

**Croatia's road to reconciliation and the role of the International  
Criminal Tribunal for the Former Yugoslavia**

By

Maja Bratić

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Department of Public Policy

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Supervisor: Professor Karoly Jokay

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## ABSTRACT

The International Criminal Tribunal for the former Yugoslavia (ICTY) has been in operation for two decades receiving praise and criticism over its work and it is scheduled to close in 2014.

Considering insufficient research regarding the impact of the ICTY in Croatia largely due to a small number of trials conducted and Tribunal's over focus on Bosnia and Herzegovina (BiH), this paper turns the attention to Croatia in order to determine what impact the ICTY had on the ground and whether and to what extent its role contributed to reconciliation between Serbs and Croats. For the reconciliation process to be feasible, however, favorable conditions must be present and therefore the paper also looks at Croatia's commitment to promote reconciliation. While an intangible term such as reconciliation tends to lose priority in international criminal trials and post-war communities, there needs to exist a broader understanding of what reconciliation entails and what are the available methods that can be applied for the process to begin. Based on inter-ethnic relations, perceptions of the ICTY and the impact of ICTY trials, the author argues that reconciliation has not been widely pursued in Croatia and that the ICTY did more to hamper than aid the reconciliation process. Although criminal trials should not be overly relied upon to de facto bring about reconciliation, there are also many extenuating factors that obstruct the road to reconciliation such as; unresolved history of ethnic violence, competing truths and institutionalized ethnic narratives, among others.

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## List of Abbreviations

BiH	Bosna i Hercegovina / Bosnia and Herzegovina
HDZ	Hrvatska Demokratska Zajednica / Croatian National Union
ICC	International Criminal Court
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the Former Yugoslavia
JNA	Jugoslovenska Narodna Armija / Yugoslav National Army
NDH	Nezavisna Država Hrvatska / Independent State of Croatia
OTP	Office of the Prosecutor
RECOM	Regional Commission
RSK	Republic of Serbian Krajina
SFRJ	Socialist Federal Republic of Yugoslavia
TO	Teritorijalna Odbrana / Territorial Defense
TRC	Truth and Reconciliation Commission
UN	United Nations

## INTRODUCTION

In light of a recent referendum that constitutionally banned gay marriage in Croatia and country-wide demonstrations against Cyrillic writing, the tolerance in this European Union (UN) newcomer state is questionable, especially in regards to its minorities. From ethnic conflict to independence, from the Hague Tribunal to EU, Croatia has come a long way, however it continues to be plagued by the demons of its past. In November 2012, the International Criminal Tribunal for the former Yugoslavia (ICTY) issued a very controversial ruling by acquitting the remaining Croatian military heads of crimes committed against Serbs in Krajina that included murder and ethnic cleansing.

Croatia's biggest minority, the Serbs, now make 4%<sup>1</sup> of the total population compared to an estimated 20% before the conflict began (in the 1991 census, 12% of Croatian population declared themselves as Serb and over 6% as Yugoslavs, of whom the biggest percentage was Serb). These numbers do not seem to motivate Croatian authorities to endorse reconciliation policies, perhaps due to other priorities.

Although the 1990s are far gone the residues of their troubled past still linger. The disintegration of former Yugoslavia and its aftermath had left behind economic, political and social carnage. The international community headed by France and the United States intervened through the establishment of an *ad hoc* tribunal. The ICTY was formed in midst of an ethnic war in order to deter war crimes by punishing top state and military officials responsible. Within its mandate the ICTY set out to dispense justice and contribute to restoring and maintaining peace in the war-torn region. The Tribunal has been in operation for twenty years and by legal standards it has been very successful, conducting 161 trials. It can be said that international justice has made a big leap, fighting against impunity that was exercised in the previous century and moved towards delivering justice at the highest level. Nevertheless, the ICTY's mandate fell short with its promises of aiding the process of reconciliation. The actual impact of the ICTY on societies in the former Yugoslavia has been investigated thoroughly in Bosnia and Herzegovina (BiH), but little attention has been paid to those communities affected in Croatia. The feelings of injustice and neglect of the victims in Croatia have created a very anti-ICTY climate and the Tribunal has been regarded as a political court that has only heightened ethnic hatred in Croatia rather than aided reconciliation.

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<sup>1</sup> Statistics available online at [http://www.indexmundi.com/croatia/demographics\\_profile.html](http://www.indexmundi.com/croatia/demographics_profile.html)

Before the ICTY could even play a role there were many underlining problems that even today further obstruct the path to reconciliation in Croatia. Nuances of ethnic hatred have survived two world wars and crept into the modern households of both Croats and Serbs. The scars of the past resurfaced yet again when in the spring of 1991 the Serbs were stripped of their constituent nation status, and followed by ethnic cleansing in August 1995. Over a quarter of a million Serbs formed refugee columns heading into the unknown.

Indictments of Croatia's main war crime perpetrators came late and in few numbers. The time gap between the ICTY's establishment and the actual indictments of Croatia's top officials may have collectively influenced popular perceptions of the court. The competing truths about the conflict as perceived by Serbs and Croats became a serious obstacle to reconciliation. The ICTY verdicts were perceived as politically motivated, biased and unjust by Serbs and Croats. This was the case whenever adopted ethnic narratives were not corroborated by the facts presented at trial but instead challenged by stories presented in the trial proceedings.

Two decades of peace have not produced any significant change in inter-ethnic relations. The truth established through ICTY trials and their subsequent judgments have done little to aid the process of reconciliation. On the contrary, ICTY verdicts have caused political fallouts and heightened ethnic hatred. Moreover, the government of Croatia has not exhibited genuine concern for its Serb population, but on the contrary it has stalled reconstruction and repair of Serb property. Reinstating tenancy rights, ethnically motivated crimes, and employment discrimination are just some of the problems Serb returnees face daily. The absence of Croatia's political will reflects the social apathy toward Serbs.

Although the ICTY is not a direct saboteur of reconciliation in Croatia, it did not do enough to promote it. It did not invest enough time and resources into investigating crimes committed in Croatia, it was slow in creating outreach programs that help local populations better understand Tribunal's work; failed to give victims a voice; and its controversial judgments have done more to collectivize guilt and entice ethnic hatred than deliver justice, promote peace and aid the process of reconciliation.

The purpose of this paper is to answer the research question: What impact did the ICTY have in Croatia and to what extent, if at all, has ICTY contributed to inter-ethnic reconciliation between Serbs and Croats? The paper will also examine the commitment of the Croatian state to create necessary conditions needed for reconciliation to take root in society. In order to establish a comprehensive analysis, the paper will begin by conceptualizing reconciliation, a rather intangible term which has a different meaning to different people.

## Methodology

This document's analysis is based on ICTY reports, transitional justice literature, a variety of academic journals, online reports, as well field work conducted by scholars and ICTY experts, and a first person semi structured interview conducted in Dobanovci, a Belgrade suburb populated by displaced Krajina Serbs. Due to limited research on the ICTY's impact in Croatia, the author also relied on newspaper reports and national polls on people's reactions to ICTY judgements to gain a better perception of the situation.

The Vukovar case-study by Clark (2012) is utilized here because the measure of inter-ethnic relations is authentic considering the city demographics, around 58% Croat and 35% Serb. Also, the ICTY's impact on the ground is better measured and compared in such an environment.

In regards to the semi-structured interview conducted by the author, one Krajina Serb was interviewed on location in Serbia in October 2013. The location was chosen because of its significantly large settlement of displaced Serbs and survivors of Operation Storm (August 1995 ethnic cleansing of Serbs from Krajina). Unfortunately, there were considerable limitations due to people's skepticism. Despite being interviewed in Serbia and in their native tongue, they were wary of the author's intentions. For the most part, people declined because according to those approached, many stated that they were emotionally and psychologically exhausted from revisiting the past and unwilling to reopen wounds. Some were adamant that their truth could never fill the ocean of lies that is already out there. Others felt that whatever they said would not make a difference and that they had more pressing problems, mainly those of survival.

