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COLLECTION OF TEXTS

TRANSITIONAL JUSTICE AND RECONCILIATION

in post-Yugoslav countries

The voices of institutions, religious communities,
activists, academics, culture and victims

Edited by
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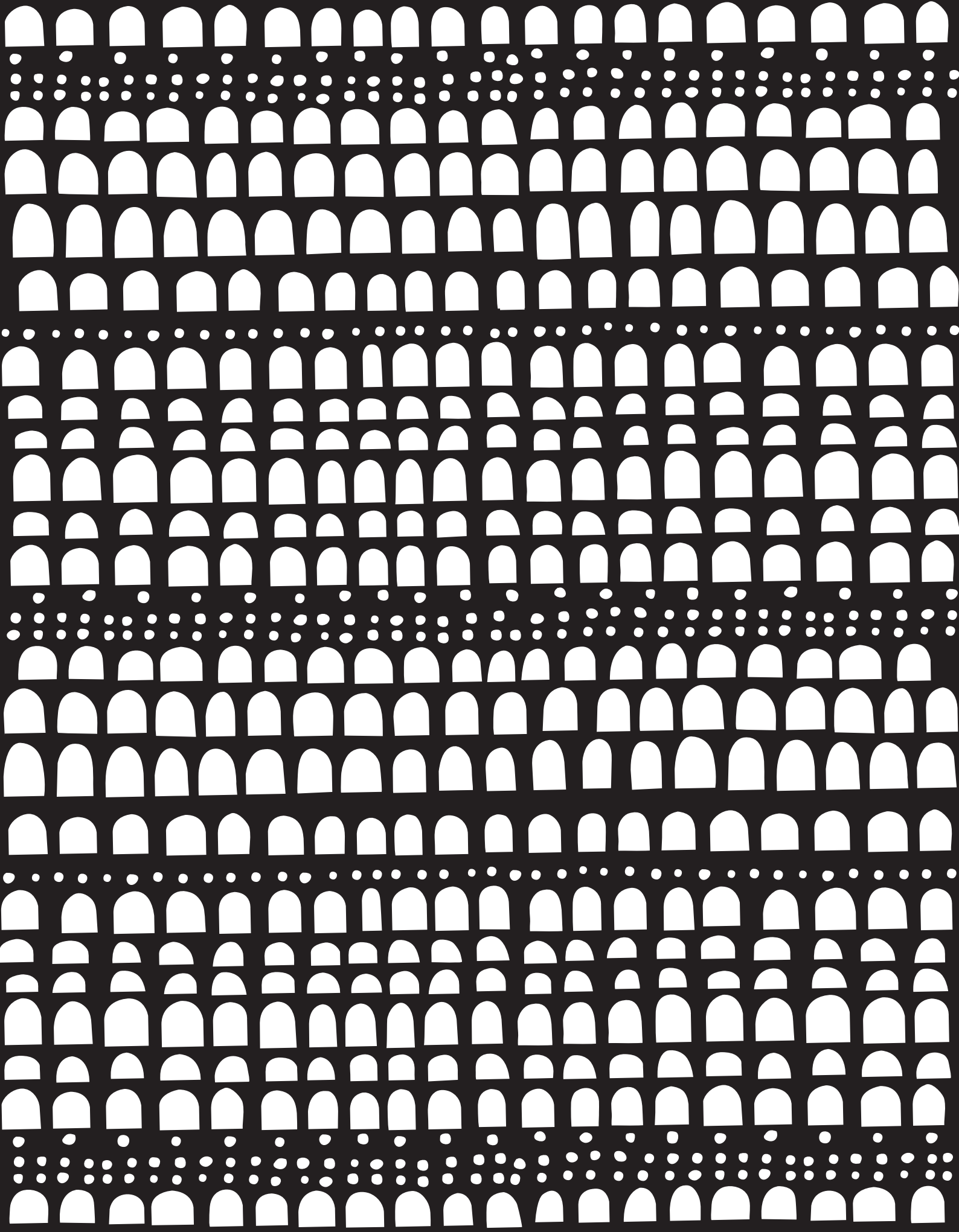
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WHOSE VOICES ARE THESE?

THE COLLECTION OF TEXTS

The Collection of Texts comprises the addresses, discussions and commentaries of representatives of institutions, religious communities, non-governmental organizations, members of the epistemological community and artists about the achievements made and the obstacles encountered in the process of dealing with the past and reconciliation, as well as testimony by victims, participants at the Ninth and Tenth Forums for Transitional Justice in Post-Yugoslav Countries.

INTRODUCTION

Nataša Kandić:¹ RECOM is the cornerstone of the attitude to the past

As we open the Tenth Forum for Transitional Justice in Post-Yugoslav Countries, there is good news to report. Eight years since the First Forum, at which we promoted the idea of a regional approach to dealing with the past, the civil society has rallied around the Initiative to establish a Regional Commission to Establish the Facts about the War Crimes and other Gross Violations of Human Rights on the Territory of the Former Yugoslavia, and has succeeded in persuading the politicians in the region to set up jointly a commission focusing on the victims, on the circumstances in which they lost their lives or went missing, and on the facts about all the war crimes. I dare say that this is something which has the potential to become the cornerstone of our joint attitude to the past, and an important instrument for revealing the past. On 14 November 2014, the Coalition for RECOM unreservedly upheld the RECOM Statute Changes drawn up by the official envoys to RECOM of the presidents of the post-Yugoslav countries.² We all have experience of dealing with politicians and we know how difficult it is and how much time it takes for a civil society initiative to secure concrete political support. It took us two years to persuade the presidents and the two members of the Presidency of Bosnia and Herzegovina to appoint their envoys to RECOM, in order to produce, on the basis of our proposed RECOM Statute, a document which constitutes the legal, political and constitutional framework for the establishment of a Regional Commission. In post-Yugoslav states, criminal trials have become the principal and the only mechanism for dealing with the past. The Coalition for RECOM supports trials of war crimes, although it is aware of the serious limitations of this mechanism of transitional justice. That is why, in 2006, the Coalition launched the Initiative for establishing an official extrajudicial body of a regional character which would focus on the victims and which would be capable of giving shape to a factual picture about what happened during the

¹ The Tenth International Forum for Transitional Justice in Post-Yugoslav Countries, November 15-16, 2014, Belgrade, Serbia

² The envoys of the presidents of Croatia, Montenegro, Kosovo, Macedonia and Serbia and of two members of the Presidency of Bosnia and Herzegovina.

recent wars. Over the years, we strove with great perseverance to develop communication with the politicians in order to persuade them to act as political sponsors of that initiative. Within the Coalition for RECOM itself, we did not find it easy to build relations of confidence, understanding and responsibility regardless of our private and personal ideas about the war. It was not easy to persuade the victims to take part in the debate on the mandate of the regional body. Unaccustomed to taking part in expert discussions with lawyers, artists and activists, in the course of time the victims came to realize that what they had to say mattered a lot. Once we had agreed that the “enemy side” also had its own victims, we proceeded with less difficulty. What still happens is that even when we are all in agreement with Professor Puhovski’s words that civil society’s duty is to bring public disgrace upon the perpetrators, the givers of the orders and those who covered up the traces of war crimes, we actually imply the “others” and not “our own”. The fact that we have reached a moment of concrete political support means success, but it is not the end of our engagement. Our task is to monitor the process which will be conducted by the state institutions.

And, lest we should forget, the Coalition for RECOM has from the very beginning encountered obstacles in the form of elections, particularly presidential elections. No sooner do we obtain the support of a president than an election follows; the new president is another politician and we are back to square one. Although we have by now adopted the document entitled RECOM Statute Changes, elections have meanwhile been held in Bosnia and Herzegovina, a new Presidency has been elected, and presidential elections are due in Croatia.³ We thus find ourselves waiting again for a new government. Judging by our experience so far, we shall also have to play our old part again – explaining, reasoning, pleading, though we will not stop our work of documenting the human losses. The more we do in this regard, the greater our chances of the politicians taking responsibility for the establishment of RECOM. Our primary tasks include compiling lists of people who lost their lives or went missing in the wars, in situations before or after the wars and, in general, in connection with the wars. The public will be informed finally about the decisions of the presidents and the members of the Presidency regarding their support for the establishment of RECOM after the constitution of the Presidency of Bosnia and Herzegovina and the Croatian elections, and after the Coalition for RECOM and/or its public advocates win the support of the newly-elected leaders for the establishment of RECOM.

We have all these years been building up the RECOM Process by relying on our own capacity, though with considerable support from transitional justice researchers and members of the academic community in Europe and America, as well as from the European Parliament, the European Commission and the Council of Europe: all of them have appreciated our determination to develop the RECOM Process by ourselves. We have been able to organize the forums and meetings of the Coalition for RECOM and the many local activities and events, thanks to the support of the European Commission, the Rockefeller Brothers Fund, the French organization CCFD, the OSCE and the Norwegian Foreign Ministry. I take this opportunity to recall that the success of

³ The presidential elections in Croatia ended in January 2015 with the election of Kolinda Grabar Kitanović.

the RECOM Initiative has been contributed to by its public advocates: Professor Zdravko Grebo, Professor Žarko Puhovski, Professor Židas Daskalovski, journalists Adriatik Kelmendi, Dženana Karup Druško, Dinko Gruhonjić, Duško Vuković, theatre producer Dino Mustafić, and also myself.

TRANSITIONAL JUSTICE

Niko Grubešić:⁴ The achievements in Bosnia and Herzegovina

Since its establishment in 2003, the Ministry of Justice of Bosnia and Herzegovina has been pursuing reforms of the justice sector in Bosnia and Herzegovina, which encompass a range of strategic programmes and activities. In the conditions of a post-conflict society, an efficient justice system can only be established if comprehensive activities are carried out also in the field of transitional justice. The exchange of experiences regarding this practice at a regional level represents an exceptionally important element of all pro-reform activities: as we employ this mechanism in other fields too, so also in the field of transitional justice.

As regards the achievements of Bosnia and Herzegovina, I can single out the following. Bosnia and Herzegovina has launched several important activities in the field of transitional justice, thus laying some key groundwork. However, much still remains to be done. For instance, the capacity of the Court and the Prosecutor's Office of Bosnia and Herzegovina has been established and empowered and also, as I have already pointed out, the Strategy for War Crimes Processing in Bosnia and Herzegovina whose implementation is in progress. The significant results achieved in the prosecution of war crimes cases in Bosnia and Herzegovina are borne out by the reports of the European Commission on Bosnia and Herzegovina's progress in this field.

While problems and ups and downs attend every activity, of course, one can generally make such a positive appraisal as this. In order to prosecute war crimes cases more efficiently, Bosnia and Herzegovina has cooperation with all the neighbouring states under the ratified agreements on legal assistance and cooperation with them and with other countries. Those signed with Croatia and Serbia are among the most important. Furthermore, a Missing Persons Institute has been established in Bosnia and Herzegovina. While implementing the activities of solving war crimes cases, we realized that they could not be completed within the planned time frame; therefore, our Strategy provides that certain less sensitive cases of war crimes are prosecuted by cantonal and/or district courts and by the Prosecutor's offices in Bosnia and Herzegovina. Nevertheless, we have also realized that new efforts should be made to strengthen the capacity for prosecuting the war crimes cases of the courts and the prosecutor's offices at all levels of government, as well as the instruments for protecting and supporting witnesses, particularly witnesses for the victims. These are the key challenges facing the governmental institutions of Bosnia and Herzegovina.

⁴ The Ninth International Forum for Transitional Justice in Post-Yugoslav Countries, May 17-18, 2013, Jahorina, Bosnia and Herzegovina

Attaching equal importance to the establishment of other instruments designed to ensure social and economic justice to the victims and to pointing out the need for strengthening the capacity of governmental institutions in order to enhance the confidence of the citizens, the Council of Ministers at the beginning of 2010 adopted the decision to draw up a Transitional Justice Strategy in Bosnia and Herzegovina. A 15-member Expert Working Group was set up comprised of representatives of governmental institutions and of the civil society and including representatives of the victims of the past war. The Expert Working Group's activities include the organization of numerous consultations; also, we have ready today a working paper of the Strategy which encompasses three strategic pillars. This fourth one, as I have said, for trials of war crimes, constitutes a separate document, though in essence they make up a joint document. Those original three pillars are: determination of facts and truth-telling, reparations and memorials, and institutional reforms.

Tonči Staničić:⁵ The victims must talk

The victims have the right to be heard, they have the right to justice, they have the right to public recognition; this right of the victims and of the sufferers in the war is the guarantee of peace, so their suffering must not be forgotten. This must be a constant reminder to both the present and the future generations of the perniciousness and curse of war. The victims can raise their voices only as persons with names and surnames, the victims must not remain mere numbers. It is necessary to establish the identity of each one of them. The unresolved status of the civilian victims calls for extensive and committed efforts towards raising awareness of this problem in all our states, in order that the victims may gain recognition and exercise their right to benefits. Generally, the problem of the missing is the most painful one in all our states, because a great many missing persons are still being looked for - in Croatia, according to official figures, 1,705 of them. I believe that, other than through the relevant state institutions, as well as through transitional justice meetings, we can obtain information about the fate of those people in others way too, and establish their exact number. In addition to the tasks already mentioned, a major future task awaiting all the experts and nongovernmental organizations concerned with transitional justice will be to strive to establish the facts about the recent past in order to eliminate all possible ideological and world-view prejudices, something which alone can bring about a change of atmosphere and develop a new cooperation between our peoples based on mutual respect and confidence. We can make a step forward only if we are aware that the difference of the other constitutes the wealth of all, as well as that familiarity with our differences enriches us. Differences are no cause for conflict but for cooperation.

Selim Selimi:⁶ Kosovo has made progress

As far as transitional justice is concerned, Kosovo has been making progress. As a new state, we have begun to step up our engagement in this field. As regards the judicial system, you may

5 The Ninth International Forum for Transitional Justice in Post-Yugoslav Countries, May 17-18, 2013, Jahorina, Bosnia and Herzegovina

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be aware that our system provides for a number of competences reserved for the mission of the European Union, EULEX – while some criminal offences are prosecuted in collaboration with our institutions, war crimes are under the jurisdiction of EULEX, with local prosecutors and judges already being involved.

We have adopted several laws concerning war crimes. I wish to mention one of them, the Law on the Status and Rights of Victims and Families of Victims, which provides for financial compensation as part of reparation. Small though this financial compensation may be, its importance to these families is symbolically great. At the moment, this law is back at the stage of being amended, because it leaves out a very painful category - the category of women raped during the war. Through this amendment, we will seek to increase compensation for the victims above the level of the existing financial compensation, in the shape of social compensation.

As regards our commitment to finding the truth, Kosovo has developed several mechanisms such as the Commission on Missing Persons and the Inter-Ministerial Working Group on Dealing with the Past, and others.

Dhurata Hoxha:⁷ The establishment of the Inter-Ministerial Working Group on Dealing with the Past in Kosovo

The subject raised by the Inter-Ministerial Working Group on Dealing with the Past and Reconciliation, established by decision of the Government of Kosovo, is more challenging than any other subject discussed by working groups in the Government of the Republic of Kosovo. The objective of this group is to develop a state strategy for dealing with the past; the strategy will include the manner and method of finding the truth on the basis of that which the group considers necessary for Kosovo. Also, the object of this group is dealing with the past massive human rights violations and serious violations of international humanitarian law in Kosovo committed in the periods of war and transition. Another objective is to promote reconciliation and sustainable peace, something which invariably calls for and ensures accountability: those who committed crimes ought to be brought to justice, which implies seeing justice done, providing the victims with compensation and creating mechanisms for seeking the truth. As the chair of this group, I assure you that all the victim categories will be treated in a dignified manner and that the whole process will be victim-oriented, with always keeping in mind their needs. Fortunately, our group has the support of the civil society organizations; but what is most important is that we have the support of the victims' families and victims' associations.

Mary Anne Hennessey:⁸ Institutional reforms and reconciliation are the basis of sustainable peace

For the Council of Europe, democracy, human rights and the rule of law are the foundation of durable peace and sustainable reconciliation throughout the whole of Europe. Thinking about achievements from the Council of Europe perspective, we can see that achievements in criminal

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justice and civil justice are much more noticeable in the region than the broader concept of justice, which is based on societal reconciliation and institutional reforms in order to make those reforms sustainable in the future. Everyone knows about the work of the ICTY, and of domestic courts dealing with war crimes. This has been very important, and will remain important into the future, in order to establish some of those truths, and to ensure that there's no sense of impunity for the crimes committed at that time. There's been a lot of success in the region in the restitution of property and, to some extent, with returns of people to their previous places of residence. There have been very huge efforts and quite a lot of success with missing persons, a lot of people being given back their identity, and a place established to express respect for the victims. There has been a certain amount of success also with housing issues, and with closing the last collective centres, with assistance to the most vulnerable people. Additionally, there is international cooperation to formalize and close the last ICTY war-related trials. And, since all of the states in the region, with the exception of Kosovo, of course, are member states of the Council of Europe, they are also participating in the broad European legal cooperation, and making use of the Council of Europe's legal norms and standards and conventional mechanisms in relation to war crimes, extradition and the use of the European Court for Human Rights, for example. The Committee of Ministers' guidelines on avoiding impunity for war crimes, are being widely applied in the region. So these are all very positive - what we can put in the basket of opportunities. However, in my view, the basket of challenges is heavier, and a much larger basket, especially as it contains a very crucial question for the future - for the present and for the future - and for justice in a broader sense. I would just like to raise three issues, only a few of which are directly in the mandate of the Council of Europe, but which taken altogether, form the crucial challenges for real justice, and real peace and reconciliation in the region. First of all, repudiation - repudiation of the rhetoric and manipulation through the media, of the facts we've mentioned a few times in the conference already. Secondly, reparations - and reparations in the global sense, not only of physical property, but in relation to civilian victims, victims of sexual violence, and the continuing trauma that people suffer today. Recognition and acknowledgement of victims - and not only civilian victims - in a public way - and that is a challenge we've also mentioned several times in Bosnia and Herzegovina in relation to memorialization and commemoration. Returns - returns, I think, needs to remain an issue for the international community to take seriously, and not to allow, in particular in the regional housing programme, any signals of the end of our concern, as there are still large numbers of people who would like to return home. However, reconciliation is the key to that. People must be able to feel safe and secure, they must be able to feel that there is a future perspective for their family, the next generations; and this is directly connected to one element of the importance of institutional reforms that the Human Rights Commissioner of the Council of Europe highlighted in his report on transitional justice and durable peace in the former Yugoslavia. Institutional reforms to insure non-repetition, education, judicial independence, solutions of media and cultural issues, and human rights.

Goran Šimić:⁹ The strategy of transitional justice in Bosnia and Herzegovina

I would like to focus on the three points I consider the most important with respect to the consultative process, the activities connected with it and, finally, the relationship between the strategy and the determination of facts - that is, to the Coalition for RECOM which advocates the establishment of a regional commission. The years have passed quickly from the moment I was appointed to the Commission charged with drawing up the Transitional Justice Strategy in Bosnia and Herzegovina: I went to Google and typed *strategy for transitional justice*. There were no results. At the beginning, we had to decide the most important thing – who will be at the centre of our strategy. We decided that only the victim and no one else should be at the centre of this strategy; also, that the activities we wish to propose must be oriented towards all the victims in Bosnia and Herzegovina and, when all is said and done, towards all of us. I am sometimes impatient with those of my students who regard as victims only those who have experienced some psychosocial or social or physical trauma. I would dare to say that all of us who live on the territory of the former Yugoslavia are victims of the war we have gone through. This is why we decided to appeal to the victims and their representatives from the victim associations, members of the public, and members of the academic, religious and other communities from all over Bosnia and Herzegovina to create a consultative process together with us. In the end, we produced a 130-page document envisaging more than 80 activities which in our opinion must be implemented in Bosnia and Herzegovina. The Strategy includes other mechanisms such as extrajudicial determination of facts, reparation, restitution, erection of memorial centres, memorialization of suffering and, lastly, activities aimed at specific institutional reforms in order that we may have publicly and socially credible institutions we can all trust.

Bojan Glavašević:¹⁰ We have drawn a clear distinction between law and justice

What I am going to talk about are specific things accomplished by the Croatian Government matters of transitional justice. To begin with, we have drawn a clear distinction between law and justice. When we talk about lawsuits, borders, and reparations, these things have nothing to do with justice, which is subjective; and for this reason, we have treated them as separate. These matters are the concern of the Ministry of Justice and of other related institutions. However, where justice is concerned, that is something subjective; there we are talking about people's destinies, about whether or not something makes sense, about reconciliation and coexistence. These are much more complex issues which call for a far more serious approach. For a start, there is the matter of the missing persons, the people we have been looking for since the end of the war. The Law on [the Rights of] Victims of Sexual Violence itself will serve our purpose as a sort of prelude to fundamentally changing the Law on [the Rights of] Civilian Victims of War. The third field with which we are concerned regarding transitional justice is dealing with trauma. And, finally, the fourth field, which I would call the truth about the war and about peace-building. The idea is to consolidate a curriculum of teaching about the Homeland War, to produce something which is objective, applicable to all, acceptable by all, devoid of hate speech,

9 The Ninth International Forum for Transitional Justice in Post-Yugoslav Countries, May 17-18, 2013, Jahorina, Bosnia and Herzegovina

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and something which terminates in a school of peace. This is something which has not existed in Croatia so far. Pupils of different nationalities attend different schools and are taught different histories. The Croatian Government has invested efforts to establish integrated schools.

CRIMINAL JUSTICE

Sandra Orlović¹¹: Serbia has no strategy for prosecuting war crimes

Serbian officials have not included in their priority list the establishment and implementation of transitional justice mechanisms designed to deal with the crimes committed during the 1990s. The establishment of specialized institutions for criminal prosecution of war crimes perpetrators has figured as the only mechanism of transitional justice in Serbia so far. Although Serbia's failure to satisfy justice regarding the crimes of the 1990s has been criticized repeatedly by international organizations and institutions, Serbian institutions have not put even the smallest effort into addressing this problem.

Over the past ten years, Serbia has issued indictments against 154 persons in 48 cases, 56 of whom have been convicted. When measured against the scale and nature of the crimes committed during the wars in the former Yugoslavia, bringing war criminals to justice in Serbia, despite the solid legal and institutional framework, has had very modest results.

Among the many reasons for this kind of underachievement, the first to be singled out are the social and political circumstances that have directly affected the operation of the institutions specializing in war crimes prosecution. There is no doubt that the general indifference of the political and social stakeholders in the process of dealing with the crimes of the 1990s adversely affects the prosecution of war crimes. In addition, numerous examples in Serbia in the past last ten years demonstrate that the representatives of the institutions often openly obstruct the work of the institutions authorized to prosecute war crimes perpetrators, or exert pressure on them.

The absence of a responsible attitude on the part of the political institutions towards the problem of establishing criminal justice for war crimes has been most seriously felt in the mechanism for the protection and support to witnesses and victims. Problems in the protection of former members of the army and the police willing to testify about the crimes of their former colleagues have been sharply criticized, for years on end, by international institutions and organizations. However, the local institutions that could have addressed such problems have remained inactive. It should not be forgotten that several former members of the armed forces have publicly spoken about the threats and pressures exerted on them by the members of the police unit responsible for their protection; some have even been forced to leave the witness protection programme altogether. With regard to support for the victims who testify in war crimes cases, the existing system does not meet the corresponding international standards. The support is reduced to a single service within the Higher

¹¹ The Tenth International Forum for Transitional Justice in Post-Yugoslav countries, November 15-16, 2014, Belgrade, Serbia

Court in Belgrade, the mandate of which is limited to the time of the victims' residence in the court. For years, the Council of Europe and the EU have been vocal in drawing attention to these problems, but their attention has not resulted in the action and involvement of local institutions.

In the past several years, the prosecutorial activity of the Office of the War Crimes Prosecutor (OWCP) has significantly declined. This can be observed by simply examining the number of charges filed and the fact that the indictments issued in these years have targeted less demanding cases. There has been no prosecution of complex cases which reveal the systemic nature of the crimes backed by the state – such as the mass killings in Kosovo, or politically sensitive cases like the genocide in Srebrenica, or the camps in the Vojvodina region, and in Slijivovica and Mitrovo Polje. Furthermore, the OWCP is continuously criticized because of its de facto amnesty for those responsible on grounds of command responsibility, since the OWCP has not applied this legal concept in any of its cases.

The objective difficulties contributing to the OWCP's underperformance include the passivity of the police department responsible for crimes investigation, along with the lack of resources, especially those needed for the hiring of associates and investigators, who constitute the necessary foundation for the investigations, analyses and preparation of cases in any prosecutors' office.

The work of the specialized courts within the Higher Court and the Court of Appeals in Belgrade can be assessed as being generally competent, professional and successful. However, some aspects of these departments are subject to criticism. In several judgments, the factual and legal conclusions were motivated by the intention to reduce Serbia's responsibility and the extent of its involvement in the armed conflicts in the former Yugoslavia. In addition, judgments are characterized by a mild penal policy, especially with regard to the application of mitigating circumstances.

One of the reasons for such modest achievements in prosecuting those responsible for war crimes is the fact that Serbia, unlike Bosnia and Herzegovina and Croatia, has not devised a strategy for war crimes prosecution. In that sense, the adoption (and implementation) of a strategy, which would make all the relevant institutions assume greater responsibility as well as specific tasks to improve the prosecution of war crimes in the future, is imperative. The OWCP has a great responsibility for the process of devising a comprehensive national strategy, because it is the OWCP's role to establish a prosecutorial strategy and priorities for the future, modelled on the prosecutors' offices in the region, taking into account the criticism of its work, particularly with regard to more complex cases and indictments of those with command responsibility.

With regard to the state's obligation to provide fair reparations for victims, Serbia has been the worst in its treatment of victims in comparison with other countries of the region. The legal framework which establishes the recognition of the status of civilian victim of war is an example of the systemic discrimination against victims, unprecedented in the region and beyond. Under current laws, only ten percent of actual victims who now live in Serbia have had their status of victims recognized and managed to secure the rights deriving from this status. Other victims of the Serbian forces - victims who were killed on the territory of other states, families of missing persons, victims suffering psychological consequences and victims of sexual abuse - have all

been excluded from the law. At the same time, victims from other countries attempting to establish their right to reparations through the courts are faced with numerous problems, the common denominator of which is the courts' protective attitude towards the State. The many years of still continuing neglect of Serbia's duty toward the victims and its violation of international obligations in this regard, have been noted in reports by the UN, the Council of Europe and the EU.

In Serbia, lustration, or checking the backgrounds of the members of the military and police, has not yet been conducted. Persons involved in the planning, execution and covering up of massive war crimes during the wars in former Yugoslavia have assumed some very powerful positions in the army and police, as well as in other state institutions. Even after being indicted for war crimes, they remain in their positions.

Dženana Karup Druško¹²: BiH does not implement State Strategy for War Crimes Trials

The criminal prosecution of those responsible for serious violations of international humanitarian law in Bosnia and Herzegovina is one of the main mechanisms of transitional justice. That is why the failure to implement the National Strategy for the Prosecution of War Crimes has called into question other mechanisms of transitional justice. The Strategy, which was designed in 2008, envisaged that complex cases be completed within seven years, i.e. by 2015, while the rest could take up to 15 years, or until 2023.

One of the key problems in Bosnia and Herzegovina, and in the region at large, are political obstructions that advocate the change of the law — or more precisely, obstructions that advocate the signing of an agreement which would disallow the extradition of Bosnia's own citizens in war crimes trials, although in other areas of criminal prosecution extradition does not appear to be a problem. It is not rare for persons who are being criminally prosecuted, and also those who have been convicted, in Bosnia and Herzegovina, to find refuge in Serbia, Montenegro and Croatia, using their dual citizenship. In addition to this, the agreements that Bosnia and Herzegovina signed with Serbia, Croatia and Montenegro on criminal sanctions (examples are the cases with final judgments against Momir Savić, Bosko Lukić, Velibor Bogdanović and Mirko Todorović) are not being acknowledged. Unresolved inter-state issues in criminal prosecution have been largely resolved by the signing of protocols and agreements, but they have not resolved the fundamental problems.¹³

In Bosnia and Herzegovina, transitional justice has been reduced almost entirely to criminal justice, which is certainly among its most important pillars. But considering what I have mentioned above, the question is whether the implementation of projects that include other mechanisms of transitional justice, particularly mechanisms of the right to truth (truth-telling), should in fact be speeded up.

¹² The Tenth International Forum for Transitional Justice in Post-Yugoslav countries, November 15-16, 2014, Belgrade, Serbia

¹³ The escape to Republika Srpska of the convicted Novak Djukic. See: Press Release of the Court of Bosnia and Herzegovina stating the reasons for the issuance of an international arrest warrant against Djukic, <http://www.sudbih.gov.ba/?id=3465&jezik=s>, <http://www.klix.ba/vijesti/bih/kako-su-ratni-zlocinci-bjezali-iz-bih-od-radovana-stankovica-do-novaka-djukica/140709103>

The only active project, and, what is most important, the only one possessing a regional character, is the Initiative for RECOM.¹⁴ When it comes to Bosnia and Herzegovina, the revitalization of transitional methods and mechanisms is being carried out, among other ways, through the operation of the Coalition for RECOM. It is obvious that the focus of transitional justice, in the region, as well as in Bosnia and Herzegovina¹⁵, could be on some other mechanism—for example, on the right to the truth, or truth-telling. In Bosnia and Herzegovina there are certainly opportunities to develop simultaneously other mechanisms of transitional justice, primarily in the field of reparations or compensations, rehabilitation, memorialization, etc.

With regard to reparations in Bosnia and Herzegovina, it is crucial to adopt a national law on victims of torture and civilian victims of war. The current solutions are partial, and do not include all victims; there are also disparities in the treatment of victims. In connection with this, it is also necessary to resolve questions of different treatment with respect to the assessment of the level of disability of civilian victims of war and war invalids, as well as of the different financial benefits for certain categories. The legislative division along entity lines contributes to the absence of a single list of users, with their rights and status.

When it comes to reparations, the only rational and well-founded explanation for such a long agony, is that the authorities in Bosnia and Herzegovina do not want uniform laws because of their narrow national interests. A unified and comprehensive law would establish the position of all victims on an equal footing. Politicians refuse to consolidate the current fragmented and differing legislation, simply because they use their budgetary funds to (in)directly control most organizations (and their members). Hence, they refuse to unify the legislation which would make redress, rehabilitation or any other form of reparation a national institution, by which systematic and equitable assistance to victims could be introduced without discrimination.

The Federation of Bosnia and Herzegovina has adopted the Law against Denial of Genocide. But the law did not receive support in the Parliamentary Assembly of Bosnia and Herzegovina.

Recommendations

Integration, as well as the rearrangement and redefinition of transition mechanisms, is urgently needed in Bosnia and Herzegovina. The dominant role of criminal justice ought to be supplemented and supported by other transitional justice mechanisms, primarily by the right to the truth (truth-

¹⁴ www.recom.link This independent, regional, civil society initiative aimed at establishing a regional intergovernmental commission for truth, proceeds from the basic assumption that a regional approach is necessary to the process of truth-telling, given the historical context and the regional dimension of human rights violations during the war.

¹⁵ There are numerous reports by international observers and NGOs about the collapse of criminal prosecution in the countries of the former Yugoslavia, which is to say, in the Western Balkan countries covered by the work of the ICTY. Although numerous agreements and cooperation protocols have been signed, prosecutorial cooperation is weak, and plagued by political interests and influences, and the processes themselves in individual states have been reduced to the prosecution of peripheral and rare individual cases. For example, cooperation between Serbia and Croatia was brought to a halt when the Croatian Parliament adopted the Law of Nullity: <http://www.zakon.hr/z/506/Zakon-o-ni%C5%A1tetnosti-odre%C4%91enih-pravnih-akata-pravosudnih-tijela-biv%C5%A1e-JNA,-biv%C5%A1e-SFRJ-i-Republike-Srbije>. Similarly, the cooperation between Serbia and Bosnia and Herzegovina is not yielding good results, despite a Prosecutorial Protocol between the two countries having been signed.

telling). At the same time, it is necessary to halt the collapse of the National Strategy for Prosecution of War Crimes, through a structured dialogue with the EU and internal measures.

The Initiative for RECOM could help redefine transition mechanisms in Bosnia and Herzegovina, and it could also help revive the generally wilting transitional justice in the region. It could do so by focusing on the integration of various transition mechanisms, especially through the establishment of a fact-finding commission, or through the mechanism of the right to the truth. Only the integration and redefinition of transitional justice mechanisms can renew, reinforce and supplement the earlier achievements. To make that happen, civil initiatives and the support of the international community, as well as the support of local politicians, are needed. Bosnia and Herzegovina has just completed its elections; the government is currently being constituted. Perhaps this is the right moment to alert the main political stakeholders that their support for these recommendations in the field of transitional justice is urgently needed.

Civil society is an equal partner and it is necessary to work on the resuscitation of civil society in Bosnia and Herzegovina, in terms of strengthening transition mechanisms in Bosnia and Herzegovina. Often it is precisely the civil society organizations that stall certain actions of transitional justice.

Certainly, we should not forget that one of the most important goals of transitional justice is compensation to victims, which at least partially eliminates the effects of crimes and prevents the commission of crimes in the future. Therefore, it is necessary to adopt a single law at the level of Bosnia and Herzegovina on victims of torture and civilian victims of the war in Bosnia and Herzegovina, to give victims equal status, and prevent politicians from holding the victims their hostage.

As part of the mechanism of institutional reforms, incentives should be created for the adoption of the law on lustration, as well as the law barring genocide denial. Requests to establish a fund for the victims, which the Hague Tribunal sent to the UN Security Council, should be supported. This would create a regional fund, which could in turn initiate internal state and interstate actions related to the issue of reparations for victims.

Within the mechanism of criminal justice, it is necessary to ensure justice for victims of sexual violence, because the number of indictments, and consequently convictions, in Bosnia and Herzegovina, remains very low when compared to the number of other prosecutions of serious violations of international humanitarian law. Furthermore, it is necessary to continue to provide adequate support to protect witnesses of war crimes, through the creation of a comprehensive protection system, which does not yet exist.

The integration of transitional justice mechanisms supported by the international community, and a redefinition of the methodology of transition mechanisms through regional cooperation, are prerequisites for a new chapter in transitional justice in Bosnia and Herzegovina. It is clear that criminal justice alone is not sufficient, and should be complemented by the establishment of RECOM, which is an essential factor in the new approach to transitional justice in Bosnia and Herzegovina and throughout the whole region.

Vesna Teršelič:¹⁶ The increase of exclusiveness gives rise for concern

Whereas during the 1990s crimes committed by members of Serb units were almost the only ones that were investigated in Croatia, after 2000 investigations were launched into crimes committed by members of Croat formations. However, even today crimes not resulting in death are only investigated exceptionally. The prosecution of rape committed during the war is being intensified after some delay, but with systematic evictions, the blowing-up of houses or deportations not being designated as war crimes for the time being. Although human rights organizations consider that the list of crimes not falling under the statute of limitations in the practice of the State Attorney's Office and the courts should be enlarged, there is no knowing which offences, currently designated as violations of human rights, will be designated as war crimes in the future.

How many crimes have actually been prosecuted? There is a considerable discrepancy between the records of the State Attorney's Office¹⁷ and those of various civil society organizations. The information inevitably depends on the interpretation of what war crimes and gross violations of human rights are respectively, and is not final. As a result of the ongoing investigations and field enquiries by human rights organizations, some crimes which are today subject to the statute of limitation may be qualified as war crimes.¹⁸

Even if this does not happen, it should be borne in mind that injustice and violations of human rights leave deep marks. Though their effects on the victims, their communities and society are not as drastic as those of war crimes, the long-term consequences of violations such as deportations, evictions, the blowing-up of houses and loss of jobs make it obligatory that institutions and society react.

Even after the elections of 3 January 2000, the Croatian authorities, intimidated by the intensity of the demonstrations in support of the accused members of Croatian formations in Split and other towns, remained very cautious as far as creating the conditions for just judicial proceedings were concerned, because this called, above all, for admitting the errors committed by all the competent institutions during the 1990s, and for turning over a new leaf. Whilst in the domain of corruption the legislator entrusted investigations to the new office operating as part of the State Attorney's Office, with respect to war crimes, strangely enough, he counted on those who had taken part in covering them up during the 1990s. One would have expected that some professionals would have taken advantage of the new political circumstances to improve their work record; however,

16 The Tenth International Forum for Transitional Justice in Post-Yugoslav Countries, November 15-16, 2014, Belgrade, Serbia

17 As of the end of 2013, the State Attorney's Office of the Republic of Croatia (DORH) knew the identity of 317 perpetrators. The perpetrators of 173 crimes were unknown, and only 115 (23.47 per cent) were solved. Out of the 490 crimes registered in the DORH database, 393 (80 per cent) were committed by members of Serb formations – the Yugoslav People's Army (JNA) or formations of the so-called Serb Autonomous District of Krajina (SAO Krajina), 86 (18 per cent) by members of Croat formations – the Army of Croatia (HV) or the Ministry of the Interior (MUP) of the Republic of Croatia, 2 (less than 2 per cent) by members of the so-called National Defence of the Autonomous Province of Western Bosnia, and 7 (1.4 per cent) by members of formations unidentified to date. As of 31 December 2013, 316 persons were under investigation, 613 had been charged with proceedings in progress, and 608 persons had been sentenced. Following the investigation or the bringing of the indictments, proceedings were suspended or judgements of acquittal were rendered with respect to 2,052 persons.

18 For a more detailed analysis, see the book *Procesuiranje ratnih zločina – Jamstvo procesa suočavanja s prošlošću* produced by Documenta, Centre for Peace, Non-violence and Human Rights in Osijek and the Civic Committee for Human Rights in Zagreb, 2014.

the decision inevitably delayed the resumption of suspended proceedings by those who, on account of their political opportunism, knowingly “forgot” about them, in order not to jeopardize their positions and promotion in the police force or in the State Attorney’s Office. The legislation adopted by the legislator in a declaratory manner in order to indemnify the victims of war did not solve their problems, but rather put the majority of them in an even worse situation;¹⁹ given that many of them received neither compensation nor recognition of their suffering and were required to pay the high costs of the litigation.

The trials of the war crimes committed in the Medak pocket, Gospić and Osijek, bore witness to the whole society’s sensitivity to the criminal prosecution of members of one’s own side, and its complexity; however, the judgements rendered against the perpetrators indicate that the Croatian judicial system is capable of carrying out proceedings of this kind. In particular, the final judgements rendered in the trials of the crimes committed in Gospić and Osijek were of relevance for the recognition of the victims’ suffering and for the social process of dealing with the past, as well as for the process of confidence building. All the same, the burden of partially or totally uninvestigated crimes remains.

Owing to the lack of time, I can only give a few examples.

The crime at the Ovčara Farm near Vukovar, committed during the night of 20-21 November 1991 against wounded and sick persons, prisoners of war, staff of the Vukovar hospital and civilians, which has been investigated by the ICTY, has not been judicially decided to this very day either in Croatia or in Serbia.²⁰ The victims included under-age children, young adult males, two women, one of them 60 years of age and the other heavily pregnant. Two hundred victims’ bodies were found in the mass grave. The mortal remains of many of those who were taken away from Velepromet and from other locations in Vukovar are still being searched for.

Mirko Norac was finally sentenced for the crime committed against civilians and prisoners of war in the Medak pocket in September 1993. After human rights organizations for a number of years had called for further investigations into the crime against the Serb civilians and prisoners of war in the Medak pocket, an investigation was carried out and an indictment brought against two persons in 2012. However, the persons at the top of the chain of command remain unaffected. The proceedings are ongoing.

As regards the prosecution of the persons responsible for the criminal offences of war crimes committed during the military-police “Operation Storm”, there has been only one final judgement rendered by the Croatian judicial system, namely for the crimes committed in Prokljani and Mandići. In the wake of “Operation Storm”, the Croatian Helsinki Committee for Human Rights

¹⁹ Law on Responsibility for Damage Caused by Terrorist Acts and Public Demonstrations (Narodne novine No. 117/03), Responsibility of the Republic of Croatia for Damages Caused by Members of Croatian Armed Forces during the Homeland War (Narodne novine No. 117/03).

²⁰ The judgement is not final due to a decision of the Constitutional Court of Serbia.

(HHO) registered 677 civilian victims and about 20,000 destroyed buildings (burned, pulled down or thoroughly damaged).

The human rights organizations monitoring the trials of war crimes have come to the following conclusion: "The effective prosecution of perpetrators depends increasingly on both the cooperation of the judicial bodies of the states in the region and on the willingness of witnesses to give evidence, that is, on their confidence that in other states in the region just proceedings will be conducted and that direct perpetrators and persons with command responsibility will be prosecuted unselectively. Although the Serbian Prosecutor's Office brought indictments against five defendants in connection with the crime committed in Sotin, the setting aside of the first-instance judgement for the crime committed in Lovas, the inappropriately light penalties imposed on the abusers in the Morinj camp, and the failure to prosecute high-ranking military and political structures in Serbia and in Montenegro does have a discouraging effect on witnesses."²¹

In the year that the Republic of Croatia became a full member of the EU, the reconciliation process ground to a halt. During 2013 and 2014, the intolerance of the Serb minority in Croatia was manifested through the destruction of bi-lingual car-plates and road-signs. The increasing exclusiveness in other countries in the region also, and in the EU, gives rise to concern and cannot have a positive effect on the judicial system.

Finally, I wish to ask whether there is going to be the political wisdom in Croatia and in other post-Yugoslav countries necessary for stopping the exertion of political influence on the judicial system, so that the standards of procedure between the judicial bodies of the states in the region can be harmonized, as many perpetrators and people with command responsibility as possible brought to justice, the persecution of persons in respect of whom there is no evidence of their being perpetrators ended and judgements imposed on unjustly convicted persons quashed.

