of these definitions and ambiguity remains as to which definitions encompass which forms of SVAM.

2.3. Male Victimhood

The ‘*male perpetrator female victim*’ dichotomy has dominated the literature

on definitions of CRSV victimhood (Solangon & Patel, 2012). One explanation for this has centred around a “*brutal vs helpless*” narrative, portraying males as evil perpetrators and females as powerless victims (Du Toit & Le Roux 2021). This undermines victim agency by removing both the possibility of male victimhood and capability of female victims to defend themselves. This has further hampered categorisation of males within definitions of victimhood. Christie’s famous concept of the “*ideal victim*” fails in at least three ways (Christie, 1986). Balkan cultural norms of men embodying heroic masculinity during wartime show such victims as strong (Stemple, 2008); the nature of the Yugoslav conflict, based on ethnicity and not geography, shows that victims may know the perpetrators; complex situations may also arise where the victim *becomes* the perpetrator (Drumond, 2016).

More broadly, it has been argued that victimhood may depend on crime. Notions that all crimes have a victim exist alongside those of victimless crimes (Quinney, 1972). However, both assume a great deal when applied to international criminal law, such as cultural uniformity and nature of crime. Male victimhood may therefore sit firmly in the less-defined framework of non-ideal victims, those which appear contradictory to Christie’s concept, and may be subject to criminological constructions (Duggan, 2018). This takes into account whether the victim is passive or active (Quinney, 1972). The broad and non-dichotomous nature of this framework is therefore the clearest for categorisations of male victimhood.

2.4. Contextual Delegitimization

Male victims of CRSV generally do not speak about their victimhood (Drumond, 2016). Often, this is a result of the cultural manifestation of *male rape myths* (Davies, 2000). These are false beliefs that men cannot be victims of sexual violence. The term *contextual delegitimization* consists of these two elements, *contextual* representing the culture, and *delegitimization* representing its effects.

Religious and traditionalist influences in Yugoslav culture resulted in males being raised in what could now be called a structure of hypermasculinity (Baker, 2015, Onyango & Hampanda, 2011). This included behaviours of rejecting perceived feminine traits and promoting the idea of the man as bread-winner and protector. These norms tended to be heightened during conflict, with perceptions of manhood dependent on males’ ability to protect their homes and families (Oosterveld, 2014).

These cultural standards “*invisibilise*” male victimhood with regard to sexual violence (Du Toit & Le Roux, 2021). This may take the form of others not believing male victims, and even specialists being unable to help. Workers in rape crisis clinics have said that they felt male victimhood was not a problem because they never saw male victims (Davies, 2000). Professionals in psychiatry and medicine also responded to being unaware of forms SVAM may take (Stemple, 2008). The culture surrounding SVAM therefore has serious practical consequences of neglect and ignorance.

This is reinforced by many national laws, which affect the response of the international community as “*international law is simply a mirror of national law*” (Feron, 2015). Many countries do not include males in their national legislation on sexual violence, thereby implicitly refusing to consider them as potential victims. In addition, in several Balkan countries homosexuality was only decriminalised in the mid-1990s, adding the notion that sexually assaulted males would remain silent through fear of perceived homosexuality. This was seen as another potential loss of manhood, or *homosexualisation* or *feminisation* of a man (Zarkov, 2014). Consequently, it would be almost impossible for a male victim to come forward without being seen as admitting to the loss of his manhood.

The effects are such that male victims may be fearful of speaking openly, may

be unable to get help, or may not believe that what happened to them was a form of violence. In light of these effects, authors have called for “*non-feminist lenses*” for a broader understanding of SVAM (Drumond, 2018), and to avoid being empirically inaccurate and theoretically misleading (Drumond, 2016). However, it is important to not “*do away*” with feminist analyses and avoid antagonistic narratives, something which a *non-feminist* lens would likely lead to. This article therefore employs the feminist framework of approaching CRSV from a gendered understanding of positions of male and female victims, considering patriarchal ideology. Such a framework dictates an understanding of male suffering and its stigma as not *greater* than that of females, but rather with regard to “*how male victims are positioned within the patriarchy*” (Du Toit & Le Roux, 2021).

3. Methodology

3.1 Using Court Testimony as Data

As of July 2017, almost 4650 witnesses had appeared at the ICTY, producing nearly 2.5 million pages of transcripts. For testimony of male victims of CRSV, the ICTY produced the largest quantity, as 48% of the accused faced charges of sexual violence (Campbell *et al.*, 2019). It appears a good source in terms of quantity, however questions of validity must also be considered.

One drawback hanging over the research was the quantitative limitation of court testimony arising from the understanding of how few men report

their experiences (Leiby, 2018). In a study of mental health consequences in men exposed to sexual abuse during the wars in Yugoslavia, 66.6% of the subjects admitted putting an active effort in to avoid any situation which reminded them of their trauma (Loncar *et al.*, 2010). The study concluded that the number of sexually abused males from these wars must have been much higher than reported. This is further compounded by the prevalence of males to speak from the perspective of a witness rather than victim. In a study of male victims of CRSV in Africa, they tended to use metaphors or speak only

about what they saw. While a good indicator of stigma, this poses a challenge when analysing interviews with regard to the clarity of whom the facts in question affected (Feron, 2015).

There are also questions of the clinical nature and pressures of a courtroom. Time-constraints, technical difficulties and misinterpretations are all limiting factors. In an all-male therapy group for victims of CRSV, none of the men who participated initially admitted to being victims (Oosterhoff *et al.*, 2004). Only after some time did they reveal their own experiences, and only later still did they speak about their sexual nature. The less accommodating atmosphere of a courtroom may therefore serve to dissuade victims from speaking openly.

In addition, Milosevic himself cross-examined many witnesses. This is an example of researchers using court testimony having no control or scrutiny over the conditions under which it is given (Aydin-Aitchison, 2020). It is unclear how representative the amount of witnesses truly is, and how openly they may speak. What is said and done, or when technical difficulties occur or breaks are taken, are outside of the researcher's hands. Feelings of the witness immediately before and after the testimony are unclear (Subotic, 2021).

These limitations only enforce the need to study archives in the first person, and the under-researched nature of court testimony suggests that any conclusions are assumptions until the material is studied (Campbell *et al.*, 2019). To approach court testimony as a valid source of data, this paper employs two frameworks. The first is awareness of the

researcher's position as an *outsider* (Biddolph, 2021). This calls for sensitivity to not portray the research in a detached narrative of the (*Balkan Other*), in other words a subject devoid of humanity. The second is the framework of "*meta-data*", which emphasises as much as possible of the "*additional information that contextualises the piece of archival document*" (Subotic, 2021). Through this, the clinical elements and uncontrollable circumstances of courtroom practice may be mediated to some extent.

3.2 Method of Data Collection and Analysis

Literature on male victims of CRSV was taken as a starting point. A number of cases appeared frequently, but the case of Slobodan Milosevic was chosen not only because of its tendency for open testimony but also because of its breadth with regard to geography and criminology. This narrowed the 2.5 million pages down to 46,000 (Simmons, 2006).