The Interviewee, Nebojša Kukolj is a native of Knin (town in the Krajina region of southeast Croatia) whose population was predominantly Serb (80%) prior to the war. Following 2011 Croatian census, the population of Knin was just over 15,000 with a reverse 80% Croat and 20 percent Serb.<sup>2</sup> Mr. Kukolj is one of many displaced Serbs from Krajina and currently resides in Dobanovci, some 20 kilometres from the Serbian capital Belgrade.

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<sup>2</sup> Statistics available online at [http://www.dzs.hr/Hrv/censuses/census2011/results/htm/H01\\_01\\_04/H01\\_01\\_04\\_zup15.html](http://www.dzs.hr/Hrv/censuses/census2011/results/htm/H01_01_04/H01_01_04_zup15.html) (visited 20 December, 2013)



## CHAPTER 1: Conceptualizing Reconciliation

Reconciliation has become a common term in political discourse among, not only politicians, but ordinary citizens in the former Yugoslavia. Although inescapable in public speeches and daily dialogue, in practice it is rarely successful. In order to understand reconciliation and how it can be applied in Croatia we first must explore its different concepts, as well as necessary components needed for its realization. Why is reconciliation needed and how can it be achieved?

Being an elusive term, reconciliation takes on different forms in different settings. Considering the war scenario in Croatia, reconciliation takes on a rehabilitative role wherein a society must heal itself from the wounds of the conflict.

*“Reconciliation is required when the societies involved in a conflict evolve widely shared beliefs, attitudes, motivations and emotions that support the adherence to the conflictive goals, maintain the conflict, delegitimize the opponent and thus negate the possibility of peaceful resolution of the conflict and prevent the development of peaceful relations.”* (Bar-Tal and Bennink 2004, 13)

Despite the Tribunal’s lack of strategy in regards to its wider mandate in terms of restoring peace and security in the region, reconciliation can be seen as an outcome and as a process for which certain elements have to be in place to make it operational. First, we need to identify the factors necessary for the very inception of reconciliation.

The way a conflict ends can determine the flow of the reconciliation process, whereas ending an armed conflict via peace accords that is mutually beneficial can significantly help the process. In cases where one party feels disadvantaged by the agreement, reconciliation may not fare well or be possible altogether. Bar-Tal and Bennink (2004) suggest that for reconciliation to happen it is best to combine methods rather than to rely on one method only. In their research they posit that a peaceful end to a conflict does not automatically translate into a lasting peace. Instead, the emphasis is put on acquiring a new set of values, emotions and beliefs that will change the psychological repertoire that was assembled during the intractable conflict.

## 1.1 Reconciliation as an outcome

Reconciliation can only be reached once the rival groups find a common language, mutual recognition of suffering and acceptance of crimes committed. There has to be a mutual effort of creating a sustainable peaceful environment in which all can benefit from and thus develop relationships and restore trust. In such an environment the opposing sides become more considerate of each other's needs and sympathetic to one another (Bar-Tal and Bennink, 2004, 15). However, this form of reconciliation may be rejected by some victims who are unwilling to repair relationships with the group they perceive as the aggressor. This may conflict with their sense of justice that the criminal trials and their verdicts come to embody.

Therefore, such reconciliation calls for a wider contribution, a collective society effort that will ensure peace and stability. For this to be achieved there has to be mutual recognition of crimes and suffering inflicted by both sides. Hence, in situations where post rival groups continue to live in the same physical space the reconciliation efforts take on a different turn. Operational elements require political and economic integration, where all groups have to be represented equally in power structures and given equal opportunity in the economic domain (Ibid, 16).

However, structural elements on their own do not guarantee reconciliation as it has been evident from some parts of the world where economic stability did not stop violent acts. Under Tito's regime, Yugoslavia was economically stable but its multiethnic coexistence could not rely on the psychological elements that were in place. The psychological rehabilitation is at the heart of reconciliation whereas it has to be embedded in the social fabric in order to encompass an entire society; changing beliefs and attitudes, tuning emotions, adopting new goals and motivations en masse (Ibid, 17).

Such ambitions may be unrealistic because Serbs' and Croats' views of history are fundamentally different. Trying to reconcile under these circumstances is extremely difficult and according to Hayner the reconciliation can only be superficial (1999, 373). However, forming collective memories by acknowledging the past in a sense that there are two sides to every story is a starting point. Acknowledgment of one's own transgressions may lead to a new understanding of the other group's suffering (Bar-Tal and Bennink 2004, 18).

The Balkans is a tumultuous terrain that has endured centuries of bad blood between neighbours and it seems unlikely for certain groups to revise their own historical accounts that have been passed down through generations. Some scholars, however, believe that through reconciliation people can collectively heal and forgive (Lederach 1998; Hayner, 1999).

Reconstructing the past in terms of collective memories is certainly necessary for reconciliation but it does not necessarily lead to healing and forgiveness. Therefore, reconciliation is not about forgiving but how society as a whole is going to rehabilitate and join efforts to build a new society (Hayes 1998, 33).

Bar-Tal (2000), identified the following psychological changes as essential for reconciliation to succeed:

- 1) Societal beliefs about group's goals
- 2) Societal belief about rival group
- 3) Societal beliefs about own group
- 4) Societal beliefs about the relationship with the past opponent
- 5) Societal beliefs about peace

## 1.2 Reconciliation as a process

Another concept of reconciliation is defined through a process of rebuilding relationships between those on opposite sides. This is a practice oriented approach, which predated by a signed conflict resolution, begins with the onset of psychological changes. Although slow in the beginning, psychological and structural changes can be successful when enforced by policies that promote the change in society's psychological repertoire as a whole (Bar-Tal and Bennink 2004, 27).

In addition to the peaceful resolution of the conflict, the following are the necessary factors for aiding the process (Ibid, 35-36):

- 1) Relationship building acts by both sides involved in the process
- 2) Political will and leadership

3) Activism of the population supporting the process

4) Institutional support (i.e. political, cultural, educational, media, etc.)

5) International community support

In order to tackle some of the challenges of the psychological aspect of the process, there are methods which can help alleviate these strains, such as (Bar-Tal and Bennink 2004, 28-35):

- Apology – the parties involved formally apologise for their transgressions against the other wherein they confront the past by taking responsibility and asking victims for forgiveness and enabling them to heal.
- Truth and Reconciliation Commissions (TRC) – a way of assisting communities to deal with the past by revealing the truth about events that transpired during the conflict; exposing crimes and administering justice accordingly could help create a collective memory and eventually lead to reconciliation.
- Public Trials – another method of facilitating reconciliation whereas they provide retributive justice by justifying the needs of victims; individualize rather than collectivize guilt; serve as deterrence of future crimes.
- Writing a common history – a joint committee of historians recreating the past that is agreed upon by all sides through negotiations; serve as a basis for rewriting history textbooks and changing school curriculums.
- Education – introducing peace education in order to advance reconciliation and change society's psychological repertoire by promoting new attitudes and beliefs.
- Mass Media – a very powerful tool of persuasion that can be used to promote reconciliation by transmitting messages endorsing relationship building with the past rival group in efforts to reconstruct public reality.
- NGOs – can contribute to reconciliation in post-conflict societies as peace movement facilitators, providing economic assistance and supporting the grassroots level in society.

## CHAPTER 2: Background

### 2.1 WAR IN CROATIA

Political changes swept through south-eastern Europe after the fall of the Berlin Wall. The wave of crumbling socialism poured into Yugoslavia and deep economic and political problems started to overwhelm the country. The Yugoslav republics started to quarrel while the presidency, lacking power and strength, failed to restrain estranged leaders and direct the country towards new reforms. Slovenia and Croatia were the first to express their dissatisfaction about large allocations to the undeveloped regions and threatened to cut their contributions to the federation's budget. Serbia, on the other hand, felt taken advantage of due to a quarter of its GDP going into the federal budget, while at the time being itself underdeveloped. Furthermore, Vojvodina and Kosovo, Serbia's two autonomous provinces, received state attributes. Undeveloped republics (Bosnia and Herzegovina, Montenegro, and Macedonia) were unhappy with the existing distribution of federal funds. Growing political and economic problems slowly started to undermine the very foundations of Yugoslavia (Marković 2006, 136). Nationalistic euphoria spread throughout the republics fueling political conflicts that quickly escalated to wars.