Tea Gorjanc Prelević:²² Not a single indictment on grounds of command responsibility in Montenegro

The Montenegrin authorities consider that the prosecution of war crimes is for the most part over. This is evidenced by the Government's proposal that the Special Prosecutor's Office be stripped of its jurisdiction for war crimes ("one should turn to the future, that is a matter of the past").²³ In spite of the clear recommendation of the European Commission that Montenegro should fight impunity for war crimes, the Government considers that this can be done by transferring this challenging jurisdiction to the regular, higher Prosecutor's Offices, which have jurisdiction to prosecute nearly all other criminal offences under the Criminal Code.

21 Report "NALAZI I PREPORUKE za razdoblje 1. srpnja 2013 – 30. lipnja 2014." prepared by Documenta, Centre for Peace, Non-violence and Human Rights in Osijek and the Civic Committee for Human Rights in Zagreb, 2014. <http://www.documenta.hr/assets/files/objave/Sudjenja-za-ratne-zlocine---nalazi-i-preporuke--01-07-2013-30-06-2014-2.pdf>

22 The Tenth International Forum for Transitional Justice in Post-Yugoslav Countries, November 15-16, 2014, Belgrade, Serbia

23 Statement by an expert engaged by the Government of Montenegro as adviser in drawing up the Law on the Special Prosecutor's Office during the debate on the Draft Law in Podgorica on 22 September 2014.

Since the 1990s, six war crimes cases have been prosecuted in Montenegro. In three of these, most of the accused were sentenced, in two, all the accused were acquitted, and in one, all were acquitted by a judgement of first instance. 36 persons were indicted, 10 were sentenced, and 26 were acquitted. However, these statistics conceal the fact that only one case in which somebody was sentenced concerns the responsibility of Montenegro, that is, of its citizens, then members of the reserve force of the JNA [Yugoslav People's Army]. I am referring to the case involving the abuse of Croats at the Morinj camp on the territory of Montenegro, which Croatia referred to Montenegro and where four direct perpetrators were finally given the minimum punishment.²⁴

One of the three remaining cases, which were concluded without anyone being found responsible, is in the appeals stage, the judgement of first instance having acquitted all the accused members of the JNA (*the Kaluđerski laz Case*, involving the murder of civilians who had fled from Kosovo to the territory of Montenegro in 1999).

Two of the cases in which the responsibility of Montenegro was implicated, as that state has partially acknowledged, were concluded by acquitting all the accused in a final judgement.

The cases involved the torture and expulsion of the Muslim population from Bukovica in what is perhaps one of the best documented war crimes of all time – the so-called “deportation” of Bosnian and Herzegovian refugees from Montenegro to the authorities of Republika Srpska, which actually constituted unlawful arrest and extradition of civilians as hostages to the army of a neighbouring state that was hostile to them. In both cases, the judicial decisions were based on an erroneous interpretation of the law. In *the Bukovica Case*, the Supreme Court finally ruled that it was not possible to try a crime against humanity retroactively, because such a crime was not envisaged by the Criminal Code of the SFRY [Socialist Federal Republic of Yugoslavia], in spite of the fact that such offences are prohibited by international criminal law, which was binding on Montenegro (i.e. the SFRY), and in spite of the fact that a provision to this effect exists in Bosnia and Herzegovina legislation and has been confirmed by the European Court of Human Rights.²⁵ In the “deportation” case, the political influence was even more obvious – it was concluded that although the accused members of the police force and State Security had committed unlawful arrests and extraditions, they could not be held responsible for a war crime because they were not a party to the armed conflict in Bosnia and Herzegovina, a conflict regarded as being of an internal nature. By arbitrarily interpreting international and domestic humanitarian law, the court said in effect: “If you engage in war crimes activities, you can do as you please, as long as you don't carry a membership card of an official party to that war”.

24 The three cases which led to the establishment of the responsibility were: 1. the killing of the three-member Muslim family Klapuh on the territory of Montenegro by three members of the Army of Republika Srpska, the connection between Montenegro and the fact that the crime took place on its territory being accidental in this case (five perpetrators were finally sentenced); 2. the conviction of the only indicted perpetrator of the kidnapping and killing of the passengers from the Belgrade-Bar train at Štrpci station in Bosnia and Herzegovina in 1993 (Nebojša Ranisavljević, a Serb from Serbia, was among the several members of the paramilitary formation responsible, commanded by Milan Lukić, a Serb from Bosnia and Herzegovina; the rest were not tried); the crimes committed in the Morinj camp in Montenegro – out of several defendants, six were charged, of whom two were acquitted and four sentenced.

25 *Simsic v. Bosnia and Herzegovina*, 2012.

Of course, this attitude is political rather than legal and dates from the days of Slobodan Milošević, who denied any involvement of Serbia and Montenegro in the war in Bosnia and Herzegovina. This case, where civilians were arrested and extradited to the authorities of Republika Srpska as hostages in order to be used for the exchange of prisoners of war, is proof enough of the participation of civil servants of the Republic of Montenegro in that conflict on the side of the Bosnian Serbs.²⁶

Thus the circle is now complete. In the case of the deportations, the Government paid reparation for 200 victims and members of their families, although in the end no one was found individually responsible. Although the Government has a programme for the return of those expelled from Bukovica and is repairing their homes, unfortunately it has no grounds whatever to seek criminal responsibility thanks to the wrong qualification by its own Prosecutor's Office.

The obvious unwillingness at all levels to punish war criminals in Montenegro is a logical consequence of the fact that the Montenegrin Prime Minister is the same person who occupied the same post at the time the crimes took place. To a judicial system which aspires to the European Union, this fact should serve as an inducement to prove its independence and its willingness to gain an insight into and deal with past crimes. It is clear that Montenegro has no such judicial system; what is also clear and what gives hope that things will improve is the fact that the European Union insists on such a judicial system in order to accept Montenegro.²⁷

Finally, in connection with what my colleagues have said and by way of conclusion, there has been no indictment in Montenegro on grounds of command responsibility for failing to prevent a crime and/or for not punishing a person for committing a crime, nor, indeed, is it known that any investigation in this connection has ever been launched. No member of the army or the police has been lustrated or has had his or her war past checked, because there are no legal grounds for that.²⁸ In some cases, such as those of *Kaluđerski laz* and of the victims of NATO air raids in *Murino*, reparation proceedings were suspended, pending the completion of the criminal proceedings, or declared time-barred. In spite of the insistence of the civil society, there are no monuments to the victims: there is, however, one monument in the shape of a glass plate in a park in Podgorica dedicated to "All civil victims of the wars in the territory of the former Yugoslavia from 1991 to 2001".

The establishment of a consolidated forum such as RECOM could help to overcome many of shared ills. In the meantime, it will help to exchange our experiences and to help the European Commission both to gain an insight into the situation in the region and to keep making progress with European integration conditional precisely on the implementation of transitional justice.

26 For further details about the processing of war crimes in Montenegro, see "Suđenja za ratne zločine u Crnoj Gori", Action for Human Rights in collaboration with Bogdan Ivanišević: <http://www.hraction.org/wp-content/uploads/20-maj-2013-Sudjenja-za-ratne-zlocine.pdf>

27 "...no serious efforts to tackle impunity have been demonstrated." "Montenegro needs to step up its efforts to fight impunity for war crimes, and effectively investigate, prosecute, try and punish war crimes in line with international standards." The European Commission Montenegro Progress Report, 2014.

28 The Draft Law on Lustration submitted by the Liberal Party of Montenegro in 2007 has never been included in the agenda of the Parliament.

Nora Ahmetaj²⁹: Priority should be given to trials before the courts of the Republic of Kosovo

The RECOM³⁰ Initiative represents a unique opportunity to deal with the legacies of war in the former Yugoslavia. This initiative is extremely challenging. The last eight years have proved that initiating dialogue among societies in the region faces inevitable obstacles. RECOM presents the possibility of dealing with the past, although the three years' process of mobilizing societies to establish dialogue has proved that the process isn't easy, and that some obstacles were inevitable.

Context for Transitional Justice Work in Kosovo

Post-war, there is always a need for reconciliation initiatives and the building of mutual trust between communities. Reconciliation is not a static process; rather, it is fluid, and requires a holistic approach to dealing with the past.

The entire process of reconciliation, like reparations, should be understood in the context of a holistic set of objectives. This includes securing justice for victims, accountability for perpetrators, the establishment of democratic institutions and the rebuilding of those destroyed through violent conflict and systematic destruction. Eliminating the fear of living together involves rebuilding trust in government and its institutions, and building social solidarity among citizens. All these objectives together constitute a holistic transitional package that contributes to restoring the society.

The Balkans in general, and Kosovo in particular, will not come to terms with the past without real political determination and recognition. The process of reconciliation cannot be taken as a separate process in Kosovo, since the legacies of the armed conflict have affected all countries in the former Yugoslavia, and should therefore be addressed as a transnational process.

Shifting responsibilities

In relation to war crimes, on 24th April the Assembly of Kosovo ratified the exchange of letters between the President and Baroness Ashton on the EULEX mandate. It also provided for the relocation of sensitive judicial proceedings, regarding cases arising out of the investigation led by the Special Investigative Task Force to address the allegations of the 2011 Council of Europe Parliamentary Assembly Report. Amendments to key legislation, including the Constitution, need to be adopted by the new legislature to establish a specialist court and its prosecution office.³¹

Now that EULEX is downsizing and transferring authority back to Kosovo, how will Kosovo's institutions handle their increased responsibilities towards war victims in general, and towards missing persons in particular? In general, there continues to be insufficient political support and a lack of proper mechanisms to gather the information relevant for investigations regarding war crimes and missing persons. Witness intimidation continues to be a concern, although the police have made good progress in establishing a witness protection directorate.³² Despite the

29 The Tenth International Forum for Transitional Justice in Post-Yugoslav countries, November 15-16, 2014, Belgrade, Serbia

30 The Regional Initiative to establish the facts about war crimes in Former Yugoslavia 1991-2001

31 http://ec.europa.eu/enlargement/pdf/key_documents/2014/20141008-kosovo-progress-report_en.pdf

32 http://ec.europa.eu/enlargement/pdf/key_documents/2014/20141008-kosovo-progress-report_en.pdf

lack of local capability, I may be among the few Kosovars who would prefer that the country try the crimes themselves, without international assistance, as a state-building and accountability exercise. I see this as a short cut, an injection, an external push for the process of dealing with the past. Maybe the conditions are not met in Kosovo, but the more grassroots, bottom-up the process is, the better for our country.

The 2014 Progress Report suggests that the government needs to approve the rules of procedure for the inter-ministerial working group on dealing with the past and reconciliation, and that it needs to adopt a transitional justice strategy. This group has shown little progress so far, as the government has not been willing to take it seriously.

Issues pending in the process of dealing with the past

As noted in the Kosovo Progress Report 2014, the unresolved fate of missing persons from the conflicts of the 1990s remains a significant humanitarian concern in the Western Balkans. A total of 1,709 persons from the conflict in Kosovo are still missing. In the Pristina-Belgrade dialogue, the matter of missing persons was invested with a humanitarian character. The UN continues to encourage the various communities in Kosovo to work towards greater reconciliation and integration, by noting progress on such important issues as missing persons and recognition of survivors of sexual violence suffered during the conflict.³³

Although in August, four countries in the region, Serbia, Croatia, Montenegro and Bosnia and Herzegovina signed a Declaration on Missing Persons in order to relieve themselves of the moral burden, the Kosovo government has not discussed the issue. Kosovo's government should demonstrate its honest intention to investigate cases of missing persons by signing the International Commission on Missing Persons' Regional Declaration on Missing Persons. This would demonstrate a commitment on the part of Kosovo's government to take an active and cooperative role in information-sharing and investigation.

Under EULEX's new mandate, enacted by Kosovo's Assembly in May 2014, Kosovo's national institutions will take on the authority that EULEX had in a new array of tasks and responsibilities, including the investigation of war crimes.

EU - Stick and Carrot

Even though European integration is the only mechanism which can initiate transitional justice in the Western Balkans, the EU has missed the opportunity to devise a comprehensive concept and a unified framework of transitional justice for this post-conflict region.³⁴ The EU has failed to articulate a coherent policy of how "justice" in the broader sense ought to guide and direct its activities of peace-building in the Western Balkans. Only in February 2012 did the

³³ Special Representative Farid Zarif, 27 May 2014 – Despite the recent slower pace in implanting the aims of the European Union-led political dialogue between Belgrade and Pristina, a senior United Nations official told the Security Council today that the two sides have »narrowed their remaining differences«, and that he hopes that once the elections are over in Kosovo, the dialogue will resume without delay.

³⁴ http://www.bmlv.gv.at/pdf_pool/publikationen/transitional_justice_sr_11_2013_05_i_kisic.pdf

Council of Europe issue a report on transitional justice in the Western Balkans, with a series of recommendations³⁵ directed at fighting impunity, the need for the truth regarding missing persons, securing effective reparations and further security system reforms. But there has been neither a firm requirement nor an instrument.

The civil society organizations from the region of the Western Balkans should create a common regional platform and seek support from the European Union to develop a transitional justice strategy as an instrument of conditionality for the countries of the Former Yugoslavia wishing to integrate in the EU.

Mirko Klarin:³⁶ The established and adjudicated facts are the main legacy of the Hague Tribunal

Let us begin by imagining for a moment what would have happened if there were no Tribunal. Would we be here today discussing reconciliation or would we be already reconciled, as my friend Lazar has said, and be on our march forward towards a happy future after having forgiven each other and forgotten what happened? Perhaps everything would be like that. As a matter of fact, we have already tried, in the name of a bright future, to forget the bloody past, only to have that past rebound on us. We swept the crimes from the Second World War under the carpet and locked the bodies away in the cupboard. That boomeranged on us, for when the hour struck, it was easy to manipulate the victims from the Second World War, given that there were no established and adjudicated facts about who did what to whom and who was responsible.

What I regard as the main legacy of the Hague Tribunal are precisely such established and adjudicated facts - those thousands upon thousands of established and adjudicated facts about what took place on a particular day in a particular place all over Bosnia and Herzegovina or Croatia or Kosovo or Macedonia. And, if nothing else, these facts will prevent someone from manipulating these things in some distant future. Because, in the immediate future, anything will go, because almost no one is aware of the existence of these facts adjudicated by the Tribunal. We know about the judgements, we know about the length of the sentences, we know about the legal qualifications, but we have no idea what they are all based on, because, for all practical purposes, that has not reached the public in these countries.

This is the starting point from which we must proceed in evaluating the legacy of the Tribunal. Although the Hague Tribunal has applied this principle of *accountability* to a relatively small sample of 161 accused persons, it has covered very successfully virtually all the more important locations of mass crimes committed in Bosnia and Herzegovina, Croatia and Kosovo, and to a small degree in Macedonia. And it has established what happened there. I wish to point out again that it is never too much to keep repeating that the established and adjudicated facts are the most precious legacy, and that the transcripts and databases of the Tribunal contain a veritable treasure trove. Unfortunately, however, few people other than scholars read these transcripts for

35 http://www.coe.int/t/commissioner/source/prems/Prem14712_GBR_1700_PostwarJustice.pdf

36 The Tenth International Forum for Transitional Justice in Post-Yugoslav Countries, November 15-16, 2014, Belgrade, Serbia.

their own needs, because they are so extensive and comprehensive; I fully understand people who do not read them. After all, they do not read the judgements either, which have lately been reaching up to a thousand pages.

I have practically lived in The Hague for twenty years, reporting for *Naša Borba* for the first five years and for the SENSE Agency for the last fifteen. We monitor all the trials from day to day. We have published tens of thousands of daily reports and analyses concerning the trials. We have produced nearly 600 30-minute weekly television programmes about the work of the Tribunal. Since 3 March 2000, we have not omitted to cover a single working week in our programmes. We have produced seven documentary films but, in spite of everything, my sense is that we have merely scratched the surface of what the Hague Tribunal has been doing over the past 20 years. And that we have perhaps told – let me err on the generous side – no more than 10 per cent of the Tribunal's story. And now that the mandate of the Tribunal is drawing to an end, we are considering what to do with all the materials we have collected and will continue to collect during the remaining two or three years. We hope to be able to stay there until the end, although our problems are mounting, given that war crimes are no longer a priority of the international community; indeed, since the priority now is the fight against organized crime and corruption, a jadedness, a weariness has set in – including for myself - with the Tribunal and the war crimes and those concerned about all those things. And I suppose that the Coalition for RECOM and other non-governmental organizations involved in the subject are encountering the same problems.

We are therefore considering what to do with all those materials. Our records department currently has about 20,000 hours of audio-visual materials from all the trials held over the past 20 years, including the evidence of thousands and thousands of witnesses, surviving victims and eyewitnesses of crimes, and of documentary footage recorded at the time of the crimes and at their locations. In our opinion, this comprises the remaining 90 per cent of the Tribunal's story which has yet to be told to the public. We believe that interest in what has been taking place in The Hague over the past 20 years will grow over time, and that new generations will come forward to ask questions about what was established there, and how. We are preparing to transfer all those materials to the region and to continue telling the Tribunal's story from there, once the Tribunal has closed its doors.

Denisa Kostovicova³⁷: A deliberative and participatory aspect of transitional justice

Scholars and analysts, by the nature of their trade, and driven by critical thinking, have focused on and studied the limitations of transitional justice. These are captured in nearly unanimous assessments that there has been no reconciliation in the region. Does that mean that nothing has changed since the end of the wars? I would like to reflect on what we may consider an achievement of transitional justice in relation to the situation at the end of violence. I will highlight two aspects: the deliberative and the participatory aspects of transitional justice. Each of these achievements will be qualified.

37 The Ninth International Forum for Transitional Justice in Post-Yugoslav Countries, May 17-18, 2013, Jahorina, Bosnia and Herzegovina

Deliberative aspect of TJ

The work of the ICTY with its effects on reconciliation and peace-building is singled out as a confirmation (or yet another confirmation, given the literature on other judicial mechanisms used globally, such as the Rwanda Tribunal and the International Criminal Court) that the contribution to transitional justice of judicial instruments is at best dubious. The establishment of the ICTY has been a part of the normalization of justice in the context of globalization.³⁸ Such a development has made impunity for crimes a non-option, but, at the same time, brought along with it a number of challenges. These can be broadly categorised as those of legitimacy, politicisation and selectivity.

Being located far from the affected post-conflict zone and with “foreigners” at the helm of the judicial process, the Tribunal has failed to generate a connection with the local population. Ironically, the record of its twenty years of existence shows, that the best rapport that it achieved was with state institutions, which themselves were often most resistant to cooperation. The legitimacy problem is also directly related to the politicisation of indictments, and the charges of ethnic bias addressed to the ICTY. The count of Serb indictees, for example, has been used to feed the Serb narratives that they have been singled out unjustly. Finally, the ICTY has also encountered the issue of selectivity as one of the key dilemmas in pursuing trials as a transitional justice instrument. Both in international and domestic trials, the question of how wide to cast the net and how far down the chain in the political and military leadership to go as to who is to be held responsible, cannot be answered easily.³⁹ The Tribunal’s strategy of focusing on the “big fry” has been additionally exposed by its strategy of “staggered and ordered closure” by 2016, and the transfer of cases to the domestic courts in the Western Balkans.

In sum, the nations in the Balkans, whether Serbs, Croats, Bosniaks, or Albanians, have been loath to see their own representatives in the dock answering for crimes committed in their name. They waved off the suspected war criminals to The Hague as heroes, dismissed the ICTY as biased, even as being an international conspiracy, while invoking exclusively their own suffering and victimhood during the course of the conflict.⁴⁰ The result has been a persistent collectivisation of culpability among the different nations, despite the fact that retributive justice is aimed at individualising the guilt; and, closely related to this, there has been very limited, if any, progress, on delegitimisation of the competing nationalist projects that contributed to the violent dissolution of former Yugoslavia.

38 R. Teitel, “Transitional Justice Genealogy”, *Harvard Human Rights Journal*, Vol. 16, pp. 69-94.

39 Cf. Neil J. Kritz, “The dilemmas of transitional justice”, in Neil J. Kritz (ed) *Transitional Justice: How Emerging Democracies Reckon with Former Regimes*, Vol. I, Washington D.C.: United States Institute of Peace Press, pp. xix-xxx, p.xxiii

40 These arguments are rehearsed in the burgeoning body of literature, with select references including: V. Peskin and M.P. Boduszynski, “International justice and domestic politics: post-Tudjman Croatia and the international criminal tribunal for the former Yugoslavia”, *Europe-Asia Studies*, Nov 2003, Vol. 55, No. 7, p. 1117-1142; Dan Saxon, “Exporting justice: perceptions of the ICTY among the Serbian, Croatian, and Muslim communities in the Former Yugoslavia”, *Journal of Human Rights*, 4(4), 2005; Fletcher, Laurel E. and Harvey M. Weinstein, “A world unto itself? The application of international justice in former Yugoslavia”, in Stover, Eric and Harvey M. Weinstein, *My Neighbour, My Enemy: Justice and Community in the aftermath of atrocity*, Cambridge: Cambridge University Press, 2004; Meernik, James and Kimi King, 2003. “The Determinants of ICTY Sentencing: An Empirical and Doctrinal Analysis”. *Leyden Journal of International Law* 16(4):717-750; Jelena Subotic (2009) *Hijacked Justice: Dealing with the Past in the Balkans* (Cornell University Press). Marlene Spoerri and Annette Freyberg-Inan, “From prosecution to persecution: perceptions of the International Criminal Tribunal for the former Yugoslavia (ICTY) in Serbian domestic politics”, *Journal of International Relations and Development* (2008) 11, 350-384.

Against such appraisals of the Hague Tribunal and its work, there is some recognition of what the Hague project by the international community may have achieved. Among the number of peace-building goals of transitional justice, we should include here the identification of crimes by means of the punishment of perpetrators, and the creation of an historical record, as well as a demonstration of the rule of law, and building local capacity by assisting domestic trials.

Yet, very little attention has been given to what I suggest will be the Tribunal's enduring legacy in the region – that of transitional justice as deliberation. Twenty years after the founding of the Tribunal, the discussion of war crimes and conflict legacy has become a part of public discourse and deliberations. First and foremost, the work of the ICTY, which can be understood as an external imposition of transitional justice on the Western Balkans, has removed from the hands of the domestic lawmakers as well as those of the public the possibility to ignore the past. The temptation, particularly strong in the aftermath of ethnic conflict, is to adopt an approach of “forget and move on”, especially if there is continuity between wartime actors and post-war authorities. The fact that transitional justice could not be sidelined needs to be taken seriously (though it can be easily dismissed, without recalling the early post-war days), despite evidence that the ability of the ICTY to project justice is more ambiguous.

Furthermore, deliberation does not mean consensus. The discussion about war crimes in the region is fraught by disagreements and contentions between and among the different ethnic groups. These are concerned with whether ideological delegitimation of the nationalism of the 1990s is a precondition for transitional justice, or vice-versa; whether a national as opposed to a regional approach is preferable, etc. Such a diversity of views points to the important deliberative dimension of transitional justice in the region – to a discussion that keeps the issues alive and on the agenda. Scholars who think critically about the notion of deliberation question the value of a debate in the context of unequal relations. When it comes to past atrocities, particularly problematic may be the fact that deliberation may only entrench previously held positions. Despite those caveats, the public sphere in the Western Balkans, when it comes to discussing the legacy of war crimes, has come a long way. This discussion does not lend itself to simple generalisations or conclusions about the state of transitional justice in the Western Balkans. But it is at least a departure from silence and complete marginalisation of the issue of criminal past. The space for this debate was prized open by the distant work of the ICTY, while local input to the debate was critical – which brings me to the participatory aspect of transitional justice in the region.

Participatory aspect of TJ

A complementary perspective on the deliberative aspect of transitional justice hones in on transitional justice stakeholders. Our understanding of the effects of various instruments of transitional justice is critically informed by the study of the actors best positioned and equipped to initiate and spearhead efforts that would tackle the war legacy meaningfully and effectively.⁴¹

41 Peter Uvin, “Difficult choices in the new post-conflict agenda: the international community in Rwanda after the Genocide”, Third World

This is reflected in a growing critical focus on civil society as *the* actor in furthering the cause of reconciliation, both from the transitional justice and the post-conflict peace-building perspectives. The bottom-up perspective is particularly relevant in the context where the institutional level - as was very much the case at the end of the wars in former Yugoslavia - was a key obstacle to any transitional justice initiatives, whether coming from the outside or from within.

Consequently, the deliberative achievements in the area of transitional justice in former Yugoslavia owe much to civil society's critical role in promoting the need for accountability with the criminal past. Civil society emerged as a key pillar of local support of the ICTY project (but also as an informed critic of a narrow perpetrator-centred ICTY approach). Consistent with its vantage point of the necessity of reckoning with the criminal past and focussing on victims of human rights violations, civil society spearheaded the debate aimed at facing the past. It subjected official authorities to unrelenting critical scrutiny in its critique of the official rhetoric and policies that would award impunity.

At the same time, despite a critical engagement with authorities, civil society has played an important role in supporting the trials, addressing both the weakness of the state's judiciary capacity as well as political constraints; in other words, it has supported the implementation of transitional justice policy (e.g. domestic trials); alongside this goal it has pushed for putting a range of transitional policies on the agenda, like advocating legislation that would contribute to the acknowledgment of the victims, as well as performing a check on given legislation to expose its bias. Likewise, it has engaged with the consequences of given state policies or pinpointed their absence, as when exposing the criminal past of appointed officials or assisting the families of the victims in their search for acknowledgment in law and symbolically.

Lastly, civil society has emerged as a source of grass-roots transitional justice initiatives, and, it could be said, a transitional actor in its own right. The work of the RECOM coalition is certainly one such example. Similarly, numerous other initiatives, including most prominently those by youth organisations, fostering contact among young people across ethnic lines, educational initiatives focused on textbooks, activism prioritising the role of women, etc. need to be understood from a participatory perspective. Transitional justice, understood broadly as a way of addressing the legacy of past abuse, has engaged a growing number of stakeholders with a wide range of perspectives, from those of political and human rights to those in the area of arts and culture.

Yet such a perspective on civil society provides only a one-sided view of the civil society's contribution to transitional justice. What I have described is the contribution of a liberally-minded civil society, which represents only one aspect of a much more complex picture of the non-state sphere in the Western Balkans.⁴² Illiberal segments of the civil society have also emerged as an

Quarterly, Vol. 22, No. 2, 2001, pp. 177-189; David Mendeloff (2004), "Truth-seeking, truth-telling and postconflict peacebuilding: curb the enthusiasm", *International Studies Review*, 6, 355-380. Beatrice Pouligny, "Civil Society and Post-Conflict Peacebuilding: Ambiguities of International Programmes Aimed at Building 'New Societies'", *Security Dialogue*, Vol. 36, No. 4, 2005.

⁴² Denisa Kostovicova, "Civil society and post-Communist democratisation: facing a double challenge in post-Milošević Serbia", *Journal of Civil Society*, Vol. 2, No.1, 2006, pp. 21-37.

obstacle to achieving post-conflict transitional justice. In this sense, the pluralism inherent in the concept of civil society is turned on its head, and denotes the presence and endorsement of extreme, exclusivist and illiberal ideas and interests by non-state actors. Just as we have seen civil societies across the region that have worked painstakingly on justice and reconciliation, other segments of civil society have had exactly the opposite aims and ideas.

Therefore, the role of civil society and its contribution to justice and reconciliation, or more specifically, of its liberal segments, cannot be assessed in separation from the broader environment in which it has operated, in that it has in many cases faced an “illiberal alliance” where segments of illiberal civil society have reinforced the reluctance or resistance at the state level to address the issue of culpability. Conversely, recent developments at an institutional level, such as official apologies, cannot be isolated from the civil society’s activism and its insistence on reckoning with past wrongs.

In summary, deliberative and participatory perspectives on transitional justice in the Western Balkans point to an ever changing context and dynamics in which the past crimes are understood, addressed and contested in the region. They shape both our understanding of the constraints on achieving justice, but also indicate why the pursuit of transitional justice has often been a painstaking and disappointing endeavour, especially from the perspective of the victims. However, they also show that they were effective in preventing oblivion, and that they kept the imperative of reckoning with the past atrocity alive, and the hope is that they may yet further carve a path to reconciliation and, above all, to recognition of the victims and their suffering.

Zoran Pusić:⁴³ The Hague Tribunal was successful before suddenly coming to a halt

The Hague Tribunal was established under UN Resolution 827 in 1993, exactly 20 years ago. As a matter of fact, it was in May 1993 - more precisely, on the 25th of May. During these 19 years of operation, it has passed through different stages. To me, its legacy appears impressive as far as Croatia in the 1990’s was concerned, when both its politics and its judicial system had a very negative attitude towards the Tribunal. The Tribunal was satanized. The leading politicians regarded it as being directly aimed against the independence and sovereignty of the country. In the 1990s, the courts were remarkably partial - openly partial - and their judgments largely depended on the ethnicity of the victim and the perpetrator. The judgement rendered in the *Novska* crimes case will probably be held up as an example of judicial disgrace for hundreds of years to come: the court says in its judgement that although it was established in no uncertain terms that the perpetrators were members of the Croatian Army in Croatian Army uniforms and bearing Croatian Army weapons, the crime was committed outside working hours. Therefore, Croatia was not held responsible. Next, the same court sentenced the complainants to pay the costs for over a long number of years, for which purpose they had to set aside a third of their meagre pensions. It was only in 2011 and 2012 that, in rendering judgement for a war crime

43 The Ninth International Forum for Transitional Justice in Post-Yugoslav Countries, May 17-18, 2013, Jahorina, Bosnia and Herzegovina.

against perpetrators who were members of the Croatian Army, a judge said explicitly, “Your being members of the Croatian Army is not a mitigating but an aggravating circumstance, because you brought disgrace upon the Croatian Army with your conduct”. This was a sea change, and I think that the influence of the Hague Tribunal was of crucial importance in that case on account of the Hague Tribunal having proved a success.

In the course of those 19 years, it succeeded in 161 out of 161 accused persons being brought before the Tribunal. The reputation of the Hague Tribunal surged after first Karadžić, then Mladić, and then Hadžić, were apprehended. Those who had always had highly negative attitudes towards the Hague Tribunal, because they saw it as a threat to their idea of national independence, began to feel respect for it.

The Hague Tribunal has sentenced presidents of states, nearly the entire military and political leadership of Republika Srpska, the greater part of the political and military leadership of Herzeg-Bosnia, the President of Serbia, the Prime Minister of Serbia, a mass of generals – a great many people - on account of command responsibility. Then all of a sudden, things came to a stop over there. Why? A staunch opponent of any kind of conspiracy theory, I simply have no explanation for this, other than that one saw for the first time that the Hague Tribunal was trying individuals; and if you try a state president, if you try top generals, the dividing line between the individual and the state becomes inevitably narrow and you actually begin to try war as such. Though this is one of the most important legacies of the Hague Tribunal and a major step forward, its latest judgements signify that some people have taken alarm at this step. In other words, [they are afraid] that war as a social activity is becoming criminalized in the same way that the slave trade is today criminalized. I hope that we shall come to look upon wars in that way. Every one of us who has studied history knows that he or she has actually only studied a succession of wars. I think that we are on the threshold of that, and that the Hague Tribunal is a very important step forward in that direction. The United Nations is also a success, although the League of Nations was a failure. Whereas big powers kept leaving the League of Nations, no one would dream of leaving the United Nations. The respect for the Hague Tribunal has inspired respect for a whole range of other courts, including the International Criminal Court; one day this will lead to what remains to be done by RECOM and which is not reconciliation. This is not a reconciliation of positions but a change of positions. We will never become reconciled to certain positions. We can become reconciled with people who may change their positions.

Gentian Zyberi⁴⁴: Reconciliation through the international criminal courts and tribunals: mission (im)possible?

I will try to address the role of international courts and tribunals in furthering reconciliation, with a focus on the ICTY and the former Yugoslavia. I will elaborate briefly on three inter-related issues and raise a number of questions for further consideration and discussion.

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The first question, just to ensure that we are on the same page, concerns the question, What is reconciliation? That most wonderful source of information which many academics loathe, Wikipedia, states that reconciliation is restoring mutual respect between individuals from different cultural/ethnic backgrounds. And to be sure, in the case of the former Yugoslavia we speak of reconciliation within States and between States. Has such mutual respect been restored? I believe there are positive signs, both at an individual and at a state level. With that assertion, I do not want to downplay the fact that there still remain unresolved (though not insurmountable) problems.

The general question I ask is: What is the role of international justice in the process of reconciliation in post-conflict societies? And please, let us not quarrel about the prefix “post-”. First, let me address the issue of whether the individuals and societies concerned perceive international justice as a process or as a result.

International justice as a process or as a result?

What are the three main criticisms of international criminal justice concerning its contribution to furthering reconciliation, and more specifically, with regard to the ICTY? Critics point to the selectivity of cases, if not outright bias; the handing out of lenient sentences; and lack of reparations to victims. ICTY sentences are perceived as lenient and do not correspond to victims’ perception of guilt and what constitutes just punishment. Unlike the ICC, the ICTY does not have a system of reparations. And calls by the ICTY President to the UN to establish such an instrument have gone unheeded. The fact that these problems are not specific to the ICTY, but largely reflect the nature of international criminal justice, is cold comfort for the individuals and the societies affected.

Do people care about whether a trial was fair, or whether the person was convicted or acquitted? My impression is that many are not interested in the legal process and such complex legal concepts as “joint criminal enterprise” or “co-perpetration”, but in the final result of a trial. That result will be interpreted in accordance with the national narrative, which is specific for each of the countries involved, Bosnia, Croatia, Serbia, Kosovo and Macedonia. Moreover, international justice is up against a formidable opponent with which nature has endowed us, which is called “cognitive dissonance”. This is a psychological process whereby a person will avoid situations or information sources that give rise to feelings of uneasiness, or dissonance.

Interaction of international criminal courts and tribunals with other stakeholders in pursuing reconciliation?

This brings me to the second point, that of the interaction of international criminal courts and tribunals with other stakeholders in pursuit of reconciliation. Let me make myself clear: international criminal courts and tribunals are a very important component of the international system because of their role in and contribution to ensuring individual criminal accountability for serious crimes. Their activity contributes to strengthening the rule of law at an international and at a domestic level. However, for it to take roots, the activity of international criminal courts and tribunals must be accompanied by strong international support for national legal structures/institutions and processes. At the same time, that activity must be effectively supported by the

main organs of the UN, regional and security organizations, and the states concerned. These international judicial mechanisms are limited in what they can reach and impose considerable costs. Moreover, international criminal law is a fairly blunt instrument and international criminal justice cannot substitute for domestic prosecutions, truth and reconciliation commissions, and civil society movements, as well as economic investments and international assistance in the consolidation of state structures and the rule of law.

While critical questions have often been voiced as to whether international criminal courts and tribunals have furthered socio-political progress and reconciliation in post-conflict societies, it should be noted that, strictly speaking, their mandate is only limited to prosecuting high-level perpetrators of genocide, war crimes and crimes against humanity. At the same time, lists of the main objectives of international criminal justice include providing justice for the victims and the international community as a whole, by punishment of the principal perpetrators, truth-finding and narration of the historical tragedy, reconciliation of the concerned post-conflict society, and deterrence of such crimes in the future. Each and any of them is anything but a modest objective.

What happens when the political elites and the media in a given country perpetuate a national narrative which undermines the work of the international criminal courts and tribunals? What happens often is that the legal narratives of the ICTY are used as a source for bolstering the prevailing national narrative rather than for furthering reconciliation. In cases when the legal narrative established at the ICTY goes against the national narrative established by the society concerned, which of these narratives do you think is going to carry the day?

General consensuses about what has happened - the war memories, if you want - are established by the political elites, religious authorities, and intellectual elites, where I include also civil society, and are based on a usually nationalist interpretation of judicial processes and shared with the general public through the media and other outlets. While the ICTY can and has created some space for introducing another, more balanced narrative, the trickle-down effect of such efforts is probably negligible unless there is strong support from the society concerned. What we often witness in the public discourse is a struggle between humanitarian discourse on the one side, and nationalism and Realpolitik on the other.

Importance of outreach?

This brings me to the third and final point, the importance of the outreach of international criminal courts and tribunals, including the ICTY. What is more important for reconciliation between peoples? Is it a 600-page decision of the ICTY (or whichever other international criminal court or tribunal) or a public apology to the victims by the leader of the country concerned? Both! But the function of the judgments issued by the ICTY is not exactly to move the parties closer together. Gestures of goodwill and communication at the highest levels of government between the countries concerned are measures which can move reconciliation forward at a much faster pace. Regrettably, there have not been enough of them so far in the former Yugoslavia!

Communication between the ICTY and the public is not made easier by the long judgments rendered by the international criminal courts and tribunals, including the ICTY, which run into hundreds of pages. That said, the ICTY has got better over time in terms of outreach and relations with the public. It must also be acknowledged that the ICTY has brought into the public domain issues which would otherwise have hardly made it to the public, and has encouraged and supported domestic war crime trials. The question which is still unresolved is, How much can we realistically expect from a criminal trial?

Trying the main perpetrators of mass atrocities is just a part, albeit an important part, of the process of rebuilding a society in the aftermath of a conflict. All the actors concerned in a justice and peace-building effort, including international courts and tribunals, should pay close attention to the psychosocial processes, socio-economic conditions and political context of the adversely affected society. The effectiveness of international judicial mechanisms in enforcing human rights depends upon access to justice, legal and judicial activism, action by relevant political organs, and civil society awareness and participation. All these efforts, international and domestic, should further reconciliation within a state and between states.

Concluding remarks

To conclude, international criminal courts and tribunals, including the ICTY, are there to ensure a measure of accountability, albeit incompletely, and to contribute to strengthening the rule of law at the international level and encourage and support efforts at the domestic level. However, when it comes to reconciliation, their judgments can only provide possibilities for prying open discussion within a given society about the dark side of armed conflicts. Ensuring compliance with the relevant and legally binding international legal standards is not an easy task, and while international criminal courts and tribunals are important, their work can only provide some important building blocks for international and national stakeholders. Reconciliation needs to be achieved at the national and inter-state levels, and that is a process which requires time and patience, besides dedication, persistence and coordination among the different stakeholders.

While, on the one hand, political, socio-cultural and legal constraints create a less than perfect working environment, on the other hand, expectations for the work of the international criminal courts and tribunals are very high. These international judicial bodies have to satisfy the, at times, differing expectations of a wide range of actors, including the international community of states, the victims of the crimes, civil society and other critical followers of their work, including human rights scholars. The activity of the international criminal courts and tribunals clearly shows that justice for gross human rights violations, albeit partial and limited, is possible. At the same time, their work and results attest to the fact that justice and reconciliation are not a matter of “either-or”, but aims that can be pursued simultaneously. Ultimately, it is for the societies concerned to seize the moment and the opportunity to move forward, while dealing with the ghosts of the past in a responsible manner.

Jelena Subotić⁴⁵: “Obstacle bias” in transitional justice scholarship

I want to begin with a brief discussion of a certain “obstacle bias” in transitional justice, and much other political science and human rights scholarship. Analyses of “what went wrong” and what the various obstacles are to human rights accomplishments are much more present in the literature than “success stories”, because they make for more interesting and rewarding scholarly pursuits. Few academics have become successful by writing books on how transitions went well and human rights records miraculously improved over night. What led most of us toward academic research was a world problem of one kind or another, so we are primed to study difficulties and challenges. This cognitive bias is not insignificant and it could seriously colour our choice of research questions, which could then, in turn, colour our findings. Academic research does not exist in a vacuum – it is driven by various sorts of biases, including methodological, political, personal, situational and cultural.

In the field of transitional justice, there has been a clear change in tone from the early research in the late 1990s or early 2000s, which had been quite hopeful and optimistic about the promise of transitional justice institutions and the global human rights agenda in general. Since the promise of robust international transitional justice institutions has not been fully fulfilled – both the ad hoc ICTY and ICTR tribunals have been ridden with problems, and the International Criminal Court has faced profound legitimacy problems, especially in Africa – much recent transitional justice scholarship has taken a more critical tone. In fact, the critical turn in transitional justice research is also the result of the perhaps unrealistic, and certainly quite maximalist expectations placed on transitional justice projects generally. If so much was expected – both theoretically, and policy-wise – from new, untested institutions, it should not really be surprising that the disappointment with what they have delivered is also palpable.

It is through this more critical lens that I will offer a brief overview of transitional justice accomplishments in the region. I will then step out of this meta-critique to look at some tangible accomplishments that should be recognized and welcomed.

Conceptual problem in measuring accomplishments

The problem with measuring accomplishments in transitional justice in the former Yugoslavia, but also elsewhere, is primarily the problem of conceptualization. What do we consider to be “accomplishment”? How maximalist are our demands for justice, or are we satisfied with even minimal change? How would we know when transitional justice has been achieved? How do I know “reconciliation” when I see it? How do I know that “justice has been done”? A little justice, a lot, sufficient, inadequate - what quality of justice? And finally, how do I accept the new “truth”? Can there be multiple truths? Who is in a position to deliver the authoritative rendering of “truth”? Victims only? Human rights groups? Independent research institutions? What if these different accounts of various “truths” are incompatible, contradictory, or inadequate? Who breaks the deadlock?

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Much academic ink has been spilt on these issues of transitional justice measurement, and there is hardly one satisfying answer. Transitional justice scholarship does not have a consensus on either how to measure accomplishment or, in the case of the former Yugoslavia, whether the transitional justice attempted has produced the outcome desired. But instead of just surrendering and saying, “we don’t know”, we often simply say, “it depends”.

Whether transitional justice has accomplished anything in the former Yugoslavia “depends” on what we wanted it to accomplish. Has it brought “reconciliation”? Well, it has brought us RECOM, by far the most ambitious reconciliation project in the region. RECOM has been able to bring together groups of victims and survivors who would otherwise have never met and shared their stories. But, how do we know whether their stories and experiences have penetrated into the larger societies, beyond the immediate participants in victims’ forums?