Every transcript was searched for "*sexual violence*", and "*rape*". The transcripts were then searched using gender terms including "*he*" and "*she*". The results revealed Witnesses B-1461, B-1244 and Mehmet Music (all male), and K20 and K16 (both female). This further narrowed down the pages to 370. Only the testimony of B-1244 potentially posed problems with redactions, although enough remained to be valid for research.

Due to the extreme range of broad to specific language in the testimonies, a

non-prescribed process of data collection and analysis was chosen to allow for deviation from any plan where necessary. Within this, the method of “*content analysis*” was selected, as it “*involves search for social, cultural, and historical insights from the text itself*”, and allows for inferences to be made

from latent content, in other words more subjective elements of the text. Accordingly, the categories were defined before the analysis began, based on what had emerged through the literature. The codes and their variables can be seen in Table 1. An explanation of the categories is provided in Annexe 1.

Variable Category	Code
1. Language of Context	<ol style="list-style-type: none"> 1. Society 2. People 3. Home 4. Culture
2. Language of Emotion	<ol style="list-style-type: none"> 1. Guilt 2. Shame 3. Fear 4. Anger/Frustration
3. Language of Avoidance	<ol style="list-style-type: none"> 1. Insufficient/inadequate language 2. Insufficient/inadequate question 3. Missed Opportunity 4. Courtroom Pressures 5. Technical Interruption
4. Comparative Elements	<ol style="list-style-type: none"> 1. Nature of crime 2. Nature of questioning 3. Nature of responses

Table 1. Outline of the content analysis coding scheme

3.3 Ethical Considerations

A key ethical consideration for this study is one which guides the process of choice about representing victims (Subotic, 2021). Same subjects of study may, to different researchers, be “*speaking in a different voice*”, meaning they may be moulded to suit a researcher’s agenda. To stay true to what has been said, Subotic’s process of contextualisation, reinforced by Campbell’s “*bottom up... micro-level, qualitative*” approach to data collection and analysis, are employed (Campbell *et al.*, 2019). This means an adequate understanding of the relevant situations of each witness where possible, before analysis of their testimony. The focus of this paper was borne with this in mind, reflected through the choice of language of *contextual* delegitimization.

Another ethical consideration is the need to weigh up the “*harms*” against the “*benefits*” (Subotic, 2021). In other words, gratuitous research in this area is unethical and therefore unjustified. To maintain an ethical standard, such research must contribute to the end of the suffering on which it focuses. Aside from benefits, future harms must also be considered. A past topic may become a source of future harm. Without these considerations, researching violence “*means reinforcing violence*”, though leaving it unstudied may have the same effect, insofar as “*silence is its co-conspirator*” (Biddolph, 2021). Contextualisation is crucial. In this instance, however, it is more in the sense of providing as much complexity as possible to the subject who may no

longer be able to represent themselves. In addition, care must be taken to avoid using the most graphic content merely to illicit emotional reactions, thereby decontextualising the testimony, when other examples or a sensitive re-telling of the facts will suffice (Subotic, 2021, Biddolph, 2021).

The final ethical consideration is understanding the impacts of this research on the researcher. For this, the framework of an “*ethics of care*” is employed. This involves being attentive to privilege, understanding the reading, writing empathetically and affording as much understanding as possible to the stories, histories and perspectives of those giving testimony. Emotional reactions can be harnessed to add greater perspective, becoming “*central to the process of research itself*” (Biddolph, 2021).

The way of ensuring that ethics of care are maintained is accountability. Assumptions, emotions and predispositions of researchers must be made visible, though not in a way which would reproduce politics of knowledge, in other words what we claim to know. Campbell’s ethical framework of “*knowing well*” can be utilised here. This framework emphasises epistemic accountability, meaning constantly asking questions of how transformative values of social justice influence the normative standards of the research. The answers to this are embedded in the values which guide the research (Campbell, 2016). In this paper, this is a combination of *meta-data*, *contextualisation* and *accountability*.

4 Presentation of Data: Analysis, Inferences and Discussion

The aims of this pilot study are to determine the visibility of contextual delegitimization of male victims of CRSV in testimony from the ICTY, and to outline how they may be afforded greater agency. Questions of language and comparison were analysed as categories for codes (see Table 1). While the process of data collection yielded few results, they tended to provide clear examples of the problems in question.

4.1 Language of Avoidance

This category aimed to find instances where potential for clear categorisation of sexual crimes as sexual violence was present or missing. Employing an understanding of general inadequacy and lack of language in this area, including standards which *invisibilise* male victimhood, this category yielded the largest number of results.

In the testimony of Witness B-1461, falling largely under *missed opportunity* (see Table 1), males forced to engage in oral sex is referred to as “*this... activity*”, “*the happenings*” and “*these acts*”. Throughout this section, there was only one instance where there was direct acknowledgement that this activity constituted “*sexual abuse*”. There is no mention that in other cases it was considered rape. Similarly, in the testimony of Witness B-1244, when asked whether male prisoners were subjected to sexual abuse, the witness simply responds “*Yes*”. When asked if this matter was reported to authorities, the answer is equally blunt, “*Yes, they were aware...*” (P v Milosevic, 2002).

Contextual delegitimization here takes two forms. Language being “*bereft of terms and phrases which accurately describe male rape*” is seen by the lack of strong categorisation of the crimes in the testimony of B-1461 (Sivakumaran, 2007). In the testimony of B-1244, blunt questions produce blunt answers, highlighting the inability and inadequacy of authorities in understanding situations of SVAM. These testimonies offer the witnesses no agency. They are stark portrayals of the *social gap*.

4.2 Language of Context

Crucial to the codes in this category were considerations of society and culture, specifically the perceptions of *feminised* and *homosexualised* male victims, or other forms of perceived loss of manhood. This category yielded the clearest example of contextual delegitimization within this framework of analysis. *Home* and *Culture* were the most comprehensive codes (see Table 1).

Witness Mehmet Music, when asked why he had not in detail described a situation where he was forced to witness two male victims “*do something that has to do with sexual intercourse*”, responded by saying “*what would it look like if I were to speak about that?*” (P v Milosevic, 2002). This response typifies its context. It appears Music is an example of the many males who were not prepared to speak in the face of potential ostracism or discrimination (Feron, 2015). Despite strong ethical concerns, the meta-data framework would suggest that this is not a

misrepresentation of this witness's words. The tone appears rhetorical, and the language blunt. Contextualisation further reinforces this, as beliefs that men were emasculated through these experiences were common in cultures where SVAM was not widely recognised (Zarkov, 2014, Oosterveld, 2014). This language may even reflect a fear of assumptions that the activity had been consensual (Sivakumaran, 2007).

