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The Ramifications of the ICTY and the ICJ in Bosnia-Herzegovina Post-Conflict:

Understanding the relationship between Justice and Reconciliation

By

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Declaration form

The work I have submitted is my own effort. I certify that all the material in the Dissertation which is not my own work; has been identified and acknowledge. No materials are included for which degree has been previously conferred upon me. All research conducted was conducted in ruling with the ethics and guidelines and approval of the NRC.

Signed: Denise A. Estrella

Date: 22 May 2015

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Abstract

The ability to foster reconciliation while addressing human rights can be achieved through the ICTY and the ICJ stemming from their use of providing accountability on individual level to a state level, admissions of guilt, removal of war criminals from society, outreach program and establishing historical and legal truths. Within the state of BiH, for many citizens there exists the belief that a failure to administer justice occurred and furthermore it eroded the relations between the ethnic communities and has left a politically corrupt system creating human rights issues, politically, economically and socially. Through the vacuum of the ICTY and the ICJ, reassembling social relationships after the conflict is possible, however, international justice has experienced shortcomings namely when it is measured against victims and perpetrator's claims, being that victims feel 'let down' by the courts and because prevention of future crimes is not eroded but rather continue to permeate within the system.

The aim of the thesis is to further explore the effects of international legal courts through discussions on whether they achieved their purpose. Although the primary purpose of the courts was to provide justice and ensuring accountability for human rights abuses, there is the underlying theme of it aiding in the reconciliation process. Moreover what it is seeking to explore is how this process can be constructed differently in the establishment of future courts and future trials.

Introduction:

If you want peace, work for justice

- Pope John Paul VI

The World rests on three pillars: on truth, on justice and on peace

- The Talmud

Bosnia-Herzegovina¹, between, 1992-1995, experienced the worst atrocity in the European continent since the end of World War II (Hoare, 2010), where mass crimes against humanity, wide spread rape and ultimately genocide occurred. Ethnic cleansing became a goal of the war, and not the consequence following the three year conflict, which over 100,000 people were killed and 2.1 million people were displaced (Rosenberg, 2008). Although each side committed crimes, the Bosnian Serbs were found to have conceived a well-documented plan to carve out an ethnically pure Serbian statelet and aspirations eventually to accede to the Serbian state (Ibid, 2008). As well, the Croatian nationalists, with the support of the Croatian government, also developed a statelet, Herzeg-Bosna, which they wished to join to Croatia (Nettlefield, 2012). During the war, international apathy failed to acknowledge the seriousness of the crimes being committed, and it has even been accused of “standing idly by and watching as thousands were taken to be slaughter[ed]” (Subotić, 2009 p. 3).

Twenty years later in a post-conflict society, Bosnia-Herzegovina's three communities² conflicting goals and interests are a permanent source of crisis which is further inflamed by a government and a constitution that does not meet any of the groups’ criteria but rather has allowed for political elites to flourish and gain further power without providing for their citizens (International Crisis Group, 2014). Corruption is rampant and unemployment is at an all-time high with 65% of people under the age of 30 being jobless and with no sign of this changing with the current system in place (Ibid, 2014). Although the UN and NATO intervened during the war years, and the UN and the EU have been heavily involved in the rebuilding process following the end of the conflict (Ibid), with many projects created in attempts to rebuild and provide a post conflict institution, animosity and tensions still exist,

¹ Although also known as Bosnia or BiH, BiH will be the preferred term used.

² Bosnian Serbs, Bosnian Croats and Bosnian Muslims (also known as Bosniaks); for the remainder of the thesis Bosniak will be used. If Bosnian Muslim is used, it is to denote the preference by the interviewee of the term.

and the lingering effects of the reasons stemming from the war are apparent. One of said problems, lies in Annex 4 of the Dayton Peace Agreement³ since it defined BiH as a state of two entities, with roughly 49% of Bosnia's territory being assigned to the largely self-governing entity of Republika Srpska⁴; and approximately 51% became the Federation of Bosnia-Herzegovina (FBiH) (Orientlicher, 2010), yet it also became a state with three constituent peoples⁵ while also remaining, of all citizens (International Crisis Group, 2014). Within the report by the International Crisis Group (2014); it claims that through Dayton "a suffocating layer of ethnic quotas has been added, providing sinecures for officials increasingly remote from the communities they represent" (p.3). Animosity stemming from DPA, is seen through the creation of Republika of Srpska and its apparent nature in seeming to ratify the results of the 'ethnic cleansing; (Jim Marshall, 2015). Furthermore, Richard Holbrooke⁶believes that the failure to arrest Radovan Karadzic was one of "the most important...things necessary to achieve"⁷