Has transitional justice brought “justice”? Here, the verdict is even more difficult to arrive at. The difficulty lies partly in the different understandings of justice. Retributive justice – punishment in a criminal justice setting – has been the principle mechanism of justice in the region. Beyond the obvious criticisms of the ICTY record – inconsistency in indictments, sentencing, prosecutorial errors, and poor outreach – there has also been clear problems with domestic war crimes trials. From the unmanageable caseload in Bosnia to the light caseload in Serbia, to the absence of serious domestic trials in Kosovo, to haphazard and inconsistent trials in Croatia, the domestic trial model can be seen to have underperformed. Even when domestic trials do take place, it is difficult to determine the exact impact, if any, that they might be having in a broader sense. Does the general public know about these trials? Are they covered in the media? Are the witness testimonies contributing to a larger sense of justice for past wrongs? It is hard to make a strong positive assessment along any of these critical lines.

Finally, what about the “truth?” Do we know what happened during the Wars of Yugoslav Succession? Do we agree? Could we all write one book together about “what happened?” Could we assign that book as a textbook across the region? Would parents allow it? Would teachers assign it as required reading for their classes? It is hard to imagine a positive answer to any of these questions. So, does it mean that the truth-finding aspect of transitional justice has failed?

In so many ways, these questions are unanswerable. We could run round in circles trying to find definitive answers and we would be none the wiser. Instead, it may be more helpful to actually identify specific accomplishments, many on a much less grand scale, but tangible accomplishments nonetheless.

Creation of repository of documents

While indirect, and not as emotionally fulfilling as the search for direct justice, reconciliation, or truth, the fact that through the activities of the ICTY, and to a lesser extent, of domestic war crimes trials, we now have a wealth of documents and information about human rights abuses committed during the 1990s is, quite simply, invaluable. None of this documentation would have been possible without the international courts, and without the dogged pursuit of international justice by human rights activists. The full value of this archive will only become apparent in the

years and decades to come, as new researchers pick up fresh topics and look for new answers that can explain the violence of the 1990s and its aftermath.

Insertion of concept of “transitional justice” into public consciousness

While transitional justice may not be popular or treated with the respect that it needs and merits in the countries of the former Yugoslavia, we should acknowledge the important fact that everybody now knows what “transitional justice” is. This is not a minor point. Transitional justice activists have managed to insert the idea of post-conflict justice, or facing the past, into the national conversation. We may not like much of what comes out of that conversation, but at least there is a conversation. This is a very different transitional justice landscape than it was 15, or even 10 years ago. Transitional justice is here to stay.

Jasna Dragović-Soso⁴⁶: The ICTY, in particular, has had very limited success in countering denial of crimes in the post-Yugoslav region

In this brief presentation, what I’d like to raise are achievements and priorities in regard to two types of transitional justice that have been studied, that exist here. One refers to the judicial mechanisms that have already been discussed, and the other one which I’d then like to move to, would be just a very brief mention of truth commissions.

In regard to judicial institutions, there is undoubtedly a lot that can be said, both about the achievements and also, I think, about the missed opportunities and the problems. We have heard about these in regard to the domestic war crimes prosecutions. There is also the International Tribunal. And, it should be said, for the academics, judicial institutions and our assessments of them have been at the forefront. This has been the main emphasis of scholarly research into transitional justice in the region. And there is obviously a proper debate to be held about this, which I don’t think we are going to achieve here and now, since it’s not the purpose of this gathering. Overall, what I would say in terms of my own assessment, I think that, on the positive side, we haven’t seen a blanket amnesty, which was the case in the past in many cases, so there have been some prosecutions and some people have been sentenced - individuals who were involved in ordering and perpetrating crimes have seen some form of retribution. There have also been some pretty significant achievements in the development of international criminal law, particularly in regard to sexual crimes and command responsibility. And one thing that has been emphasized here which I’d like to highlight as well, and that Mirko Klarin, in particular, has actually acted upon, is the archival evidence and the amount of information we now have about the crimes that were perpetrated. This is really quite significant. However, true to my calling, I also have to draw attention to the problems and the pretty significant mistakes that have been made, affecting trials - all aspects of trials, from indictments, to witnesses and evidence, duration, acquittals, and so forth. I think, overall - and I don’t think I am wrong on this - there is the sense among many, if not most survivors and families of victims, as well as among human rights organizations and scholars, that true accountability has not

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been achieved, and that impunity remains a problem throughout the region. In addition - and this is something that I want to focus on a little more - when we think about the impact of judicial institutions, we also need to think about the broader educational or pedagogic aims that these institutions aim to have, some explicitly, like the Rwanda Tribunal, and others not so explicitly, although it's still very much a part of their remit. And, these, I would argue, have, for the most part, not been met. For a variety of reasons, the narratives that have been presented by these courts have not resonated in the publics and the populations that were the main target of these trials. The ICTY, in particular, has had very limited success, I think, in countering denial of crimes in the post-Yugoslav region, and certainly not as much as its advocates had hoped. Now, why this is the case remains, I think, an area for further research and debate. I think it certainly has to do both with the mistakes made by the institutions themselves, by the courts - and I have mentioned things like, you know, problematic and overloaded indictments, procedural problems, a sometimes poor choice of witnesses, inadequate witness protection mechanisms, the problematic acquittals that we discussed last time around, and the late creation of outreach mechanisms, which, I think, have really hampered the work of the Tribunal. There have also been very difficult and unpropitious local circumstances; and here, I think, the main problem has been the high degree of continuity between the old and the new regimes in the post-Yugoslav states, institutionally, ideologically and, above all, in terms of the security and judicial sectors. And this, along with the persistence of nationalism and what Jelena Subotić has termed the hijacking of justice by domestic elites for their own political purposes, have also hampered the sort of pedagogical messages that tribunals have been able to transmit. You will find all these arguments in the quite significant literature on the subject up to the present day. What I would also like to add to this is the argument that international justice needs to be viewed as part and parcel of the international intervention in the region as a whole; and that local perceptions of justice, of narratives of responsibility and denial, are closely linked to local perceptions of international intervention more broadly - on such questions as whether external military intervention took place too late, or whether it was justified, on whether the application of coercive diplomatic tools, such as economic sanctions, was justified or appropriate, whether international diplomatic efforts and peace agreements have actually been fair and produced viable states in the region, whether international conditionality in regard to relations with the EU and accession questions has been justified and effective, and, indeed, whether we are actually witnessing international protectorates as a new form of neo-colonialism. All of these aspects, I think, impact our view of international justice. And we cannot isolate transitional justice, and international justice in particular, from international intervention in the region as a whole, and from how this intervention has been understood and interpreted locally. Now, this is something that I think has not been sufficiently recognized, and it is also the reason why I think that all external transitional justice interventions in the region will have a limited impact in terms of promoting a reckoning with the past. If any such reckoning is to take place here, I would argue it has to be locally driven and locally overseen. Otherwise, it will suffer from problems of legitimacy. And this brings me to the second point, which concerns truth commissions.

Now, as I'm sure you know very well, there have been a number of attempts to create truth and reconciliation commissions in the post-Yugoslav region, none of which, until now, has been

successful. I don't have time here to go into why this has been the case. The failures of these commissions have their own set of complex reasons. The only thing I would say is that it has to do with three interrelated factors: one is the mandate or the purpose of such commissions; the second has to do with the domestic agency, in other words, the legitimacy and actions of domestic political actors; and, finally, the international factor - and here, for example, the ICTY had had a negative impact on attempts to create truth and reconciliation in Bosnia and Herzegovina. The general point I would like to make is that, in the scholarship on truth and reconciliation commissions, these are to be perceived as fundamentally political institutions. This is because, as many scholars have argued, the truth narratives that are presented by truth and reconciliation commissions provide particular interpretations of reality, which are, at the same time, assertions of power and legitimacy. In other words, the truth that is told by a truth commission inevitably privileges one narrative about the past, and thereby suppresses or neglects others. And so, deciding which narrative to privilege, how to define who the victims are and who the perpetrators, how to determine causality and responsibility for the events and for the crimes that are described - all these are inherently political decisions, and they are decisions of great importance. Now, recognizing this, the inherently political nature of truth commissions, I think that RECOM's approach of focusing on fact-finding and individual victims is a good starting point. And I will just finish by saying why. I think that establishing a repository of officially accepted and acknowledged facts about human losses and crimes and violations of human rights in the region, and providing a narrative that is focused on the victims, is the first step towards what I think is really important - the really important thing is dialogue about the past. Now, we need to recognize, as scholars of transitional justice have put it in their study of truth commissions, shared facts do not necessarily conduce to shared truths, which is something that a number of people have already highlighted. Facts, on their own, cannot answer the more important questions and the more difficult questions of establishing the causes and responsibilities in a conflict. A narrative about individual victims and crimes can only be an initiation into a more sustained public dialogue about these more difficult questions, and I think we have to recognize that people will come to this from different perspectives, and that the "memory work" (*travail de memoire*) entailed is a long process. However, if this commission is actually established, and if it does have legitimacy - which will depend very much on the membership of the commission - and also the ability to establish independence from domestic political agendas, then I think it will be a significant first step in starting and promoting the dialogue about why things happened the way they did.

Kristen Perrin⁴⁷: The implications of in-court discussions on memory

"Thank you very much, Madam. I have no further questions. I would like you to forget this as soon as possible, and that we can all go back to normal. Thank you." (K. Simić speaking to Witness B, *Kvočka et al T-98-30-I*, pg 2407/8 (Eng), 23/08/11).

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When looking to assess processes of reconciliation, a natural direction to turn is towards the legal bodies seeking to put the elements found within the concept of reconciliation – such as justice – into practice. Where legal bodies work towards the practice of justice, the academic community will always be working alongside, practising scrutiny. Most frequently the questions asked by researchers of transitional justice are to do with what elements are working well, and what elements seem to cause problems, controversy, and scepticism regarding the systems in place. Examinations of the legal elements of international criminal tribunals such as the ICTY are both important and numerous, but I suggest that new avenues need to be taken in order to truly understand the variance and significance of processes taking place within the courtroom that are outside the legal sphere. Embedded within courtroom interactions are social and symbolic exchanges that can stand as both reflections of and implications for the success or failure of transitional justice as a tool to promote community understanding post-conflict.

Finding and interpreting these interactions can involve a number of methods, but particularly well-suited to this line of enquiry is the pairing of cognitive linguistics with social psychology. Cognitive linguistics takes speech and discourse as a reflection of mental processes, and goes beyond the analysis of what is said to uncover also what is *intended*, and what might be left out (and what this omission implies). The addition of social psychology allows us to build on the cognitive linguistic findings, supplementing them with understandings of what can be *heard* and what impact the meanings of the entirety of these exchanges could have on wider communities.

The application of these methods to ICTY court transcripts has shown interesting patterns that cover a variety of issues: it has pointed to expressions of emotion from witnesses giving testimony as indicators of power struggles between the individual and the processes and constraints of the court; it has highlighted the differences between the ways individuals of high and low profile express accountability, and sheds light on what these differences mean and why they might arise; it has demonstrated that speech to do with what to remember in court and what to forget is never passive or benign, and has meaning and implications that go beyond the simple linguistic habits of members of the court.

The act of remembering is inherent in court processes, so much so that the words used to encourage witnesses to recount events often treat memories as part of the legal process, rather than autonomous phenomena that are intimately connected with an individual. Instructions on what to remember are therefore repetitive and automatic, and witnesses are often treated according to how the court views their function, even when there is a clear effort toward sensitivity on the part of the court. We are then left with several questions: Are the ways in which memories are treated in court an unavoidable aspect of court process, and if so, how might these treatments impact perceptions of justice? To what extent do requests on what to remember and what to forget transfer from procedural requests to symbolic requests, and what does this say about the court's power over memories after the tribunals have finished?

From the perspective of legal inquiry, the court's treatment of memory seems both necessary and unavoidable – how else would one present the specifics of events to the court in using the

witness' own words? It is possible that herein lies the contradiction: this process is about one individual (or a group of individuals) presenting information to the court through the mouthpiece of their experience, as, separate individuals (or groups of individuals). So we are then faced with questions of the witness as a tool of the court. Is this definition of a "witness" contributing to these in-court struggles over narrative power?

The frustrations often experienced by both witness and interrogator may at first glance appear to be somewhat routine for court environments, and therefore benign, but the fact remains that these frustrations exist as public records of a process essential to post-conflict transition. The powerful and formal nature of the ICTY has also been noted as an essential factor in contributing to how seriously its workings are taken in wider communities, and a rigid adherence to organisation and process is part of this.

The quote used at the start of this text is from the end of a lengthy testimony given by a protected witness (known as Witness B) in the case known as *Kvočka et al.* While the direct request to forget is very significant (as is the way in which identities arise embedded in the language used – "I would like **you** to forget this (...) and that **we can all** go back to normal"), which will be discussed in a moment, this comes after definitions of Witness B's role is defined to her by defence counsel. K. Simić states:

"Q. Yes, the arrivals. You explained that. You said where you were standing, what that looked like, so let's not return to that. But were you ever present, as a witness? Don't be so surprised. You're a witness, so I have to ask you whether you saw. Witnesses see, if you see what I mean."
{Emphasis mine.}

Defining the witness by her role places her among the court processes as a piece of the larger legal environment, giving the clear message that the individual is seen by the court as synonymous with her function. Even though the act of being a witness at a tribunal implies this, the instruction given here by the defence not only defines for her what it is to be a witness, but what the act of *witnessing* is. The comment is evidence to her presence as a witness being defined not as she sees herself, but through how she is seen by the court. For the witness, these are issues of seeing and being seen, but the defence attorney's role is more about hearing and being heard. The witness is an essential element in his point being heard, rather than in the witness being heard.

Regarding the embedding of identities within the statement referred to earlier – "I would like **you** to forget this (...) and that **we can all** go back to normal" - there are several things at stake here. First, there is the power of the interrogator to direct the witness on how he would like her to treat her memories. This is significant whether or not he is referring to her memories of testifying, or to the memories of her experience during the conflict that she was recounting to the court. The second part of the statement, referring to "us all", implies that he might mean the latter, which does bear strong implications as to how this interrogator sees his own power to speak for a group that depends on her ability to forget.

The issue of normalcy is also of great significance. The idea of "normal", and the witness' memories as a barrier holding back the group from reaching some previously occurring state

of “normal”, implies that her memories are not only a barrier to some form of reconciliation, but also that the interrogator (and through him, an element of the court) are the authorities of what this previous state of normal was and should be, and how “we all” might best get back there. The intention of this statement was very likely not to demonstrate this, and may very well have arisen out of an attempt at a polite closing on the part of the defence. Nevertheless, the socio-psychological interpretations of the impact this type of statement can have on the wider court environment indicate that these ideas – creating barriers between the victims and a “reconciled” or “normal” group or groups (barriers formed by victims’ memories) - may underlie not only the court discourse, but the social and community discourse as well.

A different example of the role of memory during ICTY witness testimony can be found in the testimony of Edin Mrkalj, who testified in the same case and detailed his time interned at Omarska. During his testimony, conflicts between his answers and the intentions of the defence lead to emotional exhaustion on the part of the witness, as he struggles to express his experience on the court’s terms. This leads him to abandon control over his own narrative, saying things throughout his testimony such as, “I don’t know what you want me to say.”

During this time, there is a struggle between the witness and the interrogator, and then between the interrogator and the judge. This leads the judge to instruct the witness directly on the role of forgetting in court:

“JUDGE RODRIGUES: [Interpretation] Witness, you have to answer the questions put to you. If you can remember, you say so. You tell us what you remember. If you can't remember, you simply say, 'I can't remember.' That is an answer to the question.”

This instruction leads the witness to more obviously abandon control over his own narrative, using the act of forgetting as a way out of his struggle with the court. He replies:

“A. I can't remember. You're quite right. To avoid this further torture, I can't remember those things, and I don't want to go into them. It was the worst situation for me.”

The Judge's instruction is an interesting contrast with the previous example, although it again refers to forgetting. This time, it is not a soft request (as we see with the other example), but a reminder to the witness that forgetting is an option. Interestingly, with all the instructions to remember, the witness is then treated as if he is unaware that forgetting is a valid option.

But on top of this, his frustration seems to stem from the fact that he can remember, but being compelled to recount these experiences is outside what he sees his role as a witness to include, especially given his previous descriptions of the same experiences to the court. He takes the option of forgetting as a reaction to the court – “To avoid this further torture”. The fact that he also includes the phrase “you’re quite right” is an interesting indicator as to his views on the Judge’s statement. Here, we see him accept not only that forgetting is an option, as the Judge reminds him, but that forgetting is a tool that he can use in the face of his ordeal in court.

Edin Mrkalj's struggle with his narrative indicates that his memories could stand symbolically as properties of the court – something which once given, one should not have to give again, as the court is already in possession of it. Earlier he states:

“A. It's rather hard for me to go back to those events, because for years I have been trying to forget them and to simply wipe them away from my memory. And I have answered these same questions so many times. I see no need for me to make the effort to look back.”

As with Witness B, there remains this issue of the witness as a mouthpiece enabling the lawyer's point to be heard, which brings us back to the question posed at the beginning: Is this type of treatment of memories a necessary part of court processes, and if so, how does this impact perceptions of justice, and in turn, reconciliation? The desire to remember or forget is something unique to individuals, and cannot be seen as something fixed once decided upon. Though both witnesses in these examples are standing before the court in a voluntary capacity, the pressure of legal process taking precedence over the witnesses own personal narrative power can produce an additional pressure to forget, as we see with Edin Mrkalj. Conflictingly, in instances where forgetting has not been an issue, as with the Witness B example, forgetting is still brought up as a suggestion to the witness, implying that once the act of bearing witness has taken place, forgetting is something that *should* take place.

The impact this has on perceptions of justice and reconciliation is difficult to discern, but can be seen in terms of the messages these exchanges could be sending – messages that form court environments, and messages that are reflections of or instructions on community behaviours. This research, as research into these messages, also exists as only one line of enquiry in a field previously dominated by emphasis on legal successes and failures. The impending closure of the ICTY should not mark in any way a trend away from analysing what the tribunals have produced sociologically, and what this could mean for communities. Many of the cases that are yielding significant results, despite having finished several years ago, are still important in terms of what they can show us about the human processes of transitional justice, and will remain so as long as we remain committed to this type of study.

Katarina Ristić:⁴⁸ The legal narratives about the victims do not reach the community of the perpetrators

In my survey, which is actually my doctoral thesis, I have monitored six trials before the Hague Tribunal. These are *Mrkšić*, *Gotovina* and *Milošević* in the context of the war in Croatia, and *Kunarac*, *Orić* and *Krstić* in connection with the war in Bosnia and Herzegovina. In the first part, I analyse the legal documents, what they were charged with and for what they were sentenced in the first and second judgements. In the second part, I present the testimony of the victims, what was said during the trial. And then I follow the presentation of the trial in the community of the perpetrators and in the community of the victims, as I have chosen to call them. The attitude to

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the legal narratives is somewhat more ambivalent in Croatia, where the narratives which confirm that Croatia was the victim are used towards building a national identity, although not towards creating the identity of the national group but of the state. In this regard, we can talk here about the “memory of the victors”, which is primarily not concerned with the victims and not concerned with the crimes, but is concerned with the heroes, with celebrating generals and battles, and with the legacy of those battles as it relates to the most important thing in the public discourse – the creation of the state. In the case of these two memories, in the cases both of the memory of the victims and of the memory of the victors, we have a partial utilization of legal narratives, to the degree to which these judgements and these proceedings contribute to the formation of such memories. Of course, the most problematic situation exists in Serbia, because confusion reigns there – there are too few narratives which can be used to construct a usable story about the past. Hardly anywhere and hardly ever, are the victim communities sufficiently satisfied to say that the judgements resulted in justice being done. On the contrary, the judgements become occasions for making fresh accusations and for plotting ways of shifting the collective blame onto the other. The legal narratives about the victims which can be heard in the Hague Tribunal do not reach as far as the community of the perpetrators. Rather, they are transferred to the community of the victims, that is, they are perpetuated within the same community which perceives them as a confirmation of that which the members of the community already know – that they were the victims. Consequently, it is still up to the communities of these three states to discover through some future work what the legacy of the Hague Tribunal is.

THE FACTS, THE SHARED HISTORY

Žarko Puhovski⁴⁹: Shaming the perpetrators is our concern

We are concerned with how injustice has insinuated itself from the past into the present, and what we can do to mitigate the negative effects of that injustice. The business of the non-governmental sector is to do what the government cannot and should not do, that is, to swim against the current. To concern itself with bringing disgrace on the perpetrators. This is what we are not doing. We have become enmeshed in the widely accepted post-Yugoslav pre-eminence of victimology, arguing among ourselves as to who suffered the most victims, and that, no, our losses were the greatest. This is no concern of ours, or is only marginally so. Our concern must be shaming the perpetrators. Ours is not to sit in judgement upon them, ours is to shame them. It appears to me that this should be held in view when we are discussing something we would call transitional justice. We should try to find out what can be done to help the people, what can be done to bring the facts into the fore before they are interpreted. For the facts should serve as the basis for interpretation. With us it is, of course, quite the opposite; facts are made up on the

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basis of interpretation. This is why we are in a situation where one cannot find even elementary information about 1945, let alone about 1991 or 1995. The condition for this is what RECOM has as its premise: that the work is finished when we reach the level of the state, and that we should establish the names of the victims or at least, as Nataša Kandić is doing with the *Kosovo Book of Victims*, to show the contexts in which the victims met their fate. Because when one talks about the victim, then all are, quite simply, equal. One should therefore exercise equal understanding for the grief of the mother whose son was a war criminal and was killed after the war crime, and the grief of the mother, son or daughter of someone who was killed without themselves having done any harm. We are becoming entangled in certain emotional and psychological contexts from which one can emerge and remain objective only with great difficulty. One should help the victims, which is something quite different. They are not being helped, but one should turn towards the perpetrators. This is what I consider essential. Failing that, people will become quite accustomed to having a criminal for a neighbour as a normal state of affairs. And that would guarantee the continuation of the series of wars of succession in these parts.

Anna Di Lellio⁵⁰: A great achievement of RECOM: bringing the issue of justice back into the foreground

Thank you for inviting me and for letting me actually air, in person, some of the criticism - constructive criticism I hope - that I wrote about RECOM in an article that was published last year, and that the RECOM Coalition is being really very kind in widely circulating here, at this conference. And, since Nataša spoke first, I want to start with one thing: I want to say what Nataša said here, that she considered reconciliation to be a process, a road to be defined by concrete action, a focus on investigation into the number of victims, on the facts, on naming the victims, as a necessary complement to trials and to retributive justice, and something that goes beyond the limited potential of individual initiatives: I completely agree with her, and maybe there's no discussion, I can sit down again. But maybe I would like to express some of the problems that I see with continuing with RECOM as a regional initiative, and focus on those very few things. I've written an article on RECOM that was really focused on Kosovo and on what I learned in 12 years of research in Kosovo observing people, talking to people, interviewing people. I'm not claiming that I speak for Kosovo, for the victims of Kosovo. I use Kosovo as a vantage point to see what was problematic in the transitional justice process. And I see three things that are problematic: one, this latest development of transitional justice as a profession that produces an enormous amount of consultants; [two], the use of transitional justice as a substitute for the solution of a conflict that is still open - certainly the Kosovo conflict is still partially open, there is an agreement, but Kosovo is not recognized by Serbia, and, as everyone has said here, there is still a profound lack of trust and confidence among groups to call the conflict completely closed; and, [third] the use of transitional justice as a palliative, as a relief, as a substitute for solutions to conflict, [which] also implies that this process is completely devoid of politics. One of the issues [is that] in order

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to be all together in this room, or in larger rooms, we cannot really talk about who were the agents of violence. There was something that was said yesterday: “Can we name the evil that killed my mother, my brother, my father?” There was no answer to that. No, we cannot name the evil in this place, and we cannot name it in the transitional justice exercise. And I want to say one thing now, that naming, which is very important, Nataša uses it in a very positive way, naming the victims, all of them. But the absence of naming - of naming the perpetrators - is a problem. The words that we use in the discourse of transitional justice, they are part of the problems of transitional justice as a profession. There aren't enough words, and there are too many words. Reconciliation, recognition, acknowledgement, truth-telling – these are words that have a profound meaning, but in the discourse of professional transitional justice, they have almost lost all their meanings. This is how I see it. Someone here mentioned earlier “national kitsch”. If there is an “international kitsch”, it's this trans-national discourse on transitional justice that focuses on these words. And the third problem that I see here, is the problem of the pressure from international donors to use transitional justice as a relief, as a solution to a conflict that is still open. International donors and international institutions, the EU, the UN, they really don't have a strategy. What is the grand strategy of international institutions and international donors on transitional justice in the former Yugoslavia? At time 1, twenty years ago, they gave the ICTY to the region. It was a great thing: they built a beautiful house, and then they left it there. Now, it doesn't seem to be mattering any more, we move without any real reflection [away from] what the ICTY has accomplished - from an amazing thing, the first time that a head of state was on trial for war crimes. We move on to restorative justice, and I think that there, actually, is something that we should reflect on. Retributive justice is important. Victims, whenever you talk to them, they want that - they want people to be in jail, they want the perpetrators to be in jail. Justice, such as trial justice, produces some satisfaction. And, it's also good for human rights. There are experts, international experts, international human rights experts who are agreed on this, like Kathryn Sikkink for instance, who has written a book about how international human rights trials and domestic human rights trials actually produce effectively a human rights culture in the countries where they are processed.

Let me now talk about RECOM, since I was critical. I think that RECOM has been an extraordinary effort at opening the discussion in the region, and involving people from all backgrounds. And I use, on purpose, the word “people”, not civil society. Civil society is another word that is being [abused], that is constantly abused – it almost doesn't mean anything. And, it's a great achievement of RECOM as being precisely this – bringing back the issue of justice, bringing it back to the foreground. So, I don't want to talk about the failure of RECOM, I don't think there is a failure. RECOM has done what it has done. If we are here today, discussing all these important issues in this great discussion, it is because of RECOM. But RECOM has also exposed the limitation of this exercise, and I want then to propose two things. The alternative to something that I don't think quite works, is not doing nothing. But we can do, you know, things that can be done. And I'm not telling you what you should do, I'm just [pointing to] something that I observed. Listening to the conversation that has been going on here yesterday and today, what I have heard is that one of the priorities of any effort of transitional justice in the region is the search for the missing and the

recovery of their bodies, and the explanation of the circumstances of their death. So, when Nataša talks about a road to be defined by concrete actions, I think one of the priorities, before some other experts say, you know, tell the local communities what to do, would be a really strong trans-border activism to support the missing victims organizations to really, really create lots of consensus and mass support for the mothers, for the brothers, for all of those people who have been missing across [the region]. This is a regional effort, which should be really targeted and focused on one thing: recovering the missing, finding them and establishing the circumstances of their death. The second thing, and I conclude here, is that we [accept] the limitations of the timing and context of what we can do with transitional justice in this region, [and] also try to understand and tackle the limitations, which I mentioned a little bit before, of the international community in this field. In certain ways, you know, Nataša says a very important thing, and other people said it today – and the experience from Northern Ireland was also pointing to this: individual initiatives are not enough. They don't mobilize all the potentials of what societies can do, they compete for funds, they lack a grander strategy. So there is a necessity for coordination that manages funds and that creates a strategy, that interacts with international donors - the EU, in these particular cases. Does the EU have a strategy? Before the EU starts telling local communities what they should do, I think we should ask, to paraphrase the famous sentence, we should ask the EU, What can you do for us? What is the strategy that the EU... what kind of resources can you really invest on a sustained timeframe for a coordinated effort in the region in the name of transitional justice?

Jasna Dragović-Soso⁵¹: Apologies after completing the work on preserving the memory

In these few minutes I would like to address some of the topics raised by Nataša [Kandić] in her presentation. The first point concerns apologies.

Apologies can indeed be an important element of processes of reconciliation. As many scholars of transitional justice have noted, a formal apology issued by a parliament or president of a state can be an incredibly valuable ritual of political transformation and can pave the way for atonement and reconciliation.

However, the literature also shows that there are few apologies of this tenor and sincerity, and which have this kind of positive impact. Often they tend to be the result of political calculations and deal-making, and less noble motives.

Apologies are most effective and can offer a meaningful gesture of reconciliation when they come at a point when some “memory work” has already been undertaken - for example, following an official enquiry or the adoption of a report by a truth commission detailing the nature and consequences of the crime committed. As transitional justice scholars note, official apologies are particularly meaningful if the consideration of the past has been both democratic and deliberative – if peoples from opposing as well as ruling tendencies have been able to air

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their views – and if at the end of the process some consensus has been achieved on both the crime committed and the state’s responsibility in regard to that crime.

Demanding such an official apology before such a process has taken place - and as a prerequisite for participation in an investigation about the past (such as for example by a commission) - is in my view counterproductive. At the very best, it can only lead to an instrumental apology made for political reasons; at the worst, it can lead to recalcitrance and a lack of dialogue.

This brings me to the second point - namely that of mechanisms of truth telling, and the role played by official institutions on the one side, and that played by civil society on the other.

There has been much discussion among transitional justice scholars and practitioners about the importance of more restorative non-judicial approaches to the past, coming partly from the recognition that criminal justice institutions are unable ON THEIR OWN to bring about a broader social reckoning with the legacy of conflict and mass atrocity crimes.

There is also much frustration among civil society actors - human rights NGOs, victim associations, and other groups - concerning the lack of political will to address those issues that are important to them, having to do with things like: acknowledgement of the crimes committed, purging institutions and security forces of individuals involved in those crimes, domestic trials of war crimes, information about missing persons, as well as crucial practical issues related to medical and psychological care, social security, property rights, inheritance and pensions and so on.

What is also of some concern is that opinion polls are showing a growing social amnesia about specific crimes committed in the wars of the 1990s, which inevitably also amounts to forgetting the victims of those crimes. I agree with Eric Gordy that outright denial of many crimes has now greatly diminished in the public sphere, which is certainly a positive development. However, it is equally clear that at this time of great economic hardship and uncertainty, along with official reluctance to deal with the past and the continued presence of widely diverging ethno-national memories and histories, a genuine reckoning with the past has not made much headway in the region... And this despite the hard work invested by civil society actors in promoting remembrance and acknowledgement.

The question is: where to go from here? There are two interesting initiatives on the table – as raised by Nataša: one is of course RECOM, and the other is the UNDP proposal for a truth-telling forum (rather than an official commission) in Bosnia and Herzegovina. Both of these are based on the recognition that - although there is a large number of different initiatives undertaken within the civil society sector - the vast majority of these initiatives are local, uncoordinated, many are dependent on political forces, and at times even at cross-purposes with each other, without a broader social impact and certainly without effect in terms of overcoming national divisions.

Secondly, both these initiatives are ultimately concerned with the notion of reconciliation. Reconciliation - as we know - is a highly loaded term without a universally accepted definition; with some authors viewing it as an “end point” while others seeing it as a process made up of various strands (relating to truth, justice, reparations, apology, etc.) that together seek to address the legacy of past conflict.

Despite these differences, most scholars do see reconciliation as having something to do with the construction of a common vision for a society. To quote Kevin Avruch, reconciliation involves the construction of “at least minimally shared - and probably much more than minimally shared - narratives of the past and visions of the future”; he notes that “at the very least, one must be willing to recognise the other’s truth as part of one’s own narrative”.

I think that it is difficult today to envisage the construction of a common vision along these lines - both for Bosnia and Herzegovina (which is the focus of the UNDP proposal for a truth telling forum) and the post-Yugoslav region more broadly (the focus of RECOM) - particularly when seeking the involvement of official institutions in such projects. In the region, people are still not ready for what Dr Sarcevic described yesterday - when they can accept the narrative of the other side as a valid narrative even though they completely disagree with it. This type of reconciliation is still a long way away and I am not even sure that it should necessarily be the overarching goal at this point in time.

However, even if this kind of reconciliation based on a shared narrative is not on the books for the moment, this does not mean that the truth-telling initiatives along the lines of RECOM or the truth-telling forum proposed by the UNDP report are not intrinsically valuable as processes in their own right.

I will just finish off by highlighting where I see the greatest contribution of both these initiatives:

First of all, in the building of links within civil society and coordinating efforts, both nationally in the case of the truth-telling forum for Bosnia and Herzegovina, and regionally in the case of RECOM. The very valuable collaborative work undertaken by NGOs (including those involved in RECOM) in accounting for the direct casualties of the wars of the 1990s and the sharing of information, methods and strategies among these organisations is testimony to the importance of such cooperation.

Secondly, the focus on individual victims, which RECOM has adopted, is a good starting point for the fostering of empathy across ethno-national divides. In a context where collective visions of both victimhood and responsibility prevail, and questions of causation are inevitably going to be sources of division for some time to come, this is one way of moving forward.

Giving victims a platform to recount their experiences in a direct way to the broader public (i.e. a way which is not mediated by institutions) would confront people with the humanity and suffering of members of the “other” national groups, facilitating empathy and the rehumanisation of the other side.

In sum, projects like RECOM or the truth-telling forum for BiH that are focused on fact-finding and rehumanising the other will not on their own produce the kinds of common narratives and visions that constitute reconciliation. However, they do provide a starting point for a more constructive dialogue about the past—within the Yugoslav successor states, as well as in regional encounters.

Jelena Obradović-Wochnik⁵²: Achievements of transitional justice in the Post-Yugoslav space

When we ask about the “achievements” and “impacts” of transitional justice, we often look for the immediately quantifiable: the numbers of trials, the numbers of those convicted, or the numbers of people participating in transitional justice initiatives, such as RECOM itself. These forms of measurement are useful only up to a point. They chart important achievements and benchmarks, but this is only one dimension of transitional justice. By paying attention to these benchmarks, outputs and quantifiable effects, we risk losing sight of the more invisible and marginalised responses to the past. In my talk today, I will address some of these more invisible aspects of transitional justice, the less visible aspects of dealing with the past. I want to do this because I think that it is important to highlight that “alternative” or non-mainstream approaches to the past are not always in opposition to initiatives such as RECOM, and are certainly not mutually exclusive. My aim is to illustrate the possible convergences of these two approaches – the visible, public engagement of civil society practitioners, and the less visible, informal understandings of the past amongst the “ordinary public” - so that we can understand better the spaces and opportunities where these two approaches can work mutually. Within these “invisible” aspects, there are achievements but also challenges. In any case, the more invisible stories and practices illustrate that transitional justice is a hugely complex and contested practice. I will address both achievements and challenges, but first I want to spend some time reflecting on what I understand to be the less visible, silent or more complex responses to the past – the stories, narratives and memories that we do not immediately observe, especially if our focus is on the publicly available discourse and dialogue.

First of all, when we talk about the achievements of transitional justice, there is often one recurring theme which keeps cropping up: something that has *not* been achieved, public engagement. It is often thought that the general public in the post-Yugoslav space does not engage adequately in transitional justice initiatives, and that there is not enough public acknowledgement of the past and the victims. This is true, in many ways. There *is* a lack of public engagement and acknowledgement (and let’s not even mention the lack of engagement and acknowledgement from political elites, which we all know is well below what it should be).

This is what I want to focus on today, because I think it is important to disentangle the complexities of this thing that we seem not to have achieved - the lack of public engagement with the past and with transitional justice initiatives. This is because I think that what at first appears to be a failure, something we did not achieve, appears as such only because we read the lack of public engagement, silence, negatively. This is what Jessica Greenberg has called the “dichotomic reading of nonparticipation in post-socialist countries”, where “failure” is correlated with “absence”. As, for instance, in Greenberg’s words, “reconciliation, and its absence” and “political participation, and its absence”. This is, of course, a limited understanding, because it leads us to overlook silence as a productive space: if we look at what appears to be “the silent

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public”, we will find not only stories about the past, but relations of power, agency, resistance, and of course, potential spaces for engagement.

The ordinary public is absent from transitional justice initiatives and debates, especially in Serbia. I do not mean by the public the veterans’ or victims’ groups, who regularly take part, for example, in RECOM consultations and fora. Also, I do not mean groups of students and other local organisations and local actors invited to RECOM consultations. RECOM has certainly done a great job of being inclusive in this regard – a quick look at the public consultations over the last few years demonstrates a huge diversity of actors invited to take part. But, as important as their participation is, most of the actors that have been included in RECOM consultations, are not “ordinary” – most of the actors, such as the student groups or veterans groups, are already organised into different kinds of collective, and have a stake in the public sphere, a public voice and a platform from which they can take part in public debates. Their participation in RECOM consultations privileges their voice and experience over those of others who have not been invited to take part.

So, who do I mean by those “ordinary” people who generally do not take part in transitional justice debates? I mean literally the “silent majority” of any given society. Let’s take Serbia as an example. When I walk around Belgrade, I see people going about their daily business - buying groceries, travelling on the bus, going to work. Most of those people do not belong to political parties, NGOs, or organised groups. Most will not attend transitional justice fora such as this one, and most will not engage publicly with transitional justice debates – they will not come to panel discussions, or write letters to the newspapers; they may not even talk to their neighbours about the past. Yet, they are a part of “the society” and their voices and experiences of the past are part of the composite social memory. My research leads me to conclude, however, that they are often excluded from transitional justice debates, intentionally or unintentionally, and so we never really get to hear them. They are literally subjects, to quote Spivak, who cannot or do not, speak.

Their exclusions are multiple. First, they have often been excluded by researchers, who have mainly tended to engage with NGOs, political elites, intellectuals or students. Secondly, they are accidentally excluded by NGOs and transitional justice practices. Why? Because most transitional justice initiatives in the region prioritize the public discussion, open deliberation and visible dialogue that take places in fora such as this one, and in panels, and other notable events. My view is that these events are important, and public dialogue is crucial in opening up debates on the past. We expect much of transitional justice to take place publicly, and that’s fine. In fact, it is very important, and needs to be done. However, we must understand that public dialogue does not reach everyone, and that not everyone can, or wants to, speak publicly.

This is the main oversight of transitional justice initiatives which prioritize public engagement. Emerging research on transitional justice across the world, but especially amongst various African communities, demonstrates that the act of public speaking about the past is not only a normative Western-centric practice, but also has no cultural resonance amongst large numbers of communities and individuals. This also echoes the findings of critical security studies scholars such as Lene Hansen and Cai Wilkinson, who suggest that the act of speaking, having a public

voice and public visibility, is not always possible or desirable in some communities. The Western-centric, or rather, Anglo-Saxon confessional model of dealing with not only the past, but also all other political or politicised issues, assumes that individuals are free of constraints, and can often speak freely. This is clearly not the case in authoritarian societies, but it is also not the case in instances where communal pressures, societal expectations, personal experiences, gender relations, class relations, power relationships and other “invisible” mechanisms, may prevent individuals from speaking publicly or taking part in public debate.

This is the case for many communities across the world, and in certain post-Yugoslav spaces too. We must not forget that speaking publicly, making oneself visible, makes individuals vulnerable. In this region, where people still remember being beaten up at demonstrations, or being fired from their job for having the “wrong” political affiliation, it is not surprising at all that individuals would choose to remain silent. This region has often been framed as one that does not have a vibrant civil society, especially as when compared to other post-socialist states. But this lack of engagement has less to do with social apathy, and more to do with a retreat into the private sphere. It is very clear to me that here, especially in Serbia, since the 1990s, there has been a retraction of one’s public life into the private - unsurprisingly so, when we take into account just how the Milosevic regime, the wars, corruption and instability made public life, participation and opposition difficult. Many people here still live with those memories, and many have chosen to withdraw from public participation and to conduct their affairs within the confines of their family, their neighbourhood or their building.

However, this has also led to what I have called the “silent dilemma of transitional justice”. In a recent article, I draw on the work of Lene Hansen, and I conclude that the absence of these ordinary voices in the public debate on transitional justice makes them invisible, but also allows them to be constructed as the “silent subject” and therefore, often, as “the people who are in denial of the past”. Many transitional justice initiatives, panels and projects, are aimed at re-educating people who are in denial of the past. So, these people are literally caught up in a dilemma: their agreeing to engage with such transitional justice projects aimed at open admission of past crimes, would mean they have finally accepted the construct of themselves as “the bad guys” who had previously been “in denial” of the past, who did not understand the past, had no knowledge of the facts, and were in denial of the atrocities committed. Whereas their “silence” was often, in fact, an expression of another mode of awareness, as I have explained in previous paragraphs.

The important thing to note is that the absence of public voice, and the absence of formal participation of individuals in transitional justice debates, does not mean a complete absence of engagement with the past. Rather, it might mean that the past is being dealt with less formally, and is embedded in everyday practice. Research which highlights this dynamic is well established: however, it mainly covers various African communities, and it has only recently started to spread to the study of post-Yugoslav spaces. For instance, Johanna Mannergren Selimovic notes that the “war stories” embedded in the everyday life of people in Bosnia often tend to diverge from both the ICTY and dominant Bosnian narratives.

I have also found this to resonate in Serbia. When I carried out research here with “ordinary” people, back in 2006, I found that most of the people I spoke to, young, old, university-educated, high-school educated, all living in Belgrade, were reluctant to engage with transitional justice projects, but, nevertheless, still engaged with the past quite actively: they circulated stories about the past amongst themselves, they passed on stories to their children, they acknowledged war crimes. They rarely engaged with the “nationalists” and war crimes deniers like Ljiljana Bulatovic. At this point, I also want to make it clear that I am not talking about people we might identify as “active deniers” of war crimes. Of course these exist, and there are members of the public who will still vehemently deny the existence of victims and atrocities. I think these voices are still quite loud and obvious in some sections of the public sphere, and amongst certain political parties, but I think we will rarely find such categorical deniers amongst the ordinary public: people generally do not approach the past from such categorical standpoints. Instead, they have selectively engaged with all the competing narratives – those of the nationalists, and of the civil society activists – and created their own understanding of the past. But one thing was quite clear from my research: most people were aware of the full scale of the atrocities and war crimes committed by the Serbs already, during the time of the conflicts. They had mainly picked up these stories from refugees and former soldiers, volunteers and the paramilitary. Many of these stories, however, were told and circulated only selectively, and almost never raised as a topic of social chats. So, the lack of knowledge was not really the issue; rather, there were various political and communal pressures and norms which prevented the “public” circulation of these stories.

In short, I think this is one of the achievements of transitional justice – the fact that these stories and this knowledge does actually exist. People may not turn up at panel discussions, but they will at some point engage with the facts and ideas promoted by transitional justice projects. This is crucial to understand. Individuals have agency – they construct stories, they *do* work through the past. But this is also a challenge. How do we tap into those stories and experiences, if individuals choose, or feel pressured to, stay silent and remain invisible? One way of resolving this challenge may be to look towards the anthropological and critical international relations literature on power and resistance.