Another example in this category was in the testimony of Witness K20, who was asked about the difficulty for female victims to openly acknowledge what they were subjected to in their immediate society. The witness responded by stating “*Well, yes*” (P v Milosevic, 2002). Although the language appears mistaken here, it is possible that it is a mistranslation or misinterpretation. Regardless, the affirmative nature of the response suggests agreement from the witness with the premise of the question. The inference can be made from this that contextual delegitimization, though different in form and visibility, is not an exclusively male problem.

4.3 Comparative Elements

The frameworks of analysis employed in this category were centred around feminist literature, to help employ a gendered understanding of male and female testimony. Several examples from which inferences could be drawn emerged, though this category also raised ethical concerns. Comparison of testimony could not be based on only what the researcher considers adequate language. This would risk deeming some testimony insignificant, which would be

to contribute to the contextual delegitimization of those witnesses, and consequently reinforce the violence (Biddolph, 2021). The *ethics of care* is therefore stressed by focussing on the language of the lawyers, not the witnesses. This affords as much understanding as possible to the context of the testimony, and avoids the creation of antagonistic narratives.

Feminist studies have highlighted that all victims of CRSV suffer in similar ways, though socially this suffering manifests differently (Du Toit & Le Roux, 2021). While males lose manhood, females become “*socially soiled and unmarriageable*” (Drumond, 2016). This reinforces the inferences from *Language of Context*, and suggests that contextual delegitimization is similarly visible for both males and females. However, stark differences can still be seen, especially in the code *nature of questioning* (see Table 1).

Witness K20 was asked in court “*how hard is it in your society to face what happened to you?*”. This was followed up by “*How often are women in your society... in Kosovo or in your village, how often they report such a crime... (when it) is committed against them?*” (P v Milosevic, 2002). These questions provide a platform for testimony about societal and cultural issues. They rightly provide agency and an opportunity for problems to be highlighted. Such an opportunity is not afforded to any of the male witnesses.

Witness K16, in response to testimony about being raped, is asked “*By ‘rape’, what do you mean?*”. This form of question fills the *social gap*. It allows for

personal recollection and interpretation of what happened. Again, male witnesses are not asked any similar form of question. The position of male victims within harmful patriarchal systems may be seen here as repressed by the norms which those systems create. In other words, there seems to be no reason other than patriarchal placement as to why this language is not reused for male victims. However, this is a very small sample of testimony and these comparisons are only made in a preliminary manner. Further analysis on a larger scale is needed.

4.4 Language of Emotion

There were no suitable matches to the codes used in this category. This presents a notable inference. It is an example of the feminist framework of CRSV whereby ignoring the sexual aspect of sexual violence reinforces the lack of agency for victims (Du Toit & Le Roux, 2021). As seen in other categories, lawyers struggled to adequately phrase questions surrounding SVAM. It comes as no surprise that there were no explicit emotional reactions within the testimony, when the issue was only superficially addressed.

5 Conclusion

The overarching aim of this paper, to highlight the visibility of contextual delegitimization, was achieved through a qualitative content analysis of the testimony of five witnesses at the ICTY. From this, problems which cause contextual delegitimization became

4.5 Summary

The selected transcripts were limited in terms matching the codes. However, the detailed nature of the results which emerged offset these limitations. Inferences could be made which less confrontational settings such as focus groups may not have been able to provide. The uncontrollable nature of the courtroom therefore aided this research, and several inferences were made guided by ethical values reflected through knowing well.

Criminological construction of a non-ideal victim accounts for male victimhood. Contextual delegitimization may in turn occur through context or language. Both forms were visible through an analysis of the testimony. Near-absence of adequate terminology together with no form of self-reflecting question asked of the male witnesses showed how their agency is taken away by factors outside of their control. The testimony of Mehmet Music showed that where an opportunity for such agency may arise, contextual implications only act to repress it further. While not an exclusively male problem, contextual delegitimization is clearly gendered.

visible in a courtroom setting. Through the framework of understanding males' position within harmful patriarchal ideology, it appears as a repressive cycle. The culture surrounding male victimology with regard to CRSV acts to prevent opportunities for clear

categorisation and agency. As a consequence, justice is overlooked where victimhood is not recognised.

The lack of acknowledgement and muddled jurisprudence was reflected by the inadequacies of the lawyers' language. Consequently, the male witnesses had little opportunity to speak about their experiences. Crucially, there was a missed opportunity, evident through the transcripts, to address these manifestations of Oosterveld's *social gap*. Questions put to female witnesses could have been reused to help legitimise male victims. This could offset contextual factors and directly tackle the stigma and lack of language surrounding

SVAM. These are opportunities which could break the cycle.

The use of only five witnesses emphasises that this potential answer requires wider research. Currently a significant omission in the disciplinary literature, this research could be beneficial to finally filling the *social gap*. Furthermore, it would bolster the education of those who respond to these situations, which is crucial for the practical way forward (Stener Carlson, 1997). This would aid societal recognition and understanding, and questions to witnesses or victims of CRSV in future could be asked with agency as a primary focus, rather than a forgotten consideration.

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Annexe 1 - Categories used for content analysis

Language of Context – this category was created to highlight where instances of society, culture, upbringing or other social influences were visible in the testimony. Stemming from frameworks of *male rape myths* and *hypermasculinity*, the focus of this category was on instances of the effects of these contextual issues, in the forms of emasculation or ignorance.

Language of Emotion – this category was created to highlight where there may have been specific examples of explicit manifestations of the emotions dominant in discourses of CRSV and SVAM. The codes used all emerged from the literature. This category quickly emerged as the most limited. There were frequent instances where potential examples were inhibited by interruptions from judges, instructing witnesses to not take offence or to not react in particular ways. The testimony was also often steered away from potential examples. More subtle manifestations of this category would warrant their own research.

Language of Avoidance – this purposefully ambiguous category was created as the principle category to

identify Oosterveld's *social gap*. While all others contributed to this, as it was an aim of the study, it emerged from the literature that the inadequacies of language and predisposition of authorities to male victimhood and CRSV may be most starkly embodied within this category. Several codes within this category, such as *missed opportunity*, emerged only after a reading of the transcripts.

Comparative Elements - this category was created in consideration of two frameworks. The first was the feminist understanding that all forms of sexual violence, during conflict and peacetime, are deliberately deployed mechanisms for ensuring gender inequality by denigrating women and empowering men. It aimed to identify examples where men may also be denigrated. The second was the feminist framework of gendered understanding. Within this, it aimed to identify how the position of male victimhood could be seen in light of harmful patriarchal ideology. The second framework was more useful for the topic in question.



REPARATIONS, AS A PRINCIPLE OF TRANSITIONAL JUSTICE - KOSOVO CASE

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Abstract

Armed conflicts always include large numbers of innocent civilian victims. Former Yugoslavian wars caused over 135,000 victims and incalculable material damage in a timeframe of wars that lasted for over 10 years. In Kosovo, over 10,000 civilians lost their lives while the number of survivors of torture and other war crimes is still an estimate. In the process of transitional justice, to honor war victims, Kosovo as a state implements reparation programs, aiming also to increase awareness and impact on the memorialization of the war victims.