Although the ICTY was created prior to the end of the conflict⁸, recommendations were made stemming from the use of international legal courts in post-conflict justice, such as: prosecutions, truth telling and investigations of past violations; victim's rights, remedies and reparations; vetting; sanctions and administrative measures; memorialization; education and the preservation of historical memory; traditional; indigenous and religious approaches to justice and healing; and institutional reform and effective governance (Bassiouni, 2010: 5). However what begs the question is what occurs when these measures are in place but the community is further divided? Twenty-two years following the establishing of the ICTY, twenty years after Dayton and eight years after the verdict of the ICJ, BiH is still experiencing substantial tension within the communities, people continue to feel suppressed and many speak of another war, with their 'bags packed' and ready in case a conflict erupts once again (Vahidin Omanovic, 2014 [Interview]; Dražen Crnomat, 2015[Interview]).

³ Also known as the constitution. Agreement itself is formally called the General Framework Agreement for Peace in Bosnia and Herzegovina, but it is more widely known as the Dayton Peace Agreement (DPA)

⁴ known as RS

⁵ Bosniaks, Croats, Serbs

⁶ U.S. negotiator at the time of the war, who led the talks stemming into the creation of Dayton

⁷ Although there has been conflicting information which claims that there was an alleged agreement between Karadzic, Mladic and Holbrooke in 1996, if Karadzic helped in the peace process he would be allowed to withdraw from political life and not be prosecuted.

⁸ ICTY was created in May, 1993, the war in BiH ended in September 1995

1.1 Research Outline

This thesis seeks to address the issue of the use of the international courts in post conflict societies and whether the justice that was administered aided reconciliation within BiH. Within the last decade, there has been a rise in institutions of transitional justice, which includes international and domestic trials for human rights abusers, truth commissions, and reparations for victims and other projects that are designed to help societies deal with legacies of past violence and establish reconciliation (Subotić, 2009). In this case the definition of reconciliation I shall use is "the restoration and repair of relationships and through the acknowledgment of war crimes and responsibility" (Clark, 2012:132). It hopes to understand the complexities of administering justice when human rights abuses occur and the efforts made to repair the relationships between those involved. Peace should not be defined as being an absence of conflict, but rather it should be a lasting peace that aids in eliminating the possibility of future human rights abuses from occurring and establishing a society where reconciliation between the groups includes fostering economic, political and social growth in the country. Humans are capable of evolving over time which makes reconciliation possible as the ability to change is what is needed for permanent reconciliation to exist (Stauffer, 2013).

This thesis will first provide background into the country and the war that occurred, setting the stage for the reasons behind the creation of the ICTY and the use of the ICJ. Chapter one will end with presenting the research question. Chapter two will present the conflicting discourses pertaining to the effects of these legal institutions on reconciliation between the major ethnic communities. The theoretical approach used throughout the research will be discussed in conjunction with the methodology that was used in Chapter three and Chapter four will assess whether any limitations were found, to better correlate with how the findings tie in. Chapter five, will present the findings of the fieldwork conducted and finally, a conclusions will tackle what the over perception has been regarding the effects of the international courts and reconciliation in the country.

1.2 War in Bosnia-Herzegovina

The beginning of the final decade of the twentieth century, following the surprise end of the Cold War, began with war breaking out once again on European soil. The Socialist Federal Republic of Yugoslavia (SFRY), began to disintegrate into series of bloody armed