Transitional justice is underscored by power relations and what James C. Scott has called “hidden transcripts”. Here, hidden transcripts are those stories that I’ve just alluded to, stories and experiences that deviate from the official versions, whether the official is state-led or civil-society led. Transitional justice is therefore much like most other political practices and processes (like everything from voting to peacebuilding and humanitarian intervention), in which certain actors will hold more power and authority than others, whilst others will participate in the practice but will also find ways to oppose and resist it. However, we don’t often think of transitional justice as a practice with its own power relations, because the aim of transitional justice is inherently good and transformative, in the sense that it seeks to “improve” societies and their relations by addressing the past. Authors such as Oliver Richmond and David Chandler also highlight this: we must not ask whether individuals and communities have agency, we must assume that they do. Individuals and communities will resist official and also civil society initiatives, even those

such as RECOM, but that resistance is not “the end”; it does not mean failure. Rather, it is a starting point: resistance and agency are productive, in the same way that actual encounters between practitioners and the public are productive; they are spaces of engagement.

Therefore, in order to move forward together, we shouldn't view the silent public as “the problematic subject” whose silence needs breaking at all costs. We need to understand silence and ask if our current rules of engagement actually create silent subjects. We need to find ways of tapping in to the issues on which we converge. Convergences do exist, because both the practitioners and the silent public believe in addressing the past and in acknowledging victims. One way of engaging this section of the public may well be through less formal, community, neighbourhood-based initiatives, which do not prioritize public speaking or outputs, or links to formal initiatives. In this regard, we have a lot to learn from analogous cases in African communities, whose need for less formal avenues for dealing with the past have long been recognised by researchers.

Sari Wastell⁵³: Shared history

I think that this question of defining reconciliation is absolutely key, and the fact that there is no one concept that has cornered the market - that actually these things are going to be context specific, they're going to be influenced by cultural, social, religious, ethnic, legal and historical sensibilities. And this has always been one of the difficulties and shortfalls of transitional justice, that it is constantly looking for the one size fits all model, when what works in Guatemala is not going to work in South Africa, and what works in South Africa could not work in Fiji or East Timor, much less in Bosnia and Herzegovina or anywhere in this region. So we have to think about how we wrestle with these kinds of concepts, and I want to pick up two things that she said in her very interesting talk: that the core of reconciliation is about social relationships, and that those social relationships might be the mechanism, the very path to understanding what reconciliation could look like in very specific, local and concrete contexts.

Basically, what I want to say, which is a little bit, sort of naughty, given the panel and the title of the panel that I'm on, is that we are not really looking at an epistemological problem. An epistemological problem would suggest that there is some kind of dialogue going on, and there are different views in that dialogue. But, if it's a dialogue, there's the potential for communication in a very straightforward fashion. But I want to suggest that there isn't a dialogue, there is a certain incommensurability, which we might want to think about as the challenge of different political ontologies meeting up, different versions of reality altogether. Now, that's a fairly abstract proposition, so let's put it back into the more local and concrete context of BiH, which is not shorthand for the region, it's just actually the context that I know, because this is where I live and work. So there's nothing innovative in saying that there's some kind of disjunction occurring between the objectives of the activities that are undertaken under the banner of transitional justice, and the popular public perception of those activities, and the very definitions of things

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like justice, and also the needs that require they be prioritized for the people those interventions are supposed to serve. We all understand that as a problem.

The epistemological community should be offering a different kind of diagnosis of this problem, and that's saying that these distinctions, these definitions of things like reconciliation, justice, priority, how to create complementarity between the different mechanisms of transitional justice – all this has to be something that is open to debate. And this is one of the things that, unless we reform the practices of transitional justice, will continue to be a problem - at least here in this context, in my opinion at least. So, our problem is that we tend to take this as a question of education, on the part of the actors in the international community, let's say. But for people working for NGOs, for trans-national organizations, the UN or the EU Delegation, whatever it might be, the problem is we need to have outreach programmes that better explain what we are doing for them, because they are not appreciating our efforts, they don't understand why we do what we do. And, then, from the other side, local communities say: "Yes, but we want our voices to be heard. What about our needs, our priorities?" Are we more interested, for example, in economic justice than putting so many resources into the prosecution of war criminals? Now, if you think about this as a question of education, different constituencies trying to educate other constituencies - "This is my voice, this is my opinion, this is what I want to hear", - then, it's an epistemological problem. But, what if it's a different kind of problem? What if it's a problem more at the level of political ontology? And, put much more blandly, if it's a question of education, then what you're really talking about is that there's one reality, and there are different versions or subjective takes on that reality. And everybody wants to get their word in about what that one reality actually is. But what if we entertain the idea of multiple realities, and that that is our problem? If we're dealing with incommensurable multiple realities, that's a different diagnosis of the problem, and I very much appreciated when Dr. Kilmurray was speaking to us, when she said: "We're looking not for an agreed history, but a shared history." That is a very different form of communication.

Now, what is the basic problem - because I think I have very little time left - with transitional justice? Well, there are too many inherent presuppositions for it actually to work in a way that would create the possibility of a shared history. Nobody ever asks, "What are you transitioning to?" You are transitioning to the neo-liberal triangle, which is democracy, the rule of law, and market capitalism, and that is above the level of debate. When we talk about any kind of participatory endeavour, if all of those things are above the level of debate, if there is no participation in deciding what one is supposed to be transitioning to or how to get there, then already you've created a problem for yourself - you've created not conditions of possibility, but conditions of, perhaps, impossibility. If we look at the question of the relations being the core premises of possible differential concepts of reconciliation, where do we find most of the resources in terms of relations here? As an anthropologist, I would say that economic relationships are absolutely fundamental to all social relations. Now, if we take it as given that capitalism had to be introduced, that privatization had to be introduced, then we are circumventing a real resource there, because there was a time for the very idiosyncratic form of socialism and self-management that happened here, when labour was actually a great fount of inter-ethnic solidarity. If we're going to replace that, if it's supplanted by

economic relationships that are based on adversarial relations based on competition, a kind of winner takes all, survival of the fittest mentality, it's not clear that that is going to be very helpful in pursuing the kinds of social relations that might facilitate reconciliation.

So, what I would just like to suggest in conclusion, as part of the epistemological community and the academics who are trying to weigh in on these kinds of issues, is I think that we have to understand, as educators, that we need to be slightly bolder in our diagnosis of what is happening in any concrete context in which we're participating and offering some kind of observation or commentary on.

We have to be bolder in our teaching, such that our teaching is not understood simply to be about the question of instruction, the idea that we're just going to facilitate a dialogue which already takes for granted what the singular reality looks like, an epistemological reality, but we actually have to expand our agreement, we need to diagnose things differently, and to ask the unanticipated questions. As I always tell my students, long before you get to any kind of solution, you'd better find out the question that nobody is asking. That's the first step. If you come up with a better question than what people already take for granted, you've already gone further than putting some under-examined solution on the table, like "we all know what reconciliation is". But what if we don't know, what if we don't take that for granted? Ask the unanticipated question, and in doing so, I think we could build critical capacity, especially in the next generation, we could foster a different kind of emancipatory politics, and I think we could facilitate the evolution and maturation of the sorts of participants, real participants in social reconciliation, that this region so very much requires, and very much deserves.

And I think that our role as academics would be to try to ask those unanticipated questions and re-think the very terms of reference, because the difficulty with transitional justice - I would not want to throw the baby out with the bathwater - is that, actually, too many of the terms of reference are taken for granted and under-examined. All of the phrases - what justice is, what reconciliation is - we're not even putting those things on the table yet. And until we do, and start listening to the variety of different realities that might re-define those terms, I think they will continue to come up against the same obstacles which, certainly here, we've been bumping up against for nearly two decades now.

Sergej Flere:⁵⁴ History is the main channel for reproducing national myths and legends

I have done a study on the subject of how the break-up of Yugoslavia was dealt with scientifically. I must say that this subject has been widely written about abroad but not in the Yugoslav countries. While today we have social sciences in Slovenia, Croatia and Serbia which are to some degree in contact with world science, in other successor states of the SFRY one finds hardly anything concerned with genuine socio-scientific research. Such work as is being done of a scientific nature is mainly supported by foreign non-governmental organizations. None of the states created on the territory of the former Yugoslavia has succeeded in establishing a national

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economy. As all of them are in a position where they depend on foreign capital, it could be said that all these states are today in a semi-colonial position.

Add to this the omnipresent explosion of religiosity. We have established, however, that it is more seeming than real. It was real at the beginning of the 1990s. Although this trend has since begun to abate, it is gaining ground in the political discourse and persists there, with the result that we have a semblance of an “explosion” of religiosity - thanks also to the construction of religious facilities.

Of course, it is imperative that one should study history. I am of the opinion that our historians are not capable of doing things properly, so we need a multi-perspective textbook, and even a great number and variety of multi-perspective textbooks for each and every class, as something which should be imposed on all the states in the region; because history is one of the channels for the strongest reproduction of national myths and legends.

Christian Nielsen:⁵⁵ The periods before and after 1991 are interconnected

My thesis is that if we really want to understand and analyse the events from the 1990s, and if we really are to create a more stable and better and, I hope, common future, then we must thoroughly analyse also the history of Socialist Yugoslavia, particularly the history of its political and security structures in the 1970s and 1980s, and even before that. Let's get this straight: the exploration of these issues in no way rules out the investigations advocated by the Coalition for RECOM. On the contrary, all that is tightly interconnected. One should shed scientific light, for instance, on the liaison between the members of the KOS [Counterintelligence Service] and those of the UDBA [State Security Administration] on the one hand and the nationalist extremists on the other, a liaison entered into during the 1980s in all the republics of the former Yugoslavia. With the exception of Slovenia, we have no free access to the archives of those services, and, for the most part, no questions have been asked of the kind which scientific literature on transitional justice in other countries of Eastern Europe considers crucial and essential for a successful transition. Here in Bosnia and Herzegovina we have no free access to all the archives, partly because some were destroyed during the war and partly because some documents are kept in so-called private archives, in the homes of former officers of those services. However, others are kept in state archives - but the irony is, we can't see them. Why? We cannot study them because they bear the seal of a state secret. Apparently no one in this country today is going to remove the designation of state secret from those documents: the designation of state secret for a state which does not exist today. What is more, we sometimes encounter nostalgic and uncritical attitudes towards the former common state because, after all - and we agree here - it was much better than everything which began to happen in 1991 and went on until 1999 at least. But when I see documents of the Federal SUP [Secretariat for Internal Affairs] dating from the 1960s and 1970s, which recommend (I am quoting one from the 1960s) “the preventive incarceration in camps of internal enemies”, and when I see that the same document mentions, in other words,

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recommends the categorization of prisoners, to my eyes, as an analyst of the Hague Tribunal, this entirely resembles the categorization I saw in the 1992 Omarska camp documents, and in that I see a common thread linking the periods before and after 1991. In an epistemological sense, we have a problem if we consider only what happened in 1991 and later. But finally, let's get this straight: I do not subscribe to the sensationalistic thesis about the omnipresence of the KOS and UDBA in the former and present societies. This popular thesis is too often brought to the fore in the local media when journalists and their interlocutors either cannot explain something, or do not want to explain something, or want to discredit their opponent.

Eric Gordy⁵⁶: Limitations and problems in the construction of public memory

There are many directions that a discussion of this type can take, but for our purposes today I will concentrate on just three themes that I think have remained important objects of attention since our last meeting. These are: 1) limitations on what the Law can achieve, 2) limitations on the political will of elites, and 3) problems in the construction of public memory.

Limitations of the Law

There has been a good deal of debate about the effectiveness of the ICTY as it reaches the end of its mandate, and in general it has concentrated on two questions: 1) Has it made good law? and 2), Has it contributed to spreading knowledge about the violence of the 1990s and, consequently, to reconciliation?

We can start with the second question first. Although during the ICTY's first decade of existence its representatives were willing frequently to use the language of reconciliation, this has largely been abandoned. Over the past five years, many of the people around the tribunal, legal professionals in particular, have tended to object strenuously to the category of reconciliation, arguing (largely correctly) that the ICTY may be capable of providing fair trials and establishing some claims as facts, but that reconciliation is the job of a different type of institution. Unfortunately, the question is not simply a theoretical one: the exaggerated expectations that accompanied the founding of the Tribunal, together with the weak political will of the elites who came to power after 2000, meant that the job of reconciliation was largely consigned to the Tribunal, and as a consequence largely left undone. We will return to this question when we move to the topic of political will.

As to the first question of whether ICTY has made good law, it is worth highlighting some of its achievements, because many of these have been eclipsed by the controversy surrounding its final period. It is because of the Tribunals for Yugoslavia and Rwanda that there exists any international jurisprudence on genocide at all, that sexual violence has been established as a war crime and a crime against humanity, and that the doctrine of sovereign immunity has been (at least temporarily) subject to successful challenge. These advances in Law will stand, regardless of what we make of the very controversial acquittals that came in the Tribunal's final period.

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I would not want to dwell too much on the debate over whether the Tribunal decided correctly is acquitting indictees such as Gotovina, Markač, Perišić, Stanišić and Simatović. Instead, I would like to concentrate on a single element: what the cases have in common is that the verdicts involved law professors (in the role of judges) testing out experiments in legal theory. The “specific direction” doctrine was introduced in the Perišić appeal, then reiterated in the Stanišić and Simatović trial chamber judgment. And what has happened since? It was rejected the two times it was tested – once by the Sierra Leone Tribunal, and once by the ICTY itself in the Kosovo Six⁵⁷ appeal. Let the lawyers debate whose doctrine is right or wrong; they have already done so, and they will continue to. What we observe as citizens is that the problem is broader than the issue that legal professionals are not able to resolve sociopolitical issues like reconciliation – it looks increasingly like they are not able to resolve legal issues either.

Also on the question of what the Law can achieve, we have to consider the impact of domestic prosecutions and domestic courts. I will not be the first to observe that activity at this level has been less than might be expected, and has largely spared the higher levels of command. In Bosnia and Hercegovina the difficulty has been compounded both by controversy over efforts to restrict access to trial information (this has been attempted in Serbia as well), and by the European Court of Human Rights ruling that people convicted of offences had been sentenced under an inapplicable law.

On a certain level we could say that these issues are details, and that the larger picture is one of general inactivity on criminal prosecution in the states of the region. Here we can trace much of the difficulty to a political cause: the character of transition has had an impact on the scope and intensity of transitional justice processes. Concretely, incoming governments that had not defeated their predecessors ideologically had little motivation to consolidate their position or to discredit their predecessors by using transitional justice politically. Incoming elites were more likely to look on their predecessors not as defeated opponents but as future partners. On the one hand, the absence of a victor has meant that we have not witnessed abuse of law taking the form of “victors’ justice.” On the other hand, it means that many important stories have remained untold and many offenders untouched.

Political will and displacement

It is a telling fact that much of what has been achieved in the field of transitional justice has not been achieved by domestic or international political elites. Occasionally, we are able to see them acting in ways that are destructive of understandings that have been achieved by others: witness the deliberate provocations on the part of Milorad Dodik in the recent elections, including an initiative to name a public building after Radovan Karadžić, but witness also the collapse of will by Ivo Josipović when his advisor Dejan Jović raised some arguments that called the national mythology into question. More often, we have been able to witness them displaying

⁵⁷ Šainović et al. Case (IT-05-87)

the confusion that comes from doing nothing. Perhaps the clearest image of all this comes from the scene of the President of Serbia, Tomislav Nikolić, expressing his contrition by saying that he was on his knees, while he was sitting in an armchair.

Mladen Ostojić in his just-released book has gone a long way toward explaining the limitations of political will: incoming elites were overwhelmed by the enormity of the task of revealing the facts as they emerged, not confident enough of their own position to take the risk of making statements that contradicted popular opinion, and not sufficiently democratically engaged with the domestic public to imagine that they would respond to new information with anything other than revulsion. To his findings I would add that the most trusted institutions in all of the states of the region – religious, educational and cultural institutions – have also shown, with honourable exceptions, a much stronger tendency to regress into populism than to assume moral or intellectual leadership.

The shortage of political will appears to cross both state and institutional boundaries. The immobility of politicians and social institutions appears to derive from the same insecurity and fear. The result has been that issues of broad social importance have been shifted to the elite level, to the professional level, to International Law – kicked upstairs to the lawyers – so that the public is relatively excluded from the process of understanding its own past.

This is, however, a process that cannot be understood only from above, looking at the engagement of institutions. The recent research by Jelena Obradović (in her just-released book) and Azra Hromadžić (in her soon-to-be released book) suggests that citizens are building memories and accounts of the past, and generating unique strategies of reconciliation, in the absence of institutional leadership. Many of these forms of memory construction do not take the shape that advocates of “confronting the past” anticipated. But it seems clear that institutions that failed to act out of fear of the public now have the task of catching up with the public.

What is the opposite of memory?

The various blocked paths and wanderings along the road to reconciliation seem to leave us with a dilemma. Generations of research on reconciliation, from Ervin Staub to Daniel Chirot, tell us that the foundation for sustaining dialogue about the past and overcoming conflicts related to it is shared memory, built not only on established facts but on mutual recognition and acknowledgement. Generating this is a process that requires openness and clarity, and probably also some emotional distance from the facts and events that are being considered.

The opposite of memory is not forgetting, but incoherence. This is visible in the symbolic displays that have accompanied recent official encounters with the past. What I think research shows is that the road away from incoherence involves free communication – not only across national and symbolic, but also between institutions and the public. Over the last two decades this is what has happened the least, and it is what is needed the most.

Ivor Sokolić:⁵⁸ The civil society has the potential to spearhead changes in public perceptions

I carry out research into the institutionalized aspects or instances of the process of transitional justice, specifically in Croatia. This includes the Hague Tribunal, and the domestic criminal tribunals, as well as the civil society which we are discussing here. By identifying normative changes in the society, my research explores the influence of these instances on the social, political and cultural environment in the country. Norms as a foundation of identity make it possible to produce a more precise analysis of the extrajudicial outcomes of the whole process, as distinct from identity itself, or reconciliation, which are also used very often, but are quantified with great difficulty. One of these norms is dynamic in relation to the dominant war narratives in Croatia – the narrative about the sacrifice of the nation and the defence of the country against the aggressor, Serbia – as also the narrative which advocates investigating the allegations of war crimes. From the point of view of the war narrative, the memory of the last war must be preserved, all members of the armed forces must be protected against criminal prosecution, and every committed or alleged crime treated as an act of self-defence. Contrary to this is the position that it is necessary to establish the factual truth about every incident that took place during the war. Although such truth is not necessarily at variance with the war narrative, the very willingness to establish the truth or its absence from the war narrative, goes towards building the normative dynamic I am talking about.

My analysis therefore focuses on the question of what influence the determination of facts in war crimes trials exerts on the normative debate on these issues. It identifies the circumstances in which the debate about the norms took place, endeavours to identify the contentious issues, and analyses the importance being attributed to the fact that the norms themselves constitute a stake in that process. Thus, in some cases it can have a positive outcome, and I am going to give you now a brief example of that. I am going to talk about the case of the Lora camp in Split, in connection with which numerous judicial processes have been instituted. Essentially, the analysis shows that the media – in those instances in which they did deal with the norms, that is, when they did not concentrate entirely on the facts of the judicial processes instituted – were mostly preoccupied with two main topics: the determination of the truth and the efficiency of the courts. This actually means that the prospects for accepting the normative changes are promising, given that the media discourse attached great importance to the question of establishing the truth. It is interesting to note that the concept of establishing the truth is no longer discussed in a purely theoretical framework; rather, at least in a number of articles, it is dealt with from a practical point of view. This topic is also frequently discussed as part of the debate on media censorship, that is, in the context of criticising the censorship which is allegedly applied in those instances where media have discovered certain facts before the competent authorities have, including the publication of facts and information from the judicial proceedings on the Internet. This is of relevance for the matter of reconciliation, given that such empirical materials make it possible for us to draw specific conclusions about how one can make effective use of the Law in the situations outlined above, for interventions in the process adopting, modifying or

⁵⁸ The Ninth International Forum for Transitional Justice in Post-Yugoslav Countries, May 17-18, 2013, Jahorina, Bosnia and Herzegovina.

maintaining norms in the context of the whole process of transitional justice. This also helps us to answer the broader question of which projects have turned out to be (relatively) more successful than, say, the Hague Tribunal, and whether for that reason local initiatives and initiatives launched within communities have better chances of success. Unfortunately, surveys show that the prevailing attitude of the Croatian public (i.e. of a large segment of it) is that the officials and soldiers indicted by the Hague Tribunal or domestic courts are actually heroes, not criminals. It is arguable whether such a perception can be changed solely by legal means, given the impression that the punishment imposed, at least up to this point, has been of negligible influence on the attitude of the general public. To conclude, if a change is not initiated from the court itself, be it a domestic or an international one, it must be initiated from some other place. The research I have conducted shows me – and this is something I really believe – that the civil society itself, in spite of all its internal divisions (which are actually deeper than is commonly believed), offers a plethora of new opportunities, and that it is the civil society in particular which has the potential to spearhead change.

Adriatik Kelmendi:⁵⁹ Recognizing the victims in the case of Kosovo, and Kosovo's existence

Proceeding from the premise that we must recognize each other's grief, I firmly believe that it is necessary to achieve a social consensus among all the citizens of the former Yugoslavia about what happened during the war. Its foundation has been laid by the work which RECOM continues to do – to name every victim of the war regardless of their ethnic affiliation or religion, and regardless of the territory in which the victim became a victim. We all of us have our own numbers – I happen to know that in 2006 the Serbian Assembly even adopted a resolution which puts the number of the victims of the war in Kosovo at just a little over six thousand, this being the official report of the Serbian state.

On the other hand, only last week an organization in Kosovo came out with an official figure of just under 12,000 victims in Kosovo. Do both sides accept such figures? I think not, because the figures are different. Without rapprochement, without acknowledging each other's figures and reaching agreement about these figures, we cannot achieve reconciliation.

This is why I refer to the recognition of the statehood of Kosovo on the part of Serbia as "recognition of existence". Of course, recognition is a political process, and naturally, human rights activists do not want to combine these two recognitions into one – that is, political recognition and recognition of the victims of war. In Kosovo, however, the war continues after the war – 14 years after the war, even the new generations are not leading normal lives because Serbia does not recognize Kosovo.

Take the younger people, those born after the war, who are today 13-14 years old – they cannot travel outside Kosovo because there are states, such as the one in which we are now, Bosnia and Herzegovina, which do not recognize either the citizenship or the passport of Kosovo. Young people in Kosovo look upon this fact as a denial of their existence and normal life, something which

⁵⁹ The Ninth International Forum for Transitional Justice in Post-Yugoslav Countries, May 17–18, 2013, Jahorina, Bosnia and Herzegovina.

is enjoyed by all young people in the word; and they blame this on the party that conducted the war in Kosovo and caused all those victims. On the other side, as a result of this non-recognition, Kosovo youth and sports people are probably the only ones denied the right to compete with others. What is the root cause of this state of affairs? It is the non-recognition of Kosovo on the part of Serbia, whose direct outcome is the denial of its existence.

I say that the context of Kosovo is unique because these two issues are interlinked. If Kosovo were to be recognized without recognizing what actually took place in Kosovo, what each of the belligerent parties did in Kosovo, that would resemble the examples of other countries which recognize each other's citizenship but do not recognize the victims and the grief, and which for that reason are not reconciled. This is why I am an advocate of RECOM, and an advocate of recognizing the statehood of Kosovo.

Igor Cvetkovski⁶⁰: Reparations for wartime victims in the former Yugoslavia

In June 2013, the IOM published a report entitled, "Reparations for Wartime Victims in the Former Yugoslavia: In Search of the Way Forward". The report affirmed the existing notion that in the post-Yugoslav countries the wartime victims of gross human rights violations face significant difficulties and obstacles in accessing justice and adequate care, and that reparation, as one of the four transitional justice pillars, has been neglected and sidelined owing to politics, lack of capacity and resource scarcity. At the same time, the report offered a number of ideas and practical suggestions about how the national, regional and international stakeholders can move the process forward and facilitate the victims status recognition, appropriate assistance and possibly compensation, regardless of victim category, nationality, ethnicity, social status and place of residence.

State of play:

- *Victims' assistance efforts differ from country to country, but no state has made a comprehensive effort, with NGOs and victims' associations left to fill in the gaps.*

There has been some progress by some of the governments to institutionalize reparations and victim support policies and mechanisms. The most notable example was the passing of the Law on Victims of Sexual Violence and the drafting of a Law on Civilian War Victims in Croatia.

- *Despite formal rights, judicial reparations have remained elusive for most victims, and existing mechanisms do not cover everyone and frequently fail to cover even those for whom they are intended.*

Victims still face significant obstacles in accessing justice through criminal and civil proceedings, and accessing assistance through the existing social support schemes.

- *Past programmes are not seen as genuine "reparations programmes" but are considered more as ordinary "social programmes".*

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There has been no change in perception in respect to this issue. In fact, recent public discussions concerning reparations have crystallized the perception of difference even further, which in turn means that justice and reparations advocates will likely be in a better position to raise public awareness further and exert more efficient pressure on the responsible actors.

- *Continued discrimination between veterans and civilian victims under existing programmes contributes to the sense of “justice not done”.*

Recent attempts to reduce the difference between veterans and civilian war victims in terms of privileges and support in Croatia have resulted in a backlash from some veterans and complicated the public debate and legislative process.

- *As important gaps regarding victims’ data remain, it is difficult to assess how many victims are in need of reparations today.*

Data and information about victims remain dispersed between judicial institutions, government bodies, victim associations, advocacy organizations and professional NGO’s. This situation renders the debates and discussions prone to politicization and concerns about the resources required to establish reparations mechanisms and deliver actual reparations to victims.

Positive developments

- As mentioned above, the Government of Croatia is in the process of enacting and operationalizing a Law on Victims of Sexual Violence, and the Ministry for War Veterans is promulgating a Law on Civilian War Victims. These positive achievements, which are still facing some resistance, represent the result of good cooperation between the government and the non-government sector, where Croatian human rights NGO’s, such as Documenta, have played a crucial role. This model can be replicated in other locations.
- In BiH, the UN Country Team and members of the civil society are about to embark on a three-year programme completely focused on the victims of conflict-related sexual violence. The programme, which has received advocacy support from the UN SG Special Representative on Sexual Violence in Conflict (Ms. Zeinab Bangura) and initial funding from the UK, will tackle the issue from different angles (justice, reparations, capacity building, support and care for victims, etc). The programme has the potential for expansion to other victim categories, as well as for replication in other countries.
- HLC advocacy for inclusion of transitional justice issues into the EU accession criteria, discussion and negotiations also represents a bold step forward. The HLC initiative is also timely, especially having in mind the current EU efforts to develop transitional justice policy.
- In Kosovo, there has been notable progress with the establishment of the Inter-Ministerial Working Group on Dealing with the Past. The IMWG is composed of representatives of different ministries and government sectors, but also members of the civil society. According to the IMWG Terms of Reference, there will be four sub-groups, including one dedicated to reparations.

Challenges

- Persistent politicization of the issue of reparations remains a main stumbling rock in almost all countries. Most acute is the situation in BiH, where the question of a victim's ethnicity represents a key obstacle, which needs to be circumvented by focusing on the victim's category rather than ethnicity. In Croatia, despite the progress with the introduction of the law, the issue of the victim's ethnicity manifests itself in the current resistance of some of the war veterans against the inclusion of all civilian victims in future legislation. In Kosovo, the issue of victimhood is still perceived as mono-ethnic, while in Serbia the entire topic seems to be evaded by political factors, which is very much to the detriment of the many Serbian refugees and IDP's among whom there are probably a significant number of victims.

Conclusions

- In the post-Yugoslav countries, the reparations and truth-seeking pillars of the transitional justice concept and practice have been neglected and sidelined for a variety of reasons.
- The civil society organizations (advocacy and professional NGO's and victims associations), academia and some international agencies have played and still play a significant role in drawing government and public attention to the needs and rights of the victims.
- The governments in the region for a variety of reasons are becoming more alert, sensitive and proactive on the need and obligations to provide recognition and remedies.
- The RECOM initiative provides a unique regional forum where political and technical issues can be discussed and resolved.
- RECOM members, professional and advocacy NGO's, international organizations, experts, academics, governments and donors can and should use the positive momentum to overcome the remaining political and technical obstacles to achieve more comprehensive and victim-oriented transitional justice results on the territory of former Yugoslavia.
- Key international partners and donors, such as the EU, recognize the importance of transitional justice and are trying to develop adequate policies and collaboration/funding mechanisms. Reparations advocates focused on the region can use the opportunity to provide input and promote the region as a "learning and testing ground" for upcoming initiatives.

Zdravko Grebo:⁶¹ The facts, first of all!

The task of RECOM is fairly clear and has reached the present stage in which we must, as a matter of fact, we want – and which we will succeed in doing: to pass all the strength and energy we have invested so far, into the hands of the state presidents whose envoys have reached agreement on the basic issues. At this level of the civil society, in the non-governmental sector, we have accomplished our mission. To be sure, I am speaking for myself and will not allow, without any

⁶¹ The Tenth International Forum for Transitional Justice in Post-Yugoslav Countries, November 15-16, 2014, Belgrade, Serbia

reservations, anybody to do with this as they please; however, we have reached the moment when the state presidents should take matters into their own hands through their envoys, because we cannot perform the task before us even if we wanted to. We want to bring to conclusion this process of ours of determining the facts - that is, to produce a record of the human losses. Although we are not talking about guilt, because that is not our task, the circumstances in which those people were killed, tortured and so on are by no means unimportant facts. Therefore, I would like to offer you my encouragement, because it took me personally some time to figure this out. Yes, of course, I have my own perception about how the war started, especially what it was like in Bosnia and Herzegovina. I could also tell you about the aggression and the mass rapes. Here, we also have the other Initiative of the Coalition for RECOM on documenting the camps and so on. But let us bring to a conclusion this which we have started and force the presidents to mobilize their state, presidential and governmental mechanisms in order to see this thing through. I wish to ask you once again not to have any qualms of conscience. In your midst there are probably people who have different views about what happened from 1991 up to Kosovo. We are going to discuss that later. Of course, all of that is true. When I speak for myself rather than on behalf of RECOM, I say those things publicly. Let us now follow this matter all the way through to the end. Whether 700,000 or 7,000 people were killed in Jasenovac, whether 9,000 were killed in Srebrenica and whether or not the majority of them were soldiers... If we do not give our small contribution to that, even on the factual level of establishing the figures – after all, we have in the RECOM Statute the “socio-political circumstances” which led to the crimes and in which they were committed – I fear that the next war will start with nothing else but the manipulation of facts. As Nataša said, let us celebrate yesterday’s great success and let’s make an additional contribution to it.

Žarko Puhovski:⁶² From defeat to defeat until the final victory

RECOM has been held up for years, yet we have already accomplished something. This story about progress is, naturally, quite relative, and reminds me of the famous words of the Prussian Field Marshal Gebhard Leberecht von Blücher, “From defeat onto defeat, until the final victory”. This has been my experience. We have been suffering one setback after another, we have been pleading with them and they have been turning us down all the time, and saying, “Wait and we’ll see about it”, until they, or at least some of them, have become fed up with us. So this is how things stand at the moment – at which junction it is terribly important to bear in mind that we have not reached something that could be termed a *point of no return*. That is, a point of irreversibility. All that could change. While it is not highly likely, for example, the whole situation in Croatia would look different if President Ivo Josipović should lose at the elections. Accordingly, we are in the position not so much of “woosers”, as Zdravko Grebo used to say, as of “beggars”. There is an old English proverb which says, *Beggars can’t be choosers*.

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For our part, we could neither choose with whom we would talk – I'm here referring to Nataša Kandić and her discussions with her Serb "friends" – nor could we choose about how we would discuss things; we therefore talked with those who could do something provided they showed goodwill. It was not a matter whether or not we were right, that was beside the point. It was a question of whether we could convince them that it would be for their own good to do that. So, if anyone thinks that you only need to come forward, like in American movies, with moral arguments, in order for the other side, which is overwhelmed by the force of your moral argumentation, to accept what you are saying, then they don't know where they live. In this reality, it's been much easier to deal with some people than with others. Also, it was not all that easy to deal with some of our colleagues, because they gladly accepted others' arguments instead of ours.

We went through such things too. However, we have now reached a stage where we have the clear position of the Croatian President, which is shared by two-and-a-half other presidents, let us say, for the time being, and which is worded roughly like this: "The President of the State shall, subject to agreement with other presidents of post-Yugoslav states, make a statement to his parliament that he supports the RECOM Process and therefore wants the parliament to take the steps necessary for RECOM to become that which has been its intention all along, an inter-governmental, that is, regional commission for establishing the facts about the war crimes". This is what we now almost have. On the one hand, this is a major achievement of that methodical endeavour called the civil society. This is the point at which the civil society has penetrated the so-called top echelons of state politics. On the other hand, this is the point at which one leaves the civil society as the medium of action - something which is going to give rise to great difficulties among ourselves. Some of these people, as activists, simply do not want to let go of this kind of activism. Think about how many of civil society organizations are desperately trying to preserve their existence, even after their objectives have been reached? This is a part of the problem. All things considered, however, we have succeeded in placing on the agenda something which scandalized everybody ten years ago, and made everybody laugh five or six years ago.

Finally – and we're already running very late and I don't want to make my address any longer than necessary – I would just like to say one more thing regarding this great achievement of ours: if one could see things through to the very end, if one could have one's wishes fulfilled as in the old programmes of listeners' requests, something we all wish for, the outcome would be as follows: a commission would be established that would be approved by all the parliaments - but the commission itself, should it make a really good job of it, would meet with a disastrous reception. Because it would establish something which we in general, but not entirely, know - that is to say, how very many outrages were committed. In other words, our great achievement, if it ever came to that, would consist in bombarding the publics of the post-Yugoslav countries with these outrages. The idea that they can be made to come to their senses is still moot in this regard, but one can always hope. However, one would consider it a success if it could put a stop to what has already grown into a post-Yugoslav victimological contest to prove who had the most victims and who consequently is in the best strategic position for the next war. If we succeed in carrying out some of the things we are doing, we are going to prevent that from

happening (or at least render it much more difficult); and it is for this reason that we are more concerned with the future than with the past.

II RECONCILIATION

Željko Komšić:⁶³ One should react, but also reach out a hand of reconciliation

Reconciliation in post-Yugoslav countries continues to be topical, even though 18 years have passed since the end of war in these regions. As a matter of fact, if we consider the NATO intervention in Kosovo, we are talking about 14 years. One may well ask, why do we need so much time for reconciliation? Is this too long or too short a period for a process of reconciliation? I assume that there are people who subscribe to the one as well as to the other thesis. Is this due to the scale of the conflict, the crimes, the duration, the media coverage and the indoctrination of the people, or is it because the conflict not only broke the close ties that held us together as a society in the former Yugoslavia, but also broke the hearts of people in these parts? I believe that continuation of the discussion will give you answers to some of the questions. If we take the experience of the Second World War as being closest to us, we have the example of the beginnings of an organized European Community only 12 years after the Second World War, and by states that were parties to the conflict either as occupying powers or as occupied. The thesis about the need to Europeanize our society is often imposed on us; but, what is, in my opinion, more important as the foundation of that process is the normalization of the social relations and the democratization of the political ambience. Speaking of Bosnia and Herzegovina, unfortunately I must note that we have not succeeded in normalizing social relations - they are at odds more than ever before at ethnic, political and existential levels. Likewise, we have failed to democratize the political ambience; democracy has been wrested from the citizens, the political elites are holding it hostage and drip-feeding it to the citizens only in the times before elections - as if democracy were only elections, the filling up of government appointments and control of resources. However, I do believe that reconciliation is far more advanced among the people than it is among the politicians - far more, that is, than we are led to believe by the versions of political reality we are served in central news and current affairs programmes or in the political TV debates which dominate the media space. Needless to say, the media are of exceptional importance for reconciliation and mutual understanding among peoples in societies like ours. There will always be loud groups of national-chauvinists who hate everything different. They are also to be found all over Europe. There will always be hooligan clashes with ethnic undertones, where young people are mostly venting their frustrations over the lack of prospects on others and blaming them for everything. There will always be unscrupulous politicians who raise tensions with their rhetoric in order to win for themselves more votes in a particular constituency, because that is

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the easiest way. But that is not and cannot be our society. We must not allow the promoters of these marginal groups to impose their behaviour as the “mainstream”, or as an element of value in social relations. However, discrimination and inequality are unfortunately dominant in political activism in Bosnia and Herzegovina. How can we talk about reconciliation when we in Bosnia and Herzegovina are unwilling to accept the simple fact and universal value that all people are born equal, that they must enjoy all rights as citizens of this country irrespective of their racial or ethnic origin? Unfortunately, we in Bosnia and Herzegovina have the *Sejdić-Finci Case*. In consequence of the judgement of the European Court of Human Rights, the Council of Europe says in its latest report that the authorities have passed from a sphere of talking about finding ways of abolishing discrimination to a sphere of seeking mathematical formulas which would practically guarantee the continuation of the electoral exclusivity of the three constituent peoples with respect to specific high offices. The judgement in the *Sejdić-Finci Case* states simply: all people are equal in their political rights as citizens of Bosnia and Herzegovina.

I would like to say a few words about our region. We have had certain difficulties in communication in the past year to which you have been witness. There have been moments when one should have reacted, as well as moments when one should have reached out a hand of reconciliation, in an attempt to try to understand the positions of others, to understand the causes as well as the consequences of certain statements. I sincerely hope that that is behind us in the region and that we can continue at the level of heads of state in our joint interests of economic development and endeavouring to emerge from the economic crisis. The Hague Tribunal is bringing its work to an end after playing a specific role, but none of its judgements is enough for the families of the victims, because it cannot bring back their loved ones. The least we politicians can do is to refrain from rubbing salt into their wounds, to respect the institutions of international law and internationally recognized facts, to leave history to academic discussions and finally to begin to build a future for our children. The Tribunal is only a small piece in the jigsaw puzzle of reconciliation in these regions. Much more depends on the society itself and I therefore salute this eminent gathering. Why have I proceeded from the question of transitional justice and reconciliation and gone through basic human rights to arrive at the struggle to emerge from the economic crisis and achieve economic development? Because I believe that, after all is said and done, the overwhelming majority of people in these regions desire a simple, normal life, basic security for themselves and their families, a job by which they can live and hope for the future of their children in these regions. This hope can hardly be maintained without reconciliation, and without stability and economic development. Let me thank you once again for your invitation and the opportunity to discuss this topic.

Mioljub Vitorović:⁶⁴ Reconciliation is a process

Being a prosecutor, a deputy prosecutor for War Crimes or, as it is written here, a representative of the state and talking about what that state is doing, is a rather thankless task. For one reason

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or another, I have never fit in, so I am not going to talk about what the state is doing or what the state has done or what the state ought to do, or what it will do in the next 200 years. No, I will limit myself to what an individual can do regardless of where he or she works. The first key word is *goodness*. There is goodness when a victim belonging to a different nation trusts the person who presents the indictment, or if the prosecutor succeeds in convincing the other party, the victim, that he or she is doing the job honestly. This is not possible without a feeling of goodness. Will you give it a different name, and is that name *professionalism*? I don't know. We have come to realize that in these regions, professionals are guilty of the biggest follies and the biggest crimes. These days, I think, the other key word is *reconciliation*. It is a process that lasts - that has taken time and will continue to take time. It isn't over, anywhere. And it appears to me that this process does not consist of megalomaniacal projects, of national strategies. You saw the outcome of the national justice strategy in Serbia. A total disaster. I therefore put more faith in individual efforts and a success which is possible.

Engjellushe Morina:⁶⁵ Dealing with the past should start first within the framework of a society

We cannot deny the religious element in the conflicts in Bosnia and Herzegovina and Kosovo. This is borne out by the fact that the orthodox cultural legacy is incorporated in the two main documents creating the statehood of Kosovo and Bosnia and Herzegovina – the Dayton Agreement and the Ahtisaari Plan.

Dealing with the past, particularly in the case of Kosovo, calls for three kinds of dialogue. The position that the Albanians should talk with the Serbs in Serbia is wrong. The dialogue ought to be initiated in Kosovo society. It should be initiated between the Albanians and the Serbs in Kosovo; at the same time, the Kosovo society - and I think this would also be useful for the society in Bosnia - should enter into a dialogue with its government, its central and local institutions.

Friar Ivan Šarčević:⁶⁶ We must confront our history, our past

Our societies are jaded by religious rhetoric about reconciliation. We must search for peace, constantly talk about peace and create peace. This is necessary if we are to answer to that which substantially belongs to the very definition of *re-ligion*, because it is religion that strives to *once again bind* man with God in peace and people with each other.

I am quoting the old maxim *Corruptio optimi pessima*: the corruption of the best is the worst thing of all. I think that the religions, that is, the believers and the religious officials, have in a sense participated in the metaphysical justification and in the religious justification of the crimes. Herewith I assert what has been proven time and again, that what we have had here were not denominational religious wars; rather, we have had wars and crimes which were theologically defended and justified.