Keywords: *War victims, Reparations, Symbolic Reparations, Basic Principles on Reparations, Transitional Justice*

1. Introduction - The meaning and goal of Transitional Justice - its definition

Countless conflicts and victims follow the formation and evolution of the history of mankind. Wars and conflicts of one group or population against the other, or one country against another, besides innocent civilian victims include imprisonment, rapes, enforced disappearance, and a range of different crimes committed, where hundreds of thousands of people continue to live with scars, memories, and permanent suffering. Therefore, taking into account the consequences caused and the constant fear of a repetition of tragedies, the need has arisen to deal with the past and build a common future in mutual respect of values, customs, and culture between societies, groups, and peoples.

According to the International Center for Transitional Justice (ICTJ), how countries emerging from conflicts and oppressions address large-scale or systematic violations of human rights which are so large-scale that a normal justice system will not be able to provide proper responses, is referred to as transitional justice (ICTJ, 2024). This type of justice is an integrated approach with a variety of instruments that in essence has the "healing" of suffering and the permanent care of victims of crime so that they can return to normal life, and thus to society. According to Laura Davis: "Transitional Justice is, in the literal sense of the word, a form of justice adapted to societies in transformation after a dark page in their history, which seeks to address the past so that it never happens again". (Davis, 2014) As a form of model or practice in dealing with the mass atrocities in societies that are recovering from the

conflict, transitional justice, besides dealing with the past also has its forward-looking component, because it aims to prevent their recurrence.

Criminal prosecutions, reparations, truth-seeking, memorialization, and institutional reforms are among the most important measures that need to be implemented carefully to ensure that criminal responsibility, accountability, and justice for war victims, the right to truth, and the right to know what happened, promotion of individual and national reconciliation examples, providing common and unified narratives of the truth, will contribute to long term peace and security, reconciliation, and cooperation. Thus, through addressing the past, build the future (HLC, 2015).

It is important to note that all these instruments of transitional justice, are complementary to one another, therefore, one instrument alone, is not sufficient without the other. While the prosecution of the perpetrators and bringing justice to the victims is imperative, the right to reparations is a special and deeply important instrument in guaranteeing post-conflict justice for civilian victims of war crimes. Research has shown that victims did not define justice as only the punishment of the perpetrators, but also the support to implement a set of their social and economic rights (Stover, 2005). Similarly, if some perpetrators are punished, but public institutions are still filled with officials with dubious pasts, Transitional Justice will be deficient and consequently will not achieve its goal of building lasting peace. The expectations

of the victims after the conflict are diverse because the war affects the victims in different ways. And, therefore, the fulfilment of the objectives of

Transitional Justice requires the use of the various mechanisms available in a holistic, creative, and measured way. (Davis, 2014)

2. The right of war victims to material and symbolic benefits – Reparations

War victims besides other forms of support, also need financial support and other services that contribute to their wellbeing, and progressive restoration of their dignity. The right to reparations is one concrete instrument of transitional justice that particularly deals with this aspect. Although monetary compensations are the most common forms of reparations, providing support on rehabilitation, resocialization, and social benefits are important forms of reparations for the victims. Equally important are official apologies, public punishment, and not glorification of perpetrators, marking anniversaries, memorialization, and other forms of honouring the victims, which constitute the halo of symbolic reparations.

Regardless of their nature and form, all reparations contain important psychological and social functions of rehabilitation and respect for victims. They also contribute to reconciliation by bringing different parties into the public sphere of commemoration. (Naidu, 2004) The right of victims to the benefit of financial services and other benefits (reparations) is provided for in Article 75 of the Rome Statute of the International Criminal Court. This right is also part of the United Nations Basic Principles on

Reparations for the right to grievance and reparations for victims. (UN, 2005)

Kosovo institutions have taken the responsibility to care for war victims, since laws and regulations were administered by the United Nations Interim Mission in Kosovo, between 1999 -2008, when is the time all the categories of war victims and survivors had been summarized in a single law.¹ The Law has divided 12 categories of beneficiaries listed below that continue to receive financial assistance from the state budget.

- Families of Kosovo Liberation Army Martyrs
- Families of Missing KLA Military
- Military War invalids
- Military invalids with supervision
- Families of military war Invalids after death
- Families of Civilian Victims
- Civil War Invalids
- Families of the missing civilians
- Civil Invalids with supervision

¹ LAW NO. 04/L-172 ON AMENDING AND SUPPLEMENTING THE LAW No.04/L-054 ON THE STATUS AND THE RIGHTS OF THE MARTYRS, INVALIDS, VETERANS, MEMBERS

OF KOSOVO LIBERATION ARMY, SEXUAL VIOLENCE VICTIMS OF THE WAR, CIVILIAN VICTIMS AND THEIR FAMILIES. (2014)

→ Families of Civil War Invalids
after death

→ Veterans
→ Victims of Sexual Violence

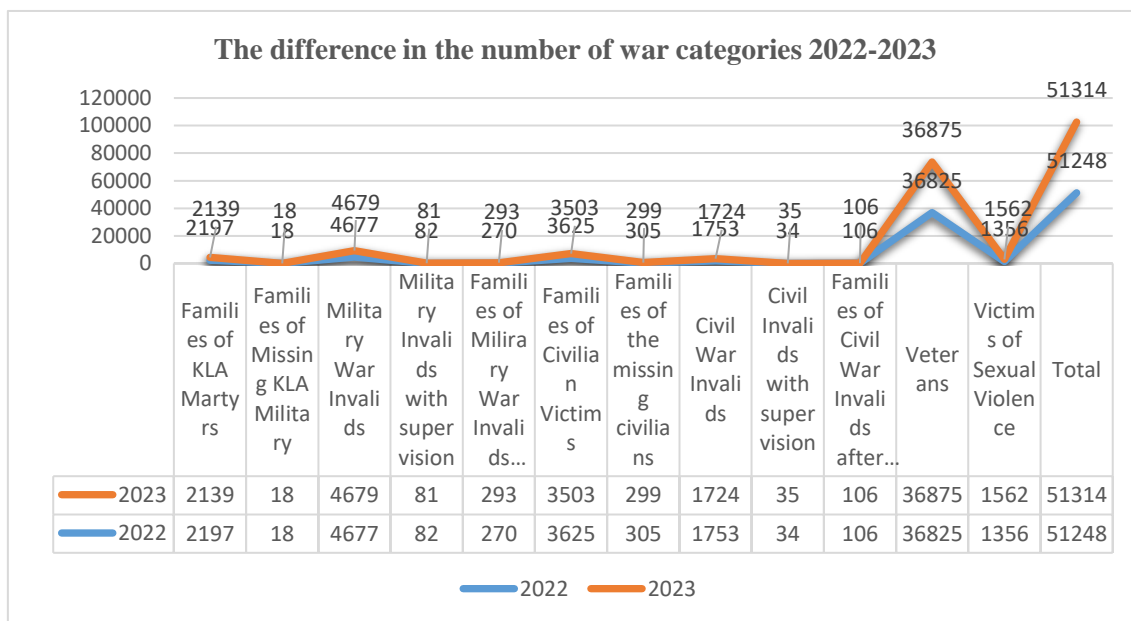


Chart 1. Resource: Department for Martyr Families, Invalids of War and Civil Victims (Kosovo Government)