In Croatia, nationalism was at its peak headed by Franjo Tudjman and his HDZ party whose aspiration eerily resembled those of the infamous NDH. During HDZ's first general assembly on February 24, 1989 Franjo Tudjman proclaimed that the Independent State of Croatia "was not merely a quisling formation committing fascist crimes, but an expression of the historical aspirations of the Croatian people" (Vučinić 2005, 35).

In 1990, Yugoslavia held its first multiparty elections. In the Croatian elections the majority of the votes were won by HDZ which did not hide its secessionist goals of forming an independent Croatian state. The Croatian Serbs were alarmed by these aspirations and feared a repeat of the horrendous events of World War II were committed in the name of NDH, a pro-Nazi state.

In response, the Serbs in Croatia organized along the Krajina belt (a geographical region of Croatia where majority of Serbs lived for centuries) and adopted a declaration of sovereignty and autonomy of the Serbian people in Croatia. After holding a referendum to secede from Croatia, Republic of Serbian Krajina (RSK) was established. It had all elements of a state organization – territory, people who have lived there for many generations, legally elected state organs, military and police structures in place

(Vučinić 2005, 52). Shortly after, the Croatian Parliament adopted a new Constitution stripping the Serbs of constituent nation status and relegating them to the status of a national minority. Serbian Cyrillic script was banned and Croatian became the only official language. Serbian literature was purged from library collections, Serbian TV and radio operations banned and their administrative and police positions taken away from them.

Croatia declared independence on October 8, 1991 by abusing the right to self-determination and violating Article 5 of the 1974 Constitution of SFRJ. The article stated that borders could not be changed without the consent of all republics and autonomous provinces. In 1990, the Croatian Assembly adopted a new Constitution in which the Republic of Croatia became a national state of the Croatian people. Croatia argued that it had legal rights to secede from Yugoslavia, referencing the right to self-determination as guaranteed by Article 1 and 55 of the UN Charter, disregarding the fact that this right has never been applied nor interpreted as a basis for breaking up a UN member state (Vučinić 2005, 48).

Although President Tudjman had support from the West and had essentially secured Croatia's independence he insisted on seceding from Yugoslavia by force. This was evident from his speeches in which he stated that there would have been no war had Croatia not wanted it. Tudjman promoted his ideas in August 1991 speech when he gave a solution to the "Serbian problem" by "reducing the number of Serbs to 3% of the total population". He as well noted that if it came to war he could not guarantee safety to any Serb in Croatia (Ibid, 50).

In the 1991 census, over one fifth of Croatia's population was Serb – 12% declared as Serb and over 6% Yugoslav of whom the biggest percentage was Serb. Tudjman almost delivered on his promise, as just ten years later in the 2001 census Serbs made up only 4% of total population (Ibid, 51-52). This was a direct consequence of the 1991-1995 war concluded by 1995 Croatian army offensives – Operation Flash and Operation Storm. These events went down in Croatian history as legitimate operations against the Serb rebels in which over a quarter of a million Serbs were forced to flee their ancestral lands making it the single biggest exodus since the Second World War (Marković 2006, 169).

In May 1991 armed clashes started in Borovo Selo, a Serbian village close to Vukovar, when Croatian Ministry of Internal Affairs (MUP) went on a raid in retaliation for the arrest of their two officers. Busloads of Croatian policemen arrived at Borovo Selo to carry out the operation. The aftermath left dozen Croatian officers and three Serb civilians dead. Outrage poured in and violent incidents against Serbs followed (Prosecutor v. Mrksic et al. 2007, 11).

A full blown armed conflict ensued in Vukovar with the Yugoslav National Army (JNA) involvement after repeated pleas to the Croatian police and paramilitary groups to deblock JNA barracks fell on deaf ears. After three months of fighting and heavy shelling the city was completely destroyed leaving behind many casualties –soldiers and civilians.

In January 1992, European community recognized Croatia's independence and JNA withdrew. The RSK army continued controlling majority Serb areas in Croatia. With the war in Bosnia brewing in 1992, Croatia got pushed to the sidelines. After three years of fighting, in the ending stages of the Bosnian conflict, the worst massacre had been committed in Srebrenica by Serb forces. While the world was busy pointing fingers at the Serbs, Croatia took the opportunity to overtake the territory under Krajina Serb control. NATO aviation supported the Croatian initiative by providing aerial reconnaissance (Vučinić 2005, 75). In August 1995, Operation Storm executed series of powerful attacks, bombing Serb towns and refugee columns. Villages were burned to the ground, the elderly who could not escape were brutally murdered and more than 250,000 Serbs were expelled from their land. This two-day operation that left devastation and despair was regarded by Croats and their western allies a military success. The plundering and murder continued for several months after the operation.

No one enjoyed the victory more than Tudjman who gave a speech in Knin right after the operation. He gloated in jubilation when he shouted from the podium, "they didn't even have time to take their dirty money and filthy underwear" (TransConflict 2013).

## 2.2 INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA

Enacted by the UN Security Council Resolution 827, the International Criminal Tribunal for the Former Yugoslavia was created on May 23, 1993. The Tribunal was established in the midst of ethnic conflicts and aimed to achieve three goals; deliver justice by individualising guilt and bringing those responsible to account for their actions, deter future atrocities, and assist in further reconciliation and peace building between the nations (Clark 2009, 23).

### 2.2.1 ICTY Achievements of Declared Purposes

According to the official website of the ICTY, the following was accomplished (ICTY 2013):

- 1) Leaders were held accountable
- 2) Justice was brought to victims
- 3) Victims received a voice
- 4) Facts surrounding the conflict were established
- 5) Contributions were made to international law
- 6) The rule of law was strengthened

As per 2013 ICTY report, 161 individuals were indicted for grave breaches of international humanitarian law committed in the former Yugoslavia. Out of the 161 indictees, the Tribunal has so far processed 136 wherein 69 of those sentenced, 18 acquitted, 13 referred to national courts, and remaining 36 have either deceased or had their charges withdrawn (ICTY 2013). These numbers are incredible considering the Nuremburg Trial only had twenty four defendants.

Never before Nuremburg and Tokyo Trials were any international criminal courts instituted for delivering justice in hopes of harvesting peace on the road to reconciliation. The ICTY is the first of its kind, an ad hoc tribunal which is now the point of reference for all those that followed, most importantly the International Criminal Court (ICC). Upon the establishment of the ICTY and its sister ICTR, there has



been a proliferation of other subsequent courts for Sierra Leon, Uganda, Nigeria, Kosovo, Cambodia and East Timor (Orentlicher 2010, 11).

The Tribunal has contributed greatly to establishing peace in the region, delivering justice, establishing the truth, upholding victim's rights and leaving a historical record. One of the most important achievements of the ICTY is the ruling on the crime of genocide which is seen as the biggest contribution to international humanitarian law (Devitt 2012, 4; Roberts 2009, 744).

In addition, the ICTY has been instrumental in merging diplomatic and interventionist methods, restoring the rule of law, and facilitating reconciliation. Moreover, by prosecuting high ranking officials for war crimes the Tribunal has been successful in abolishing legal impunity which was exercised widely in South Africa and Latin America (Humphrey 2003, 496). Criminal trials serve as instruments of social healing which is accomplished through the punishment of the culprit. However, true reconciliation can only be achieved if the victim manages to forgive and becomes vengeance-free (Ibid, 499).

The reason for creating a court outside of the former Yugoslavia is one of a precautionary nature due to the fact that judicial systems in the post-war countries had to be marred with corruption therefore non-functional. In addition, the locality of the court was also a method of preventing possible accusations of "victor's justice" (Devitt 2012, 3). In opposition to growing claims of the ICTY implementing victor's justice and ethnic favoritism, Meernik (2003) argues that the ICTY is exercising law by following internationally accepted legal standards on which the judges base their decisions. He adds that there is absolutely no bias towards the Serbs but that those who committed most crimes in numbers and in severity get prosecuted and jailed for longer. The ICTY is almost completely void of political elements that could hinder its operation in any way despite judges coming from NATO countries (2003, 159).