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There are three requirements here that appear of great importance to me; let us share them together, we who come from religious communities, with other people who regard themselves as atheists. First: one should always insist on **dealing with the past**. Reconciliation as a component part of transitional justice, for religious communities and for believers, means to confront both one's own as well as the common past. For in that past were laid the foundations of our identities. We know that often they are religious and sometimes national, especially national, identities, which use religion and religious identities for political ends. Some people may not agree that we should deal with the past, because they say that we are afflicted with too much past. This is particularly insisted upon by those who are more responsible and more to blame for our past. Consequently, the perpetrators and the criminals often want to erase the past. But they are not the only ones, there are a good many people for whom reconciliation is merely an ideological means to profit themselves; there are also, let us say, in non-governmental organizations people who wish to effect the erasure of the past through some "technical rationalization" or other: and often well-meaning people in religious communities say, "I've had enough of these tales of suffering, the past, blame. Let's move on to the future." I dare say we won't be able to get out of our past so easily this way. We must confront our history, our past. It is burdensome indeed. Here I am advocating – this is no idea of mine, but of those people who have worked, say, in South Africa, for reconciliation – I am advocating the so-called "conflict model" of dealing with the past, rather than the "consensual model". This is a somewhat dangerous idea. I am not advocating war, but that we should begin to accept the different notions about the past and the differences which can, naturally enough, be pure fabrications from our point of view - in other words, anything can be falsified. In other words, we must truly acknowledge the fabrications of others as an aspect of their truth; however, we should not keep silent about it, but should let our opinion be known in a tolerant if conflictual conversation, a conversation conducted with respect, though while also trying to persuade and dissuade. By way of an example, I will cite a history textbook produced by the Palestinians and the Jews. It is fashioned in such a way that on one hand (one page) you have the "Jewish/Israeli truth" and on the other the "Palestinian". There is in the middle a blank space left for the individual's comments. This is the only possible model for confronting our common past. There is another matter that appears to be of consequence, especially for the religious communities and for every believer, as well as for those who are not believers: the believers and the religious communities should constantly be appealed to, if I may say so, on the grounds of their attitude to God. Obligation, moral obligation for the believer, political obligation for the believer and his activities in society, do not stem solely from political and moral responsibility or obligation, but they stem from a fundamental article of faith, from the attitude to God. And it is precisely due to this fundamental standpoint that blunders and aberrations occur among ourselves. The Metaphysical responsibility is in crisis. The fact is that the religious communities and people in general are responsible not only for their own, but for man as man, taken as a whole. We who belong to religious communities are responsible also as believers to God, especially in view of the eschatological position that we shall all one day come to account before God. If this "metaphysical responsibility" (Jaspers) is absent from anywhere, it is absent precisely from the religious communities! One could also put it this way – that the "divine" God has become too "human" - He has been dragged down into the nationalist

mire. But let us see how things stand with the God of other religious communities: when we hear about the God of another religion, our perception is that he is, unlike ours, the God of the war crime. The God of the war crime and of the criminal has been dealt with by our best poets, writers, artists from these regions. We find it very difficult to acknowledge this. So, here in this second step towards social reconciliation, it is important for us to return to the fundamental fact of our standing before God. For this God, if we can see clearly, is always greater than any name and notion we attach to him, there is always something left out. We cannot reduce him to our "own" God - that is, we believers and religious institutions have the duty of liberating ourselves from our double privatization of God. First, from the privatization of him as "my" private God; after which we should proceed to deprivatize him from the collectivistic "we", from the collectivistic "we" form, that is, as "our" God. That will provide the foundation and a good opportunity for us to enter into dialogue with people of other faiths and, at the same time, into dialogue with atheists. I don't mean with those atheists for whom atheism is an intellectual posture or for whom atheism is a source of gain, but with those who, in common with believers, will not allow that, so to speak, "supreme position", to be occupied by any concept, any terrestrial idea, or, least of all, any nation, national god, or leader. This opens the possibility of dialogue among people, and the way to reconciliation. The third requirement which seems important to me in these theses is the attitude to the "others". This is where the monotheistic religions have failed - I'm not saying all of them to the same degree, and not all the believers to an equal extent - and precisely in this business of the necessary dealing with the past. For they have behaved as if "there is no God", as if that God is not the "divine God" but God as property. If there is no sublime God, then one will do everything to make sure that "there is no other God either". If, therefore, one acts as if there is no God, then the Other must not exist; consequently, this has led to the demonization of the other, to the demonization of the other in environments where someone makes up the ethnic majority and, finally, to the marginalization or "vaporization" of the other. For us believers, the fundamental issue is whether the God in whom we believe is primarily sensitive to our criminals, because it is they whom we are to save. Is He then sensitive to the criminals of the others who have done us harm? And is that God, in whom we believe, sensitive to the sufferings not only of my people, of my neighbour, but also to the sufferings of other peoples? And this is also where one should change direction and believe in a God who is aware of and concerned about not only crimes and sins and evil, but also victims and sufferings. Let us take a look - nearly all religious institutions commemorate their victims in this way, in order to point out by their commemorations that only the others are genocidal, while we ourselves are the sole victims and innocent. Our memorials and religious commemorations often constitute a double humiliation of our victims, as if to say, on top of their real suffering, You were not sufficiently nationally conscious; thus their innocence is interpreted as naivety and their sacrifice and goodness as some kind of sin, because they were not sufficiently nationally conscious. What is more, it is sometimes said in the religious discourse that their death was God's punishment for their sins. I would now conclude with two main theses: 1. Before entering into dialogue with others, one should reconsider one's relationship with God. One must, therefore, return to that fundamental relationship, and all people must appeal to the believers and the religious communities for that

authentic rather than hypocritical relationship with God. 2. At the same time, one should respect the right of others to a world view and a religion.

Finally, an example of the use of religious symbols. In my Christian community – the reference is to the Catholic and the Orthodox Churches – one should re-examine the meaning of Jesus' Cross. Did Jesus go to the Cross in order that more crosses be sown on this earth, or in order that there should be no more crosses? Or should we, in the words of an atheist, the architect Bogdan Bogdanović, dream about a country in which there would be no more monuments to victims? Believers, and I myself personally, are faced with the following question: Is that God in whom I believe a universal God, or a particular God, i.e. some kind of a national Moloch who devours human children? I also ask myself whether I respect the monuments this country is crowded with. One of the solutions is that we should begin to respect the monuments of others; and, at the same time, stop spreading them. In Christianity, just as in Islam, in accordance with the fundamental teachings, according to the Bible and the Koran, God is merciful also towards those who do not believe. He is not concerned as much about rightful faith as about the suffering of others. This poses a big task also for believers and religious institutions. Thank you for your attention.

Husein effendi Smajić:⁶⁷ Religious communities are not responsible for what happened between 1992 and 1996

In 1996, the religious communities should have told the public, and the believers in particular, that no religious war had been fought in Bosnia and Herzegovina and that the religious communities, with the exception of individuals, were not responsible for what happened from 1992 to 1996. Most important of all are truth and justice and reconciliation, that is, the complete freedom of the victims to tell the truth and the possibility to testify about this war in public. It should be made mandatory on all institutions to disclose all the information about war crimes at their disposal. Concealment of war crimes also constitutes a war crime. Secondly: bring all the war criminals before a court, an international or a national one. The Islamic Community will participate in every project such as RECOM on condition that truth and justice are respected.

Father Vanja Jovanović:⁶⁸ Reconciliation of the one with the other is a process

There is no religion which regards man as something unworthy, and no religion which says that a man who is different from me was not also created by God.

As regards the role of the churches and religious communities, it is essentially the return to the source of faith. I know that many people outside the religious communities have problematic attitudes towards us. We strike them as non-governmental organizations of some sort, as movements of some sort. No, we are people who have dedicated their lives to God and we believe with deep certainty in His existence and our existence in Him. In this regard we say: Reconciliation of the one with the other is a process. Man is not a mechanism that can be wound

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up. Man is not a project, so it doesn't do to draw up a plan and tell someone who has lost a husband, a wife or a child, "Now then, you are to become reconciled and to function in such and such a way in such and such a society". This isn't done, it's not easy, it is a process that takes time. What we can do is in still faith and return people to the source.

Jakob Finci:⁶⁹ Reconciliation through confidence

If one were to accept the requirements of Judaism, RECOM would be absolutely superfluous. Namely, Judaism requires in the first place that he who has done wrong should acknowledge his error and seek forgiveness. What is more, he should not seek forgiveness once only but three times; and if the one who was insulted and wronged does not forgive him, he must ask for it another three times, in the presence of three friends who will intercede on his behalf. Other than that, the one who did wrong must pay for the damage, pay compensation which may be greater than the damage done; next, the punishment is decided upon and he is then granted remission. In other words, if this could be achieved in the territory of the former Yugoslavia, RECOM would not be necessary, because everybody would simply apologize to each other, pay for the damage and forgive each other. To be sure, there are those who do not forgive; as to those, if they do not accept the apology offered three times in the presence of three witnesses who will back the apology, it shall be considered that the sin was expiated, because they are obliged to forgive. Even if he who was wronged or insulted dies, the one who has sinned ought to go to his grave, his funeral, and seek forgiveness for his sins in the presence of ten people and pay for the damage to his heirs. If there are no heirs or they are not known, he should pay to the court in order that the court may dispose of it. The victim alone can forgive; no one can forgive in the name of the victim. Therefore, it sounds a bit strange when we ask one people to apologize to another. An entire people is never guilty. It is always individuals who are. When we talk about reconciliation, at least from the point of view of Bosnia and Herzegovina, I think that we should first talk about the trust that is not there. Unless we come to trust each other, there will hardly be any reconciliation.

Hoxha Rexhep Lushta:⁷⁰ Forgiveness and reconciliation are best effected through genuine dialogue and understanding between contending sides

While philosophers debate the concept of truth and how to attain it, in the meantime it remains for us, as religious leaders, to search for the facts and to offer our version of the truth on the basis of the facts we discover.

But are we ready for a genuine peace? Twenty years after the bloody wars in Croatia and in Bosnia and Herzegovina, and fourteen years after the war in Kosovo, their consequences are still in evidence. In Kosovo, we still have about 1,750 missing persons about whose fate nothing is known, and we also have a fairly large number of raped women who demand indemnity and

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justice. The consequences of the war are noticeable everywhere, in the souls of the people affected by these wars, with everybody trying in their own way to find the peace they lost as a consequence of those events.

As a member of the Coalition for RECOM, I regard RECOM as the only comprehensive initiative and, at the same time, the most serious so far - an initiative which has gone a step further in investigating the truth. Considering that the influence of the religious leaders in the region is enormous, I think that certain religious circles have not done enough to extinguish the hatred and the nationalism among the believers, but are doing quite the contrary - there have been cases of religious leaders who promote even greater hatred in their addresses, something which ought not to exist in our midst.

As religious leaders, we talk with officials, we ask that they too should do the impossible in the quest for the ways that will take us to a sustainable peace; while always bearing in mind that the war has left behind consequences such as, say, the fate of the missing. We ask that we as religious leaders should raise our voice, to influence our governments to disclose the fate of the missing, because this is the only possible way to heal the wounds of the families of the missing; that will doubtless help to achieve reconciliation and a sustainable peace.

The support for RECOM should be seen as a mission and a debt to our victims. From a theological point of view, religion teaches us to be cordial, tolerant, generous and noble, and by no means cruel and aggressive - and, least of all, criminals who take innocent life. If we want to be among those who are the paragon of goodness, we should be honest inside our own religious communities, and ready to forgive. If we are among those who feel guilty, apology should be sought for the deeds that were committed. If we are among those who think that crimes were committed against them and that they are victims, we must be ready to forgive if forgiveness is requested by the other side.

In societies undergoing transition, apology implies a process where two sides which have fought each other until recently face each other and are now ready to sit down at a common table to negotiate and listen to each other. To hear about the other's suffering and to recognize the identity of the other. That would be the road to bringing the two sides face to face, after which they would proceed to discuss the past, whilst having before them the facts about who did what. Once that has been done, it should be up to the victims to decide how to act towards those who committed the crimes. However, the experience of victims in various societies across the world indicates that the seeking of apologies for crimes committed has opened up for the victims the way to forgiveness. While something like this cannot be imposed, one should create the conditions for genuine dialogue and understanding between the parties themselves. I think that this is the best way to forgiveness and reconciliation.

Christopher Lamont⁷¹: Accountability and forgiveness are complementary perspectives

There is relatively little understanding of the role of religious communities, the tentative role and the actual role of religious communities, in the context of reconciliation. And this is in part because the study of and practice in the field have evolved along two parallel pathways. One is an understanding of transitional justice and reconciliation embedded in a secular tradition of international human rights and of the creation and establishing of the rule of law, which sees transition and reconciliation as functions of these processes. The second parallel pathway would look at reconciliation from the perspectives that we've heard today, that accentuate slightly different concepts; so that where we can see, perhaps, the concept of improbability as deeply embedded in the more secular tradition of creating and establishing the rule of law - words that we've seen used a lot in the previous commentaries today, words like, for example, forgiveness, words like redemption and repentance. Now, the question is whether or not there can be a common ground or dialogue between these two traditions, or these two parallel pathways. And, in that sense, there is an opportunity. It's on a very superficial level, but the "capillaries" are essentially the same. We've heard here words like accountability used, for example, and forgiveness. But, when we probe deeper, as we've learned from some of the previous presentations, the meanings of these terms take on different meanings, depending on which tradition you are approaching from yourself. So, for example, the meaning of accountability along the first pathway described, is individual accountability before the law in relation to ending impunity; whereas accountability described by some of the previous speakers, was an accountability that was metaphysical, that would occur in some other field, or some other domain. How do we bring these two together? The other point I might raise, along with this difference in the points of accentuation between these two strands, is the sense in which, whereas one emphasizes accountability, you can see another bringing up forgiveness. And perhaps you can see complementarity between these two perspectives, in the sense that, whereas one focuses on a more optimistic view of accountability processes, the other may provide a resource for delving into deeper questions. But, as I have mentioned, important as it is to understand the role of different communities in reconciliation, it is also important to take a step back, and reflect upon the role of religious communities and religious leaders in finding and bringing comfort.

Friar Ivo Marković⁷²: The idea of reconciliation requires a vision and a step forward

My name is Ivo Marković, I'm from the Religious Service or, rather, from the Pontanima Choir; therefore I will speak a little about art. It seems to me that at present we lack perspective in the process of reconciliation; we have one vision, which is Europe as unifier. I think that it would be very important to have an idea which could mobilize all people. In my judgement, only art could do that now. I would like to mention several aspects of art which are very important and which have not been mentioned today. Bertolt Brecht speaks about the *Verfremdungseffekt*, the English

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translation being the *astonishing effect* [sic]. The essence of this effect is that it causes people to change after coming to realize with astonishment their former attitudes. The best artists in this connection are poets, writers, journalists, commentators, especially when they appear on radio and television. Another idea has been put forward by the philosopher Hans Georg Gadamer. He views art more or less as play. Art creates energy which can have an effect here. An art which would transcend borders - a *cross-border art* - an art which could, after arising in Bosnia, conquer Serbia and other parts of the region. What I want to say is that the idea of reconciliation here requires a vision and a step forward.

Nataša Kandić:⁷³ Understanding and interpreting the concept and process of reconciliation

My duty is to try to outline how reconciliation is understood in the region. Today we have heard many definitions of transitional justice and reconciliation; let us now see how we understand the notion of reconciliation and how this is understood by the civil society organizations, the victims' associations and the victims - how they perceive the way to reconciliation. I would say that there are a number of recognizable initiatives, views or opinions about how should this be carried out or how we should arrive at reconciliation. I would proceed from Bosnia and Herzegovina, and also from the proposal of the UNDP experts who are up-to-date with the document we have been told about today, which is the Transitional Justice Strategy in Bosnia and Herzegovina. The position of the UNDP experts is that it is still too early to establish national truth commissions, although there remains the possibility of networking with regional initiatives, but that at present the most important thing is to create a public space; they propose for this purpose a Forum for the Truth where people would speak, put forward ideas, opinions, present studies, research results about what happened in the past; it would be a platform for making confessions which, by the very fact that they are uttered, can over time lead towards an approximation of the perceptions about what happened in the past. This is not an adopted, that is to say, not an official initiative; however, since it accompanies the official document of the Transitional Justice Strategy and is backed by eminent transitional justice experts, one should take this proposal seriously and consider the potentials of the proposed state Forum for the Truth with a view to achieving reconciliation. Some civil society circles in Serbia consider that there can be no reconciliation unless some societies carry out de-Nazification. This idea stems from the German experience and has never been thoroughly elaborated; however, the advocates of de-Nazification point out that Serbia should proceed from what it has done to others in order to set a process of reconciliation in motion. A third, publicly discernible, initiative which can be distinguished in texts, in oral submissions, and at conferences, sums up the position of the civil society in Kosovo that reconciliation is conditional on Serbia, its official institutions, the highest representatives of that state, acknowledging and making an apology for the crimes they perpetrated against the Albanians, from mass crimes to expulsion. This too, according to the advocates of this approach, is a condition which can open the way to reconciliation.

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Everyone agrees, including even those who do not agree that all victims are equal in death, that public recognition of the victims is a condition of reconciliation. However, unlike transitional justice practitioners and theorists, politicians make a connection between reconciliation and judgements against generals as proof of crimes having been committed against a people. This was clearly in evidence in the aftermath of the judgements of acquittal against the Croatian generals, when politicians in Serbia concluded, "Here, this judgement of acquittal against the Croatian generals spells the end of reconciliation". At the root of this political, official position, lies the conception that if there is no judgement for crimes committed against the Serb people, then there are no conditions for reconciliation either. It seems to me that, in view of precisely such conceptions of the process and notion of reconciliation, there is much to be said for this attempt of ours to include in the debate on the instruments for determining the facts about the past researchers and theorists from the ranks of the academic community, in order that we may try jointly to involve the politicians in the debate on reconciliation. I should say that one of today's conclusions is that reconciliation is, after all, a process, and that it means a long road. This road must be well-conceived and well-planned, defined and specified with concrete actions and measures that will lead us to agree that what we need in order to achieve reconciliation are sympathy for others, recognition of and regard for others, confidence, respect, and that we have omitted to develop these values, not only in the wake of this war, but also in the wake of those which preceded it. This means that our task is to remind the politicians every day of the general interest in order that they may change their understanding of reconciliation, to convince them, to show them that there is no reconciliation without recognizing others. And if we make reconciliation conditional on recognizing only our own victims, I am afraid that we shall not get what we want: a reconciliation which, as has been pointed out a number of times, will be based on confidence and on public recognition of others and their personal truths. Depending on where a victims' association is located, we also have a countless number of different opinions about what is trust, among other things. We had occasion also today to hear that there is a need among the victims in Bosnia and Herzegovina for public recognition not only of the injustice done to them but of the legal definition of the criminal offences which are actually under the jurisdiction of The Hague Tribunal and domestic courts.

Wherein lies the distinctiveness of this RECOM Initiative, given that we have different opinions about what reconciliation is and how well we see the others in this process of reconciliation? Let me repeat, today several participants have observed that we must put an end to the Balkan culture and practice of looking upon victims as numbers, and that that culture of memory has actually always been a culture of a contest of numbers. It is precisely this RECOM Initiative that has that as its starting point. There can be no public recognition for the victims from one's own community if we do not know their names, if we do not know their identity and if we do not know the circumstances in which those persons lost their lives or went missing. While we are still not even close to that, all those rallied around the RECOM Initiative realized a few years back that it is not enough only to advocate the application of a regional approach to determining the facts about the past, given that we expect the states to be the bearers of the RECOM inter-governmental project. Bearing in mind what our state institutions are like, we must back this

idea for the realization of our primary task, which is to prepare the information and the facts on which the forensic truth for the public recognition of the victims is based. Hence the *Kosovo Memory Book*, hence *The Bosnian Book of the Dead*, hence the progress in documenting the individual victims of the war in Croatia, hence the documenting of the human losses of Serbia and Montenegro, the documenting of the circumstances in which policemen and soldiers of Serbia and Montenegro lost their lives in the wars in Croatia and Bosnia and Herzegovina. Naming the victims gives us a framework for what we ourselves cannot do, namely, for ensuring public recognition of the victims. Towards this end, the states can add another important element which we ourselves cannot, although we wholeheartedly advocate this idea: if we succeed in documenting all the individual victims, their public recognition must be accompanied by public testimony. The testimony of the victims must be heard, one must hear the voices of victims from Knin in Zagreb, of Albanian victims in Belgrade, as well as of Serb victims in Pristina. The voice of the “erased” from Slovenia must be heard, however much one may think that this is different from the mass graves created after 1991 or during 1998 and 1999 in Kosovo.

So now, my duty is to invite you to make comments and set out your arguments regarding the civilian and official initiatives presented. It is quite possible that there are more initiatives than I have mentioned. They should all be mapped and their potentials analysed. As an advocate for the RECOM Initiative, I consider that all this has great potential. This initiative has produced results and provides a clear picture of what should be done to bring us closer not only to coexistence but to trust, to developing a culture of sympathy, solidarity and non-repetition of crimes. The RECOM Initiative has so far contributed to the lessening of ethnic and political tensions in the region; it has the potential to bring closer together those who until recently saw each other as enemies. It has the potential to bring together a large number of investigators and scholars from prestigious universities who are concerned with our past, who can animate academic communities in the post-Yugoslav countries. We are aware that it took us two years to convince the presidents of the states in the region that this is their job and to persuade them to appoint their personal envoys to RECOM’s Regional Expert Group. Please bear in mind that, as Professor Zdravko Grebo has pointed out, this RECOM Initiative has no special interest in detracting from the importance of the legacy of the Hague Tribunal. However, there is one crucial difference between the RECOM Initiative and the law courts. I will give you an example in order to make myself quite clear. Some of you may not be aware that on 1 June 1992, about 700 Muslim men were captured, separated from their families and imprisoned in the Technical School in Karakaj near Zvornik, in the municipality of Zvornik. Within a week, all of them had been killed in the most heinous manner. The mortal remains of some of them have not yet been found. The trial of the former president of the Municipality of Zvornik, the commander of the Territorial Defence organization and some members of Serb volunteer units charged with the crime took three and a half years. The defendants regarded the crime as an act of heroism and as evidence that they had acted as Serb patriots. The court established that the accused were responsible for the deaths of 300 men rather than the 700 who were actually shot. Why did the court convict the two officials and about ten direct perpetrators only for the deaths of less than half the number

of the men executed? Because the court was not in possession of the exhumation reports and death certificates, partly because not all who had been exhumed had also been identified; so it named only 300 men in the annex to the judgement. On the other hand, non-governmental organizations had documented the circumstances of the deaths of 700 men and given their first names and surnames. This is where the potential of the RECOM Initiative lies: it can rectify the limitations inherent in judicial proceedings and provide a fuller factual picture of what happened. We from the Coalition for RECOM are in the habit of saying that RECOM will provide a forensic picture of the past. If in addition to providing a forensic picture we succeed in establishing the circumstances of the suffering of each individual victim, then a regional commission, under whatever name, is within reach; and the politicians would do wrong not to make use of so much work, so much information, so many facts and so much forensic truth for the first time in Balkan culture, for a good cause which has the potential to prevent the repetition of crimes.

Hrvoje Klasić:⁷⁴ The process of reconciliation cannot be viewed separately from the process of understanding

We really cannot consider the process of reconciliation separately from the process of understanding the past; in other words, there can be no reconciliation without understanding or contextualizing historical processes. The scientific community of historians in these parts is still heavily burdened by nationalism, which is wrapped up in patriotism. The historiography is still too often in the service of politics, with multiperspectivity existing only in traces, especially when we talk about the textbooks. Yesterday, before I arrived here, I talked at a round table in Zagreb precisely about multiperspectivity in history textbooks, and I cited the example of an Israeli-Palestinian textbook where a subject is presented by both an Israeli and a Palestinian source. I am trying to imagine such a situation in our regions and I somehow still find it difficult. What we lack – I am talking about the scientific community of the historians, irrespective of individual endeavours – is dialogue, a dialogue within each historiography, each national historiography, but also a dialogue between different state historiographies. Very often we engage in what I shall call scientific *l'art-pour-l'art*-ism (you may detect in this other concepts as well). With our research, we are becoming an end in ourselves. What we write is more or less not read even by our colleagues, and society for the most part receives very, very little benefit from that. However, I would like people to make comments, I would like my students to comment on my book in the same way that they commented on a serial produced by Oliver Stone: that serial is based on scientific facts and shows us a new approach, a combination of art, science, media and so forth. In my opinion, that is absolutely desirable, considering that we are dealing with generations whose views of the world and of knowledge are, after all, different from those of 30, 40 or 50 years ago.

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Zoran Pajić:⁷⁵ The inter-generational cycle of “historical reckoning” and violence repeats itself

I am particularly interested in the relationship between transitional justice and reconciliation, something I think is not sufficiently appreciated by the public, and even not among well-informed advocates of the one and the other process. I am therefore grateful to Hrvoje Klasić for his detailed argument about the historical context of identifying war crimes and their perpetrators in the post-Yugoslav wars. One is truly astonished at the ease with which the widest public has reactivated the expressions “chetnik”, “ustasha”, “balija”, and how they have become part of the daily official and unofficial narrative of the war. It is as if it was understood that we would continue where we left off in 1945! On the strength of this, one may conclude that such efforts as were made to achieve reconciliation in the wake of the civil war in Yugoslavia (1941-1945) were either superficial or insincere. The example I am going to give reaches even further back into the past. There is a BBC2 video clip shot in mid-1992 during the siege of Sarajevo. The BBC reporter approaches a soldier of the Army of Republika Srpska, who is lying behind a machine gun on Mt. Trebević and firing random shots at Sarajevo, and asks him, “Why - well, who are you shooting at down there? Who do you have in your sights?” The soldier’s laconic reply was, “Why, the Turks, for God’s sake!” In the same way, Žarko Puhovski has observed that the textbooks which we have been using from generation to generation obviously have not revealed the real truth of that history. Which is why we keep returning with such ease to the Turks, the Ustashas and the Chetniks. This inter-generational cycle of “historical reckoning” and violence keeps recurring, and the new generations are unfailingly being asked to pay the bills of their ancestors.

I would like to draw your attention to a phenomenon which is particularly widespread in Bosnia and Herzegovina. It concerns the scepticism with which the public has received the professions of apology and regret one occasionally hears from the highest political representatives of neighbouring countries. In general, doubts are expressed about their sincerity and timeliness, and they are often dismissed as forced concessions to the European Union or America. Instead of being taken by the Bosniak public (to whom these apologies are mostly addressed) at face value, that is, word for word, with due regard to the standing of the person who is expressing the apology (head of state or government, parliament speaker) – the impossible is expected. As a friend of mine said, if President of Serbia Nikolić were to set himself on fire publicly outside the Skenderija city centre, Sarajevo would say that he had planted a stand-in. Surely the only option is to accept the apologies for what they are worth and keep bringing them up, to remind those who gave them that they must go further and proceed more responsibly in creating the political prerequisites for reconciliation.

At the same time, I would like to point to a much more complex aspect of this phenomenon of scepticism with regard to accepting apologies. I think that reconciliation began to be talked about in public too early, almost immediately following the end of the war in Bosnia and Herzegovina. The

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advocacy of reconciliation was spearheaded by certain non-governmental organizations, which were often stimulated by the rhetoric of prominent humanists abroad, many of whom did not comprehend either the intensity or the many nuances of the war in the former Yugoslavia. To the huge population of victims and all those who felt grievously wounded by this all-pervading inter-communal conflict, any thought of reconciliation appeared premature and forced. We were first swamped with the terminology of reconciliation (dialogue, confrontation with the other side, coexistence, shared grief, loss for all, etc.), without still being unclear about the causes of the war, who ordered the crimes, and who had what war aims in that chaos. In other words, the insistence was on reconciliation, without any transitional justice mechanism having been offered and put into the service of that process. The knowledge about all the facts of the crimes remains incomplete to this very day, the denial of the crimes in all the national communities has already become part and parcel of the national culture and identity, no consistent system of retribution and compensation for the victims has been established, the level of satisfaction offered the victims through court judgements against the perpetrators of the crimes is inadequate, and so on. In a word, it is frivolous and arrogant to talk about reconciliation until all these prerequisites begin to be fulfilled.

Finally, I think that we as protagonists of the process of transitional justice should actually investigate, should ask the victims and all those who live in the past, whether reconciliation will change their everyday lives. As far as I know, the only non-national monument, as I would put it, is located in Sarajevo. It is a monument to the killed children of Sarajevo, and it bears no reference to any side in the war.

Spomenka Hribar:⁷⁶ Reconciliation: a process or an ultimate goal?

The business of culture is not only to destroy ideologies, the different ideologemes, but also to create the basis for life in the future, to impart a new meaning to the values that were destroyed in the wars, and perhaps a new set of values altogether. The new set of values can be based only on the four age-old, or primeval, values, namely: the sanctity of life, the consecration of the dead, the dignity of man and the Golden Rule. At first, all these four primeval values existed in an unwritten form; later, they were adopted by all the religions and incorporated in their teachings and, naturally, ideologized.

The sanctity of man implies the recognition that man is a mortal being, in this sense a unique being; every man is special; the death or murder of a man deprives him not only of his whole future but also of his right to a natural death. For this reason, you must not kill a man because you cannot bring him back to life. If you cannot correct something, or put it to rights, then you still must not kill. That is why states which have attained the culture of such recognition are abolishing the death penalty.

The second value is consecration of the dead. If we take a brief look into the past, into Yugoslavia, we find out that some victims were glorified while others were pushed into oblivion and covered

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up in silence, as a result of which the latent war is implicitly continued. What's the reason? Until we bury, until we inter all the dead, the ones and the others, as long we discriminate against some of the dead in relation to the others, there can and will be no peace and the war is not over. This is what we have lived to see; and it has already been mentioned that radical groups have been calling each other Chetniks and Ustashas, or accusing each other of being that. Therefore, the war ought to be brought to an end! Much has already been said about that, about the crimes that ought to be tried in a court of law...

The third value is the dignity of man. Man alone has a relation to death, to his final being and, in this regard, to Being as such. Man has dignity not in order that his soul should remain pure, as all the religions teach, but precisely because he is a mortal being, a being endowed with pain.

The fourth rule is the Golden Rule, which means: One should not treat others in ways that one would not like to be treated.

These are the four precepts on which is based and established the new, or, if you prefer, age-old set of values which would make life in the future possible. At the level of politics, reconciliation requires democracy, and at the level of society, creative freedom, in order that people may transform their traumas, their grief, their suffering, and thus overcome them. At the third level is the level of the individual, the single person who must go through the following process alone: if he is burdened with horrors, terrible experiences, sufferings, he must experience catharsis, he must get over the hatred and the desire for revenge.

I must point out that the reduction of reconciliation to the individual level is by no means of primary importance; in that case, we would throw the blame for all past suffering onto the individual, which of course won't wash. One should also establish the guilt at national and supranational levels - that is, at the level of society: until the individual sins and the mutual sins are established, there is no reconciliation.

Let me answer the question: reconciliation – a process or the ultimate objective? If we assume that reconciliation is the ultimate objective, it means that we understand it as some sort of nirvana where everyone thinks in unison. This is contrary to reconciliation. For a reconciliation is not needed where all think alike, where they are already “reconciled”. I must reconcile myself with a person with whom I cannot possibly reach agreement regarding his interpretation of anything, neither of the past nor of some other dispute. I must live with him in tolerance, in order that it may be possible for us to live normally and as human beings in the first place. Reconciliation is the objective, if by this objective we mean the permanent quest for the way to the other, in order that we may understand the other man as our other self. It is the search for warmth in interpersonal relations, because that is what we need.

The foundation of reconciliation is sympathy - this is what fulfils people of reconciliation, the people of the new/old ethic, and this is what opens the future for us.

Denisa Kostovicova⁷⁷: The reconciliation process primarily takes place through communication

My task in this session is to define reconciliation and my entire talk will be about why I was not really able to do so. Therefore, what I would like to do is to take you through different ways of thinking about reconciliation. I hope that when we hear about the problems and the needs of the victims, this kind of academic thinking about reconciliation will not seem meaningless, but provide some guidance to thinking about what reconciliation might mean in the Western Balkans.

Reconciliation is an important concept, because it is taken as indicator of transitional justice. Hence, we hear assessments about whether the work of the Hague Tribunal has been effective or not, and these are often made in zero sum terms: such as that the Hague Tribunal did not lead to reconciliation in the region. Others, by contrast, claim that it did produce some basis for reconciliation - for example, by establishing the juridical truth. However, the concept of reconciliation is much more complex. It's easier to say what reconciliation is not. What I thought was really interesting is to hear the representatives of state institutions, and of civil society, say that reconciliation is not a "forgive and forget" policy; and also that it isn't some sort of relativisation of responsibility or equalisation of guilt and culpability, which echoes the scholarship on the subject. Even when we look up the synonyms for reconciliation in the dictionary they reveal the complexity of this concept. Reconciliation is about the restoration of friendly relations, about making one's view or belief compatible with another, about establishing consistency. But all these aspects become difficult and problematic in the aftermath of mass atrocity. How do we know that the establishment of formerly friendly relations is what we should strive for, if these very relations had caused conflict and suffering? So, what is at the core of reconciliation? At the core of reconciliations are relationships, and when the scholars think about these relationships, they think in terms of horizontal, human relationships between groups and individuals, and vertical relationships, between communities and institutions, as we have heard in reference to the example of Northern Ireland. Therefore, trust needs to be built not just between communities, but between people and institutions. These are the sites or places of reconciliation: social and institutional. But how do we get there? If reconciliation is about building trust-based relationships, what is the path that leads from distrust and hurt to trust and reconciliation? This is where the search through the books and writings on reconciliation becomes much more problematic. Because we do not have much time, I would like to focus on one particular point that I found very interesting in this literature. This literature talks about the importance of truths and facts for reconciliation. How do truths and facts help bring about some sense of reconciliation? A number of authors talk about the creation of cognitive dissonance that mitigates cognitive dogmatism. How does this concept translate into understanding of reconciliation in a post-conflict context? In the context of a criminal legacy, cognitive dissonance implies that the process of truth-telling and the establishment of facts may create uncertainty and doubt about the goodness of one's cause. What does this mean in practise? If we look at the journey that we've gone through in

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the area of former Yugoslavia, there has been some movement in breaking through the blanket ideological denial that characterised the immediate post-war period in the 1990s. The dispute about the facts of crimes, i.e. the questioning of the “purity” of one side, creates uncertainty about what is claimed, and this lies at the core of cognitive dissonance. We should note that the presumed innocence of one side has been the biggest obstacle to moving forward, and the biggest obstacle to one side recognizing the victims on the other side. There has been a lot of talk about the victims in the region, but mostly different groups have talked about their own victims. Further, what makes the concept of reconciliation hard to come to grips with is the broadening of the discussion to include issues beyond the facts of the crimes - issues that include consideration of motivations, political dynamics, and so on. I would also like to recall Ignatieff’s words, that the truth and the facts serve to “narrow the range of permissible lies about the past”. So, in a way, if we talk about what is required for reconciliation, I would say that there must be some sort of a cognitive change, the way people think about the crimes, and most notably the crimes committed by their own group and in their name. The issue of reconciliation is highly contextual. What is required from reconciliation will certainly differ across post-conflict areas.

In conclusion, what can I say about reconciliation? It’s interesting that a motif is beginning to emerge in the conversations and presentations that we have had since yesterday. I will quote Borraine, who said: “Reconciliation can’t be a concept that you frame on a wall.” In other words, reconciliation is not something that is static. It is a process. My research suggests that in complex post-conflict environments it does not involve just the opposite sides of the conflict, it has to unfold in parallel within one side - the contestation within a group about the criminal legacy is critical. When scholars talk about the concept of reconciliation, they talk about acknowledgement and forgiveness. Stanley Cohen, who is one of the most fascinating authors to read about the issues of truth, acknowledgement and reconciliation, says that this is nonetheless “a radical way of confronting the past”. Others would offer a more moderate view, by saying that reconciliation is never total. However, even this approach is in tune with the fact that reconciliation is a process. It is never total; it never includes all members of antagonistic parties. There will always be those who will hold on to their entrenched views. It never includes every dimension of reconciliation completely, and probably it never will be fully reciprocal between the parties. But the process of reconciliation also needs to be defined by a steady process of overcoming obstacles, and these obstacles are presented by culture, by race, by religion and by politics. I would also add that it takes place through communication, and come back to the point that I made yesterday concerning the important contributions of communication and deliberation to this process. Hence, all I can say is that there is no simple answer to the question, “What is reconciliation?”, and I would say that the question of what is “good reconciliation” is even harder to answer. What is evident from developments in the Balkans is that this is not a zero sum term. Referring to Galtung, we can say that it is more than coexistence. People can live side by side, but have nothing to do with each other. Thus, it’s clear that something more in terms of collaboration across ethnic lines, or the lines of hurt, is necessary in order to achieve some sense of reconciliation. An important contribution that gatherings such as this can make is to help us understand what reconciliation in this region might be like. Scholarship shows unequivocally that the communities

“translate” the concept of reconciliation in their realities differently. For example, in Chile, to seal the process of reconciliation, it was important to flash the names of the victims on a stadium, which would ordinarily show football scores, in a gesture of public acknowledgment of suffering at a place where the abuse was committed. Leaving you without a clear answer as to what reconciliation may mean in the Western Balkans, I would suggest that the very meaning is something worth pursuing, both in view of the present political and other challenges, and in view of the legacy of the range of crimes that occurred here.

Nebojša Petrović:⁷⁸ It is necessary to humanize the others

I will suggest – very briefly, of course - a few ideas in connection with the topic of this gathering, which seem to me worth exploring. First, in my opinion, a greater balance of approach in respect to the future is necessary. It seems to me that it is outbalanced by the past which, I wish to point out, also should be taken into consideration, lest it be thought that it should be left out. One should also point out some positive examples: for instance, what was avoided by the signing of the Dayton Agreement or what was avoided thanks to the existence of the Hague Tribunal. It is general knowledge that in almost all countries, even in the great democracies, old war leaders have later become presidents or prime ministers. I am sure it would also be like that here if there were no Tribunal in The Hague. One should also point out other positive changes in relation to many post-conflict areas. Bosnia or the former Yugoslavia are an unattainable dream for the Democratic Republic of Congo, for Nagorno-Karabakh, for the Kashmir, for the Israeli-Palestinian relations, for Afghanistan and for Somalia, not to enumerate further. Just as there are those who are, so to speak, ahead of us: the relationship of France and Germany, if we go back a little into the past. We have also been told here about Ireland; I think that it too is a little ahead of us, so they can serve as models for us in some respects. I have an idea about a comparative study of the problems of ordinary people from Argentina through Bosnia to Sri Lanka, on the basis of which one could draw many cross-cultural parallels and mutual recommendations. However, this would first have to be organized before results can be seen. Further, concerning balance. One should heal the wounds, promote truth and justice. No one can deny that. Nevertheless, I wish to point out that though these are necessary, they are not sufficient conditions. In addition to securing these conditions, it is necessary to humanize others, to build contacts, to develop a culture of peace. Here, in my opinion, we come to a very important point. If the first, say, the speaking of the truth, is at variance with the second i.e. if the speaking of the truth, for instance, dehumanizes rather than humanizes the other, that is not useful and can also be harmful for the society as a whole, and probably for the people who put forward such views. The question is, how, ultimately, such an idea can be made useful? To put it briefly: when one talks about establishing the truth, of crucial importance is what to emphasize, and where to elicit a sense of injustice which will provide people with a strong motivation, whether among the people who are listening or in the communities. It is necessary to develop an aversion to crimes in general, rather than to crimes against *them*, against the “others”.

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When people listen about crimes, the problem is that they often hate the whole group to which the criminals belong. The ideas being put forward must be complex, in order to stimulate controversy and thought. As you know, all great works of art are like that. Simple truths, even those which are not at all in dispute, are commonly regarded as the usual propaganda and do not contribute to the increase of empathy but, unfortunately, to the increase of vindictiveness. We must also take into account certain permanent traits of human nature. People avoid and reject bad images of themselves. Denisa mentioned “cognitive dissonance”. One can emerge from it in various ways – constructively or, unfortunately, destructively. When someone threatens our image of ourselves, or when we say something to our own detriment, we usually avoid the implications. Studies have shown that we avoid this even when we do not pose a threat to anyone other than ourselves. For example, it has been shown that in trying to give up smoking, smokers do not register at all the messages which they might experience as threats or which provoke in them strong concerns about their health; such things hold true for identities in some other matters. Threats, moralizing, stigmatization, especially of members of a group or nation, without laying emphasis on personal guilt, merely alienate people and give rise to new hatreds. There is a whole science and applicable discipline about procedures for changing people’s attitudes and about procedures for changing people’s behaviour, with scientists studying objectively and systematically over long periods of time the factors which increase and those which decrease the success of, among other things, social actions such as actions designed to bring about the reconciliation of social ideas, political ideas, commercial ideas and so on. I think one should pay much greater attention to them, in order that the speed of the positive changes we all desire should be greater and more in evidence.

Mirko Klarin:⁷⁹ Reconciliation from the point of view of war criminals

A small contribution to the debate on reconciliation, but from another angle. We have been considering here the process of reconciliation from various angles: from the angles of the academic community, religious communities, states, RECOM, non-governmental organizations and victims’ associations. But we have omitted to mention “reconciliation from the angle of war criminals”. Being neither a psychologist nor a sociologist, I can only offer my layman’s analysis of the interpretation why reconciliation is far easier over there, in the Hague Tribunal and in prison, than here. First, those over there are in the same predicament, in the same social situation, they are confronted by similar charges and the same “enemies” – the prosecution and the judges. Another factor which may have contributed to their reconciliation may lie in the fact that at that time, in 1998 and 1999, the Tribunal’s detention facility contained mostly so-called small fry. The big shots had not yet arrived. They were all more or less charged as direct perpetrators, with an occasional politician (Kordić) or a military commander (Blaškić) also being there. The then governor of the Detention Unit, who had previously been working in an Irish prison, once described them as *pussycats* in comparison to the Irish prisoners. His impression was that they were people without strong convictions, that they believed in nothing, least of all in a “lofty cause” in the name of which they had killed and tortured

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people. Therefore it was, of course, much easier for them to make peace, given that they believed in nothing – we’ve got this now, let bygones be bygones. Third, in contrast to us here, “our own over there” knew what they had done, they knew what had happened and they knew why they were making peace. After all, if they did not know it themselves, they found out about it from the evidence the prosecution presented them with, so they had a clear situation before them and they knew: “We did this and that to you, you did this and that to us, let’s be nice and make up, so we can move on.” But we here still don’t know why we should become reconciled: what did we do to them, and what did they do to us? The fourth consideration which may be of consequence is that those people in detention in The Hague were largely shut off from the pernicious influence to which “our own at home” were being subjected, exposed as they were to daily hate speech, propaganda, continuing hostility. I am speaking of 1998, 1999, so bear in mind that all our leaders and warlords were still in power at that time. Consequently, being isolated away in The Hague, they were free of all that baleful influence to which you were subjected here.