Likewise, another special category codified by law is the former political persecutees. The Parliament of Kosovo in October 2010 approved Law On The Rights Of Former Politically Convicted And Persecuted (2010), which guarantees the right to pension and disability insurance, the rights to reparation for the damage caused as a result of imprisonment, punishment, or persecution, and the rights of their family members. In addition, another reparation is provided for teachers, who were among the persecuted category of the population, especially since the Serbian regime particularly targeted education in the Albanian language. According to the

Law on Status of Albanian Education Employees² which estimates compensation for approximately 23 thousand teachers and workers of the education system (2019) foresees the recognition of their working experience and, their engagement throughout the 90s. Moreover, this law recognizes the contribution of the owners of the private houses where students hiddenly continued their studies after the University of Prishtina and other schools were closed by the Serbian regime.

Remembrance through commemorative days is particularly important in a post-conflict society, particularly as Kosovo

² LAW NO. 06/L-073 ON THE STATUS OF ALBANIAN EDUCATION EMPLOYEES OF THE REPUBLIC OF KOSOVO FROM ACADEMIC

YEAR 1990/91 UP TO THE ACADEMIC YEAR 1998/99

continues to count 1596 missing persons, who are victims of enforced disappearance, while the truth about their fate remains unknown. Days such as Veterans Day and Exodus 99 to remember the horrors experienced by the Albanian civilian population on their expulsion journey towards Albania in 1999 constitute a symbolic type of reparations, that aims to emotionally appreciate and evaluate the sacrifice and the experience of each individual.

2.1. "Two pensions" and the gap between the categories

The number of people that deserve reparations compared to the available budget of Kosovo as one of the poorest countries in Europe reveals the gap towards the obligation and financial deficiency. In 2016 public audit institutions and the International Monetary Fund (2016) pointed out the extraordinary expenses of reparations and pensions for war victims and survivors that the budget of Kosovo could not afford. Moreover, war victims and survivors, including their families, due to the horrors and atrocities that they have survived, are eligible for more than one category of pensions and reparations, while denying them these double schemes or asking them to choose among the pension categories is a violation of human rights and makes them experience revictimization (*Telegrafi, 2016*). Moreover, the pension schemes are symbolic financial compensations that hardly manage to cover any of the needs and necessities that the war categories might have as a

result of war injuries or disabilities, including permanent health dependencies. Particularly difficult for the war veterans who have been injured or disabled, as this leads to their discrimination in the labour market.

According to Sanije Rexha, Director of the Department for Martyrs, Invalids and Civilian Victims at the Government of Kosovo, there are Court decisions that approve double pensions for some of the war categories but not some others, which unfortunately is leading to a higher number of lawsuits against the state, causing even higher additional budget costs.

Moreover, there is a gap in financial reparations between war veterans and other civilian victims. Table 2 shows that war veterans as the largest category have a higher budget allocation compared to the recognized categories according to the respective law. Taking into consideration that with time and the age of different war categories, the needs of these victims and survivors change and increase, a frequent re-assessment of pensions is necessary to ensure rightful compensation. Likewise, the psychological aspect should be honestly taken into consideration in determining the degree of disability by the Medical Commission. It would be very important to carry out permanent supervision of all categories and, based on the findings/real needs, determine the pension. So, not linear pensions, but within the same category, exponential pensions should be applied, depending on the present conditions (needs) shown by certain families.

Month	Number of beneficiaries	The difference in numbers	Amount per month (€)
1/2024	36851	-24 ⁴	6.141.653.50€
2/2024	36950	+99	6.199.922.50€
3/2024	36927	-23	6.192.421.00€
4/2024	36972	+45	6.227.953.00€
5/2024	36971	-1	6.212.838.00€
6/2024	37103	+132	6.245.501.00€
7/2024	36886	-217	6.203.767.50€
		-265/+276 (11)	43.424.056.50€

Table 2. Resource: Department for Martyr Families, Invalids of War and Civil Victims (Kosovo Government)

3. Conclusions

Kosovo is the last country to succeed from former Yugoslavia, although its rights to create a state of its continue to be unrecognized by Serbia as well as 5 EU member states. The path towards statehood included suffering and painful experiences for the civilian population especially, causing more than 10,000 civilian victims and more than 13,000 in total. Massive human rights violations, human atrocities, and crimes against humanity were committed against the Albanian civilian population in 1999, which had already started in the early 1990s when the killings and disappearances had started to mount.

War victims constitute the essence of Transitional Justice. Therefore, their reparation for what they have lost

remains the main duty and obligation of the state and society. Victims constitute the evidence that verifies what happened and the only chance to reveal the truth. Kosovo was administered by the UN Mission until the declaration of Kosovo's Independence in 2008, thus it is thanks to this mission for establishing several legal foundations, including the one for reparations for the victims of war and their family members. This has made the institutions of Kosovo continue with the advancement of rights for the victims of the war, making Kosovo the only country out of all the countries that emerged from the former Yugoslavia that compensates its citizens for the losses they suffered during the war.

⁴ Compared to December 2023 (36875)

As we have seen, Kosovo allocates more than 120 million euros from its budget each year as direct reparations for the categories of war victims. As a whole, this amount exceeds 200 million euros. Including, symbolic/memorial operations, various rehabilitation, medical equipment, as well as health treatments for all the recognized categories.

However, Kosovo must do more for the victims of the war, so that through reparations it can consolidate the process of building peace and reconciliation. For

a democratic, equal society, respecting diversity and guaranteeing inclusiveness, accountability, and institutional responsibility. Now more than 25 years have passed since the end of the war in Kosovo, which means that many victims are aging and dying, and the reparations programs must be consolidated. Thus, the Government of Kosovo must take immediate legal actions and changes to the existing strategy, to compensate war victims for their current needs, caused by traumatic experiences in the recognized timeframe.

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CHALLENGES, IMPUNITY, AND LESSONS LEARNED AT THE INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA

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Abstract

This paper explores the International Criminal Tribunal for the former Yugoslavia's (hereinafter ICTY, Tribunal) crucial role in prosecuting individuals for the commissions of offenses against international law. The Tribunal was set up to put an end to impunity for those who committed war crimes, genocide and crimes against humanity. With a focus on the Statute of the ICTY and processes at the Tribunal, this paper will offer an overview and analysis of the Tribunal's challenges in fulfilling its mandate, emphasizing disadvantages regarding procedural hurdles that prolonged the swift justice. While the Tribunal made significant progress in the field of international criminal justice, there was still room for criticism, nevertheless, it remains a strong pillar in the struggle against impunity and a glimmer of hope in endeavours to achieve justice.