Saxon (2005) opines that the ICTY sends a very strong political message as it should because the law is rarely separated from politics. In regards to accepting guilty pleas for giving out milder sentences, the Tribunal welcomes public confessions of guilt by the accused. Taking responsibility for their horrific crimes and expressing remorse is considered to be very helpful in achieving reconciliation. The main objective of the ICTY is to establish the truth that will guide the rule of law and aid in the process of reconciliation. The accusations of American stronghold on the Tribunal in efforts to further their hegemonic inspirations are dismissed as judicial illiteracy suffered under Tito in the former Yugoslavia. The negative attitudes towards the ICTY stem from not being able to confront the past, especially for to the Serbs. Therefore, the judgments rendered and the truth that is constantly being revealed during

trials is playing a crucial role in dealing with “the worst parts of their histories” which may play a vital role in preventing history from being repeated (Ibid, 563).

Diane Orentlicher (2010) acknowledges that the ICTY has given the victims some justice as the Bosnian Muslims have been highly supportive of the court. She correlates the differing perceptions of the Tribunal divided down ethnic lines with the number of defendants from all three sides. By arguing that two thirds of indictees are Bosnian Serb, she asserts that it is somewhat logical for this ethnic group to have the biggest resentment towards the ICTY. The Bosnian Muslims have been the most receptive to the Tribunal and approving of its work, while the Croats have always been somewhere in the middle (Ibid, 49).

Refik Hodžić, former ICTY spokesman and outreach coordinator for Bosnia and Herzegovina, argues that the Tribunal has de-facto contributed to reconciliation because there was no process of reconciliation to begin. Without the ICTY there would be no conscious effort to promote cooperation among once warring ethnic groups. The ICTY has created a historical database of investigations, trials, and mounts of evidence that can only assist local courts to continue on in their quest of truth-seeking and holding responsible those guilty of war crimes. Without an international criminal court the indictments and prosecution of top-level officials would never be possible (Hodžić 2013).

### 2.2.2 Critique of the Tribunal and Undeclared Purposes

From the very beginning the policy of the Security Council was marred with ambiguities and even more so once the Tribunal was created. The Americans, French and British employed strategic legalism which was the product of *realpolitik* disguised in legality to endorse their agendas. Lawrence Eagleburger, American Secretary of State used the strategy first in order to add credence to his premature accusation of the Serbian leadership. The Americans sought for the Vance-Owen peace plan to be rejected, in which they succeeded. The law was used, or in other words abused to stifle efforts to reach a negotiation. It was at this juncture that the Americans succeeded in naming their candidates for potential war criminals very early on, before the ICTY was even established. All were Serbs; Slobodan Milosevic, Ratko Mladic and Radovan Karadzic. Also, the French used strategic legalism for their political goals as to excuse France from any potential criticism and curry favor with the French public (Hazan 2004, 535).

Shortly after the ICTY opened its door for operation, the French had no intention of creating an effective international tribunal but simply exercise judicial activism. On the other hand, the Americans wanted an operational court that would serve as a legal weapon to pursue their interests. Thus, they invested immensely into the Tribunal, in particular the Office of the Prosecutor (OTP) which greatly adds to scepticism of the ICTY's independence. Having provided the Tribunal with financial and human aid along with its political backing, the United States failed to provide evidence and attest to Eagleburger's claims against the Serbian leaders (Ibid, 536).

Bloodshed in El Salvador, genocide in Indonesia and Cambodia and many other horrific atrocities around the globe never prompted the establishment of an international court. It was the Bosnian conflict that impelled the Security Council to establish an ad hoc tribunal to stop the suffering. Thus, a very important question is raised of why it took so long for establishing an international criminal body. Nuremberg and Tokyo seem to have served their purpose and failed to "lend themselves immediately to the progressive development and codification of international criminal law" (Zacklin, 2004: 541).

Adding to many decades of infeasibility of an international court were the fierce refusals of many states to surrender their sovereignty. There was no international criminal code that would ascertain the establishment of such a court. The ad hoc tribunals were more a cause of political contrition rather than

a deliberate policy to uphold international justice. Assumption is that the international community failed to respond quickly to the wars and in order to ease their conscience, the court was created (Ibid, 542).

Unlike in other parts of the world where amnesty was applied in order to heal the wounds of violent conflicts, the ICTY opted for a peace via justice approach. In South Africa and Latin America, TRCs were instrumental in restoring peace. It was believed that criminal trials would be damaging to the society. Establishing the truth and eventual peaceful co-existence between once warring nations or groups was considered the most vital component of reconciliation. On the other hand, the ICTY was adamant that without first enforcing justice there could be no peace. There is however little empirical evidence indicating that criminal tribunals have assisted in building peace and stability (Clark 2011, 19).

One of ICTY's presumed roles was fostering an environment respondent to reconciliation and cooperation between the countries of the former Yugoslavia. According to Fatić (2000), the tribunal should have acted as a "filter of messages" thus circumventing the proliferation of resentful feelings (Fatić 2000, 9). However, because the court failed to create an atmosphere of trust and understanding it has been labeled as a political instrument. In addition, the ICTY failed to stay impartial and provide judgments according to misdeeds, and not persons and nations. As such, the ICTY could not be seen as a facilitator of regional reconciliation but remains a pawn in "the *Realpolitik* of the great powers" (Ibid, 10).

Sengupta (2007) contends that due to the long political impasse of the Cold War, the UN needed to accentuate its legitimacy which was under scrutiny during the Yugoslav and Rwanda conflicts (2007: 60). Once the Tribunal started encountering problems it quickly went back on its promises by trying to refute them. Thus, Hayden (2011) argues that the ICTY is a political tool for those who finance the Tribunal and only masks its true role behind the vows of reconciliation. Condemning the Tribunal for its 'antiwar profiteering', Hayden strongly believes that the ICTY was utilized as a mechanism which allowed for the war to continue as it served other purposes. The NATO powers were able to reawaken the legacy by legitimizing its purpose after almost fifty years of inactivity. The business of NATO gained new grounds and sought to expand its power by acquiring new recruits and further undermine Russia's influence in the Balkans (2011: 324).

In regards to political elites in the former Yugoslavia, the ICTY was successfully used as a mechanism of controlling the masses and keeping alive nationalist tensions. The Srebrenica "genocide" in particular as

Hayden points out is used as a strategic tool that “legitimizes a grievance or perpetrates persecution of defenders of each besieged nation” (Ibid, 325).

Hayden (2006) strongly opposes the Tribunal’s tactics of seeking justice over “the needs of the elderly, youth, the sick, disabled and unemployed” (Ibid, 403). He also raises an important question, one that seems to elude a popular public debate, where the pursuit of justice at any cost should take precedent over economic and political development of war-torn regions. It is a common fact that economic and political sanctions have debilitated nations, as was seen in the former Yugoslavia. The power of the ICTY to dictate play and impose sanctions on those that do not fully cooperate is very damaging. This only stalls the economic development which is extremely important for the post-war rehabilitation of the region (Ibid).

The Tribunal has been often criticized for its lack of impartiality but the advocates are persistent in arguing that one side committed the most atrocities and thus endured more prosecutions. However, Fatić (2000) concurs that it is a rarity particularly in civil war to have as equally as many crimes committed on all sides. This creates an environment of stigmatization due to attributing guilt to only one nation. This inevitably minimizes the gravity of crimes of those perceived less guilty enabling them to manipulate their claim of victimhood. This could potentially entice inter-group tensions and halt reconciliation (2000:84).