This would be my lay analysis; and I think that this phenomenon – why reconciliation is achieved far more easily in prison than in freedom – should be investigated by the sociological, psychological and psychiatric communities.

Avila Kilmurray⁸⁰: Northern Ireland - a comparative perspective

1. Comparison is always difficult in conflict situations and I am acutely conscious that while the conflict in Northern Ireland – in its most recent manifestation – may have been more protracted than that which you experienced, in terms of the number of fatalities and overall impact, our society as a whole suffered much less than happened here. So what I will share with you today is drawn from our experiences, but I will leave it to you to draw the conclusions about what might be applicable and useful. What is undoubtedly common to virtually every conflict situation is the need for at least some people to show the necessary leadership and courage - to take risks in the interests of conflict transformation and peacebuilding.
2. I want to share with you some experiences, drawn from the work of the Community Foundation for Northern Ireland, in relation to –
 - (i) Support work with victims and survivors of violence;
 - (ii) Work to support the re-integration of former political prisoners (and related to this, ex-combatants);
 - (iii) Activities supported within local communities in many of those areas most affected by the violence to alleviate on-going tensions; and
 - (iv) Work involving civil society.

I also want to discuss some of the difficulties that we have in still addressing the legacies of the past – because Northern Ireland still has its share of unresolved problems. I will also

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touch on some issues with regard to EU funding, as the Community Foundation for Northern Ireland was a major fund manager of EU PEACE Programme funds over the period 1995-2008, and still has some connections with our current PEACE 111 programme.

3. But first, some context. The Community Foundation for Northern Ireland is an independent charitable foundation that was established in 1979, at the request of community-based activists from both sides of the sectarian divide in Northern Ireland, to provide support to deprived communities and social groups. It was deliberately structured to work in a bitterly divided society, with a Board of Trustees drawn from both sides of our divide. It worked throughout both the years of violent conflict and of transition from conflict, and because of that it built up a wide network of contacts and trust throughout different communities. And that is important, because one of the most critical things in contested societies is to develop a network of trust and relationships. After our main ceasefires, in 1994, the Community Foundation for Northern Ireland used its remit as a Managing Agent for EU PEACE Programme funds – both for community-based reconciliation initiatives, but also to support work with former political prisoners and victims/survivors of the conflict.
4. One of the most important aspects for the Community Foundation was to obtain a framework for its work in order to provide it with a strategic context. Because so often when emerging from violence, the demands and requirements seem so massive and widespread that what you can do seems so small and insignificant. Consequently it was crucial that we were able to identify a conflict analysis that allowed us to make sense of the challenges – and opportunities – facing us. We adopted the conflict transformation framework suggested by US academic John Paul Lederach, where he described peacebuilding as a triangle, where it was necessary to work with the base (the communities and local groups), the middle level of the triangle (i.e. the institutions and agencies, such as the churches, the media, the security forces, the educational institutions, etc.) and finally, the apex of the triangle, i.e. the politicians and decision-makers. Lederach wrote: “Peacebuilding must be seen as an open, accessible system that rests on a broad base of participation and responsibility rather than one which relies exclusively on the “owners” of a (negotiating) table. To understand this as an interdependent model means that we recognise the place of the table, but we don’t rely on it as the exclusive deliverer or sustainer of the peace”. In other words, civil society does not try to usurp elected representative democracy, but there is also a role for critical participative democracy that is made up of civil society organisations in their multiplicity. Having a framework allowed us to agree a range of strategic approaches in terms of peacebuilding and conflict transformation, although in later years it was not a framework that was agreed by elected politicians, who often resented the concept of active civil society and participative democracy.
5. From early on, we convened meetings to talk to the people who had been most affected by the conflict, in order to hear what their experiences and priorities were. This was not an easy exercise, because more often than not, those that had suffered severely in the conflict were both deeply hurt and bitterly angry. They saw agreements being reached and ceasefires being negotiated, while their losses seemed to be both forgotten and ignored. And when

the reality of EU money was introduced into the equation, there were bitter recriminations and divisions over who were the “innocent victims” and who were not; and over who was entitled to be prioritized for funding and compensation, and who were to be demonized as being perpetrators of the violence. These divisions, more often than not, were fanned by elected politicians for party political purposes. So essentially, the very real hurt of victims and survivors was used for political purposes. And this continues today, 15 years after the Belfast Agreement, which was our primary peace agreement.

6. But when we worked with victims and survivors of the conflict we saw some very genuine needs:
- The need for people to tell their story – and to be heard. The worst thing for a victim or their family, was to become a statistic in the catalogue of war, because behind that statistic was life and love and loss, no matter who the person was. So the telling of real stories was important to humanize the conflict. A number of different approaches were taken, such as a Conflict Quilt, like the US Aids quilt, where every patch reflected something that belonged to somebody’s lost one. But the important point was to provide a focus for people to exchange their stories as they made the square that would form part of the collective quilt. Other art forms have also been used for the same purpose, such as a stained glass window in a school, designed by children whose classmates had been killed in the violence, but which was then used as a focus of discussion about what had happened. What we were looking for was ways to humanize the conflict – to offer it the human face of those that had been bereaved or suffered.
 - But once the stories are told there is the need to offer people the support to deal with the implications of their experiences. All too often we find people suppressing what has happened to them and their loved ones, but this can lead to dependence on prescription medicine for depression, or anger, or domestic violence – so many different expressions of desperation. So the support groups for victims have developed a programme of support, which at the one end can offer alternative therapies, such as reflexology and aromatherapy, but can also recognise when people may need to be referred to more formal psychological or medical forms of support. However, there is also the balance between not over-medicalizing the situation, because it was the situation of conflict that was abnormal, not the reactions of the people caught up in that conflict.
 - And then there has been the need to provide support for victims of the violence who still have physical needs for pain relief and appropriate limb replacements, and so forth. So many people could not financially afford the new technology to cater for disabilities that were a result of bomb and gun attacks. It was important to see how these new technologies could become accessible.
 - And then there were the more difficult, and divisive issues, of people requiring truth and justice – in a situation where, unlike South Africa and other countries coming out of conflict, we did not have a clear situation of winners and losers, and where the truth of what had

happened was itself disputed, so that we started talking about a kaleidoscope of truths rather than a single objective truth, although that in itself was also problematic.

7. We supported the establishment of self-help victims and survivors' groups, which was important at the time for giving people a voice where previously they had been silenced, but which also had its difficulties. All too often the Groups reflected the experiences of one side of the conflict or the other, and as such could become a focus for divisive political manipulation, or indeed a self-justificatory and self-reinforcing focus for one version of the truth of the conflict. As the provider of EU funding, we brought all the Victims and Survivor Groups together at regular intervals to exchange views and to coordinate policy demands. But there were still very strained relations, and all too often, self-help groups could be dominated by a small number of politically motivated individuals, who themselves were still struggling to deal with their own hurt and anger as victims.
8. In the area of re-integration of former political prisoners and ex-combatants, there were also challenges, but in some ways easier to deal with. Former political prisoners had a range of shared issues, which included –
 - Being demonized by the broader society as being “to blame” for the violence – i.e. an easily identifiable target of blame;
 - Having served a prison sentence, being excluded from a range of different forms of employment, not being allowed a visa for travel to certain countries, and being subject to a range of other forms of exclusion;
 - Struggling to re-establish a livelihood in a society that had often moved on, and often trying to re-establish themselves in families that had also moved on without them;
 - Being particularly vulnerable to issues of alcoholism and, in some cases, suicide;
 - But, at another level, having a certain local credibility as being the hard men (and they were largely but not exclusively men) who were expected to live up to a certain stereotype.
9. In the case of former political prisoners, the strategy of supporting Self-Help Groups and Drop-In Centres was incredibly important. We worked with the former political prisoners with affiliations to five different paramilitary groups, many of which had engaged in murderous feuds with each other during the course of the conflict. From an early stage, we set up an Advisory Group comprised of 2 representatives from each group, together with a couple of representatives from NGOs that had worked in support of prisoners. This established a polite if not trustful relationship. But over time we have managed to form a partnership between representatives of all five paramilitary groups, with them exchanging views about the past, but also, just as importantly, about on-going current tensions and political sensitivities. One of the cross-cutting concerns between all groups is to try to stop the next generation going through what the ex-prisoners themselves experienced, and collectively they have made a DVD, together with school materials, to outline how it is not glamorous to engage in violence. Ex-prisoners from different backgrounds go into schools to talk to young people about both their paramilitary and their prison experience, and why they now support the

peace process. And currently we are working with the former political prisoner groups to explore whether we can produce a shared – but not agreed – history of the political struggle, again as a discussion focus for young people. The aim of this is to give a group that were at the heart of the violence a role in how it is recorded and understood, otherwise they will become passive by-standers of a history written by others; and as has often been noted, history tends to be written by the victors – and certainly by the middle and elite classes.

10. The other contribution played by former political prisoners and ex-combatants is to act in order to alleviate on-going violence, particularly at our peace walls – the high walls that we have that divide single identity areas. An important initiative was to establish mobile phone networks, so that ex-prisoners from opposing sides can contact one another to check out rumours or reports of sectarian attacks. Of course, to work in practice, this also requires a network of regular meetings and training.
11. One of the sectors that has tended to be written out of the political script since the successful conclusion of the Peace Agreements in 1998 and the early 2000's, was the Women's Sector. This was incredibly important during the years of violence, and in the immediate transition from conflict, in maintaining cross-community contact around issues of mutual interest, such as poverty. However, they also addressed the difficult question of "How can we build democracy out of difference?" For a period we had the pioneering initiative of the Northern Ireland Women's Coalition, which was elected to participate in our peace talks; but just as important was the understanding at community level of the question, "How can we listen, and hear, each other with respect, but without necessarily having to agree or reach an artificial consensus?" It was all about working to place oneself in the other's shoes, which is not easy.
12. And for a period – and still to a certain extent – we had the broad coalition born from civil society of what we called (somewhat ironically) the G7. This was a coalition of seven organisations drawn from the Employers' organisations; the farmers; the Trade Unions and the Northern Ireland Council for Voluntary Action for the NGOs. And they acted as the cheer leaders for the peace process, organising street demonstrations when the peace process appeared threatened. In this case, an emphasis was placed on positive economic progress as a non-threatening potential win-win situation for all parties to the conflict, while political detail was still a matter for negotiation.
13. There are, of course, still major areas of unfinished business, even 15 years after our main Peace Agreement in 1998. One of these is the difficulty of dealing with the legacies of the past, where one side sees our conflict as a war – or at the very least a political struggle – and the other (including the British Government) officially views it as an aggravated crime wave. That is why we had prison hunger strikes as prisoners imprisoned for political offences were designated criminals. The failure to deal effectively with the legacies of the past has left us with a serious fault line in any sense of reconciliation. As a result of this:

- Symbols, such as flags and emblems, become an arena for sometimes violent conflict. When will a flag fly where? And will any change undermine my identity?
- There is no amnesty in place for ex-combatants, so Prisoner Organisations have to remain in place as old members face possible arrest for incidences that happened two, or more, decades ago.
- The demand for Public Inquiries into killings – particularly those with alleged links to British Intelligence – remain on the boil.
- There is still an uneasiness that the Peace Agreement is “dynamic” in nature and the constitutional position is still open to change, should a majority decide to vote for a different constitutional configuration. This is exacerbated by demographic changes in balance between the perceived Catholic/Nationalist/Republican community and the Protestant/Unionist/Loyalist population.

In terms of conflict transformation we have made great strides, but we are by no means over the line with our agreement.

14. And yet there were inspiring aspects in the Belfast/Good Friday Agreement:

- The fact that it offered an a` la carte selection in terms of national identity, state citizenship and national aspiration – we can carry two passports, British and Irish, or opt for one or the other.
- The power-sharing configuration which gives a sense of inclusive ownership of decision-making, even if it is tortuous at times to get decisions made.
- The recognition of three strands to our constitutional position: relations between the two main community identities within Northern Ireland; the North-South relations within the island of Ireland; and the east-west relations between Ireland and Britain.
- The recognition of the importance of the principles of Human Rights and Equality, albeit we still have not got our promised Bill of Rights.

So much done, still more to do.

15. Finally, a word about EU funding programmes. These have been consistent and courageous, identifying all the right post-conflict policy issues, no matter how sensitive – such as the re-integration of political ex-prisoners into society. As against this, they have become increasingly audit-driven and bureaucratic, and overly log-framed in approach, thus missing out on the important niche risk-taking of peacebuilding. In essence, they were great when they were delivered in the form of a Special programme, but became increasingly rigid when they were cast in the format of Structural Funds, with all the attendant rules and regulations. So be careful for what you wish for in this respect – or at the very least, negotiate carefully in this regard.

16. The 19th century Irish writer, Oscar Wilde, once said that the truth is rarely pure and never simple. I think that we can say the same thing about peacebuilding. And yet what is critical is the fact that in so many conflict transformation contexts:

- Civil society is better placed than elected politicians both to take risks, and to take initiatives that might support the path out of violence;
- Civil society can provide both neutral space – and at times political cover – to pilot new ways of thinking about reconciliation and how we can live together;
- Civil society can work to ensure that groups that may be marginalized and excluded from the on-going peace process – such as women, youth or minority ethnic groups – have their views brought forward;
- Civil society can forge broad alliances – for example, between different churches, or between labour and business interests – with the overall aim of supporting a peace process; and
- Civil society can ask new questions for old problems, given that political interests are often captives of their own ideologies and the set expectations of their electorate.

Having said all this, what civil society cannot do is to seek to replace or undermine elected political interests that have won a mandate to engage in peacebuilding - no matter how slow. The peacebuilding of civil society must be supportive in nature, in the understanding of the insight offered by Mahatma Gandhi, when he said, “Keep your thoughts positive, because your thoughts become your words. Keep your words positive, because your words become your behaviour. Keep your behaviour positive, because your behaviour becomes your habits. Keep your habits positive, because your habits become your values. Keep your values positive, because your values become your destiny.”

CULTURE, ART AND FACTS

Svetlana Slapšak⁸¹: Culture boldly addresses our past

The issues of responsibility, compassion for victims, empathy, and more generally of understanding of past events are now quite widely addressed in the cultures across the area of former Yugoslavia. At the beginning of the conflict, mainstream culture played a shameful role by embracing the nationalist discourse, so cultural products were often instrumental in stirring up of hatred and spreading cheap forms of patriotism. However, culture was also quick to embrace a new radical discourse, posing daring questions about what our past really was, what happened to us and to what extent we were responsible for it: the best responses and boldest interpretative creations were arguably those formulated in the performing arts.

Svetlana Slapšak⁸²: Spreading the truth: a gadfly ethics

If we take the term “spreading the truth” as an acceptable concise operational term denoting the activity and accomplishments of RECOM, then we can define several epistemological fields of

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the humanities and social sciences where changes are recorded or can be identified, described, and pointed to. In this context, I am interested not only in scientific works (mainly by the new generation of scholars), but also in the possibility of addressing, on the basis of these results, new challenges in understanding and explaining the society in which we live.

Spreading the truth and the political distortion of history: However transparent, sometimes even comical, when adopted by the media and in public discourse, the political distortion of history can have serious repercussions on the historical “literacy” of young generations. In Western Europe and the United States, the consensus about the alliance against Nazism and Fascism in the Second World War is considered unquestionable, while, at the same time, changes in the interpretation of the opposing sides and victory in the Second World War in Eastern Europe are seen as a means of combating the memories of Socialism and Communism and their possible revival. Re-evaluation of collaboration, and of Nazi and Fascist crimes, and of the fundamental shifting of sides in the war, and ascribing new roles to the predecessors of today's political allies, does not seem to upset much the stable anti-fascist part of Europe. Therefore the anti-fascist movements or, on the other hand, the re-conquests of history, do not have unambiguous allies in Europe – they need to be carefully looked for. In the region we are concerned with, the accomplishments of RECOM could serve to provide a solid foundation for anti-fascist initiatives and attempts to stabilize the history of the Second World War within the generally accepted frames: these accomplishments convincingly speak about the pernicious affinity between collaborationist and quisling movements during the WWII, and those responsible for genocide, mass destruction of people, property and cultural monuments in the Yugoslav wars, both in war-affected and other areas. There is a clear continuity of ideological texts, historical interpretations, and recycling of discourses, including visual parallelisms – imitation in uniforms and behaviour, related pop-cultures and situational productions... Reinterpretation, that is to say, the political distortion of history, finds in the accomplishments of RECOM a powerful set of established data, which will alert us to the dangers of this process and of any idea of its repetition.

Spreading the truth: a gadfly ethics⁸³: The gadfly is that very nasty bug that attacks large animals. And it is one of Plato's most effective figures of speech in *The Apology of Socrates*. Socrates defends himself before the Athenians, his fellow citizens who put him on trial, saying that he serves as their gadfly, who persistently stings the big, fat, slow and dimwitted horse - that is to say, the Athenian democracy - provoking it into action. His social role was that of a gadfly. Someone you cannot do without, because he is constantly stinging you, constantly reminding you that something is wrong.

Can a gadfly ethics be problematized in the contemporary South Slavic (and Balkan) cultures, and can the demand for truth, accountability and the abolition of all censorship on memory be

⁸³ One of Plato's powerful metaphors in *The Apology of Socrates* (30e-31c). Socrates warns the Athenians that, if they kill him, they will lose the God-given gift of having someone who persistently goads them on and makes them think; he compares Athenian democracy to a large and noble, but slow-moving horse that only a gadfly's sting can spur into action. That he never gained anything for himself from his civic activities, Socrates proved by staying poor. Socrates has earlier explained his position with respect to other philosophers, and elaborated on his commitment to truth. That is why in this passage he does not explain in detail why he acts as a gadfly. It is a social function, which is made even more powerful by his invoking Nature and God's will; both Nature and God clearly look after democracy.

found in the artistic practices of these cultures? An important precondition must be met for this to happen: clear boundaries must be drawn between the different artistic practices which communicate with the audience – a population possessing social, economic, professional and institutional power. These practices may be questionable, questioning and provocative, and even life-threatening to the artists, but still not raise the political and social issues that the citizens of that society have brushed aside. Then again, sometimes an accidental institutional “dislocation” can lead to a “gadfly” shift, which nearly always entails a calculated harm or benefit for the injured individual. Sometimes, of course, provocative ideas with “gadfly” potential fail to take effect, due to the fatal combination of informational abundance and lack of interest.

As the forms of government in these cultures rely on superficial, unreflective, and scholarly unconfirmed imitations of parliamentary democracy, where Socialism/ Communism is put under a clear taboo, the area in which the “gadfly” individual would operate is huge, fluid and vague. The issue that stands out, because it shapes the reality following traumatic war-related events, regardless of the type of state organization, is that of the responsibility for the wars, for the crimes and other injustices which the new countries have incorporated into their helter-skelter cobbled-together collective identities. In the narratives created for these new identities there is absolutely no room for accountability, punishment and reconciliation; these can be introduced into the new societies only through a collaborative effort between activism, academia and the arts. The state system, with all the injustices that are now manifesting themselves on an intolerable scale, is not by itself the target of these demands. Accountability, punishment and reconciliation were put through successfully both in kingdoms and nascent state structures, and in restructured state systems; Morocco, South Africa and Uganda are cases in point. Artistic elaborations of these topics, however, necessarily touch the question of democracy and social justice, because, almost inevitably, they interlink history, responsibility and the current social situation in South Slavic and Balkan cultures, which is rather disastrous, as we know well enough. In the devastated area between Athens and Budapest and between the Vardar and the Soča rives, not a single local large industry exists that is controlled by local government or a state- or socially-owned company or, for instance, a cooperative. The collapse of industry in the region appears as a grotesque parody of the national/nationalist discourse; this discourse lacks any material basis whatsoever, and has relied, both during the war and in its aftermath, on one and the same instrument only – the repressive apparatus and moral corruption of the media and the cultural and educational elites. The national/nationalist discourses on natural beauties and cultural monuments also appear as a self-parody in a situation where eco-systems are being devastated, many museums are being closed, and virtually all cultural institutions lack funding. The theme of the critical intervention of art and the artistic act thus becomes central to democracy (imagined, future, however vague the contours), as it aims to awaken, stimulate, activate and orient the cognitive potential of citizens toward critical thinking and train them to act in such societies - or, more precisely, to change those societies. As expected, in such an ideological vacuum, and in the absence of collective imaginaries which have not been already discredited, whatever has been with great effort and aggressively corrupted in the public discourse became appealing for all kinds of recycled imaginaries; from nostalgia,

almost completely embedded in the consumer culture, through ambiguities in defining memory and collective memory, to uncritical revisiting of the hardline discourse of the nomenclatures of socialisms, both Yugoslav and that of the Warsaw Bloc. This is not only bad training for our brain, which should strive beyond merely recycling past experiences, but also a denial of critical thought, which once defied such a frame of mind. In other words: censorship as an intervention in history, in favour of precisely those who, while in power, implemented censorship.

Spreading the truth and time-space manipulation: The censorship of memories and the mechanisms of coerced forgetting are not necessarily limited to public speech and the prevailing discourses. They may also involve a less obvious trend of fogging the chronology of historical events (distortion of history), and interfering with the spatial organization of memory. To take an example, the Sutjeska battle memorial complex is left to decay and the area where it is placed is declared an “ecological park” in the Republic of Srpska. Another example is even more emblematic: in an area of northern Bosnia (between Brod and Doboј), the destroyed houses in which mostly Muslims had lived before the war have neither been reconstructed nor removed, but left in ruins to serve as a warning to their former residents that they should not come back. Twenty years after the Second World War, traces of destruction in Yugoslavia had already been removed; twenty years after the Yugoslav war, the ruins are used to send a political message of intolerance. RECOM’s accomplishments, in this case, not only counteract the censorship of memories, but also inspire us to fight against it - for example, by the action of inscribing photographs of the ruins with the names of their former residents.

Dino Mustafić⁸⁴: Artistic truth should not “relativize”

The war smashed the civilizational substrata, cities were destroyed, and the cultural and historical heritage was obliterated - those tangible cultural monuments which witnessed the presence of other cultures in a territory which, according to the doctrines of the war, should have become mono-ethnic, “purely” national. I do not think it is the duty of artists to promote the culture of remembrance or to foster empathy; rather, artists simply start from their basic purpose – to be responsible to themselves and responsible for what they say in public, and, in this regard, there have always been relevant, important works of art that have become part of cultural history or art history. There have also been relevant works of art that simply became ugly with age and disappeared as propaganda or ideological pamphlets. In this regard, I would like to say that it is very important that we bear another aspect in mind: artistic truth does not have to coincide with factual or historical truth, but it certainly must start from the premise that it should not falsify things, nor retouch them, nor “relativize” them. A creative artist is, by definition, a subversive person, he belongs in the opposition, and he is the one who critically re-examines his reality. But terms usually used in budget calculations, by which the institutions which are supposed to preserve memory speak to themselves about multi-ethnicity, are increasingly coming into use. Very few people are

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really aware of the havoc that the dominance of the national, which lasted from the 1990s to the end of the 2000s, has inflicted on culture. The number of those who base their cultural identity on something broader than national identity is dramatically low. Professor Grebo has spoken about a certain “fatigue of material”, that is, fatigue of the people who have for long, for more than 25 years now, been fighting against evil. And then, of course, you ask yourself: Who am I saying all this to, and why? And if you ask yourself this question, and if the things you talk about make any sense whatsoever, you begin to seriously question your postulates, political and intellectual, and everything you think. The vulgar nationalism, the boorish fascism, which has been in power on and off for the last 25 years, is something with which we meet even nowadays. Then, indeed, the artistic community, or family, I would say, is a minority group of people who do make a difference through their valuable works. But there is also a parallel and indeed very extensive production of national kitsch and trash (which should not be ignored or underestimated), and there is also an artistic production which makes every effort to prevent the very important reconciliation process from taking place. I think that we also need to say something about the general trend of cultural faltering, which is generally impacting on all works of art of high value and achievement, and which fits well into the global trend towards the production of mass consumption culture. Much of it is commercialized; and, in this sense, of course, nationalism is a very fertile ground for the commercialization or “entertainization” of culture, and the attachment of a certain market value to it. Such conditions create, it seems to me, the dichotomy in our society – a society that, in trying to achieve a collective identity, is torn between national and pro-European orientations. The past must be seen as glorious, rather than examined with a critical eye, as it is the place where justification is sought for all the failures of the present, usually by, with one voice, blaming others. Let me now talk about hope: I think that the work of a new generation of artists that has emerged and managed to get together is very interesting. From the NGO sector, I will mention “Hartefakt” from Belgrade as a noteworthy example of such production and of people completely unburdened by local memories and myths, a generation that came of age in the information society. This is an example of dialogue between art and the present moment. Looking at the different aspects of the social phenomena which reflect our political, economic and social reality, we can say that the war did indeed shatter our shared memories, but art needs to strive to foster the culture of remembrance and establish connections with official politics and the ways in which it preserve memories and political culture. Unfortunately, memories are still an expression of national homogenization, they lie at the foundation of the myth of the nation and state, and become a heroic point of national history. Intellectual debates on this subject are usually highly charged with emotions, because the memories of the war, pogroms, and flights are very much alive and heal very slowly. If you have a permanent historization, about which we have listened from the points of view of science, history and social discourse studies, then, of course it seems natural that a view on history is permeated with nationalism, often with connotations of losses - lost grandeur, lost importance. However, many significant works have been created that have touched upon our most recent past - and our distant past too -, and dealt with history and memory in a responsible and humane manner, through the microcosms of individuals and victims. And that is the art that jumps over all national barriers and administrative boundaries and pulls down all the walls of hatred. That is the art that

awakens compassion, that is the art conducive to soul-searching and repentance. It is in such art that we should look for hope for our reconciliation process.

Lazar Stojanović⁸⁵: If it wants and if it dares, art can win freedom for victims

We are speaking here about the artistic community, taken in its unrestricted sense, as people who produce something they and their wider community call art. They often gather around various associations, field-based or regional, and also usually act independently of these associations as a recognizable group in their broader community. One can immediately tell the difference: from a variety of artist associations and their members we expected support, representation, and help; and from artists we expect, in addition to all these, an appropriate artwork, engagement through their own work. It is the duty of artists, we believe, to establish and demonstrate a link between the work they present to the audience and the mission they pursue, or at least support. The artistic community has a huge and proven potential to spread ideas and implement humanitarian projects. Let us remember the famous example of Bob Geldof, whose involvement inspired musicians to mobilize to relieve the grave humanitarian crisis caused by famine in Africa.

During the conflict, our art community and culturologists for the most part aligned themselves with the ongoing political projects of some of the belligerent regimes or movements. I would not a priori condemn any member of the arts community or any culturologist, just because he prefers those who pay for his services and glorify him, to those who would gladly club him to death in some dark corner. If however, they decide to swim against the current - and it sometimes happens even among artists, and that is what we believe they should do -, then they need to be prepared to take significant social risks. Artists must be allowed to express their own understanding of political processes, or of the context in which they take place. Without exploring the reasons for such a sorry situation, it is obvious that the broad, active, powerful support of people from the cultural sector for the movements for rehabilitation of victims in our country is coming at a very slow pace, and plodding along a narrow path, in contrast to some more developed countries in the world. One reason for this is the customary imposition of constraints, the granting of assignments to artists. It would not be good if citizens' initiatives or people dealing with transitional justice assumed that they are doing something very important and something very good, and you, poets, painters and musicians, are not able to understand it and will not help them in the way they ask you and want you to. A member of the movement for transitional justice is neither an innovator nor a leader, but has a much more modest role, that of a motivational speaker, someone who is there to convince you that it would be beneficial for you too, as artists, to link your work to the movement in some way.

At the heart of our engagement, whether we are artists, athletes, soldiers or NGO activists, is the victim. I hear it all the time, and of course I agree, that we seek compassion for victims, the right for them to go public, we seek restitution for victims and many other, no less important forms of social recognition. However, there is one thing we usually do not see and do not seek,

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which seems basic to me. This is freedom for victims, the freedom for a person to present him/herself as a victim. Because the victim is not only someone who was killed, or left disabled, or robbed of his property, or someone whose property was destroyed - in other words, a passive victim. There is one good thing in this disaster that befell the territory of the former Yugoslavia: the official victors or the official losers have never been declared. This gives us the opportunity to approach this problem and the victims in a broader manner, with less political bias, and to apply more broadly humanitarian instruments in the context proper to art. That is what I'd expect art and artist to do. From the civil sector, though, I'd expect something more than encouragement and motivational speeches. I'd expect artists to be asked what they think would be the best way to do it, instead of told what they should do, what they should promote, which side is the right side, and what the acceptable way of looking at the crimes is. Freedom for victims will not come about through some abstract promotion of equality of victims, but through winning and exercising freedom for the victims. That is what art does, when it wants and when it dares.

Ante Perković⁸⁶: That invisible spiritual space still exists

Nearly three years ago, I wrote the book *The Seventh Republic*, which deals with a spiritual, cultural space created in the former Yugoslavia, which was, of course, invisible and, which was, of course, too weak to cope with the developments that took place in the other six Yugoslav republics throughout the 1980s and resulted in the 1990s wars. What I personally see as a core thesis of this book is that "the seventh republic", this invisible spiritual space, is still existent today, undestroyed by the wars, undestroyed by politics; and that, despite all that the previous speakers have mentioned, with which I absolutely agree, the substance of mutual cooperation, cooperation in culture and in the arts, remains alive. Ethics and aesthetics are what the community of artists and culturologists, of people working in the field of culture, should be guided by, above all, and after all. People who are involved in culture and arts, well-educated people, should by all means avoid the trap of believing that "we" the cultured, "we" the educated, "we" the cosmopolitan, are above "them" who are not all these. Our duty is to bridge this gap, instead of producing artworks, or media messages, or texts or books aimed at people who hold the same opinions as ourselves.

Svetlana Slapšak⁸⁷: The theatre is supposed to upset and cause discomfort

Art and scholarship never lag behind, and cannot be accused of tardiness. Whenever they respond to a question, it will not be late. Here is an example of how art can respond in a meaningful way, albeit running the risk of being inaccurate. I am referring to the play entitled *25,671*, by Oliver Frljić, produced by the Kranj Theater. I watched it in Ljubljana. *25, 671* stands for the number of people, non-Slovenians, who were deprived of their civil and human rights in 1992. This is the number established so far. What if another "erased" citizen shows up? Will the play collapse? Of course not. The purpose of this play is to make its audience feel extremely uncomfortable.

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Alban Ukaj⁸⁸: Raising war topics was not easy

When it comes to my work on the play *Hypermnnesia*, at the first meeting I had with the actors from Belgrade, some of whom I had known from before, speaking about the theme of the play was not easy. At the same time, I am empathetic, up to a certain degree; there are things I can take and there are things I cannot take. My colleagues from Belgrade found it terribly difficult to understand that I had been looking forward to the bombing... To this day I have not changed my mind, because we - I personally, and, I believe, a lot of people then in Kosovo - saw it as the only thing that could rescue us. My Belgrade colleagues were not happy to hear that, just as I was not happy to hear what they were saying. As for working together, I think the most important thing in the process was to have felt empathy towards one another, to have understood one another, regardless of our different views on things, and not to repeat the mistakes our parents' generation made. And to break the chain of guilt and accusations, and strive to forgive each other as much as we could. I believe that we succeeded to a large extent. We remained great friends after the play - it bound us together very closely. The play had initially been called *Whitewashing*. While rehearsing, we were saying things we had never said before, not even to our parents, things we kept hidden from them or they kept hidden from us. Although we all knew these things, we never talked about them. It was not easy to say them in front of someone you saw for the first time and did not know well. And then came the premiere, and I had to say these things in front of my parents and deal with it afterwards - as somebody said, and as Stevan has just mentioned, the nationalist statements of our parents. Facing up to it was not easy.

Maja Izetbegović⁸⁹: I have the privilege to speak about my personal experience on stage

I was seven years old when the war started and my parents decided to stay in the war zone. That war experience is something that has left a profound mark on me and determined who I am - not by my choice, though. When I talk about the war in private, I always get carried away by emotions, I always get angry. My childhood was happy, despite the war, but looking back on it now and recalling the circumstances in which we lived for four years (it felt like living in a concentration camp, shelled on a daily basis) fills me with enormous indignation, and makes me unable to rationalize what happened. I am unable to speak rationally with people about that. But when I began to deal with it more thoroughly, in the theatre, from *Elijah's Chair*, to *Hypermnnesia*, working with my own personal experiences, or, as Alban said, when we were telling one another our stories and, as Dino said, without "relativizing" the experience and tragedy of others, it helped me rationalize the facts and, by listening to other people's tragedies, put my own tragedy into perspective. And I said to myself: "OK, thank God I have this privilege to speak on stage, in theaters across the former Yugoslavia and beyond (because we toured a lot with *Hypermnnesia*) about something that concerns me intimately, something which, through theatrical language, is given universal relevance, so everybody can identify with it." I, as an actress, saw it as a

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huge privilege and a task, a duty to talk about it. During rehearsals, communication between us and the actors from Serbia kept changing: I knew nothing about the bombing, and they knew nothing about what we had been through, and that is where changes took place in people. To me, that was sufficient. However, in Germany and Poland, people would come up to us after the performance and we could see that they had been enlightened. “Was it really like that? We had no idea”, they were saying. And it gave us a sense of satisfaction, unfortunately. After watching these clips for 40 minutes, I feel sorrow, because our circumstances were such that we have needed to do shows like these. But it is our duty to speak about these things.

Stevan Bodroža: Art that questions

When I was invited from Vienna to select a text dealing with the 1990s wars in the former Yugoslavia, it seemed quite a tall order for me. Nonetheless, before long I had selected a text by Almir Bašović which I had already read and liked. Since I come from Serbia, my attitude toward the war in Bosnia and Herzegovina and the war in Croatia was quite specific. At the time of these wars, I was just a teenager, and all the people around me, all the adults around me, were trying to convince us that what was happening there had nothing to do with us, that we were not taking any part in it. At that time, I sort of clearly felt that they were lying to us. I was not so sure what exactly they were lying to us about, but I sensed that some great evil was happening out there that had to do with us and would mark us forever. And I remember very well those articles published in the newspapers in 1995, when Ratko Mladić entered Srebrenica with his army. The Serbian press portrayed it as a victory, a battle won, but one could sense the horrible background to all that. Many, many years later, working with actors from Vienna, I had the Almir Bašović’s text in front of me, the text which conceptualized the Srebrenica story in a very transcendent, very broad manner. There was not a single scene in it featuring soldiers, the Army of the Republic of Srpska. I felt the need to insert some clearer references in my play about who actually committed the massacre, and so I did. Because the very reason I chose that theme was the feeling of shame that someone had done something claiming he did it in our name and to the benefit of the nation I belong to: it is a mark of shame imprinted on you, which you cannot get rid of if you are a thinking person and if you take responsibility for your own life. You cannot sleep easily knowing that someone did such things ostensibly in your name. However, something interesting happened while I was rehearsing with the Austrian and German actors, which I want to share with you. At first, I wondered whether Austrian and German audiences would grasp the complexity of what happened in the Balkans. The truth of the Balkan wars, however complex it may be, is in fact very simple. It is widely known who killed and was killed in Srebrenica. While we were working on the text, we saw tons of documentaries and many feature films. What happened was that the personal and family histories of the Austrian and German actors began to surface very early in the process, as did their own feeling of shame for the things they knew their own family members had done. So very early on in the rehearsals we experienced catharsis, as we all started to delve into our family histories. Neither I nor members of my basic family took part in the war, but I remember only too well some nationalist statements that could be heard during our family gatherings. My Austrian and German colleagues had more disturbing

memories regarding the conduct of their family members during the Second World War, and before long an electric current of empathy began flowing among us, which made it possible for them to understand the fate of some woman from Srebrenica and convey her story. Just as the suffering and pain of people who have experienced tragedies can never become outdated, as they will never pass but last forever, I am convinced that the social relevance of this type of art can never become outdated. If we were to make historical comparisons and draw parallels, we could say that we find ourselves now in the same situation as Germany twenty years after the Second World War. It was at that point that German artists started increasingly to create works of art which inquired into the role Germany played in the Second World War. They have been doing this for many decades now. Therefore such re-thinking of the past through art cannot and should not be just a fashion that will last for several seasons, as long as there is support for it. It should last for decades, for as long as it takes for our societies to recover.

Hazim Begagić⁹⁰: It is important that we brought the phenomenon of the music school in Zenica back into the public discourse

The play *A Letter from 1920*, an authorial project by Oliver Frlić, premiered in Zenica and Sarajevo in 2011. Since then, it has been performed in 22 towns of the former Yugoslavia. In a way, we owed this show to Belgrade, and it seems to me that it fits very well into the context of the Forum for Transitional Justice, and was a good preparation for this morning's session. When we offered this project to Oliver Frlić, we were actually driven by the idea of dealing with some local wartime stories that had never been told. Zenica was not directly affected by war sufferings. Other great Bosnian tragedies, which took place in other towns, such as Srebrenica, Sarajevo, Mostar, Prijedor and others, received much more attention. During the war, Zenica was under the control of the Army of Bosnia and Herzegovina. Our town managed to maintain a relatively honourable attitude toward its citizens of Serbian and Croatian ethnicity, but that attitude was never seriously re-examined. The phenomenon of the music school in Zenica, located just 10 meters away from the theatre in which soldiers of the Seventh Muslim Brigade of the Army of BiH detained citizens of Serbian and Croatian ethnicity, is the subject I wanted to see dealt with, at any cost. I wanted us to raise that topic and bring it back to the public discourse. Also, there was the case of Dr Sladojević, a reputable citizen of Zenica, who simply disappeared from town one night in 1993; as well as other, non-local occurrences. All these things have to do with contemporary Bosnia, its history, and, in a way, its future as well. So we decided to commission Oliver Frlić, a man of the theatre known for his intense and characteristic approach, and an author who has his own intimate history with Bosnia, to do this play, dealing with such a general and broadly conceptualized topic. Oliver spent the first 17 years of his life in Bosnia and left it amidst the war sufferings in 1993.

The play has a very precise structure and could be divided into two parts. The first, non-verbal part, in which the author tells his story, gives his views on Bosnia, its tragic destiny, referring, I

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would say, to contemporary Bosnia. On the other side, we have dialogic forms, five polemics, debates, discussions between the actors who actually speak in their own name. The director uses very simplified images, which consequently often drew flak from the audience. They often saw it as an overly simplified story about the complex problems besetting the contemporary Bosnia. However, every time we perform this play in Bosnia, in Zenica or in our partner Sartre Theatre in Sarajevo, the reactions we get from audiences is indeed entirely different than those we get in other countries of the region: the Bosnian audiences react in a very emotional, almost cathartic way, maybe precisely because of the simplified language the play uses.

Andrej Nosov⁹¹: A view from the perspective of the other

We at Hartefakt have realized that the theater, in our circumstances, gives us a certain opportunity to do something against the prevailing lack of opportunities for social engagement. That is why we decided to do *Hypermnēsia*. We saw it as an opportunity to offer a “view from the perspective of the other”. In addition to empathy, the theatre provides us with a unique opportunity to see the other side. To be open to and able to understand the position of someone who had maybe had his gun pointed at our city at some point, and to hear his side of the story too. And I'm not talking about some kind of a need for forgiveness. What I am just saying is that this process, which includes RECOM too, requires us to be ready to change ourselves. Working as a producer on the plays that show the perspective of the other, I myself changed a lot, and quickly.

Another important question concerns the audience. No matter how vocal we get, the past is still shrouded in silence. The theatre and film help us penetrate that wall, to talk about the past. The nine Forums for Transitional Justice held so far, certainly helped people - at least, the victims -, who, year after year, participated in these forums, to stop seeing the “other” as an enemy. So, the main question is how can the theater, how can I as a producer, and the play that we create, raise new questions, open new fields and new spaces for a new audience, while accepting and understanding the perspective of the “other”.

The documentary theatre is facing a serious crisis. I think that we have become fed up with the mere conveyance of the facts, so to speak - those staged illustrations -, and that, in fact, most authors and the majority of the audience wish to do more than that. What to do next, and in what way we can actually arrive at the perspective of the “other”, seem crucial to me. So that we in Belgrade, at Bitef Theater, can hear the story of Alban Ukaj, and be ready to hear a different perspective. I think this is something that might be called the beginning of the end of the war. And that is something I consider important.

Bojan Munjin⁹²: Protagonists of the Yugoslav tragedy in one place

When we look back on [the initiative for] RECOM, on that Sunday morning when we met to discuss past wars, art and facts (as part of the Tenth Forum for Transitional Justice in Post-

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Yugoslav Countries), we can say that the conference had a moment of a sublime catharsis, but also a dash of a painful drama. Just like in Act IV of *Hamlet*, the protagonists of the Yugoslav tragedy, which, even after 25 years, we still cannot forget, came together in one place: victims, witnesses, drafted soldiers, theatre (and film) makers, activists who counted the dead and helped the living, and those who are now grown-up people but were very young at the moment and looked with horror in their children's eyes at that human disaster. In fact, the destinies of many of those who were present that Sunday morning were permeated by the multiple roles in which their professional biographies and sufferings, fine arts and horrible realities, refugee camps and stage spotlights, scars on their souls and sorrows on their faces, were all mixed together. That concealed internal landscape could be sensed among the people present as they sipped their morning coffee preparing themselves for the conference, which – judging by superficial external signs – looked like any other conference in the world. However, something was missing that morning, something that probably only some PTSD therapist could notice: people talked to one another in small groups, but there was no laughter, none of that loud and casual laughter that typically accompanies such gatherings. Only violent death, and consciousness as the remaining human reflex, brought all these people together, to turn this seemingly routine meeting into a scene of potential and perhaps extraordinary humanity. By throwing an impatient side-glance, one might conclude that art may seem a superfluous decoration, because we have learned everything there is to know about the Yugoslav war horrors, as for twenty-five years now we have feverishly repeated the hundreds of names of both victims and criminals, insisting that the deaths could have been avoided, that all that could have been avoided. We argue and yell at friends and opponents alike, we become sick and tired of recounting over and over again the horrors of Vukovar, Sarajevo, “Oluja” and the refugee column near Kosovska Mitrovica, so much so that we are once again ready to die, if necessary, to prove how profoundly unhappy we are because of what happened, and because we could not or did not want to prevent it, and that we are unable to forgive ourselves or the others for all that. Therefore, to the people who over many of those years had lived lives full of fear and desperation, the session “Using facts in a work of art” could indeed seem almost an impertinence or an intellectual affectation. That would have been the case had we talked that morning about comedy or comical soap operas or theorized about the theatre. That morning we discussed the plays that spoke about past wars. The only “funny” aspect to it had to do with dark humour, the so-called “gallows humor”, to which people resort in order to keep their sanity in the face of horrors, and which artists use to show irony and contempt for the facts that during wartime almost succeeded in swallowing us up.