conflicts that continued on for a decade (Reidlmayer, 2007)⁹. This set the stage for its eventual independence in April 1992 by Bosnia from Yugoslavia, through its recognition by European Community and the U.S., creating a backdrop in the rise of the already existing nationalist views of the Bosnian Serbs, compounded with the existing animosity from Serbia (Rosenberg 2008). Immediately after, since the Serbian nationalists were unwilling to live in a newly independent BiH, "the Serb paramilitaries and the Yugoslav National Army (JNA) began shelling Zvornik...compromised of sixty percent Muslims, which fell on April 10" (Burg & Shoup: Rosenberg, 2008, p.143). The result was a war that lasted until 1995, with the country divided, thousands of deaths and the international community in disagreement on the tackling of this conflict following the discovery of the use of rape, torture, and other modes of terror, including ethnic cleansing and genocide. Although the eventual involvement of NATO¹⁰ caused the end of war in 1995 leaving over 100,000 people dead and 2.1 million displaced, the lack of the international response until the atrocity of Srebrenica occurred, was delayed and inadequate (Subotić, 2009). The Bosnian conflict has been categorized as one of the "most brutal atrocities of the Balkan wars, including the genocide at Srebrenica, ethnic cleansing and the use of concentration camps" (Bassiouni, 2010 p.868). Through this war, the association with 'ethnic-cleansing'- the attempt by one ethnic group to purge territory of another ethnic groups by inflicting horrific crimes on their members- reached extreme levels (Orentlicher, 2010) and the group that suffered the largest in the cleansing campaign were the Bosniaks who according to census on the war in BiH, 83.33% of the civilians who were killed or are considered missing; 10.27% Serbs; and 5.45% Croat (Ibid).

One of the worst atrocities stemming from the war, was the mass killing on 11 July 1995 by Bosnian Serbs of 8,000 Bosniak men and boys in Srebrenica, Bosnia (Nettelfield, 2012). Following the events in Srebrenica; as it occurred in a UN 'safe zone' and UN forces handed over the Bosniaks to the Serbian troops, this caused the involvement of NATO who, coupled with the mass killings, crimes against humanity and the use of sexual violence and rape, finally used unprecedented firepower against Bosnian Serb forces in late August 1995. This in culmination with the effects of international sanctions against Serbia and a decisive Croatian offensive against Serb forces in the Croatian-Serb war, led to Serb leaders

⁹ SFRY was made up of seven different states, and following the collapse of the Soviet Union in 1989, five of those states sought independence, leading to various wars occurring in the Balkans region; Slovenia: 1991, Croatia 1991-1995, BiH 1992-1995, Kosovo 1998-1999, Macedonia 2001

¹⁰ NATO: North Atlantic Treaty Organization

participating in negotiations, which were under U.S. mediation, and reaching an agreement to end the war (Ibid, 2010).

Following heavy investigation, Srebrenica was classified as having been a genocide by both the ICTY and the International Court of Justice (ICJ), with the ICTY charging Bosnian Serb leaders Radovan Karadzic and Ratko Mladic with genocide and other crimes (Orientlicher, 2010). Nonetheless, Srebrenica was not an isolated incident, but rather the culmination of the "genocidal program appeased and facilitated by the west over time...rather than draw attention to all those other places where smaller but equally vicious massacres took place" (Ibid., p. 25). Overall, the war resulted in lasting psychological damage which includes both the victims and perpetrators.

1.3 Human Rights and Justice

The foundations for a modern human rights system occurred through the creation of the United Nations and the nearly universal acceptance of the Universal Declaration of Human Rights which were intrinsic to having a check and balance system in the world (Bassiouni, 2010). This new world order to uphold human rights and have accountability for abuses committed, were severely tested during the Cold War as human rights were poorly instituted, led to the absence of the formation of any international tribunals following Nuremburg and Tokyo (Oreintlicher, 2010). With the fall of the Soviet Union in the 1990s and the conflicts in BiH and Rwanda¹¹ and mass atrocities being committed, the need for a new form of accountability to be upheld, led to creation of the international tribunals which were a radical departure from previous legal institutions (Rosenberg, 2008).

The expanding literature at the time emerged with the premise of transitional justice being developed, with a complex set of expectations for countries coming out of violent conflict (Subotić, 2009). Through this literature, the consensus developed by the mid-1990s was one that felt that a link needed to be established between justice and reconciliation with the end of conflict and support for democratic transitions to be instituted (Chicago Principles, 2011) thus the possibility of lasting peace could exist. The Security Council Resolution 827, under

¹¹ Rwanda experienced its own conflict in April 1994, when the Hutus targeted the Tutsi's resulting in the death of approximately 800,000 people over 100 days. The International Criminal Tribunal for Rwanda was created in response and was the sister Court to the ICTY.