The Security Council reassured the world that the ICTY will serve its purpose of aiding restoration and maintenance of peace in the region. However, Hayden (2011) posits that the ICTY has done more damage to the process of reconciliation with the ICTY trials only enticing mutual recrimination (2011, 316). In contrast to the Nuremburg Tribunal which lasted less than five years, the ICTY is excruciatingly slow and after twenty years it keeps painful war memories very much alive. The overwhelming resources put into the Tribunal could much better serve the people it claims to represent. The stagnant social and economic climate in the former Yugoslavia cannot bring about reconciliation. There is an obvious gap in the literature as almost no research was conducted in regards to the social and economic impact of the Tribunal on former Yugoslav republics. Out of many problems plaguing the tribunal, its social role and impact on post-war communities is assumed and rarely studied (R. M. Hayden 2006, 395).

On the other hand, Clark (2011) highlights a different gap in regards to truth and reconciliation, in other words 'an impact gap'. She posits the need for transitional justice that is evidence-based thus advocating for TRC. Clark argues that this approach is important for three reasons: 1) to produce realistic expectations of what the ICTY can achieve; 2) to be able to assess the work of the Tribunal and if in fact it is contributing to peace and restoration; and 3) there is no "one-size-fits-all" model of transitional justice (2011, 244-245).

A relatively small number of ICTY trials conducted in relation to Croatia crimes have helped create negative attitudes towards the Tribunal. Limited trials have isolated the region from necessary research on ICTY's impact on the ground (Clark 2012, 399). Therefore, there is very limited transitional literature with a focus on Croatia calling for a more open and constructive debate about past events. This further problematizes the process of reconciliation where the ICTY reinforces national narratives instead of helping to create shared beliefs by writing a common history.

## 2.3 RELEVANT ICTY TRIALS

### 2.3.1 Vukovar Three

The biggest focus of the ICTY concerning Croatia was the Ovčara massacre of around 200 Croatian men by Serb forces. The case became known as the 'Vukovar Three' after the three defendants charged with the crime – JNA Colonel Mile Mrkšić, Captain Miroslav Radić, and Major Veselin Šljivančanin. The three were charged with crimes against humanity, violations of the laws or customs of war, and grave breaches of the Geneva Conventions. Radić was found not guilty, Mrkšić received a 20 year sentence, and Šljivančanin was sentenced to 10 years and granted early release in 2011 after serving 8 years.

After the fall of Vukovar to JNA and capitulation of Croatian forces there was an agreement between Croatian government and JNA to safely evacuate the Vukovar Hospital. Major Šljivančanin claimed to have received information from the hospital's director, Vesna Bosanac, that there were Croatian combatants hiding in the hospital among the wounded. Bosanac later denied this claim when she testified in the Hague against Šljivančanin.<sup>3</sup>

As stated in the initial indictment, what later transpired was that around 400 men were removed from the hospital allegedly by JNA units and brought to a farm on the outskirts of Vukovar. In the final ruling the ICTY established that at least 200 prisoners of war were executed. During the investigation, 198 bodies were exhumed from the mass grave at the Ovčara farm. The final judgment concluded that according to evidence the massacre had been committed by Territorial Defence (TO) and paramilitary forces and not JNA (Prosecutor v. Mrksic et al. 2007).

Regardless, Mrkšić was convicted because he withdrew JNA soldiers who were protecting the prisoners at Ovčara and thus failed to prevent crimes that subsequently happened. Šljivančanin was also held responsible for failing to stop the mistreatment and provide security to prisoners.

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<sup>3</sup> Transcript of Šljivančanin's testimony translated into Serbian: <http://www.hlc-rdc.org/Transkripti/vukovarska/Transkripti/2006/Vukovarska-trojka-svedok-Veselin-Sljivancanin-1.11.2006..pdf>

### 2.3.2 Operation Storm

The second most prominent case was ‘Operation Storm’ where indictments were issued against three Croatian generals, Ante Gotovina, Mladen Markač and Ivan Cermak, initially charged with crimes against humanity and violations of the laws or customs of war. During this military offensive almost all Krajina Serbs were expelled from their ancestral homes with those incapable to flee murdered. The aftermath also left thousands of houses plundered, torched, livestock killed, and wells poisoned (Prosecutor v. Gotovina et al. 2011).

Indicted in 2001, Gotovina was at large until 2005 when he was apprehended in Canary Islands and transferred to Hague. The trial commenced only in 2008 and in 2011, both Gotovina and Markač were found guilty of individual responsibility as members of a joint criminal enterprise (JCE), while Čermak was acquitted of all charges.

However, in November 2012 both Gotovina and Markač were acquitted by the Appellate court on a majority 3:2 decision, where two of the judges had dissented. The judgment continues to cause controversy as it seems to have been based on a technicality in reference to the 200 Metre Standard. Judge Agius dissented by stating that “the evidence the Majority chooses to write off as insufficient is, in my opinion, very relevant for establishing the unlawfulness of the attacks” (Appeal Judgement, 2012:10).



## CHAPTER 3: THE ANALYSIS

### 3.1 Inter-ethnic Relations and Croatia's Commitment to Reconciliation

Although two decades have come and gone since the conflict in Croatia, the intolerance is higher than ever among the Croatian youth that had never witnessed the conflict. Recently, a research study *Youth in a time of crisis* (2013) was conducted in Zagreb. The youth survey included 1,500 young people between the ages of 14 and 27 and produced disturbing results. When asked if they would marry a Serb, only 5.4% answered positively while almost 87% would have a problem with having a Serb as a neighbour. In comparison to a 1999 survey, the tolerance was more present, with results revealing that 13% of those surveyed would marry a Serb and 22% have a Serb as a neighbour. It can be argued then that animosity has been on the rise, rather than subsiding since the violence of the 1990s. At this rate, it can be suggested that in ten years there will be zero tolerance for Serbs in Croatia.

According to a popular Serbian newspaper *Novosti*, there is an ever-growing sentiment among Serbian people that one of the most recognizable characteristics of Croatian identity is in fact anti-serbism, alluding that the hatred towards Serbs has been encouraged well before the wars of the 1990s. Croatia is almost completely ethnically pure and the popular notion is that Serbs continue to represent the source of all Croatian problems. The massive demonstrations against Cyrillic script, hate speeches by politicians, fascist chants by football players, beatings of Serb school children are just a small piece of a big mosaic of hate in Croatia. It is important to note that some part of Croatian public denounces such intolerance and ethnic hatred but are powerless to confront them.

Historian Miloš Ković said in an interview for *Novosti* that the anti-Serb sentiment in Croatia is not a consequence of the violent events of the 20<sup>th</sup> century but rather a much older and larger phenomenon imposed from many different sides that reach back to Austro-Hungarian times when the feud between the Serbs and Croats was encouraged by the monarchy itself. As such, it was easy for Ante Starčević<sup>4</sup> to later build on his chauvinistic dogma which gave birth to the Ustasha movement and their genocidal anti-Serb ideology.

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<sup>4</sup> 19<sup>th</sup> century Croatian politician regarded as the father of Croatian nationalism.

In Croatia, limited reconciliation efforts focused on the violence of the 1990s cannot work unless there is a national acknowledgment of the past crimes against Serbs and understanding of a long history of animosity between the two groups. There have been no public apologies for the Operation Storm just like there were no apologies after World War II for the horrors of Jasenovac and Jadovno.<sup>5</sup> Time did not heal the wounds of the past as Tito's regime did not pursue the perpetrators and talking about their crimes became political taboo, all in the name of 'brotherhood and unity'. The victims were, however, commemorated with a permanent memorial in Jasenovac to which Tito has never paid homage throughout his almost forty year reign. Therefore, false reconciliation had been imposed on the second Yugoslavia not allowing psychological change necessary for true reconciliation to take place. As a result, it can be said that such distorted beliefs of the past rendered future generations unamenable to a reconciliation process.

Historical animosities are also reflected in market economy. Croatian companies operate successfully in Serbia with their marketing campaigns welcomed across the country. The reality for Serbian businessmen in Croatia is quite the opposite. A reverse scenario where Serbian businessmen are privatizing Croatian companies and where marketing posters adorn Croatian cities inviting Croats to visit Serbian ski and spa centers are simply unimaginable.