An introductory video was screened, containing excerpts from six theatre plays that deal with the war in Yugoslavia and the facts surrounding it; a segment of *Hypernesia*, directed by Sarajevo-based director Selma Spahić, was especially “funny”, because it shows the crazed residents of a Sarajevo skyscraper a soldier at the border is ordering into lines by ethnicity, asking them to sign a document that they are voluntarily abandoning their property... When you watch the whole video, you can see, for example, young men playing themselves (*Generation 91-95*, *Montažstroj* Zagreb, directed by Borut Šeparović), when their parents or society wanted to push them into the war with their poisonous

ideologies of hatred. You can also see Kosovo society (*Patriotic Hypermarket*, co-produced by Novi Sad, Prishtina and Belgrade), in which both Serbs and Albanians admit that they “feel like shit” and that too much suffering had been caused by stupidity, wickedness, and primitivism. You can also see a segment from *Aleksandra Zec* (directed by Oliver Frijić), recounting a real event – the murder of young Aleksandra Zec, and her father and mother, and the sediment of guilt and responsibility burdening the conscience of Croatian society... We then saw a theatrical report on the Srebrenica survivors (*The Potocari Party*, directed by Stevan Bodroža, produced by the Nestroyhof Theatre from Vienna), as well *Death by Erasure*, to do with the fate of the “erased” in Slovenia... In fact, this whole theatrical travelogue, one scene after another, looked darkly surreal, like a bad dream - we experienced that “Is it possible?!” feeling, as if it had happened to someone else and not us, which finally turned into a grinning festival of madness, where human beings were pushed into situations they never wanted to be in, and some other humans did things they could have sworn just a moment earlier they would never do. That Sunday morning, I think, I became aware not only of direct human responsibility, but also of the metaphysical aspects of the spiral of evil.

The panelists were: theatre directors Dino Mustafić, Andrej Nosov and Stevan Bodroža, actor Alban Ukaj, actress Maja Izetbegović, the director of the Bosnian National Theater in Zenica, Hazim Begagić, and dramaturge Almir Bašović. Of course, they all talked about their experiences with working on the above-mentioned and similar plays, about their painful wartime experiences, about the deaths and destruction. But there was a feeling in the air that the most significant thing was their presence, and their testimonies in the presence of victims and people enveloped in a veil of pain and bad memories. And so it was that, the idea crystallized that morning of the dignity and courage of one generation of artists formed amidst the sufferings and frustrations that surrounded the disintegration of our beautiful country, which was accompanied by bloodletting and the cries of the killed and displaced. There have been generations over the past 25 years that did not react at all, or spewed chauvinist ideologies and acted as “war-mongers”. The seven panelists did not speak from any ideological perspective, but simply as humans extending their hand, offering consolation and understanding. Furthermore, there were people in the room and at the table from “opposing sides” of the conflicts: from the very beginning, it was quite clear that this would not be easy for any of them; but the “honest facing up” again proved to have a healing effect – the wars of the 1990s were in part a consequence of earlier failures to face up to the past and to the persistent, tribal code of silence, because of which each of the “righteous” in these lands proudly carried their own secrets to their graves.

For me personally, that Sunday morning meeting also opened up the possibility for forgiveness. I profoundly want to believe that forgiveness did happen in some hearts.

Lazar Stojanović⁹³: A fact may change its value depending on the context

When we talk about facts, we usually use the word “fact” with its two dominant meanings. One refers to facts established in a court of law. No matter what we think about it, if something is

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conclusively established in a court of law, or if a court decides that you have a third eye or that you took off into the sky and landed few days later, then it becomes a fact, even though it is not part of anyone's experience. Because the court has so decided. To be fair, this sort of things happened mostly in the Middle Ages; but it can also happen nowadays.

The second meaning attributed to the word "fact" presupposes a consensus of opinion among relatively reasonable people regarding a particular matter. For instance, that the Earth orbits the Sun and has one satellite. Since all people would agree about this – if not all the rabbits, apes, lunatics, members of various sects, who might challenge it, at least all the community of intelligent people – we accept it as a fact. Facts are not discussed, we consider them to be well-established. We consider that it has been established that the Earth has one satellite which revolves around it, and we will not argue about that.

And what happens with facts in movies? Whatever fact is referred to in a movie - an event, a person, a person's confession, a fact established by some court, or some empirical fact - is never devoid of context. Should you put it in a different context, its value would change, and be perceived sometimes as a completely different thing: therefore, it would no longer be the same fact.

Because we are not bound by rules when making a film, because it is a form of art, a privilege, and since films for the most part, in nine cases out of ten, present facts that have been established in some other ways, we do not necessarily associate films with specific authors, specific artists or specific professions. The vast majority of films shown on TV have been made by journalists, not filmmakers. It is therefore very difficult to tell how many films dealing with the facts about the war there are in the region. If we include all television news stories about the conflicts in the territory of the former Yugoslavia in the 1990s and the beginning of this century, there would be several thousand such films. But if we take into account only the films by known authors, which have a producer, a director, credits, someone who has skillfully filmed them, and someone who seriously edited them, then there would be only several dozen such films. At the same time, films are like people. They come in all kinds of shapes, in all sizes and sometimes unexpectedly. There are feature and documentary films, and films made for a particular occasion or use, and serials. They come in other forms too, designed either to be shown on screens or on television and so on, but what matters here is that they all deal with the war in one way or another, and try to say something to you. So if they are not limited by form, and if their content is not a problem either, I think it would be more appropriate (though I would hope you will challenge this thesis) to regard film as part of a struggle for media space and as a kind of engagement countering an opposing engagement, than as a means and a process by which to arrive at something we could call truth. I would not exclude the possibility of using film as a research instrument, but such films appear very rarely, and when they do, they have great value. Some of these films are among the best documentaries I can remember, in which the camera is used to penetrate into the particular situation of a person or group of persons, or into a phenomenon, only after which the subject is articulated into a meaningful whole. Hence, in addition to being a way of presentation, film is also a tool. The films we will see today explore how war changes the lives of all people, even those whom we usually would not think of. The main topic of this meeting - and rightly so, because it is the most dramatic topic - is the topic of victims, people

who lost their lives or suffered damage to their lives because someone committed a crime against them. But what we sometimes fail to see is that war changes the lives of all of us – the aggressors, the victims, the witnesses, even the mere journalists or observers, or the people who are in various ways professionally involved in it – often in an unexpected manner. So, all the movies we are going to see today have to do with this theme – how war changes people's lives. The first one is a film by a well-known film director from Kosovo, Isa Qosja, *Three Windows and a Hanging*. It tells a story about a woman raped by paramilitaries from Serbia, a victim who becomes a culprit because the publicizing of her story threatens the norms and prejudices of her entire community.

Before I pass the floor to Vesna Kesić, let me just draw your attention, in the spirit of what we said at the beginning, to the key scene in the film, which is almost imageless. The characters speak in the dark. Qosja could have filmed it in any way he wanted. He could have made a History Channel-style reconstruction of the event. He could have had his actors speak in full light, so that you can follow the drama on their faces. But he didn't. By presenting this fact in a spare, almost completely dry manner, he left it to the greatest artist after Our Lord, and that is you, to picture freely what the scene might have looked like. It is a very intelligent and effective directing technique. We will also see a clip from a film about protected witnesses, without whom it would not have been possible to arrive at truth in many cases. Because if a victim has died, if he/she is gone, then the only persons who could speak about that crime are those who witnessed it. And in order to speak, they need to be protected. They are a cause of enormous controversies, and the general public is divided on whether they should be regarded as traitors or heroes. But very rarely do we ask ourselves what they go through. Their lives are turned upside-down, sometimes they even have to change their identity, to become someone else, reborn on another planet - to continue their life in some country a long way from here, as someone who no longer has any ties with the land he has left.

All those who follow cinematography in the region know Pjer Žalica as the author of the celebrated series of short films that the "SAGA" group made in Sarajevo during the siege of this city. They are not only testimonies, but also exquisite short art films, presenting excerpts from Sarajevo life at that moment. Making these films required a great deal of cool-headed observation, a great deal of in-depth analysis, a lot of imagination and a lot of spontaneity – and in the middle of a war. Mr. Žalica has brought us tonight a few excerpts from his film *Children Like Any Other*, which, in my opinion, leaves no one indifferent, because it is about the victims, who are absolutely innocent - by definition, innocent.

Vesna Kesić⁹⁴: Women war victims are held responsible for the fate that befell them

The fragment of the film *Three Windows and a Hanging* by Isa Qosja that we have just seen obliges me to say something about it. Unfortunately, the director is not present. From the beginning of the war in Croatia in the early 1990s, I have dealt with women victims of war, refugees from Croatia and Bosnia and Herzegovina, among whom were raped women. We, the activists of the Center

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for Women War Victims, deliberately did not refer to them as raped women but as women victims of war, because rape was not the only form of violence these women were subjected to. We focused on the women's personal tragedies, their personal experience and their personal well-being - what feminism calls, creating opportunities for women to regain control of their own lives after refugee trauma. We started from the assumption that women and children are the major victims of war, not because only women were victims of abuse, terror and rape, but because women do not participate in the political decision-making that leads to wars, or in the military operations and commission of war crimes. That is to say, they participate far less than men do. This means that they, as well as children, are, so to speak, more innocent victims than men, who dominate decision-making in political and military affairs and pursue warlike policies. We have also worked with many raped women, some of them suffering from the secondary trauma of disdain and stigma. And here I must correct Lazar's terminology: in such situations, victims are not referred to as "culprits" but as being exposed to "secondary victimization", owing to patriarchal politics and power relations. First, the victim experiences the worst possible assault on her body and her integrity – I believe that every woman knows that fear, the fear which she carries in her genetic code of that horror, feels it instinctively even if she has never experienced such a situation, especially when it comes to wartime, collective, mass rapes. How a woman will survive it, how she will process and integrate this experience into her life and personality, depends on many factors. What some women go through in the aftermath of rape in some cultures, where their patriarchal, conservative communities, even their own families, hold them responsible for what happened to them, is termed "secondary victimization". We came across a few such cases, but I must say, this was not the prevailing attitude towards raped women. We also met women who said: "My old man said that of course I was not to blame, and my children supported me, and we managed to get over it, and no one in my community blamed me". Holding a woman responsible for the tragedy that befell her is in fact a continuation of the patriarchal violence against women. We must not forget that, only some fifty years ago, this was the prevalent attitude exhibited even toward women who were raped during peacetime. What happens to these women afterwards, how they will work through their trauma and recover from it, very much depends on their own inner strength and how they are treated by their immediate environment. But, there is another thing I would like to say, which may sound strange in this discussion which primarily seeks justice for victims: female victims can be victimized, used, manipulated in some other ways too. They can be instrumentalized not only by ruling nationalist politicians for their own agendas, but also for the purpose of worldwide anti-war sensationalism. We did not bring the victims of sexual crimes into contact with the media, because it was immediately clear to us that it would be awfully dangerous. The European and American media, albeit in good faith, actually intensified the stereotypes of our region as dominated by a strongly patriarchal model, similar to that found in the Middle East, where "honour killings" take place. Women do get killed, there is no doubt about it. Women are raped, women are to blame. Such things happen nowadays, whether the women are held responsible or not. I think it's important to give women the right to treat their trauma, to overcome it, and to integrate it in whatever way they deem best for them. In the film, some excerpts of which we have just seen, we have this "double victimization". At the end, it seemed

most unlikely that this woman would ever come out of this trauma, because instead of getting support, her community imposes “patriarchal guilt” upon her.

But in both Croatia and Bosnia we had situations where Tadjman’s or other politicians’ propaganda machines took advantage of what happened to these women. The numbers of raped women were pumped up, their stories were launched only to be used by nationalist propaganda, to demonstrate that only “they” were the criminals, because it was in their genes, they were the rapists and we were the victims. Thus we would no longer say that only the women who really experienced wartime sexual violence were the victims. It was important for the nationalist politicians to metaphorically equate the woman and the nation, so that it was no longer a Croat woman or a Muslim or Bosnian woman who had been raped, but Croatia or Bosnia their very selves. For us, it was extremely important to show that women are victims both as a demographic group, by sex and gender, but also as individuals who need help and who are entitled to all sorts of assistance, including reparations.

Ivana Lalić⁹⁵: Protected witnesses are disappointed in state institutions

I hope that the facts presented in the film *Witnesses* will make Serbia at least a little less indifferent with regard to the Albanian victims. The reason why Miloš Teodorović, my co-author, and I made this film, lies in the fact that in Serbia there is no political will to shed light on the crimes committed against Kosovo Albanians, to publicly speak about them and to make the general public face up to them. Of course, I also hope that our Albanian colleagues from Kosovo will deal with the subject of the crimes committed against Serbs and other non-Albanians. Now, by looking at the media coverage of Albanian victims, we can clearly see the way in which Serbia treats Albanian victims. For example, when a grave in Raška was unearthed and the bodies it contained were transferred back to Kosovo, this information was, as a rule, presented in the twentieth minute of the entire television news broadcast. If we compare the treatment of Kosovo Albanian victims with that of victims from other countries of the territory of the former Yugoslavia, it seems that the former receive the least amount of media coverage. That is how the media treat them, and how the majority of citizens treat them; and that is, unfortunately, how the political elites treat them. And what happens in Serbia to those who speak out about events in Kosovo can be concluded from the testimonies of the protected witnesses who are the protagonists of our documentary. In addition to the harrowing descriptions of the crimes committed against Albanian civilians, these witnesses also describe, I would say, the hell of condemnations they went through after providing the facts about these crimes to the Office of the War Crimes Prosecutor. They were condemned by their colleagues, ex-comrades, and communities. In the film, they also speak about the problems they had, paradoxically enough, with the very police unit that was supposed to protect them – the Witness Protection Unit, created precisely to safeguard the security of protected witnesses. Some policemen from

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the unit are actually former members of the “Red Berets”, who not only showed no solidarity with the people who testified about the crimes, but psychologically harassed them and tried to cow them into silence. Because of all this, some witnesses voluntarily dropped out of the programme, preferring to live in their communities virtually as sitting targets. Every one of these witnesses spoke in the film about how disappointed they are in the state institutions. Condemnation and lack of understanding is all they got from them. These witnesses, former members of the 37th Detachment of the Special Police Units, plucked up the courage to testify against their commander, Radoslav Mitrovic, a man who had been accused of a serious crime – the massacre of 48 members of the Berisha family in Suharekë. Mitrovic was later acquitted and only some lower-ranking officers were convicted of this crime. Also, all the officers whom the witnesses identified as direct perpetrators now walk free, after spending a short time in detention. And now these witnesses - and their respective communities learnt very soon about their testimonies - practically live together with the people they testified against. You can imagine what their life is like. They come from Leskovac and Vlasotince, and live there now labeled as “Serbian traitors”. At the end of the excerpt you also saw a former member of the military unit known as the “Jackals”. It was a formation that committed some serious crimes in Qyshk and the surrounding villages in Kosovo. We interviewed him as he walked on the charred remnants of what was once his floating cabin/houseboat at Ada Ciganlija. His houseboat was burnt down by unknown perpetrators the night before the “Jackals”, against whom he had testified, were to be sentenced. After the rendering of a first-instance judgment against them, these “Jackals” walked free from court and are now walking the streets of Belgrade and Serbia until their case is finally adjudicated. Lazar called this segment of the film “the catharsis of a protected witness”. Protected witnesses are insiders, members of police or paramilitary formations who were present when the crimes occurred - they are eyewitnesses, not direct perpetrators. So they have never been accused of war crimes and therefore have never received any benefits from the state in exchange for their testimonies. They have decided to speak out, to go public, despite great risks. They have put their own lives at risk and the lives of their family members. But revealing the truth has also helped them - helped them to find peace of mind, if indeed such a thing is at all possible. And if there is anything that can help them to rid themselves of the horrors they witnessed and therefore participated in, it is uncovering the truth about them. And I believe they know this.

Pjer Žalica⁹⁶: Victims are the real heroes of war

According to scientific research, there was no child in Bosnia and Herzegovina who did not suffer traumatic consequences of the war. It is not irrelevant information. We, as a group, were making films throughout the war. And continued to do so, individually, after the war. During the war, it somehow seemed the logical thing to do, and we felt privileged to be able to do that, because most other people had a much more difficult task, especially men. We felt we were doing an

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important thing, pursuing a noble mission, fighting in our own way for a good cause. It has been repeatedly said today that everything we do here is about preventing past events from recurring. Back then, I was not aware of this and, I have to admit, even after the war I was still not aware of it. It never occurred to me that my work, my grappling with difficult topics, was about preventing recurrence. Now I hope and believe passionately that this is so, and that there is a possibility that it will not happen again. We are no prophets and cannot guarantee anything, and should be pessimistic rather than optimistic, but pessimism should not be our excuse for not trying. As far as I am concerned, I simply try to distinguish right from wrong and to keep doing it all the time - this is right, and that is wrong. And I think that telling wartime stories, or stories that have nothing to do with wars but speak about some fundamental principles, is worth the effort. I made a film about the children who underwent the severe trauma of living in a besieged city, and yet were trying to live their lives like any other children. With this film, I did not want to say that children in other cities did not go through similar things. When I make a film about particular children who were abused or endured difficult times in Sarajevo, I do not say that children in Kosovo, or Rwanda, did not go through similar things. I simply say that it is unacceptable, and terrible, that these things happen, and that, of course, they should never have happened, and that it is our common responsibility not to let them happen again. Whether we will succeed, I don't know. The girl in the film who lost a leg is now a young and successful woman. A film director from Columbia who saw the film wanted to make a sort of feature documentary which would follow the lives of these three or four children today. The girl without a leg did not want to take part in his project. She said: "A terrible thing happened to me, but I refuse to be a victim. I chose not to live as a victim and don't want to go back to that". She found a way to heal from trauma. I appreciate her choice enormously. I cannot compare my own wartime experience and its effects on me with what many of you in this room went through, but I could say that I did go through hard times and could consider myself a victim. But I do not agree to, primarily because I believe that the victims of war are in fact the heroes of war. I had the idea, which was soon forgotten, that all the women who were raped during the wars in the Balkans should be declared war heroes. The idea was not taken into serious consideration. But I think many people, whether or not they share my opinion, actually feel the same - that war victims should be considered war heroes. For us filmmakers, that would be an asset, because we, as storytellers, need heroes. We need heroes for our movies, for our stories, for all sorts of narratives we work with. These victims are often our heroes, and therein lies a big responsibility. Alban made a very good point at the end of the previous session, by saying that even though we may not have a solution for how to look at one another, we still have a common denominator - the terrible experience we all went through and which left no one undamaged, no matter where we happened to be at the time. Because only a few of us could choose where to be, in what position, even those who started the wars. Let me mention one event that has marked the past few days and caused a stir in the region and beyond: the return to Belgrade from The Hague of a man who used to live in the same city as I did. It would be great if we could find a way to break down these walls between us and get people in our streets talking about all these important things we have brought up here today. I don't know how we could do it, but I'm ready to take part in such an effort, in whatever way I can.

III THE VOICES OF THE VICTIMS

Mirko Kovačić⁹⁷: Dialogue in prison camp

I am Mirko Kovačić from Vukovar. I was imprisoned in the camp in Stajićevo, in Serbia. I am a mathematician, an engineer and a constructor. Let me explain to you what dialogue means in a prison camp. I was taken to the camp from some basement. I was an elderly man of 61. I was taken to Stajićevo along with my son. On the second day, we were joined by a man who used to work with my wife as an attendant in the Social Accounting Service [SAS]. He was dying of diabetes. Older people know what the SAS is. Without apologizing, I told Commander Miroslav Živanović, “This man, whose name is so-and-so, is dying, what should we do?” “Well”, he said, “you know what? He needs some medicine he takes daily, and he needs massages for the circulation. Who is going to take care of this?” “My son is”, I said, “he is a professor of physical education, and I myself will look after him.” There was a small room for calving cows in this Stajićevo place, and five of us older men were housed there. There had been no water in the camp for five days, so my son was assigned guards and went across the field to fetch some from a well two kilometers away, and that’s how the sick got their water. A visit headed by a certain Ms. Mary of the International Red Cross had been announced earlier, and she came to Stajićevo with two English interpreters. I speak Italian, German and Czech, so I was able to use two languages to communicate. She was Italian, and I described to her what it was like there, what was going on and what was being done. After she had left, Živanović came up to me and started a conversation, a dialogue: “What did you tell her?” “I told her that this gentleman had gotten sick”, I replied, “and that you had come to his aid and so on. Thank you for that.” The second time, he came to me and asked me how the sick were doing. He was on duty during the day, and would stay in the camp until three or four in the afternoon. But at night, some other persons, bandits, members of different parties that existed at the time, would go on the rampage, torturing people, beating them and so on, but he had never heard of that. I spoke to him about this a few days later, and asked him what I should do. “Mr. Kovačić, be careful now”, he told me. “But, Comrade Colonel”, I started... “You know what, Mr. Kovačić? I didn’t go to the Academy to learn how to run a prison camp, I am a soldier”, he said. But he did move these sick people of ours to another part of the camp, and, in so doing, saved them. There were five or six of them. And now, at the end, a real treat – by the order of that same Ms. Mary, who showed up again 10 days later, 24 of us were scheduled to be released. We were all 61 or older. According to international law, we were civilians, not soldiers. And there were also 28 minors. At 6 a.m., that morning, before the roll call line-up – the anthem wasn’t being sung anymore, but we would instead repeat the old Yugoslav form of “curse the traitor” and so on - we lined up as usual, and since it was my turn and also my son’s birthday, I had to sing twice. Anyway, my son Darko spoke English, and Mrs. Mary started talking to him. He was keeping an eye on me while I was in the line-up with the rest of the elderly, and she came up to him and kissed him. Then

⁹⁷ The Ninth International Forum for Transitional Justice in post-Yugoslav countries, May 17-18, 2013, Jahorina, Bosnia and Herzegovina. Mirko Kovačić, prison camp inmate.

Mr. Živanović came, Colonel Živanović that is, and asked me what Darko was doing, since he had been minding the elderly up to that point. I said, “Colonel, it’s his birthday today.” And then - he took that Geneva memorandum with all our names on it, and pencilled in “Darko Kovačić”. And that is how I got out with my son. And, to finish – what is dialogue? It’s now three times that I have been summoned to the County Court in Osijek. Someone high up in the camp inmates’ association has accused Živanović as the chief torturer, as the head of, I don’t know, this or that, but I have been persistently repeating what I have just told you, and I stand by my words - Živanović is a decent, honest and true soldier, not some torturer. There, that is what dialogue accomplishes.

Zoran Kosić⁹⁸: Veterans talk about reconciliation

You see, it is like this, what the gentleman from Vukovar has just told us, that is true humanity. What I mean is - he didn’t want to accuse that man, who had truly acted like a man, just on a whim or because it was the done thing. He was not wrong to call him “Comrade Colonel” either, since it was only in February 1992 that they all became gentlemen, or sirs. Us veterans here, we have been gathering from all over the region, and we have long been discussing the idea of a gesture being named, “We have reconciled, have you?”.

Mirjana Učakar⁹⁹: The “erased” have difficulties in exercising their right to compensation

I come from Slovenia, and I would like to greet you all. I don’t actually have any questions, so I would just like to state some facts. The war did indeed begin in Slovenia. We have hundreds of war veterans in Slovenia, heroes even, but the young soldiers who died in the war, aged just 19 or 20, they are not spoken of at all. There is only room for the heroes who won the 10-day war. That’s one thing. The other thing is that we have a president who doesn’t care about certain problems, such as those of the erased. In the three years since he came to power, he hasn’t uttered a single word about the erased, and there are 25,000 of us. Many of us now live in other republics, in other states. A law has been adopted concerning the erased, giving us just three years to regulate our Slovenian citizenship status. Many have not been able to attain it within this time-frame, but still they refuse to extend the limitation under any circumstances. Even though we won the case before the European Court of Human Rights in Strasbourg, we are no victors. We face numerous difficulties and problems when collecting compensation and dealing with common bureaucrats, while the politicians – they don’t even want to hear about us. Ours is a state that doesn’t care about human rights. I mean, human rights in general – only those of the politicians and the select few. So it is really hard to talk about any kind of justice there, and sometimes we can’t get any justice in Slovenian courts. And our Constitutional Court is... well, “God forbid”. Over there, nobody cares about what Europe has to say. We don’t care about anything, actually.

98 The Ninth International Forum for Transitional Justice in Post-Yugoslav countries, May 17 - 18, 2013, Jahorina, Bosnia and Herzegovina. Zoran Kosić, Association of War Veterans from the Wars of the 1990s, Kikinda, Serbia

99 The Tenth International Forum for Transitional Justice in Post-Yugoslav countries, November 15-16, 2014, Belgrade, Serbia. Mirjana Učakar, Association of the Erased, Slovenia.

Dragan Pjevač¹⁰⁰: Hague acquittals drove process of dealing with the past back to the beginning. I am a refugee from Croatia. I live in Serbia now. My mother was murdered in 1993 in Medački Džep, in Croatia. I am also the President of the Coordination of Serbian Associations of Families of Missing Persons, but I'm here just as a member of the RECOM Coalition. All states speak only about their own victims. And this has not changed. The majority of associations of victims' families are state-financed and co-opted. Consequently, it follows that the victims' families also only speak only about their own victims.

We also have to recognize here that the Tribunal's recent acquittals have reset the entire process of facing the past back to the beginning, if not further. I have in mind Serbia and Croatia in particular. In this respect, the process of facing the past is at a standstill. To illustrate, I will use the example of Croatian Defense Minister Ante Kotromanović, whose first comment after the acquittals of Croatian generals was, "We are now as clean as a whistle".

With respect to the victims, and ourselves as well, there are associations that represent victims, but - and I have to say this, because I don't want to be misunderstood or come across as too harsh - those representing them are, in a way, powerless to help anyone, and need help themselves. Because all of us victims really do need some kind of help after the traumas we have experienced. I am therefore going to give you a couple of examples in this area, sincerely and without any pathos: someone is responsible for the more than 800 Albanian victims buried in Batajnica. Someone transported these people in trucks like lumber. I feel for these people as if they were my parents and my brothers. I see no difference between my suffering and the suffering of these people; the same goes for the Serbs driven out from Kosovo - they, too, are my parents and brothers. 10 days ago, I had the opportunity to visit the Memorial Center in Srebrenica. It was built by the SENSE agency, and stands as a form of reparation to the victims of Srebrenica. One should really go there and see it for oneself. But, even more importantly, it should be visited, above all, by the Serbs from Bratunac who live only five kilometers away. I had the opportunity to talk to them for a while, since I had arrived to Bratunac the previous day. And so I spoke with a 20-year-old Serb, and asked him what he knew about it. What he "knew" was that there were no more than 2,000 victims in Srebrenica, and he knew that, prior to what happened there, 107 Serbs had been killed in Kravice on Christmas Day, and so on. When I asked him if he had been there, the answer was "no". I think that everyone needs to visit and see Srebrenica, and then sit down and really listen to the stories of everything that happened over there - but the fact remains that these "packages", as they once called them, were being led away for execution. And one does need to face that - I don't see it as something that can't be faced. The same goes for the Serbian victims in Sarajevo - I don't see why that would be something impossible to face. And just to add to that - the Serbian victims of "Oluja" (Operation Storm), the victims killed in Ovčara... If a woman was killed, that woman was my mother. If a man was killed, that man was my brother. I see no difference there, and certainly

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not from the perspective of a victim – why would that person be just some Croat, or, I don't know, just an Albanian or a Serb. They are all victims. They are all the same. And that is the approach that we here, through RECOM, accept and understand.

This morning, another speaker here was right to notice that she felt reconciliation between us. Croatia has been accepted into the European Union. According to the records of our missing persons associations, there are 238 known burial sites of ethnic Serb victims. However, there still haven't been any exhumations undertaken. A serious engagement in the process of searching for missing persons... or even talking about the missing, while knowing about this part of the problem and not having it resolved first... well... let's go then, and visit and exhume every known grave... But even after 20 years, we are still incapable of forcing the states to undertake this basic task. With respect to that, I have heard two serious individuals at the highest levels of government say that it was a matter of a trade-off. When I heard that, I felt like everything had exploded before my eyes. This means that a concession needs to be made by Serbia in order for those in Croatia to exhume 50 or so people who disappeared during the war. That is, more or less, what I have had to face so far. I am 58, and to have to learn these things now... that that's how it all works, and not through some humane approach...

And let me give you the latest now. 10 days ago, my brother received a notice from a Croatian court that he had to pay some tax to the amount of 12,000 Kunas. He has no idea what it is for. The first instance verdict in our favour was given in 2013, 11 years after we had filed a lawsuit for the damages, pain and suffering resulting from the murder of our mother. It had taken 11 years... and my brother finally got a first instance verdict in his favour. But then the second instance ruling didn't return the case to the first instance court for re-trial, as is usually the case, but instead overturned it, rejecting the claim for damages outright, and presented him with a tax bill for 12,000 Kunas. The same is in store for all six of us brothers – more than 10,000 Euros in tax bills. And the first thing my brother said was, "First, you burn my house", which is literally true in our case, "then you massacre my mother, and then, for their trouble, this civilized EU state has now handed me an invoice for over 10,000 Kunas!"

There, that's the part we are all more or less familiar with. And I also know that there are far worse examples than mine, and that every single victim probably has a similar story, if not worse.

Bekim Gashi¹⁰¹: I am the most wounded man in the world

I come from Kosovo, from the village of Trnje in the municipality of Suva Reka. My mother Hyra and four of my sisters - Selvete, Luleta, Blerta and Lumturije - were murdered in March of 1999. After the murder, which occurred on March 24th, 1999, their bodies were taken away by Serbian soldiers. I have to tell you that my family's tragedy did not end with their massacre by the Serbian army and police, because soon afterwards, 23 members of my extended family also disappeared without a trace.

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I don't know if you can imagine the emotional state I am in, but I believe that if you were to spend just one second in my skin, you would experience the emotional state of the most pained man in the world - or you would experience hell itself.

What gives a man the right to harm another, I ask?

I believe that civilized people should not be indifferent to such events, which leave deep marks on their fellow human beings. We are all witnesses to the fact that international law has not addressed war crimes in sufficient measure.

The recognition of the human dignity and equal and inalienable rights of each member of the human species is the pillar of freedom, justice and peace in the world, while the disregard and contempt for human rights lead to barbaric acts which insult the conscience of all of humanity.

To love and create a world in which all people would enjoy freedom of speech and religious belief, and freedom from fear and poverty, is the goal of all mankind, and should be proclaimed as the highest aspiration of every man, and every people, nation or state. Human rights should always be protected by law, so that an individual, a group or a people would not be forced to turn to rebellion against tyranny and repression as a last resort. At all times, and under the present circumstances of global political dynamics in particular, it is necessary to promote the development of socio-political friendly relations between all peoples and nations. The cooperation between them is, and should be, not just a general model, but also a need, a necessity, a reason and an inalienability, through which a better life for all can be achieved, without any distinction. Through these actual and attainable circumstances, peace, stability and love between all people, peoples, nations and states grow and strengthen further.

We ourselves bear a huge burden of teaching future generations that peace and love between peoples are not cowardice but great human virtues, and that, as such, they are achieved through mutual and sincere communication in good faith, initially between individuals, and then between entire groups, peoples and nations.

With respect to Kosovo and the horrifying war waged against its civilian and unarmed population - against the common, ordinary people whose only fault was being Albanian -, it cannot be described as anything other than a crime, a genocide and the attempted mass destruction of an entire people by police, military and paramilitary forces under the control of the Serbian state and government.

Under such circumstances - where the Serbian people, by and of their own accord, elected to put President Milošević at Serbia's helm, whereupon he rolled up his sleeves and immediately set to the work of destroying everything Albanian with his policies and his units made up of butchers and barbarians - didn't the Serbian people of the time have at least the moral responsibility to tell him, "Enough, stop!"

And so, for the sake of yesterday, today and tomorrow, for the people of Kosovo to live in peace and harmony with the Serbian people, they expect the following of them:

First, a public apology for the crimes, the terror and the barbarity perpetrated by Serbia's institutions under Milošević's leadership during his political nepotism in the former Yugoslavia;

Urgent acceleration of RECOM's activities aimed at facilitating the location, identification, documentation and handover of the mortal remains of all ethnic Croats, Bosniaks and Albanians killed or forcibly disappeared between 1991 and 1999;

Unconditional backing by all the state governments of the former Yugoslavia, aimed at encouraging, strengthening and providing support for RECOM's activities;

The release, without delay or deliberation, of all those still imprisoned in Serbia because of their political beliefs, irrespective of their ethnicity or nationality (e.g., Albanian, Croatian, Bosniak, Slovene, etc.);

The initiation of mutually sincere relations between the two peoples at diplomatic, economic, social and political levels, aimed at creating a climate of general security and peace in the region.

Nataša Kandić:

I regret that Bekim did not speak more about his feelings, or about his struggle with Serbia's Office of the Prosecutor to have an indictment brought for the crimes perpetrated against his and other families from the village of Trnje in Kosovo. All of us here feel deeply and sincerely for his personal tragedy, and the tragedy of his whole family. I would like to invite you all to follow the trial and judge for yourselves how much justice it will deliver in the end, and whether it will provide Bekim with at least a modicum of relief, particularly bearing in mind that the mortal remains of his and other families from Trnje have yet to be found.

I would kindly like to ask you to speak about how you feel about the past, and the support you have in your lives today, which have taken a turn different from what you had planned. None of us can replace the courts, but we can influence them to try those responsible for the crimes, and not to allow the past, and the people lost with it, ever to be forgotten.

Nada Bodiroga¹⁰²: My mother's shoe, the only surviving witness

I come from Indjija in Serbia, and I am a member of the Belgrade-based Suza Association of families of the missing in Croatia. My parents disappeared in 1995 during *Oluja (Operation Storm)*.

I remember it all quite well, every day I would pass these places on my way to school: Karlovac, Orlovac, Rečica, Skakavac, Sjeničak, Utinja, Utinja Vrelo, Vojnić Kolodvor, Slavsko Polje, Vrginmost... all the way to Sisak. My mother's name was Danica, my father was Teodor, but everyone used to call him Teša. He spent his entire life selling transport tickets in Orlovac. There wasn't a single person that didn't know him – he was always funny and in a good mood, and everyone loved him. He didn't care for guns, as he had spent the Second World War in German captivity.

He had nothing to do with the army during the nineties, and my mother was just a housewife. They both lived through the war in poverty, doing minor farm work, because pension payments had stopped when the war broke out, and they had no other income. But at least they never caused anyone any harm. Still, when I came to the burnt ruin of what had been my home, the

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only thing I found was one of my mother's shoes under a rock, the only "witness" that my parents had ever lived there. Everything else had been lost to the flames.

When the war broke out, my parents continued to live in our house, coping with poverty. I would go over Bosnia to visit them and bring supplies whenever I could. They were afraid and lived in fear, but I would always comfort them and tell them not to be afraid, and that no one would bother them, because they had not done anything wrong. Three months before the fall of Knin, I went there for the last time. I still remember their fear - it was as if they could sense what was going to happen. Even then, I assured them that no one would harm them. That morning, when I heard over the radio that Knin had fallen, I didn't realize what that meant at first. The phone lines were cut right away, so I couldn't call anyone. It was only when the first columns of refugees started to arrive, that I realized that something terrible had happened.

I waited for the buses and columns to pass, trying to find out whether my parents had fled and what had happened to them. A bus came along, and when the driver opened the door, I asked if there was anyone inside from Slavsko Polje, hoping to get some news about my parents. The driver literally put a child of four or five in my arms and said, "We have only this child from Slavsko Polje." The boy put his arms around my neck and squeezed me so hard, the only thing I could remember were his words, "You take me. I have no one. Do you have any children?" At that moment, I was completely stunned. He wouldn't let go and started crying, and my legs started to give way. A policeman came. He wanted to take the boy from me, but the boy wouldn't let him, and he only barely managed to pry him away. He was taken to a clinic. Later on, when I came to my senses, I went there to ask after the boy, but I was told that he was not ready for house care. He had experienced such stress, that he had to stay in the hospital. I continued to ask after him, and I heard that he had been placed in foster care. I found out later that he had been adopted by some Greek basketball player, and had graduated in the meantime. We stayed in touch. Eventually, he returned to Croatia.

While I was waiting for the columns to arrive, I received a call from a former neighbour of ours who had moved to Italy, and he told me that both my parents were fine, and that his sister would visit them and let me know what was going on, and what I should do. He never called again. I also heard from the wife of one of my cousins from Karlovac, and she basically told me the same thing, promising to call me again. She never got back to me either. Still, I was hoping that they had been taken somewhere, that they were still alive... I kept searching. The only thing I cared about was whether they were alive.

Years have come and gone, and I still can't sleep at night. I dream of them still alive somewhere, in this place or that... One day in 2000, I came to work, looked at some newspaper and saw a big headline. It read, "General Stipetić denies there were victims during *Oluja*", and then a passage, I still remember it well: "General Stipetić denies that his honourable soldiers, upon entering the village of Slavsko Polje, found Teodor and Danica Samardžija at their doorstep, set fire to their house and threw them both inside." The newspaper fell from my hands, my arms and legs gave way, and I ended up in the emergency room. I was then taken to the medical center, where I was

diagnosed with multiple sclerosis. It has never been established how I got it, but the doctors there believed that it was because of stress. I had never been ill before. I spent a whole month in the hospital and still couldn't stand up. Fortunately, I had a good doctor who kept encouraging me, "It's all in the will. You mustn't give up! You have to fight to stand up!" I listened to her words and took them to heart, constantly feeling the urge to stand up and start walking. I didn't want to end up in a wheelchair, because I knew I had to fight for the truth about my parents' fate, and I couldn't do that if I could not walk... In the end, I was successful. It took years, but I did fight my way through it – I was finally able to stand on my own two feet, and continue searching for my parents.

One day, I received an e-mail from Ivan Grujić [Head of the Croatian Government Commission for Missing Persons], who informed me that some charred bone fragments had been recovered, and that they had been transferred to Zagreb for forensic analysis in order to determine whether the remains were of human or animal origin, and that I would be notified of the results. He also told me that there were nine "unsuitable" cases. That word "unsuitable" stung terribly. I called him up and said, "Mr. Grujić, please don't tell me that the remains of my parents are among the unsuitable ones." "Unfortunately, Mrs. Bodiroga", he said, "I'm afraid I must inform you that they are. The bone fragments are just too badly burnt, making DNA analysis impossible. We've tried three times and failed." "And, what am I to do now?" I asked, "I was hoping that you would bring me in for identification, so that I can finally bury my parents and sleep in peace." "We will try once more, but I advise you to accept it for what it is and bury the remains, or hope for better times and wait for the technology to advance", he answered.

Later on, I was summoned by the local police in Vrginmost, and I went there on August 13th, 2014. I was received by a certain Inspector Katica, who asked me if I was willing to give blood. "Blood - what blood?" I asked. The inspector replied that they had been receiving notices from Zagreb all the time, informing them that they hadn't been able to identify the mortal remains from my burnt house, because they had no blood samples to compare them against. I was caught completely off guard. I showed the inspector the letter from Mr. Grujić, which clearly showed that both I and my sister had given samples of our blood in 2009, and that they were sent to Zagreb in full accordance with the procedure. The inspector, too, was shocked at that. She immediately called up Grujić's office in Zagreb and turned on the speakerphone. I was able to hear their conversation well. A cousin of mine was also there. She introduced herself to Grujić's secretary and explained why she had called. The answer was - I was able to hear every word of it - "Yeah, the two of them did give blood, but the recovered remains were not human, but animal in origin..." That was another shock. I can't even remember how I got out of the police building. I still can't sleep. I simply don't know any more whom I should talk to, and whom I should trust. The only thing I ask is, to be notified, in writing, about whether they have conducted the analysis at all, and what the origin of the exhumed remains is. I will hold on. I will not give up. I want the truth, because I have the right to know.

The only thing I can say to these younger generations is to listen and learn well what war really means - in a war, it is mostly the innocent who die, the civilians... and this should never again be repeated... And the calls for war should never be heard again, anywhere. I want no revenge. I feel for all victims equally.

Sunčica Antić¹⁰³: My dead father has been listed as alive for 15 years

I am Sunčica Antić. My husband, Negovan Antić, was killed in Kosovo. He was abducted, and then murdered. There are no documents which concern his death, but I obtained some information with the help of the Humanitarian Law Center, and I thank them for that.

After the arrival of KFOR in Kosovo and Metohija, we stayed behind, hoping that we would have no enemies. Then, what happened. On July 31st, 1999, my husband Negovan and my uncle Novica Ilić were dragged from their car and abducted in front of a whole crowd of people in the village of Koretin, in the municipality of Kamenica. Two days later, with the help of one of my dad's colleagues - an Albanian who is now deceased and whom I wish to thank - we found their massacred bodies. Escorted by KFOR, we claimed the bodies and buried them at the City Cemetery in Kosovska Kamenica. But we weren't issued any documents concerning the handover or their murder, or anything of the sort. 15 years have passed since, and there still isn't a single document about that event in existence. I couldn't claim any rights since it was only three or four months ago that I got their death certificate - not even the right to know where their grave is. So, a man who has been buried for 15 years is registered as... not even as missing. He is listed as still alive. So I wanted to draw your attention to the problems of us survivors as well, because I believe there are other families facing the same problems. However, with the help of the Humanitarian Law Center from Belgrade and Priština... anyway, they helped me, and I was able to obtain some documents and finally get a death certificate issued, so that I could claim social benefits for myself and my child. And I think that victims and their families are vulnerable in this regard. They don't know whom to talk to, or who might hear them out and help them. Justice and the courts... or, a just court, and justice... I hope that someday they will bring truth to all the victims, particularly the... I think that the civilian victims are not being paid enough attention. All victims are victims, whatever their nationality. A victim is a victim. I feel for all the victims. I am so sorry.