Keywords: *Justice, Impunity, Trials in absentia, Prosecution, Accountability.*

1. Introduction

The ICTY was set up to ensure that perpetrators of breaches of human rights and international law will be held responsible. This paper delves into obstacles faced during the Tribunal's proceedings that hindered the administration of justice and prompted discussions on accountability.

Before delving into an evaluation of the ICTY Statute, this paper offers a review of the notion of "the funding of justice", discussing the establishment of international bodies such as the Tribunal and their associated expenses and funding origins. By scrutinizing the ICTY Statute and placing a focus on the accused individuals' rights; it showcases the challenges encountered by international criminal justice in the aftermath of mass atrocities.

The main theme of this paper centres around article 21, paragraph 4 (d) which corresponds to the values outlined in the European Convention on Human Rights and Fundamental Freedoms. This specific provision focuses on protections

for individuals facing accusations, such as the prevention of trials conducted without the presence – trials in absentia, the right of the accused to legal representation by a counsel, and also sheds light on some of the procedural hurdles that complicated the ICTY's mission, considering some relevant cases.

Finally, it will conclude by discussing some of the lessons that can be learned from the work done by the ICTY, providing an interesting point of view on how future international criminal courts and international criminal law itself benefit.

This research aims to answer this question: *How did the rights of the accused specified in article 21, paragraph 4 (d) of the ICTY Statute and budgetary aspects impact the delivery of justice, and what lessons can be learned to improve international law and international criminal tribunals in addressing impunity and swift justice?*

2. The International Criminal Tribunal for the Former Yugoslavia

After conflicts, efforts have always been made to establish special courts to prosecute all those who have committed international criminal offenses. Consequently, in 1993 the ICTY was established with the aim of bringing to justice all "persons responsible for serious violations of international humanitarian law committed in the territory of the Former Yugoslavia since 1991 in accordance with the provisions of the Statute" (Statute of the

International Criminal Tribunal of the Former Yugoslavia, 1993, article 1). International crimes over which the Tribunal had jurisdiction were: grave breaches of the Geneva Conventions of 1949, violations of the laws or customs of war, genocide, and crimes against humanity (Statute of the International Criminal Tribunal of the Former Yugoslavia, 1993, articles 2-5).

The United Nations (hereinafter UN) Security Council (hereinafter SC)

endorsed Resolutions 1503 and 1534, which foresaw a three-phase plan. It envisioned completing investigations by the end of 2004, all first-instance trials by the end of 2008, and all work by the end of 2010 (International Criminal Tribunal for the Former Yugoslavia [ICTY], n.d.) However, due to the late arrest of the remaining fugitives and the complexity of certain cases, initial estimates were revised to ensure the highest standards of procedural fairness (Completion Strategy, 2024). In addition, developments related to the health of detainees sometimes caused

delays to the Tribunal's work (ICTY, n.d.).

Due to the Tribunal's short mandate, the International Residual Mechanism for Criminal Tribunals was established by the UN SC on 22 December 2010 to carry out essential functions of the ICTY and the International Criminal Tribunal for Rwanda (hereinafter ICTR) after the completion of their respective mandates (United Nations International Criminal Tribunal for Rwanda [UNICTR], n.d.).

The ICTY's mandate officially ended on 31 December 2017 (International Bar Association [IBA], 2017).

3. Challenges of the ICTY

The ICTY's mission was heavily influenced by obstacles that hindered its effectiveness in achieving goals and schedule adherence. The hurdles included limitations, the intricate nature of criminal law, and struggles in capturing fugitives. This resulted in delays of justice delivery, and worries regarding the encouragement of impunity. This section outlines some of the challenges of the ICTY in prosecuting the international crimes over which it had jurisdiction.

3.1. The budget of the ICTY

The prosecution of international criminal offenses depends on the willingness of the international community. However, setting up an international criminal tribunal is a process that costs a lot; keeping the tribunal and its mechanisms working is very difficult because it requires lots of finances in terms of

processes. Additionally, when something is budgeted, it's easy to be functional.

The ICTY as well as the ICTR, claim that international justice is costly and slow (Wippman, 2006, p.861). Firstly, the ICTY had an annual modest budget of 276,000 dollars, but it soon mushroomed into an institution with 28 judges (16 permanent judges, 12 ad litem), and over 1100 staff (Wippman, 2006, p.861). Its biennial budget for 2006 and 2007 was 276,474,100 dollars, and over the course of its first fifteen years (until 2007), the ICTY alone has been allocated over 1.2 billion dollars (Wippman, 2006, p.861).

The Tribunal encountered obstacles due to financial limitations despite a notable increase in its budget over time from humble origins. It grappled with the task of handling resources while operating within the confines of the community's

financial restrictions. Striking a balance between the expenses associated with conducting international trials and fulfilling its promise of delivering justice to victims of grave offenses posed continual challenges, for the ICTY. During its 15 years of operation, the Tribunal received a budget exceeding 1.2 billion dollars. However, concerns arose about the prolonged nature of the hearings and the substantial expenses associated with justice initiatives.

The budget was not small; however, the expense of bringing to justice those most responsible for war crimes and helping strengthen the rule of law in the former Yugoslavia pales in comparison to the cost of the crimes (Wippman, 2006, p.861). The lives lost, the communities devastated, the private property ransacked and the cultural monuments and buildings destroyed, as well as the peace-keeping efforts by the international community are incomparably more expensive (Wippman, 2006, p.861).

3.1.1. Comparison of the budget of the ICTY, ICTR, and International Criminal Court

On 17 July 1998, at the UN Conference in Rome, the agreement for the establishment of a Permanent International Criminal Court (hereinafter ICC) was signed (UN, n.d.). However, the Rome Statute entered into force on 1 July 2002 (ICC, n.d.).

Since the establishment of the ICC until 2012, it has indicted only 15 persons and its cumulative total budget over the

initial decade was 900 million dollars (Denver Journal of International Law and Policy, n.d.). The ICC in 2012 had an annual budget of over 140 million dollars, and 766 staff members (Jon Silverman, BBC News, 2012). However, the ICTY indicted 161 persons, and the ICTR indicted 61 persons, in their first ten years of work (Denver Journal of International Law and Policy, n.d.). But, if we look at the budget both Tribunals had, the ICTY for the first ten years of its establishment had 695 million dollars, and the ICTR had about 1 billion dollars budget (Denver Journal of International Law and Policy, n.d.). Thus, can be seen that the processes and the work done by the ICC are much slower, and very costly compared to the ICTY and the ICTR. Nevertheless, the justification can be that while “the ICTY and ICTR were more geographically focused, the ICC has a global remit and has to engage in often lengthy negotiations with national judicial systems to attempt to meet its goals Jon Silverman, BBC News, 2012).