Not until recently has anything been done to stop the widespread public propagation of animosity against Serbs. There is a perception among Serbs that the recent measures implemented against hate speech in Croatia are nothing but a strategic move in ticking off all the prerequisites for Croatia's EU accession. Former SFRJ Minister of Foreign Affairs, Vladislav Jovanović opines that the Croatian proclamation of continued efforts toward reconciliation being based on the values of the EU is only a smokescreen, suggesting that Croatia only wanted to ingratiate itself with EU members. The Serbs, he posits, are much more open and tolerant toward Croats and willing to forgive and forget many things from the past (Novosti 2013).

Mr. Kukolj explained during the interview that he never experienced discrimination in Knin because he lived in a majority Serb town albeit "when Serbs were taken out of the Constitution as a constituent nation, the real problems began" (Interview 2013). It is obvious that Serb memory was on repeat during

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<sup>5</sup> Extermination camps in Croatia during the NDH regime.

the rising ethnic hatred among political elites in 1990s Croatia. It continues to today where Croatian crimes are justified and celebrated making it difficult for the Serbs to forgive and forget.

Operation Storm, for example, has become Croatia's national holiday and every August celebrations are in toe with some taking place in Knin where paradoxically the remaining Serb community commemorates Serb victims. Kukolj claimed that he did not mind Croatia's annual celebration of Operation Storm, but insisted that "they cannot make Serbs celebrate their doom". He concluded that "Serbia may be the worst, the dirtiest but it is not malicious and it would never do what they did" (Interview, 2013).

After holding a referendum to ban gay marriage, the 'Serbian problem' in Croatia was back on the agenda with the use of Cyrillic script in Vukovar and the Croatian constitutional law which mandates bilingual signs in towns where a minority accounts for more than 30% of the population. The plan to introduce signs in both Latin and Cyrillic script caused wide spread demonstrations underlined with hate speech, while the same law introducing signs in Croatian and Italian language in the Istra region passed unnoticed. Croatian Prime Minister Zoran Milanović accused HDZ opposition of being responsible for the public outbreak of chauvinism. He expressed his disappointment that in the midst of an economic and social crisis, Croatia has to tackle multinational concerns because the opposition is unable to compete anywhere but in the regions where ultranationalists reside (Novosti, 2013).

On top of this, it does not help that the Croatian government has failed to promote and aid the return of displaced Serbs. The 2006 Human Rights Watch report outlines the government's failure to provide the necessities of life such as tenancy rights, rights to employment, and discrimination in services distribution (e.g., electricity) and to protect overall human rights of the Serb returnees. The same report highlighted further government imposed obstacles to reintegration of Serbs, slow progress in the repair and rebuilding of Serb properties, violent ethnically motivated incidents, under representation of Serbs in state administration, and so on (Human Rights Watch 2006). The 2010 HRW report did not yield better results but only added to the list of concerns; unresolved crimes and unsuccessful prosecution of war crimes cases and heightened discrimination against ethnic minorities, particularly Serbs and Roma. When asked why he had not returned to his family home in Knin, the interviewee replied by saying he didn't want his children to "learn their history" and added that "only those that convert to Catholicism can live there". Only his uncle, a pig farmer, returned to Croatia but struggles to survive as Croats refuse to buy from him because he is a Serb. This is what the interviewee called a "silent boycott" that prevents Serb returnees to have a quality life (Interview 2013).

Croatia's inability to provide essential elements necessary for the reconciliation process can be seen as a reflection of an apathetic society. For reconciliation to happen there has to be a need for it and a political and social commitment to help with facilitation. In addition, various newspaper reports (The Guardian; Pravda; RINF) have alluded that the Croatian society has been experiencing a return to fascism. With the recent accession to EU, one would expect that the EU values would spread to Croatia and be respected. Instead, hate speech has been on the rise with the fascist chants gaining popularity. In particular, the recent incident involving a Croatian national team soccer player chanting "Za dom"<sup>6</sup> in front of tens of thousands of fans who chanted back in unison "Spremni", painted a picture of a society endorsing NDH regime and its fascist policy against Serbs. The government has not done much to prevent the occurrence of these types of incidents, while the EU leadership has so far restrained from directing criticism and imposing sanctions on its youngest member.

The aforementioned indicates that many psychological and structural changes needed for reconciliation are missing in Croatia. Serbs in Croatia continue to face economic difficulties and underrepresentation in state administration. The lack of respect and consideration for life and welfare of displaced Serbs by the Croatian government discourages many from returning. Also, continuation of ethnically motivated violence has prevented the establishment of a secure environment needed for reconciliation. Furthermore, societal beliefs of majority of Croats about their own group and that of the rival group have not changed. This is best seen in the public events when the members of the society act in opposition to the proclaimed government policies. Without a change in psychological repertoire the process of reconciliation is not possible. Thus, it can be argued that the outcome of reconciliation has never been a Croatian goal.

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<sup>6</sup> Za dom – for the homeland, Spremni – ready! Ustashe salute that is often compared to Nazi salute Sieg heil!

### 3.2 Perceptions of the ICTY

The establishment of the ICTY was essentially a ‘foreign-imposed decision that appeased an international normative demand for justice’ rather than to tackle a specific situation, in this case the conflict in Croatia (Clark 2012, 406). The narrowness of the Tribunal’s mandate and its frequent blasé appeal left a trail of disenchantment across former Yugoslavia. The perception of Tribunal’s disinterest in the impact its proceedings had on the ground created an environment of distrust.

According to Subotić (2013), the ICTY set itself up to fail. First, the ICTY did not secure a larger framework of transitional justice but prompted itself as the sole judge and jury, distributing justice and punishment. Such a role carries enormous responsibility whereas any failure reflects solely on the Tribunal which had a very technical mandate. At its very onset, the ICTY promised too much without actually calculating in the danger of prematurely setting high expectations. The court was simply not “equipped to either make or keep” expectations such as paving a way to reconciliation and creating a historical record. Due to strong perception of ICTY being the main pillar of justice, human rights groups heavily relied on the Tribunal with assisting to build transitional justice.

The truth-seeking and evidence gathering of the ICTY has been predominantly concentrated on the conflict in Bosnia and Herzegovina. The reflectors have been pointed mostly on crimes committed in Bosnia while their focus faded when the focus shifted to crimes committed during the Croatian conflict. Consequently, the subsequent research by many scholars has been predominately on Bosnia and on the impact ICTY left on its population. There is limited evidence of large scale research about the impact of ICTY and its role in inter-ethnic reconciliation in Croatia. Clark (2012), on the other hand, gives us a comprehensive insight into her fieldwork in eastern Croatia. She argues that the ICTY has not contributed to reconciliation in Vukovar.

Clark conducted her research using a bottom up approach, interviewing ordinary people instead of focusing on the political structure. She stressed that the impact on the ground was most important and

representative of true feelings about the Tribunal. Ordinary people are the best reflection of majority opinion as their views are constructed in accordance to social norms and political structures in place. This approach gives insight into a more realistic situation on the ground.

The first problem that Clark faced was defining reconciliation within the context of adopted narratives as it pertained to some but not others. A very subjective nature of perceiving reconciliation was at the root of the problem when measuring the actual impact of reconciliation in societies that may have completely different understanding of it. Transitional justice literature suggests that reconciliation is essentially an offspring of justice and truth. Then again, justice is also subjective especially to ordinary people that require it to be seen rather than done from a legal point of view. To those people involved in conflict, justice is more of a tangible phenomenon and not a figurative one. The impact of ICTY on reconciliation can be graded on the premise of a positive or negative correlation between justice and reconciliation. Perceptions are instrumental in the determination of the Tribunal's impact and as such the perception of justice being done is directly associated with its contribution to reconciliation.

As far as ICTY helping deter war crimes this has been proven to be a complete fallacy where the biggest crimes happened after the Tribunal was established. Punishing those responsible has also been widely disputed in Croatia where the Tribunal has been seen as failing to prosecute the winners, in this case the Croats as they claimed final victory. This, according to Peskin (2006) could set a wrong precedent of promoting impunity where the atrocities committed by the victors go unpunished because they prevailed in battle.