the reasons for establishing the ICTY in 1993, states that "the restoration and maintenance of peace" is one of its goals, and furthermore, within the ICTY report of 1994 "[t]he role of the Tribunal cannot be overemphasized. Far from being a vehicle for revenge, it is a tool for promoting reconciliation and restoring true peace¹²." (Rosenberg, 2008). The view of the use of international criminal law being used to create social ties through the 'law' has become a prominent outlook and the shift in justice discourses has been centred on the debate of addressing the fundamental question of how international justice can reassemble 'the social' in more just forms after conflicts (Campbell, 2014). The ICTY and the ICJ have featured in these debates and have been found to be important tools for reconciliation being accessed through justice, since they provide an irrefutable historic record, punish the perpetrators for the sake of justice and deterrence, and promote peace and reconciliation.

1.4 Understanding Reconciliation

What must be understood is that reconciliation itself is a concept in which there is no clear unified view. It is dependent on the experiences of each individual and their community. What is clear is that there are two core elements that can be identified from the wealth of competing definitions. Amstutz 2006: 154; Appleby 2000:194; Bloomfield 2006:28, Philpott 2003:3 as quoted by Clark (2009) agree that "first, reconciliation entails the repair and restoration of relationships particularly at a psychological level" (p. 360) The second element that Clark mentions from a consensus of professors and scholars, is of;

[r]econciliation involving dealing with the past, taking responsibility and acknowledging wrongdoing. [A]s a critical first step, guilt needs to be recognized with the acceptance of responsibility for atrocities or other events symbolizing intercommunal and interpersonal relations" (Jeong 2005 p.156; Clark 2009 p.361).

Acceptance of guilt by the individuals of the country is the first and foremost step, assessing international guilt of how the conflict was handled during and afterwards, comes later.. Stauffer (2013) mentions that it should also be considered that reconciliation may not be the goal of a community "in transition from conflict to peace or cessation of violence. It may be, for reasons widely apparent, that there can be no reconciliation with the enemy" (p.

¹²Resolution 827, formally establishing the ICTY, was the first war crimes court established by the UN and the first international war crimes tribunal since the Nuremberg and Tokyo tribunals.

28), and further explains that it could be related to cultural attitudes and histories. Nonetheless, the problem that transpires, is that individuals inside and outside the region have formulated their own views about who is responsible for committing such crimes, thus making reconciliation difficult for the international legal mechanisms to develop.

Rosenberg (2008) explains another form of reconciliation, one which is used in the context of "transition from identity-based atrocities, such as ethnic cleansing or genocide, to a new democratic state, the term is loosely used to mean people re-establishing prior connections 'across ethnic, racial or religious lines' (Weinstein & Stover, 2004; 2008 p.139). A moderate understanding of reconciliation would lie between simple coexistence and complete repentance and forgiveness (Rosenberg, 2008), but while complete repentance and forgiveness are the utopian model, even simple coexistence has been hard to achieve. Within Bosnia, for many the view of no definite 'winner' or 'loser' has led each group to formulate its own narrative with the other side being the perpetrator (Jim Marshal, 2015[Interview]). Some scholars believe what could have aided and have been more effective in correlation with the ICTY would have been a truth and reconciliation commission. Although the existence of one did occur in 2002, it was plagued with multiple issues and criticisms and was terminated in 2003¹³(Worthington, 2006). Furthermore, the international trials that were conducted at The Hague were "domestically rejected as illegitimate victor's justice" (Subotic, 2009 p. 5). The question that does need to be addressed when dealing with cases where crimes against humanity occurred and especially with genocide having been present is the assessment of the human rights abuses and ensuring that they are discussed and dealt with, properly and effectively.

Stemming from the creation of the first Tribunal regarding the war in Former Yugoslavia, the use of International Criminal Courts as a force to try individuals and states on war crimes, has become a widespread tactic. The creation and institution of International Criminal Tribunal for Rwanda (ICTR), Special Court for Sierra Leone, Special Tribunal for Lebanon, Special Tribunal for Cambodia, the International Criminal Court and the Ad-hoc Court for East Timor, were based on the idea of post-conflict justice as a response to human

¹³ The Commission for Truth and Reconciliation was established in 2002 however, the Commission was annulled in 2003 when FRY was transformed into Serbia and Montenegro since the existence relied on a mandate from the Federal presidency, an office that was eliminated with the end of the Federal Republic of Yugoslavia (FRY).

rights abuses such as crimes against humanity, genocide, mass killing, etc.. Whether these courts can foster a reconciliation process within the states in which they operate or if they further hinder the process is crucial. To quote Staub et al. (2008), "Lasting peace requires changes in the attitudes of people in each group towards the other," a concept that can either be repaired or exacerbated through the international courts.