Ljubiša Filipović¹⁰⁴: Reconciliation first, then the Return

I have never spoken about myself and my family like this. This is the first time. I've always been used to speaking about other families, those I represent as the president of an association. The first thing I would like to say is that it is incredibly hard for the victims' families, especially when they speak publicly. The speaker from the village of Trnje near Suva Reka, who spoke before me... I heard about this case in these meetings, not while I was in Kosovo. He has lost so many of his family, and that is a gaping wound that can hardly be healed. I also have lost a first cousin on my uncle's side in the village of Trnje - his name was Žarko Filipović. No, I haven't lost him - he was kidnapped in 1999. Then, my uncle, Panta Filipović, a medical worker - he was held in the family house, where he was abused and tortured. He too was taken away. He was the kind of man

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who helped everyone. At the insistence of his neighbours, he decided to stay in Prizren. They kept talking him into staying, assuring him that no one would bother him, and that they would protect him if need be. When all those military and paramilitary units passed through Prizren, some men in uniforms came along from God knows where, “Blackshirts” they were called. They didn’t even know him, but they tortured and butchered him. My eldest brother was killed in Mala Kruša.

With the help of the Great Britain Fund, I helped get 10 houses built in Prizren for the returnees. These houses were built on old foundations, but, to this day, no one has moved into any of them. There is no freedom of movement, no one can guarantee their safety, there are no schools that teach classes in their native language, there are no jobs to be had, and a man simply cannot hope to survive there. Efforts need to be put into reconciliation and the return of refugees - permanent return. However, with everything that is going on, I really don’t believe that anyone will ever be able to return there and live as happily and as safely as they used to. But, we do hope for a better future.

I believe that there has to be reconciliation between the people first, and only then will the return be possible. There is just no other way.

Marica Šeatović¹⁰⁵: My pursuit of truth and justice

My husband was murdered in Novska on November 21st, 1999. It happened in the house of his neighbours, the Rašković family. A married couple, Išo and Sajka Rašković, were also killed at the time, in their own house, as was another cousin of ours, Ljubomir Vujić. They were all cousins of mine, actually. They were killed by members of the Croatian Army’s First Mechanized Guard Brigade – “The Tigers”. They broke into the Rašković house sometime in the evening, and found the couple there. “Are there any Serbs around?” they asked. They were told that my husband and our cousin, Ljubomir Vujić, were next door. And then one of them, acting as some sort of commander of theirs, sent two soldiers to bring the two of them back to the Rašković place. Then the torture began. They weren’t just brought over there and killed or, you know, shot - instead, they were tortured in all manner of ways, forced to sing Četnik and Ustaše songs and what not, they even had to sign their names... In any case, there was torture involved, and abuse. This lady Sajka was taken upstairs by one or two of them, and was later found completely naked on the couch, her throat slit and her ribcage cut open. There were also some rags found near the couch, tea shirts and socks and the like. It was all cut to shreds. Blood was also found on the ceiling. I don’t know if it is still there. I wasn’t home at the time. I was in a nearby village with some of my Croat neighbours. But we would go back to our house every day, because two of their boys were in the Croatian army, and when one had a day off, we would go home, just like we had the day before. This neighbour of mine had even asked my husband Mihajlo to come with us, but he wouldn’t have it. “I don’t feel guilty”, he said, “I’ve never harmed anyone, and I won’t leave my house.” Either way, he was on work duty. And that’s it as far as this murder is

¹⁰⁵ The Tenth International Forum for Transitional Justice in Post-Yugoslav countries, November 15-16, 2014, Belgrade, Serbia. Marica Šeatović, Novska, Croatia

concerned. I found out about it three or four days later, and, with the help of these neighbours of mine, we buried them. My search for truth and justice began in 1992. The truth has come out, bitter and hard, but justice was served only partially - or, I don't know, not at all. Then, also in 1992, two men were arrested and remanded in Sisak, since our village is in this municipality, and sometime in September of 1992, the Military Prosecution raised an indictment. Three hearings were held before the Military Court, but then the Amnesty Law was adopted, and the two of them were granted amnesties and released. There was even a comment penciled in on their amnesty, ruling that the prosecutor had no regrets. It wasn't until much, much later that I found out about all this. My first battle began when Mrs. Vujić and I started our search. We went to every institution we could reach. In any case, in 2004, we filed a civil suit for damages against the Republic of Croatia, but the first instance court in Novska promptly rejected it. Then we filed an appeal with the Municipal Court, but the court just affirmed the first instance decision, and I was presented with a bill to pay. With just my pension - which was very small at the time, some 2,600 Kunas, and hasn't increased much since - I had to pay 500 Kunas every month, for 18 months. And, this didn't even include the court's expenses, just the legal aid. In the meantime, we filed an appeal with the Supreme Court and the case was returned for re-trial, but the outcome was the same - rejection, and during re-trial, I was also issued a fine of 10,000 Kunas. It is not yet due, so I might end up with even more fines to pay. When I was notified that I had to pay for the expenses, I contacted some NGOs, starting with Documenta. I even spoke with some journalists - I'm not sure if Boris Pavelić from "Novi List" is present. Him I met in Sisak during a screening of a documentary about Vjera Solar, whose daughter was killed and whom many of you know. Mr. Pavelić then started to write about all this, and our search began. I went to see state attorney Mladen Bajić and God knows whom else - I even visited some MPs and went to the Human Rights Civic Committee, where I met with Zoran Pusić. I have also received help from Croatian NGOs from Novska, so I've really felt like I had strong support, and I would like to take this opportunity to thank them all, along with all these people from Croatia, Serbia, and Sarajevo, because they are all working on the same thing - they are helping us. It has really meant a lot to me. All that support, from all these people, it means a whole lot more to me than someone telling me something on behalf of any institution. An institution just rejects and cuts you off, but, unlike them, I've felt that these people were sincere and acting from the kindness of their hearts.

In 2009 we filed another lawsuit... The two of them had been amnestied and released, but in 2009 we managed - in a way at least - to re-file the criminal charges against those two perpetrators. One of them has died in the meantime. He was burnt to death in some car accident in 1998. The other one has fled to Bosnia and Herzegovina, and, once again, an indictment was brought against him and another individual who still lives in Novska. In the first instance, before the Military Court, our case was prosecuted as a murder. With the help of all these organizations, we managed to get it changed to a war crime, and an amended indictment was brought against the two individuals. One of them was released in 2010, while the other was on the run at the time. He was sentenced in absentia to 20 years before the Municipal Court in Sisak. Then, of course, the state attorneys filed an appeal, and the Supreme Court returned the case for re-trial. Four

war crimes chambers have been established in the meantime, so the case was returned for re-trial to the Municipal Court in Zagreb in 2012. There have been six or seven hearings there so far. I have been present at all of them and, let me tell you, it is really hard on everyone who has had to go through these courts in any of the newly established states we have here. I think that only the strong can endure it all, and only those with the will to persevere until the very end. And all these injustices inflicted upon you in these courts, and the accused and their commanders lying to your face – it is simply unbearable. It is most inappropriate.

In the end, after the re-trial, both of the accused were acquitted. Even the man who had been tried in absentia and found guilty... he was released, and the Supreme Court has... anyway, the verdict has since come into force... I haven't read it, but, in any case, the judge's argument was that the state of Croatia was in some way responsible, because they were killed by Croatian soldiers. So, you could say that I've found at least some satisfaction there.

Amir Kulagić¹⁰⁶: Blossom and springtime remind me of those who are now gone

First of all, I would like to express my deepest sympathy for all those who have experienced war and loss personally, and to wish us all peace; but also to suggest engaging more in joint work for the common good. That is the only way we can achieve at least some sense that justice has been served. I know... Well, first of all, I apologize to all the mothers who lost their children. I think that theirs is the greatest pain imaginable. But, if you'll let me, I would also like to say a few words about my family and my own experience of war. First, I would like to say a few words about my father Safet, who was murdered on May 8th, 1992. He was shot in the back. He was over 60, 100% disabled, and walking on crutches. He had two broken legs, one shorter than the other, so he really wasn't a threat to anyone. He didn't want to leave Srebrenica because he thought, like most other ordinary people, that he hadn't done anything wrong. Around the time he himself was murdered, in the span of just a couple of days, more than 30 other people from Srebrenica, all of them elderly or sickly, were killed in one way or another. Some were burnt alive, others poisoned by chemical weapons. Some were butchered to death. From the methods used to kill all these people, we can see that the goal, so to say, of the murder of these innocent elderly people was, above all, to send a message that all would not end without bloodshed, and to scare those who hadn't run off to the woods in the hopes that everything would be over in some 10 or 15 days. Why is my father's case typical? Firstly, because he and most of these other elderly people were left unburied for days, their bodies strewn across the streets - that too was a message. At the same time, 82 houses were burned down, which basically destroyed any hope that everything would be over quickly without casualties. So, again, why is my father's case typical? Perhaps it is because of these two things. Some time ago, I myself and several other families who had lost their members around the same time filed charges with the OTP. However, we were told that there was no one who could testify. That basically means that we all have the knowledge, but not the admission. First of all, my Bosniak

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friends and neighbours can't or won't testify out of fear, while my neighbors of Serbian nationality are unwilling, probably also out of fear for their lives, or because of some personal belief. Secondly, my father's fate is an example of crime without punishment. There are many similar experiences among us here – yes, we do have the knowledge, but not the admission, and many crimes have gone unpunished, certain to remain in the souls of all of us who have lost someone for a very long time. Besides my father, I have lost a stepfather, an uncle, and his son, a boy of 16. I'd like to say a few words about this boy. He was in Tuzla when he left for Srebrenica and disappeared along the way. My aunt, his mother, was told that he had been found and identified using classical methods. Although sad, at least she was happy to have found his mortal remains. Every day she would visit him, so to speak, and go to Tuzla, to the site where he was buried, or so she was told. However, that turned out not to be true, which was another trauma that she now has to carry in her soul, so to say, and has a very hard time coping with. I am using this example just to emphasize - and at the same time kindly ask everyone who works in a prosecution office, or missing persons commission, or similar organization – please be very careful in what you do, because a delayed trauma can sometimes last even longer, and cause even greater pain than the initial one. Now, why are my uncle and stepfather typical? They were found in four or five separate mass graves, and very few of their mortal remains were found. And, maybe that's what's typical, and I say this for the following reasons. First, I would like to say that I was taught, that is, I thought, that a man could only die once, when he loses his physical life. However, finding someone's mortal remains in as many as four or five different mass graves, that tells us that one can die twice. They would dismember the body and then spread the parts around, destroying most of the mortal remains in the process. I apologize, it is not easy talking about this. Now, the third significant thing in the cases of my uncle and his son, was that, not only had they been killed and their bodies dismembered, but what followed was the systematic denial that these people had existed at all. And this happens quite often. That is the hardest part, one that comes at the end, a coup de grâce, so to speak, against you, your entire personality and all that. And this is probably what most of you here, who have experienced the loss of loved ones personally, find the hardest to bear. Now, imagine how hard this must be for those who haven't even found the mortal remains. Along with those mentioned, I have also lost another uncle, along with his son, whose mortal remains were also found in more than one mass grave. Again, why are my uncles and their sons typical of the situation in Srebrenica? For two or three reasons perhaps, the first being that their bloodlines, the Kamenić and Bektić families, have been extinguished. On his [my other uncle's] side, there was just the grandfather, the uncle who was his only son, and his only son. They are all gone now, and this family doesn't exist anymore. One aunt has died - died of pain, that is - and my other aunt is in fact incapable of reproduction, which means that both families will soon be gone. These are just typical cases, and there were many such cases in the area of Srebrenica. This trans-generational crime of genocide leaves permanent consequences in its wake, and does not end with the physical disappearance, so to speak. What else could I say? Besides them, I have also lost my brother-in-law. He was a very good friend of mine. We haven't been able to get to his mortal remains, and this weighs heavily upon us. The responsibility for the deaths of my stepfather and my uncle lies with a certain Grbić, an officer who was convicted before the B&H court and identified as the individual responsible for

their deaths. He had been sentenced to 30 years imprisonment, but was released a couple of days ago on the grounds that some laws of the former SFRJ haven't been applied, and that some procedural errors were made. Please... This needs no comment, I think. Can you even imagine what a trauma that has been for my mother, my sister and the others? As far as my wife is concerned, she was seven months pregnant when Srebrenica fell. I was hiding in the woods, so we didn't even see each other at the time. She came to Potočari with her father, her grandfather, her mother and her sisters, and... Now, why am I bringing her up? She literally had her father and grandfather snatched from her arms. She was pushing and pulling, and wouldn't let go of them. They were about to rifle butt her in the stomach to kill the baby she carried when my father-in-law cried out, "Please, don't! Let her go and we'll go quietly! Just leave her alone!" What was particularly hard for me, since I had journeyed for seven days and eight nights through these same woods fleeing from Srebrenica to Tuzla, was this image of my wife with her stomach cut open, and the child pulled out and impaled on a knife... even now, that is often a problem for me... so I can see only too well how hard it is for the victims to come forward and speak out about their personal experiences. It is much easier to speak about the experiences of others. Those with the courage to speak of their personal experiences at meetings like this one I consider heroes, not victims. It takes strength to come out here and talk about your pain in front of everybody? It is not just me who has lost someone, my wife too has lost all the male members of her family. What we live with today, me and my family, is that my wife has her traumas, and I have mine. Whenever April comes along, when spring arrives and the flowers start to bloom, my wife and I have a very hard time. Not between ourselves, I meant that we have psychological problems, because that smell, instead of bringing us joy, reminds us only of death, and of those who are now gone. I am sorry.

Nikola Šašo:¹⁰⁷ Their bones have found their eternal home

I am a refugee from Croatia. I lived my entire life in Zagreb. My parents, Ljubica and Petar, lived in Banija, in the village of Ljeskovac, near Dvor on Una. The two of them worked their farm over there. They were both retired. They never harmed a flea in their lives, and they never thought that something bad might happen to them. That day [August 4th, 1995], when Tuđman "freed" the Serbs in Krajina and told them not to leave their homes, my father kind of fell for it and said, "Why should I leave my home, I have never harmed anyone. I have never been in any army, and I have done nothing wrong." But there was danger from the direction of Žirovac, and their neighbours talked them into leaving, and so they left with the column. They loaded mother up, since she wasn't exactly mobile, and arrived in Dvor on Una sometime around 6 p.m. That is where they were captured by the Croatian Army. They surrendered immediately and gave a statement that they wanted to stay. They were separated into two groups – those who wanted to leave for Bosanski Novi, towards Serbia, on one side, and those who wanted to stay on the other. My parents stayed on that other side, thinking they would get to stay in their home. I don't know if they made a mistake or not, because the same would have happened even if they had said that they had wanted to

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go - either way, their names were put on a list by the Croatian Army. So they were registered. The person in charge of taking over... this is all well known... the commander was Željko Krapljanin. The Croatian Army knows it, and Ivan Grujić does too. Everyone does. However, what Mr. Žarko Puhovski said - for you just to walk in and charm someone into giving you information of any kind, that is like walking on nails. Since I lived in Zagreb at the time, I was searching for my parents on my own, non-stop. I believed that they were still alive somewhere... before I found out - and I only found out that they were not alive by accident, from Minister Ivan Grujić's aide. Anyway, it was then that I began searching. These witnesses that were with them, they have all been killed. My father was wounded, they shot him straight in the chest in the basement of some house in Voja Strinake Street in Dvor. Immobile as she was, mother was sitting on her travel bag. She hadn't even managed to stand up before they shot her in the face, blowing her head off. After that... I mean, they were the parents of five children - my brother from the Missing Persons Association based in Serbia, who basically dedicated that entire part of his life to this cause, he has become ill, as I have... and so on... We all ended up with traumas. Most of us have had a heart attack, which is in effect what some of the families here have been speaking about - the quiet killing of entire families in this manner, revealing the truth in small doses and such things. The quiet killing... 19 years later, we were invited to Zagreb, when our blood samples were taken in Osijek for the second time, as we had already given blood to some international organization, but it was deemed invalid. Croatia now refuses to hand over the bones. They won't hand them over because they supposedly need to perform some analyses. It is all a game of cat and mouse. And only if someone is in a good enough mood to leave the door ajar can you walk through and learn some small bit of truth. But I am grateful for that. It's only now that we are starting to think about looking for the perpetrators and those responsible, because the position of the state of Croatia is that there aren't any. Perpetrators? What perpetrators? There are only their own victims. There is no one responsible on their side. And now, for example, after 19 years, we have finally managed to... we were contacted by the Institute for Forensic Medicine in Zagreb, and we claimed the bodies, thank God.

We were persistent, but there are many others who helped make this possible, like the RECOM Forum in Budva, where I also took the floor, just like today, my legs shaking, and spoke about this problem. It was then that this truth slowly started to move into the aether and so forth... The same path lies in front of everyone who has yet to claim the bones. It's a mosaic made up of a hundred pieces and someone's good will at the end, the good will just to let you claim that heap of bones, so that you can finally bury them. To tell you honestly, I was, like, relieved. I am satisfied. I want to thank everyone who helped - Nataša, Grujić - everyone who helped us resolve this.

If this RECOM never takes root, there won't be any other, stronger systems, not a single one, that could unite all of this and, as Dr. Puhovski said, at least adjust some provisions and convince those feudalists to at least give us the bodies. Because, we *are* victims. Not them. We are the victims. And these feudalists should at least agree to give us something, like the bodies of our loved ones, or they should try the criminals that killed them. Anyway, we'll cross that bridge when we come to it, because these trials... There is such a long way to go before these criminals see their day in court. I lived in Zagreb until 2000, and while I was there, Croatia issued arrest

warrants for all Serbs who lived in Krajina. My brother was deported from Vrbovski, near Rijeka, and taken to a prison in Sisak. Wherever you showed up, in whichever municipality in Krajina, there would be arrest warrants in effect for, say, your father, your parents... I don't even know how many warrants my father alone had outstanding, and I am talking about a man of 70 who has never gone farther than the cattle market in his entire life... He never went anywhere. He had a warrant issued for his arrest over the destruction of police compounds and mass murder. Everyone, well, almost everyone, had some arrest warrant of this sort issued for them. And whatever we tried... I spent three years walking around Zagreb without any documents, like a ghost. There used to be a Marija from Zenica working at the police station at Velesajam, and when I arrived there, she told me that there was an arrest warrant for my father. I asked, "What warrant, is it international or Croatian? The Croatian warrants have been issued for all Serbs. The international one", I said, "is the only one I recognize." You just couldn't get any documents issued. Like I said, I had been walking through the streets of Zagreb for three years without an ID like a ghost, until I asked the late Mr. Đukić for help [representative of the Serbian minority in the Croatian Parliament]. I filed a lawsuit against the state and the police. There's just no... all the institutions failed there. That is why I say to you all - I feel for you. I won't take much longer.

And, you have to stay persistent until the end... like we ourselves did, and were finally able to have our parents buried at Orlovača cemetery in Belgrade. They have obtained their eternal home, those bones of theirs. And, for that, we are glad... Now, this other part that needs to happen, finding those who perpetrated the crimes - that is really going to be a walk on nails, knowing how Croatia slams those who have suffered with fines, and then adds court expenses on top of it. Imagine this, I have a pension of 240 Euros, and when I file a lawsuit, they tell me, "Stop right there, these are the expenses incurred by the Office of the Public Defender." You're left with nothing. Does any Serb have the strength to go there and file a lawsuit or criminal charges? But I do believe that now, thanks to RECOM, these issues will get at least somewhat resolved. On an individual basis, it just doesn't hold water.

Thank you very much for listening to me and I wish you all... We have waited a long time, 19 years, and I hope that you all find emotional peace, just as we ourselves have. Thank you very much.

Kada Hotić¹⁰⁸: But how does a criminal go to sleep at night, when the images start coming back?

On this occasion, I am not going to talk on behalf of the association, but in my own name, about what I have gone through. To start, I will have to be brief, because if I were to tell you my whole story, it would take days. I lived in Srebrenica with my husband, son and daughter. Two of my brothers-in-law were also there. So, we were all very close. But the war caught us unawares, we were all surprised, and we didn't manage to leave Srebrenica, just like many others didn't. And after the first attack on Srebrenica, an artillery attack, I fled to the woods with a group of people.

¹⁰⁸ The Tenth International Forum for Transitional Justice in Post-Yugoslav countries, November 15-16, 2014, Belgrade, Serbia. Kada Hotić, the Association Movement of Mothers of Srebrenica and Žepa Enclaves.

It was April. In the meantime, Amir's father, along with everyone else who was immobile or unable to flee the city, was captured, killed and burned. Those who couldn't get out of their beds, were burned in them. Amir [Kulagić] has talked about that. Srebrenica was in flames. I spent 11 days in the woods. There were 56 of us - men, women and children. It was snowing - we had that late April snow - and then it started to rain. Somehow, we pulled through. No one even got a cold. When Srebrenica was set ablaze, we went back to that burnt place to try to continue living there, somehow. But we were being shelled from the hill non-stop. You couldn't even breathe. Soon afterwards, the food ran out. I'm not going to get into what it is like to suffer without food and all of that, or the strain of the journey over the hills into enemy territory, controlled by the Serbs, just to bring back some food. I made that journey 19 times.

The first time I went there, all the nails on my toes fell out. My shoes were a size too large, and during the night I would be carrying 25 kilograms of corn, struggling to survive and feed my family... I would never let my son go over there to try to bring it back himself, I exposed myself instead. It was all like... It was bearable, that agony of shelling and airstrikes... Although there was nothing we weren't hit with. And, they say there were no airstrikes, but they were using MIGs against us. They kept bombing us even after a resolution had been adopted banning the use of aircraft. Some say the planes from Ponikva were agricultural. But they couldn't be shot down, not with a rifle, and few people had those. Amir here knows what it was like over there without any weapons. I, too, know - the defense consisted of 40 odd rifles. Some had that make called... My Samir built some contraption for himself. We were attacked, we had to defend ourselves. We had stayed, we had nowhere to go. But we would have endured it all, all that suffering, and I would have spoken with pride about how we had managed to survive, I would have said that it had been a true work of art, a miracle, to have come back from it all, with no food or water, no electricity, surrounded and wounded. They called themselves generals, but we had no guns - but when Srebrenica fell, we were treated like an army. Our fates were sealed on that 11th of July. I still had hope, and I was happy, happy that we were all still alive, my Samir and my Senad, my husband and my brothers... Some went into the woods, the others were in Potočari. And then Mladić came, with that group of his. They took my brother Ekrem to that white house of some kind which is being talked about nowadays. And my Ekrem is gone now. One of my brothers left for the woods with my son and brother-in-law. They never got through. And, just as I climbed onto a bus... Let me tell you, there were all kinds of buses there from Serbia - "Lasta" and the "7th of July" company from Šabac, and God knows what others. They were used to transport people, to deport them. My husband was about to board the bus behind me, when they put a gun to his neck and took him aside. I looked at him then, and there was a group of people there, just standing around, I can't tell you why or how. He had his backpack with him, with all of our photographs inside. Those were our keepsakes... if only I had those... In this...

I spent two days in Potočari with these people and - dear Lord, the suffering there... There was a woman next to me giving birth in the crowd. A man came and just crushed the baby - it didn't even get to call out, not a single scream. The name was never even recorded, not among the disappeared, and not among the newly born. But that baby was born. Another woman held her

crying baby. “Woman, shut that child up!”, the man said. “What can I do?”, she replied, falling silent, not uttering another word. You could hear a girl screaming. She was from Šušnjari, or so they said. “Leave her alone, she’s only nine!” her mother yelled, at least I think she was her mother. Shoulder to shoulder, not 10 meters from me, they were raping that child. She kept screaming and screaming until she ran out of breath. Then she stopped. It was a crowd. We were all trying to push through to that spot. I was holding on to my husband’s shoulder... Before they took him, that was... I had to go to the bathroom, so I went into a cornfield nearby. There were three bodies there piled on top of one another, their heads severed. There was another house nearby, so I went behind, and - again, nine bodies face down, their heads severed. I went back. I didn’t need to go the bathroom anymore. Then they took my husband away. I felt empty. I had no fear left, no desire, no will of any kind.

Later on, when I crossed over and continued to search, I went to all the hospitals and everywhere, and they told me that my Samir had been wounded. I went everywhere, I searched... but my Samir was nowhere to be found. A month went by, two months... I kept waiting... My Samir was nowhere to be found. I kept his shoes - they were large, size 46. “My Samir will come”, I kept telling myself. He didn’t. He never came back. Not to this day.

I have built up my courage since. I have found the strength to fight and search for the missing, and for those responsible, through RECOM and other organizations from all over Yugoslavia and the world. And I’ve toughened up: I would cry a bit and then remind myself that at least I have no one to be ashamed of. No one of mine was a criminal. Thank God, they were not. I have my pain and suffering, and my tears. But how does a criminal go to sleep at night, when the images start coming back? It’s harder for him, I say. We received one letter from Vlasenica, where one such man describes his life in much the same way. That is a life I wouldn’t wish upon anyone, not even the foe that killed my child.

Mevludin Lupić¹⁰⁹: We need compassion

On May 25th, 1992 exactly, Lupići, the village I lived in, and other nearby majority Muslim villages were surrounded and, within a couple of days, we had all been exiled to the village of Klisa. Over the following night or two, there must have been around at least 5,000 people brought there - men, women and children. On June 1st, in Bijeli Potok [White Stream] - though for us, it was Black -, all men aged from 15 through to 90 were separated from their families, from their wives and mothers, and loaded onto trucks and taken to the Technical School Center in Karakaj. Among others, my father Ramo was in one of those trucks, as were my uncle, my nephews and many others among my relatives, neighbours and friends. There were a total of 668 men in the trucks. At this “technical center” – naturally, we had no knowledge of what was going on over there, not before the trials anyway – between June 1st and June 7th, around 200 of them were

109 The Tenth International Forum for Transitional Justice in Post-Yugoslav countries, November 15 -16, 2014, Belgrade, Serbia. Mevludin Lupić, Association of Families of Killed and Missing Persons from the Municipality of Zvornik.

killed, while some died of heat or suffocation. The rest were taken to the Cultural Center in Pilice, located in the same municipality of Zvornik, where they were tortured and killed. Finally, those who were still alive were taken in smaller groups to Gera's slaughterhouse in Karakaj and killed. All of what I have just recounted had happened within the span of about seven days, and we only found out about it years later. We were living in the hope that they were still alive, and that they would someday show up from somewhere. When the war ended, the search began. Were they still alive? All kinds of information, that is, misinformation, was circulated – that they were in Serbia, that they were in this place or that - right up to the point when the first mass grave was uncovered in Pilica, and then the one in Crni Vrh. I lived with the rest of my family in Tuzla at the time, since we had all been driven out from our homes.

When we returned in 2001, we began our search for their mortal remains, if nothing else. And then, I think it was in 2005, I can't recall the exact date, some indictment was raised, and we were invited by the Humanitarian Law Center to attend the court proceedings as members of the victims' families. I use the words "some indictment", because I knew nothing about indictments at the time, or even where I was supposed to go in Belgrade with my neighbours belonging to the families of other victims. So we were invited, and we came to Belgrade. The court proceedings we attended were for the war crimes perpetrated at the Cultural Center in Čelopek against our neighbours from Divič, not the killings of June 1st at the Technical School Center, Gera's slaughterhouse or in Pilica. But it was because of this trial – and I would like to take this opportunity to thank Ms. Kandić and the Humanitarian Law Center, along with all of their associates who provided support to the families – that the proceedings were initiated for the crimes in Bjeli Potok and Gera's slaughterhouse. That same year [2005], my father Ramo was found in one of the mass graves on the mountain of Crni Vrh near Zvornik. At that moment, all my hopes for life, along with everything I had imagined and dreamed of, had just died. That trial somehow opened my eyes. Somehow, it... then, of course, Nataša and her associates, along with the assurances of the prosecutors and judges that one day justice would be served... inspired me to continue on, to find the strength to simply move forward, because I hadn't found my family yet, my loved ones. To this day, we are still searching for their mortal remains. But, I just can't... I haven't prepared for this speech today. I am telling you all this from the bottom of my heart and soul. Some time ago, I think it was about four years ago, when the court proceedings in Belgrade were completed and I saw my father's name and the confirmation of his death in the verdict, I felt hope that justice would somehow be served. But the sentences imposed... they were what they were. From my point of view, they were catastrophic. The man who had had all the power was sentenced to six years in prison. The man who had had command of the Territorial Defense and all those units deployed there at the time, was sentenced to 15 years in prison. But what encourages me still, is the Assembly held here yesterday. There is hope, because all of you here encourage me, and because I don't want to give up everything, since I have given everything of myself to this issue. I want peace, I want justice to be done, I want the families to one day feel at least some satisfaction... I want us to live on and be able to say that justice has been done, in part at least, and that the truth has come to light, and that the criminals have been punished. But, unfortunately, even in recent days, we could all see what was going on

in the Hague Tribunal, and it is what it is. But I still think there is strength left, and that we can all pull through together, if each of us does their part. I do think that we are powerless, but what gives me courage, is that we are all in this together, and I hope that someday we will be able to sit down and say that we were at least partially satisfied. Of course, our pain will stay with us, but you can comfort us with your compassion. We need it...

Prenk Gjetaj¹¹⁰: The families of the disappeared are the most vulnerable category of people affected by the war

I do not represent any institution here, nor do I represent the Government Commission for Missing Persons of the Republic of Kosovo, which I chair. I have come here to listen and pay my respects to the people who experienced violence and crimes. Only those with humane feelings should walk through the doors of this Forum, because only they can understand the pain and suffering, and the experience of war. A crime is a crime, it has no other name, irrespective of where it is committed, or by whom.

I would first like to say a few words about Nataša Kandić. Some brand her a traitor, others a nationalist trying to erase the distinction between crimes, and so on. I say she is a strong woman, capable of uniting people in their shared pain – the pain of having lost loved ones. What is the reach of truth, and how can we make those responsible accept it? That would be very hard, and one woman or one person alone cannot hope to accomplish this. We all need to work on this.

The families of the missing are the most vulnerable category of people affected by the war. They have been deprived of the right to know the fate of their loved ones. Their position is not one of equality, and their pain does not lessen or alleviate with time. Their nightmare is distinct, and unites them across national divides. In meetings and forums, we have heard a common message - that the missing have just one trait, which also serves as their ethnicity: that they are missing. And, if we try to understand them from this perspective, we will have made significant progress. The families of the missing have been denied not only the right to know, but the right to compensation and reparation as well. They find it difficult to reach those institutions most easily accessed when acting in the name of national communities. A child who has lost a father, a wife who has lost a husband and takes care of a child – having been victimized through no fault of their own, do they not all have the right to at least a modicum of justice, and to live as human beings? If only they could find some satisfaction in the condemnation of the crimes, as we are still very far from establishing responsibility for many of the disappearances.

And, should we give up on establishing responsibility? Of course not, because, above all else, the right to give this up belongs to those who have experienced the violence, and them alone. And I don't see, nor have I seen any representatives of institutions or victims' families of any ethnicity, willing to give up on responsibility for the crimes.

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And when it comes to establishing responsibility, it has to be accompanied by the willingness to apologize.

Everybody says that *they* are the victims. But it is well known who the victims are. Therefore, I do not want to take upon myself that responsibility today and say that Bosnia is, or Serbia, or Croatia, or that the Serbs are, or the Croats, Bosniaks, Albanians... all of this is well known... all too well known. And in any case, that is a job for the competent authorities and institutions, for the prosecutors and courts, for the investigators. The truth is known, but it is being covered up. We all know the truth, and this truth therefore has to come out, and only then will we be able to overcome all the obstacles. That in itself could be a certain kind of satisfaction or rehabilitation for the injustices experienced by the victims.

Munira Subašić¹¹¹: Confidence is what is most needed

I have heard talk of justice and reconciliation many times. I have never heard anyone, or of anyone, talking about responsibility and trust. I think that what the region of the former Yugoslavia needs most is trust between people. We know that the Hague Tribunal was established in 1993 in order to accomplish three things: stop the crimes, bring those responsible to justice and establish peace. However, nothing became of this. I heard what this young lady [Jelena Subotić] said - I was listening very carefully when she said that she would defend the Hague Tribunal. At the end of its mandate, it will be the victims who judge whether it succeeded or failed. Whoever wants to can defend it and say whatever they like, but we victims will have the final say over whether its mandate was successful or not. At the outset, the Hague Tribunal was working well, right up until the staged death of Slobodan Milošević. I lost 22 members of my immediate family, and perhaps more than a hundred members of my extended family, in the Srebrenica genocide, and, as a mother, last year I got to bury just two tiny bones - all that was left of my son Nermin, found in two mass graves 25 kilometers apart. I don't think I gave birth to a child looking like that, I gave birth to a child with both arms and legs, and eyes, and a head, and everything else. But unfortunately, that was all there was. Then again, his name is among those of his friends, neighbours and comrades, all 6,500 of them, and, in a way, I am content. I have found at least some relief in that.

RECOM is a good thing - it is good for these things to be spoken of and not forgotten. But I also think that the victims need to participate more. It's not just about writing a report, or saying that reconciliation or this and that have been achieved. RECOM has to work on building trust among the common and ordinary people, the politicians, the intellectuals and everyone else. That is what I have observed in all of this.

Lastly, some thoughts about the acquittals before this court of ours in Bosnia and Herzegovina. The War Crimes Chamber established within the Court of Bosnia and Herzegovina was also working well in the beginning; but now, lately that is, the people who sit there - and I apologize

¹¹¹ The Tenth International Forum for Transitional Justice in Post-Yugoslav countries, November 15-16, 2014, Belgrade, Serbia. Munira Subašić, the Association Movement of Mothers of Srebrenica and Žepa Enclaves.

to a select few judges and prosecutors – are not those who are most capable, but those who are most convenient. It's the politics that appoint our judges and prosecutors there. And so we victims of genocide can comfortably say that the court in The Hague is also a political court. The acquittals of those generals and Šešelj's release – true, he was a nightmare for them there, but now he will be a nightmare in Serbia – I think that's also politics, to keep a man, or even a criminal, incarcerated for 11 years without a verdict. As ordinary people, we all have to ask ourselves what else is wrong over there.

I would like to kindly greet you all again. I just wanted to open the floor up a bit, so that we can talk more about responsibility and trust between the people in the region of the former Yugoslavia.

Desanka Pejčinović¹¹²: We are willing to kneel and humiliate ourselves for the sake of our children

I am Desanka Pejčinović from Peć, mother of Slobodan, a kid abducted in the city he grew up in. I am also a representative of the Association of Families of Abducted, Killed and Missing Persons in Kosovo and Metohija. It is hard, very hard for us, for the mothers, and the victims - 15 years have come and gone, but for us, it is as if our families and victims were kidnapped and killed only yesterday. We now have to continue on with all the strength we can muster, the same way we have fought for more than 15 years. So the fight is not going to stop; but, unfortunately, almost all the parents of our abducted kids have now died, never having learnt the truth.

I expected much more from RECOM, as did all our families. We expected to get much closer to the truth, and a lot faster, not just through RECOM, but through other institutions as well, both domestic and foreign. I personally, and the families from our association, we expected to... You know, RECOM here is close to us, and the Humanitarian Law Center is close to us - we have been clinging to everyone, and still do. Even an enemy is no enemy to us if he is going to help us get closer to the truth. It is hard living in uncertainty for 15 years. Our families are sick, and we spend every single day living with a spasm that just won't go away. What I want to say - and I will try to be brief because other speakers are waiting – is that a decade and a half has passed, and our victims still feel so humiliated, but we haven't gotten any closer to the truth. And the things we are willing to do, myself personally, and all the families from my association... the things we are prepared to do for the sake of truth... We are willing to do anything, we parents in particular, who still don't know the fates of all these kids of ours, aged 14 upwards. We still don't know anything, and we are prepared to kneel and humiliate ourselves for the sake of our children, and to forgive anyone in order to learn the truth, or at least to get closer to it.

Speaking of forgiveness, Dragica Majstorović, a mother from Priština, asked me to read a poem to you. She wrote it herself, it is about her son Ivan, who was kidnapped in Priština in front of his building, waiting to go into exile with nothing but a handbag. He is still missing, his fate unknown. Here, listen to what we mothers are willing to do. Her poem is titled "Murderer":

¹¹² The Tenth International Forum for Transitional Justice in Post-Yugoslav countries, November 15-16, 2014, Belgrade, Serbia. Desanka Pejčinović, displaced person from Kosovo, Association of Families of Abducted, Killed and Missing Persons in Kosovo and Metohija.

“Murderer, all will be forgiven, just tell me where you buried my son,
Tell me, did you place a stone over his chest, or cover him in sand?
You laid him perhaps in the ground of my land.
How did you judge him, what guilt did you find,
What words did you speak to him at the end?
Did you bind his eyes, or look him bravely in the face, the face of a child?
He had not yet known love, he had never shaved, he was forever waiting for his beard to grow.
Murderer, tell me, did he pray at death’s door?
Did he call for his mother?
What death did you give him? Did you shoot him?
How did you find it in yourself, he was only a child?
Murderer, all will be forgiven, just tell me where you buried him,
Under which tree did you snuff out his life, what colour the grass you covered him with?
How did you find it in yourself to return home, and hug your children?
How did you sleep last night, knowing you had killed my child?
Did you dream of him?
Murderer, all will be forgiven, just tell me where you buried my son.
Or did you sell his heart at the world’s market?”

We are prepared to forgive everything for the sake of truth, to stand in humiliation even. The missing are nowhere to be found, not among the dead or the living, and I kindly ask, not just of RECOM, but of all people of good will, character and open heart, to just help us, please. It is unbearable to wait for the bones to be uncovered, so that I can finally make a grave for him, and pay my respects as a mother. Perhaps I have overburdened you with this, but it is hard for me, and you will understand what I feel better than others could.

THE VOICES ARE THOSE OF:

Ahmetaj, Nora, Center for Research and Documentation, Kosovo

Antić, Sunčica, IDP from Kosovo

Begagić, Hazim, theatre director, BiH

Bodiroga, Nada, *Suza* - Association of Families of Disappeared and Killed Serbs from Croatia, Serbia

Bodroža, Stevan, director, Serbia

Cvetkovski, Igor, International Organization for Migration (IOM), Switzerland

Di Lellio, Anna, PhD, New School, New York University, USA

Dragović-Soso, Jasna, PhD, Senior Lecturer, Goldsmiths, University of London, UK

Filipović, Ljubiša, Association of Families of Missing and Kidnapped Persons in Kosovo and Metohija - Božur

Finci, Jakob, President of Bosnian Jewish Community, BiH

Flere, Sergej, Professor, Maribor, Slovenia

Gashi, Bekim, resident of the village of Trnje, Suharekë Municipality, Kosovo

Gjetaj, Prenk, Kosovo Government Commission on Missing Persons

Glavašević, Bojan, Ministry of Veterans' Affairs, Croatia

Gordy, Eric, PhD, Senior Lecturer, University College London, UK

Gorjanc Prelević, Tea, Action for Human Rights, Montenegro

Grebo, Zdravko, Professor, Law School, Sarajevo, RECOM Advocate

Grubešić, Niko, Ministry of Justice, BiH

Hennessey, Mary Anne, Council of Europe, BiH

Hotić, Kada, the Association Movement of Mothers of Srebrenica and Žepa Enclaves

Hoxha, Dhurata, Inter-ministerial Working Group on Dealing with the Past and Reconciliation, Kosovo

Hribar, Spomenka, PhD, publicist, Ljubljana, Slovenia

Izetbegović, Maja, actress, Sarajevo, BiH

Jovanović, Vanja, Father, Sarajevo parish priest, Serbian Orthodox Church, BiH

Kandić, Nataša, Coordinator of RECOM project, RECOM Advocate

Karup Druško, Dženana, Association for Transitional Justice, Reconciliation and Remembrance in BiH (TPOS)

Kelmendi, Adriatik, editor, TV Kohavision, Kosovo, RECOM Advocate

Kesić, Vesna, journalist, Croatia

Kilmurray, Avila, PhD, Community Foundation for Northern Ireland

Klarin, Mirko, SENSE News Agency

Klasić, Hrvoje, PhD, lecturer, Faculty of Philosophy, Zagreb, Croatia

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Lushta, Rexhep, Hoxha, Islamic Community of Kosovo

Marković, Ivo, Friar, *Pontanima* choir, Franciscan Theology, BiH

Morina, Engjellushe, co-founder of the Kosovo Council for Foreign Relations, Kosovo

Munjin, Bojan, theater critic, Croatia

Mustafić, Dino, director, BiH

Nielsen, Christian, PhD, University in Århus, Denmark

Nosov, Andrej, director and producer, Hartefakt, Serbia

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Ristić, Katarina, PhD, Faculty of History, Arts and Oriental Studies, Leipzig, Germany

Selimi, Selim, Kosovo President's Personal Envoy for RECOM

Slapšak, Svetlana, Professor, Ljubljana, Slovenia

Smajić, Husein effendi, Mufti of Sarajevo, Islamic Community of Sarajevo, BiH

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Šarčević, Ivan, PhD, Friar, Franciscan theologian, Sarajevo, BiH

Šašo, Nikola, refugee from Croatia, parents killed in the Croatian military-police operation *Oluja* in 1995

Šeatović, Marica, Novska, Croatia, husband and friends killed in house next door

Šimić, Goran, PhD, member of the Expert working group of the Ministry of Justice and the Ministry for Human Rights and Refugees of BiH for the development of the 2012–2016 Transitional Justice Strategy in BiH

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