“A Tribunal that is blocked from investigating war crimes on all sides of an armed conflict may bequeath an impoverished and distorted historical document that fuels denial of crimes for generations to come.” (Peskin 2006, 228)

The bottom-up approach has been promoted as grassroots initiatives are said to contribute to successful reconciliation. However, many believe for society to shed its old beliefs and emotions acquired during the conflict there must exist a top-down method that will create conditions needed for reconciliation to be pursued by local actors. Many countries choose a minimalist approach or simply choose not to pursue reconciliation, Croatia being one of them. Society's demand for reconciliation depends on the combination of different forces: historical, cultural, and political. Prioritizing reconciliation has to follow

a negotiated metamorphosis from old to the new but in societies that claim military victory this is completely absent (Bloomfield and Huyse 2003, 25).

### 3.2.1 Reconciliation via justice

In Vukovar, the perception of justice as administered by the ICTY followed a moral scheme built on an ethnical doctrine surrounding the events that took place prior, during and after the conflict.

The ICTY verdicts or lack thereof have left Serbs in Vukovar feeling robbed of justice. They feel that the Tribunal has completely disregarded Serb victims and therefore omitted going after their perpetrators. Serbian sense of denied justice reflects their distrust of the ICTY. Along with these feelings of judicial betrayal, the Serbs continue to face daily ethnic discrimination. Although everyone is exposed to the economic strife, the Serbs maintain that their situation is much harder because they are constantly barraged with accusations of guilt over the conflict. The job search thus becomes a psychologically burdensome affair. This becomes an issue as it creates an imbalanced job search approach which could eventually ostracize a group economically. Under such conditions sense of victimhood is heightened in turn enticing feelings of frustration and anger toward the other group. Harvesting reconciliation in these conditions becomes particularly hard.

Being used to the crime “perpetrator” label, Vukovar Serbs today express very little or almost no interest in the ICTY proceedings. When asked about their opinion of the ICTY work, they either claimed that they did not have time to follow the trials, or dismissed the Tribunal as something that never intended to give voice to common folks (Clark 2012, 406).

In regards to his feelings towards the ICTY, the interviewee Kukolj said that it was a private court serving the interests of others but that he did not know whose. He was completely unfazed by the Gotovina verdict disclosing that it was nothing that should be of concern to him. Gotovina had nothing to do with “it” he adds, but those who were in army units that committed the crimes should be held responsible (Interview, 2013).

The Croats in Vukovar, on the other hand, had much deeper and more antagonistic feelings towards the Hague. This was probably a result of their endemic disdain for how the ICTY handled the trials of the Vukovar Three, insisting the sentences were extremely lenient. They were adamant in their critique that the ICTY did little to punish the guilty and bring peace and justice to the victims and their families. This acute sense of injustice peaked in 2011 with the indictment and subsequent conviction of a celebrated

Croatian war hero, Ante Gotovina. When a year later Gotovina and Markač were acquitted on appeal, the ICTY was no longer seen as anti-Croat.

Croatian politicians and media played a big role in promoting the common war narrative of Croatia's Homeland War, one of purely defensive nature. The defensive encore was drilled constantly through every media outlet packaged as an undisputed truth. Being engraved in the very cognitive apparatus of the population it de facto eliminated any other versions of the narrative. The initial convictions of the Croatian generals as part of a joint criminal enterprise where the Croatian state itself was held responsible for murder, destruction of property, and expulsion of Serbs were a direct attack on the truth as conceived by the Croatian people. Thus, the ICTY became unjust, impartial and politically motivated. Former Croatian fighters were outraged by the *Gotovina et. al.* verdicts and claimed that no court that operates outside Croatia's borders could preside over the events in Vukovar as it could never understand the situation and therefore should not be allowed to place judgment.

The overwhelming sense of ICTY injustice among the Croatian population on the ground can be attributed to their limited knowledge about the Tribunal and the way it operates. In particular, the lack of legal interpretation available, as was the case in the Vukovar Three trial had potential to skew people's understanding of the verdict and sentencing procedures. Therefore, the sense of injustice in conflict-ridden societies may be ill-informed if the need to attach guilt is not substantiated with the facts of the case. Problems arise when these facts are unavailable albeit in some cases insufficient or rather ignored.

The lack of justice can be contributed to the information gap even though almost everything pertaining to ICTY trials is available online in the local languages. Legal language can be difficult to understand and not every household has at its disposal the necessary technical resources. Furthermore, Croatian authorities have widened this gap having evaded educating the public about the ICTY and leaving it to the media to provide interpretation which was inadequate at best (Clark 2012, 409).

The responsibility is also with the ICTY to help people better understand its work. Unfortunately, after twenty years in operation there was a sizably small effort that went towards this issue. Considering the Tribunal's comfortable budget, much more could have been invested into outreach programs and resources enabling better communication and access to information. Despite having an outreach office



in Croatia's capital Zagreb it is still a long journey for many across Croatia, especially those communities that are most in need of it – close to the east and south borders of the country as that is where the most fighting took place.

Unlike the 'Bridging the Gap' initiative conducted across BiH, there was no such initiative in Croatia. The ICTY outreach office in Zagreb has however proposed initiatives to get involved with high schools across Croatia holding informative seminars about the Tribunal. The Croatian Ministry of Education is yet to sign off on this proposal (Ibid, 410).

In order to challenge negative attitudes and create a positive image of the Tribunal there needs to be a more vigorous education campaign, but education in Croatia is divided along ethnic and political lines. Therefore, reconciliation cannot be achieved through formal education but it has to be approached from a non-formal system through youth organizations and NGOs (IDEA 2003, 29).

Local initiatives such as RECOM did not fare well due to lack of political will and institutional backing. Despite great recommendations that RECOM had issued, their efforts remain aspirational due to regional governments' disinterest in adopting them (26<sup>th</sup> Workshop, 2013).

### 3.2.2 Reconciliation via Truth

In regards to the truth aspect of reconciliation there is a critical independent variable, one that posits that people's concept of the truth as produced through criminal trials is a product of their acceptance of that truth. The notion that criminal trials contribute to reconciliation by establishing truth is a little premature and in the case of Croatia may be a bit farfetched. The abundance of legal documents produced from criminal trials and their historical importance on future proceedings cannot be disputed. It is this historical record that the ICTY is relying on to help aid reconciliation. Assuming there is only one truth to which everyone will subscribe to and especially when this truth is a product of an international criminal body is naive. In other words, 'truth' in Croatia is multilayered and ascribed to ethnic interpretations (Clark 2012, 412).

In an environment of competing truths it is extremely difficult to develop a prototype which can be used to establish a balanced criterion. In the whirlwind of 'us' versus 'them' there is little or no room for shared truths. In Vukovar, Croats insist on claims that they only defended themselves from Serbian aggression, and thus continued to proclaim victimhood. On the other hand, the Serbs feel they were attacked for not wanting to secede from Yugoslavia and that Croatian separatism was to blame for the

conflict which Serbs referred to as a civil war. The Serbs gave testimonies of severe intimidation prior to the conflict which evoked fear and painful memories of their suffering under the NDH regime. The fear had previously set in following HDZ's win in the 1991 election. The right-wing party had at his head a known nationalist, Franjo Tudjman, who was well known for his ideas of an ethnically pure Croatia.

Crime denial and insensitivity to the suffering of others can be attributed to self-victimization where perpetrators claim victimhood and thus attempt to justify their crimes. In addition, manipulation of numbers by politicians adds to an already aggressive 'victim competition' between rival groups (IDEA 2003, 64). Judging from the competing truths it is evident that there is a large ethnic divide in Vukovar which only makes the road to reconciliation an impossible trek. In order to rely on truth to make any reconciliation process possible, there first needs to be a reconciliation of truth. The 'ethnization of memory' directly sabotages all potential reconciliation efforts as much as it makes it impossible for truth to have a level playing field (Clark 2012, 414).