Therefore, it can be concluded that the processes and the work done by the ICC are much slower, and very costly compared to the ICTY and the ICTR. This also leads to another weakness of the ICC which is weak record of prosecutions, because since its founding the ICC has only been able to convict a relatively small number of defendants. This includes multiple convictions for less serious violations related to the administration of justice than major atrocity crimes (Sterio, 2016) On the other hand, in 2015, governments spent almost 14 trillion dollars on wars (World Economic Forum, 2018). This reveals that states are more willing to support the

commission of crimes than they are willing to support justice.

Compared to other courts like the ICC, the ICTY handled more cases with less expenditure, but still faced criticism despite its efficiency in cost management and caseloads dealt with efficiently at a lower cost compared to other globally renowned international tribunals like the ICC. Delays in trials and legal procedures contributed to a perception that these tribunals operate at a pace and incur costs of operation which pose challenges to maintaining public trust in their ability to provide swift justice effectively and efficiently as perceived by society. External factors such as political influences imposed by states sometimes posed difficulties in the Tribunal's efforts to perform its duties smoothly due to funding constraints imposed by certain states. The prolonged duration of trials and the sluggish process of capturing fugitives enabled offenders to escape repercussions, for extended periods – contributing to the prevailing belief, in unchecked impunity.

3.2. Trials in absentia

Trials in absentia are seen as a fight for impunity for all the perpetrators who have committed criminal offenses. They refer to conducting a criminal trial without the presence of the accused person in court. Article 21 of the ICTY Statute foresees the rights of the accused and in paragraph 4 (d) it's specified that the accused should be tried in his presence, and to defend himself in person or through legal assistance of his own choosing (Statute of the ICTY,

1993, article 21, paragraph 4 (d)). As good as the idea of having trials in absentia is, the ICTY did not permit trials in absentia, because this article *expressis verbis* (explicitly) requires the physical presence of the accused in the trial.

If the ICTY had allowed trials in absentia while it was active, the Tribunal could have finished its three-phase plan on time before its official mandate ended. At least the perpetrators could have been prosecuted, initially leading to a verdict. They could then appeal their case to the International Residual Mechanism ensuring that the legal proceedings continued smoothly while dealing with the difficulties of bringing all accused individuals to trial. This method could have provided comfort to the victims and the impacted communities, by showcasing accountability while also respecting the convicted individuals' opportunity to appeal their convictions through the International Residual Mechanism, prior to the finality of the trials, ultimately making a balance between expediting legal proceedings and upholding principles of justice.

One of the challenges that the ICTY encountered was the struggle to capture known fugitives such, as Radovan Karadžić and Ratko Mladić (UN, n.d.) for a long time which led to delays in finalizing their trials as per the initial plan of the Tribunal, due to their complex cases and late apprehension by authorities. After the indictments were confirmed on 24 July 1995 and on 16 November 1995, warrants of arrest were transmitted to the Federal Republic of Yugoslavia (Serbia and Montenegro), the Republic of Bosnia and Herzegovina and the Bosnian Serb administration

(which has become Republika Srpska (UN, n.d.). The prolonged evasion of these individuals contributed to a sense of impunity prevailing among victims. Their families endured a lengthy wait for justice to be served. In the period wrongdoers roamed without restraint. This did not prolong the quest for justice. Also, it sparked doubts regarding the efficiency of global legal frameworks.

Despite the requirement of a trial for the accused to be present in person, not allowing trials to proceed without presence, significantly impacted the Tribunal's ability to administer justice promptly. If they had allowed trials in absentia, the ICTY could have pursued fugitives, issued verdicts, and could have offered some closure to victims. This could have assisted in lowering the view of impunity since wrongdoers could have been held responsible even if they were not present and given the chance to challenge their cases at a time before the International Residual Mechanism.

Nowadays, some countries adopted trials in absentia in their legal system, a scenario where the accused individuals' physical presence is not mandatory even at the initial phase of the investigation, particularly when it comes to crimes against international law. Nevertheless, an essential protection measure within these systems guarantees that the accused can request an automatic retrial without any conditions attached. In the criminal procedure codes of countries such as Croatia and Kosovo, there are provisions in place for conducting trials in absentia for cases involving criminal offenses against international law.

The ICTY faced difficulties due to its commitment to the principles outlined in the European Convention on Human Rights and Fundamental Freedoms (hereinafter EMRK). Specifically, article 6, paragraph 3 (c) requires the accused to be physically present during proceedings, which, as mentioned above, led to delays in delivering justice despite ensuring procedures were in place (EMRK, 1950, article 6, paragraph 3 (c)). The Tribunal's dedication to maintaining the integrity and respecting the rights of the accused like having access to defence counsel and avoiding trials in absentia, clashed at times with the necessity for an efficient approach in prosecuting individuals for war crimes. Maintaining an equilibrium, between fairness and effectiveness presented an obstacle for the ICTY as it strived to protect the rights of the accused while meeting the demand for swift justice.

3.3. Trials with no defence counsel: Amicus curiae

Considering article 21, paragraph 4 (d) of the ICTY Statute, the defendant had the guarantee of the right to self-representation (Statute of the ICTY, 1993, article 21, paragraph 4 (d)). To reduce the chances of unfair trials occurring especially in situations where defendants opt to defend themselves in court cases at the ICTY, the use of *amicus curiae* (*lat. friend of the court*) was employed to help maintain a just process throughout the proceedings. This measure was crucial in instances such as Slobodan Milošević trial where his choice was to be self-represented and that could have jeopardized the trial's fairness.

The use of a party known as an *amicus curiae* was beneficial in upholding fairness and responsibility in these legal proceedings. However, it also brought attention to the balancing act, between ensuring defendants' rights and the importance of keeping trials running smoothly and efficiently.

The court could also revoke the defendant's right to self-representation, according to rule 80 (B) of the Rules of Evidence and Procedure of the ICTY, and the Trial Chamber could appoint a counsel to represent a disruptive

defendant (Rules of Evidence and Procedure of the ICTY, 1994, rule 80 (B)). The purpose behind this was so the trial could proceed without being delayed or obstructed by the detrimental behaviour of the defendant.

Moreover, rule 45 *ter* of the ICTY Rules of Evidence and Procedure, addressed the assignment of a counsel to represent the interest of the accused, considering that is in the interest of justice (Rules of Evidence and Procedure of the ICTY, 1994, rule 45 *ter*).