The issue is not only one of reconciling opposing truths but that these truths are conceived through a method of selectivity. Naturally, memory is selective but it can also be manipulated and abused by those who wish to further their malicious goals. Nevertheless, memory can be instrumental in achieving reconciliation by commemorating victims through permanent monuments. Others, on the other hand suggest that a mixture of remembering and forgetting might be best for society (Bloomfield and Huyse 2003, 30).

While both groups, Serbs and Croats, persist on their defense from the 'other' still neither is willing to acknowledge crimes committed by those of their ethnic group. In many instances, their facts are built on limited information or simply on preconceived notions exclusive to their ethnic narrative. Very often many are unable or unwilling to open up to other truths based on facts and figures that contradict their own. Thus, in cases where crimes were committed both groups dismissed them as isolated incidents committed by "idiots" albeit being of their own ethnicity in efforts to detach them from their ethnic group. In contracts, the crimes committed by the other group's "idiots" were seen as ordered from the top and methodically executed while the crimes committed by their side were attributed to "individual excesses" (Ibid).

Clark's findings show a greater reception by the Serb population in Vukovar to acknowledge the crimes committed by their own side. In other words, Serbs in Vukovar are more prone to accepting the truth than the Croats. Arguments have been made in transitional literature that Serb side committed majority of the crimes in the Yugoslav wars, therefore there should be a positive correlation with more willingness to recognize these crimes (Biro, et al. 2004). But, there are other more practical explanations. Unlike Serbs in Bosnia who have returned to their pre-war majority Serb communities, Serbs in Croatia remain a minority. Vukovar Serbs are more susceptible to discrimination and collective guilt thus more willing to acknowledge Serb crimes so they can make their co-existence with the Croatian majority somewhat easier. In contrast, Croats are less willing if at all to acknowledge crimes committed against Serbs. Even when presented with indisputable evidence, they are more likely to trivialize those crimes and insist that they cannot be compared to those committed against Croats (Clark 2012, 415).

### 3.2.3 Controversial verdicts

The trial of Gotovina exposed another significant obstacle on the path to reconciliation, that of rejected truths. Unfortunately, majority of Croats did not align with the ICTY's truth. Therefore the notion that by creating a historical record of truth, the reconciliation will subsequently follow is rejected. The narratives of a defensive war all but crumble and there is absolutely no mechanism in place to address the alternatives. The national narrative of victimhood has seeped into the very social fabric of society, not allowing necessary change of beliefs, emotions and opinions essential for reconciliation to take place.

Even though the Croatian State Attorney's Office requested all ICTY documentation pertaining to the Gotovina et al. case, the ICTY has not yet transferred any documents. In addition to ICTY's inefficiency there is fear that the Croatian court system will not commit itself fully to prosecuting war crimes against Serbs during and after Operation Storm. The EU membership will only further relieve Croatia of international political pressure to aid the process of reconciliation (26<sup>th</sup> Workshop 2013).

The acquittals of Croatian generals created chaos and widened the rift between already dissenting public narratives about the Yugoslav conflict. The polar opposite reactions in Serbia and Croatia only reaffirmed "a cognitive impossibility that any ICTY verdict – a conviction or an acquittal – would be able to change the public memory of the violence" (26<sup>th</sup> Workshop 2013, 20).

Country-wide protests were held in Serbia with Belgrade at the forefront for its outrage concerning the verdicts. Public opinion was in unison about the ICTY as a biased, illegitimate and unjust body. The acquittals have resurrected the demons of the past which stand in the way of reconciliation.

In Croatia, a polar opposite reaction of euphoria was enjoyed by tens of thousands gathered in the main square in Zagreb. It was a hero's welcome parade organized by the government where spectators indulged in free food and drinks. Croatians saw the ICTY verdicts as a vindication not only of their generals but the country as a whole. Their infamous war of independence was confirmed to be a legal offensive. The long-awaited dream of becoming a country had received a legal stamp, one that reaffirmed their claims of being victims of Serb aggression and legitimized Operation Storm.

Subotić (2013) insists that the controversial ICTY verdicts of acquittals, have been unanimously interpreted in the region as an end to reconciliation. The Tribunal lost all credibility by throwing more doubt to all ongoing proceedings in ICTY as well as domestic courts. Nationalism received a boost and continues to spread throughout the region.

## CONCLUSION

Next to delivering justice and deterring future war crimes, reconciliation was always a part of a package deal presented by the ICTY. Speeches of ICTY officials and country leaders very often included a reconciliation theme. When it came time for evaluation and critical analysis of the Tribunal's work and its impact on the very reconciliation it promised to facilitate in war-torn regions of former Yugoslavia, it became a very loose term and not an official part of the ICTY's mandate. Therefore, it can be said that the overreliance on *ad hoc* tribunals to bring about reconciliation is naïve as it was never equipped to fulfill such expectations. Who is at fault than those who had made a promise they could not deliver or those who put their faith in an international court in whose name it was enacted in the first place.

Though 'Vukovar Three' and 'Operation Storm' trials have not contributed to any considerable reconciliation, the assumption cannot be made that criminal trials could never have a positive effect on the process of reconciliation. This is because there are other obstructive factors that are evident in the inter-ethnic relations between Serbs and Croats and Croatia's disinterest to commit to the process.

The ICTY, besides being too costly and time-consuming it has not contributed to the reconciliation process in Croatia, neither via justice nor by giving voice to the victims. On the contrary, it is said to have halted reconciliation whereas it heightened ethnic tensions by giving credence to rival ethnic truths. The trials have not produced a greater sense of justice but in some cases led to re-victimization (i.e. Operation Storm). The location of the court has significantly lessened its impact on the ground having isolated the victims it claims to represent. Without being a part of the judicial process that they claim is a necessary component of healing, the victims felt robbed of justice and in some instances disregarded the court completely. The information gap has also immensely added to this anti-ICTY sentiment as criminal courts tend to restrict the flow of information. The Tribunal was slow in creating outreach programs that now seem to only be an attempt to salvage its broken reputation.

In terms of aiding reconciliation by leaving a historical record, breaking a cycle of impunity, and individualizing guilt, the ICTY has failed on all fronts. To this day, the Tribunal has not convicted anyone for the crimes committed in Operation Storm or any other crimes against Serbs in Croatia. The controversial ruling surrounding *Gotovina et al.* case is bound to undermine the outcomes of ongoing trials and leave many discouraged in seeking and receiving justice in Croatia's local courts.

Furthermore, the acquittal ultimately legitimized Croatia's military operation and reinforced the national narrative of the homeland war. To many Croats this marked the official end of the war by legalizing Croatia's 'thousand-year-old dream' of independence. Unscathed by charges of ethnically cleansing its Serb population, Croatia became an EU member state on July 1, 2013.

The long historical feud between Serbs and Croats contributed to today's hostile attitudes thus making them more resistant to change. Also, the absence of reconciliation initiatives following World War II meant that Serbs and Croats could not rely on history to provide a model that can better guide them. Nevertheless, since the 1990s the Croatian government seems to have taken a minimalist approach to reconciliation in order to fill all EU accession prerequisites.

Although there are some bottom-up approaches to reconciliation at the grassroots levels, however, they have not yielded enough support necessary for mobilizing a greater society for changing popular narratives that prevent people from changing their psychological repertoire. Croatia's failure to deal with the past is preventing society psychologically rehabilitate and become more receptive to reconciliation. In order to do so, opposing histories between Serbs and Croats have to be reconciled. There is little probability that this could happen in any near future because confrontational attitudes and historical animosities between the two groups are embedded into their very psyche and thus extremely resistant to change.

Considering the present situation in Croatia, there is little evidence of either readiness to forgive or openness to acknowledge the suffering of Serbs, therefore leaving little hope to look forward to reconciliation in any immediate future. Problems may lie in the fact that reconciliation is not something sought after and does not take primacy in Croatian society. Croatia is a very ethnically pure country, a new EU member state, and there are other problems knocking at its door. Bearing in mind that Serbs constitute 4% of the entire Croatian population, there are other problems of greater magnitude than those concerning reconciling with the remaining Serbs. Possibly, this might be the fundamental problem of the Croatian state.

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