4. Lessons Learned

ICTY's experiences and obstacles have imparted lessons that played a pivotal role in shaping and advancing international criminal law. Some of them can be:

- The ICTY and other international criminal courts have shown that justice is costly. Despite the fact that the budget might increase, operations of the court more than often are very costly and slow, and this highlights the need of sustainable and logistical support. Also, funding of international criminal courts depends on the states, because they are the ones who decide to fund justice or not. This concludes that prosecution of gross human rights and international law violations depend on the willingness and political interests of the states.
- Balancing fairness referring to the rights of the accused with the

need for efficient and timely justice. This is also associated with the strict prohibition of trials in absentia, in order to ensure the physical representation of the accused in criminal proceedings, showcasing the importance of safeguarding the rights of the accused in international criminal law. International courts and tribunals should develop strategies to uphold fairness standards while implementing processes.

- By prosecuting high-level officials such as Radovan Karadžić, Ratko Mladić, and Slobodan Milošević, besides promoting the fight against impunity, it demonstrated that even heads of states and military leaders can be held accountable for gross human rights and international law breaches.

- The Tribunal received backlash for the duration of its court proceedings; certain trials lasting for several years raised concerns among stakeholders about the necessity for enhanced methods in handling intricate international cases involving extensive evidence and numerous defendants. Also, the prolonged processes left the victims with a sense of prolonged wait for justice. Considering nowadays conflicts, there will definitely be a need to be established regional criminal courts to prosecute individuals for grave human rights breaches. Tribunals of the future could use the ICTY as an example to create better case management systems.
- The late arrests of certain individuals result in late justice. The late arrests of Radovan

Karadžić and Ratko Mladić underscore the necessity for establishing strong international cooperation mechanisms, or at least a need to respect the principle “*aut dedere, aut punire*” meaning either extradite or punish, associating it with the universal jurisdiction.

The Tribunal played a significant role in influencing the development of international criminal law by emphasizing important enhancement and adjustment. The achievements and failures of the ICTY have resulted in stronger collaboration mechanisms and improved structures for protecting the rights of the accused and the interests of victims. Institutions such as the ICC, now draw from the experiences of the ICTY to further develop international criminal justice efforts while persistently combating impunity worldwide.

5. Conclusion

There is no doubt that the ICTY played a pivotal role in shaping international criminal justice by holding accountable the culprits in the territory of the former Yugoslavia. However, during its functioning, it faced different challenges that hindered the process of justice, such as the prohibition of trials in absentia. The prolonged processes raised many concerns regarding the impunity of perpetrators.

The budget highlighted the issue of justice funding and the need for sufficient international support in order for international institutions as such as

the ICTY can be set up, keep working and operate effectively. Thus, it showed that justice can be funded if there’s a political will or interest.

Despite facing obstacles, along the way, the Tribunal established standards particularly in acknowledging the rights of defendants and maintaining principles in line with the EMR. Article 21 paragraph 4 (d) illustrates the Tribunal’s dedication to guarantee trials with the physical presence of the accused, even if it led to delays in proceedings.

This paper demonstrated that the experience of the ICTY leads to shaping

international law itself and can be used as an example for future international criminal courts, highlighting the significance of establishing processes for addressing crimes effectively while ensuring the rights of the accused and the timely delivery of justice are in balance.

In the end, the ICTY's journey has played a part in shaping an efficient international criminal law system shedding light on the persistent difficulties of addressing impunity following widespread atrocities.

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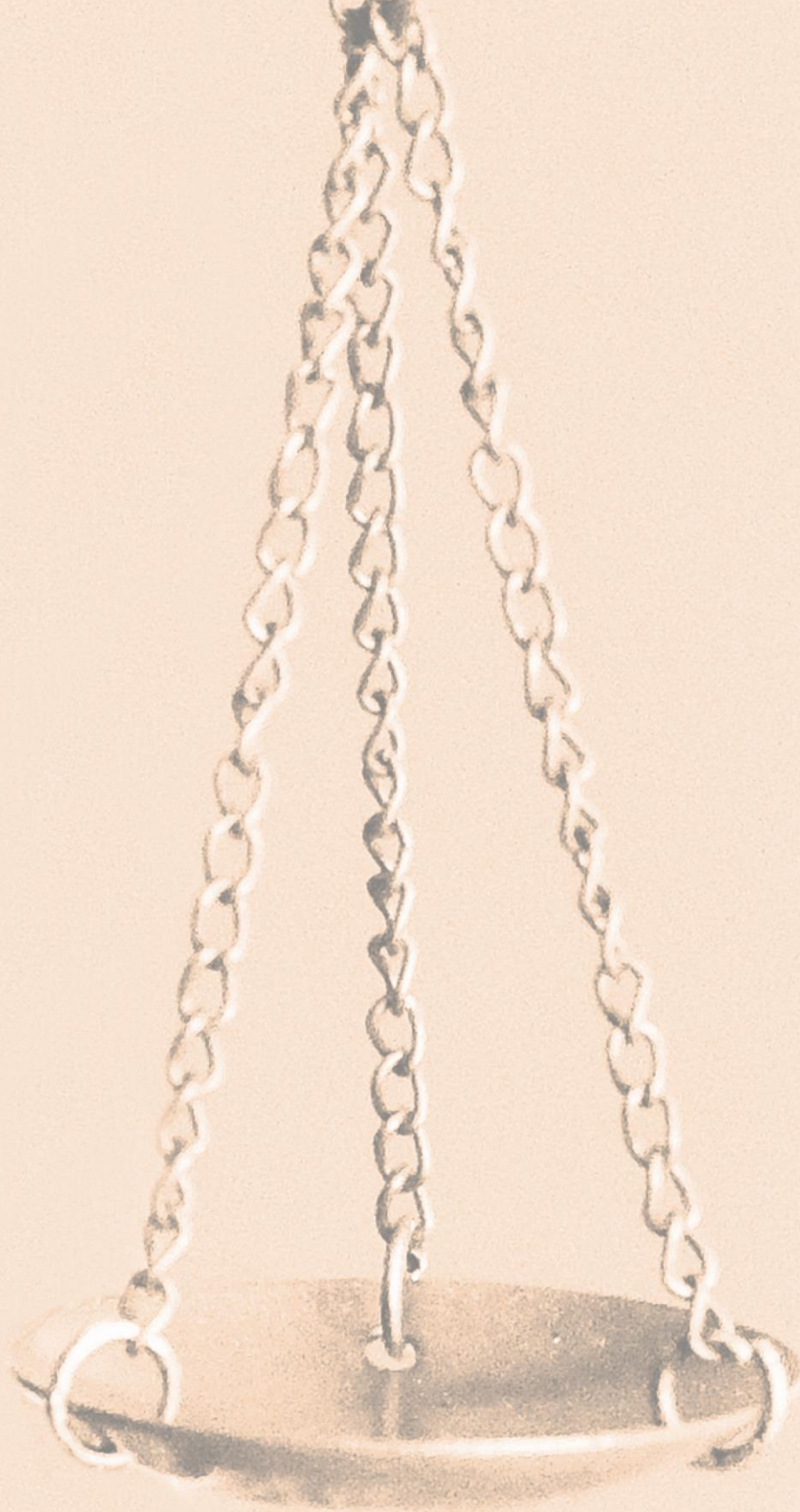
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