1.5 Research Question

Using Bosnia and Herzegovina as a case study, the author's focus is on the verdicts of the ICTY and the ICJ and the administering of reconciliation through the vacuum of justice, which ultimately can aid in establishing peace.

1. Whether the ICTY and the ICJ have been able to foster reconciliation while addressing human rights between Bosniaks, Bosnian Serbs and Bosnian Croats?
2. Has the ICTY and the ICJ provided accountability from an individual to a state level within the country?
 - a. Their ability to reassemble social relationships following the conflict, by challenging and reviewing the basic premises on which international justice is founded upon and the effects it has had on achieving reconciliation and protection of human rights

Chapter 2- Literature Review

This chapter will explain the International Court Tribunal for Former Yugoslavia (ICTY) and the International Court of Justice (ICJ) and the roles they have played in post-conflict justice pertaining to Bosnia-Herzegovina. It will look at the different opinions that are held by scholars and the conflicting discourses that have emerged as to whether these courts have been effective or lacking in aiding the reconciliation process of the country.

2.1 Conflicting Discourses

A debate within various levels of society, regarding the best methods on ensuring accountability for war crimes that operate in conjunction with reconciliation, has been ongoing, which in turn established guidelines such as the *Chicago Principles on Post-Conflict Justice* (2011). While constructing effective strategies to be placed in post conflict states, for some, the reconstruction of a country cannot work without the elimination of denial of facts from the perpetrators. Stauffer (2013) believes that survivors of wars want the harms they have experienced to be heard and that the wrongness committed be acknowledged not only by the perpetrators but by the surrounding society. As such they seek the help of others to “reassure themselves that they are living in a world with others, one in which they will be protect when they are under treat. They seek meaningful human rights” (p.44). This ultimately leads to an absence of trust which is readily apparent in BiH (Johansen, 2010).

The most conflicting discourses that can be heard are the narratives that each community views as their own with each side claiming that crimes were committed in an act of self-defence in the face of the other group's aggression. For Bosniaks, 'Greater Serbia' was the purpose of the war from Serbian aggression; in contrast the Bosnian Serb views that a civil war occurred and Bosnian Croats claim that foreign aggression from Serbs, Bosniaks or both occurred (Johansen, 2012). Furthermore, leaders of all three major ethnic groups have treated their respective convicted war criminals from their own ethnic group as war heroes (Adis Hukanovic, 2015 [Interview], Orientlicher, 2010). The government has in the past strongly encouraged war-crimes suspects to surrender to The Hague, as a sign of patriotism for the common good of the nation and the state (Subotić, 2009).

For Jon Elster (2010), understanding reconciliation is a prerequisite for stable peace that needs to be accompanied by several other factors if it is to be realized; addressing past

grievances is necessary to create a future of coexistence where a relapse into conflict is unlikely. The ICTY works on the basis of bringing justice to those responsible for serious violations (its judicial purpose) and to contribute to restoration and maintenance of peace in the region (Shany, 2009). As a tribunal seeking to prosecute individuals of war crimes, it is an important mechanism for reconciliation not only through its four-point mandate¹⁴ but as well through its purpose of establishing truth and administering justice and being a vehicle for historical narratives (Burke-White, 2014). In the context of the ICJ, its importance lies not in the number of cases, but on the principles of international law and the basic legal reasoning which sets out international judgements (Hoare, 2010). Pertaining to BiH, the adjudication on state responsibility for the genocide that occurred in Srebrenica was crucial as it led to the verdict, in 2007 on a case; for the first time that a sovereign state stood on trial for genocide (Milanovic, 2006). What these two courts provide is criminal responsibility for grievous atrocities and mass violations of human rights and the laws of armed conflict (Ibid, 2006).

2.2 The Establishing of the ICTY

On 25 May 1993, the UN Security Council Resolution 827 established the International Criminal Tribunal for the Former Yugoslavia, with primary jurisdiction over international crimes committed in the former Yugoslav territory. The jurisdictional power it possessed:

[g]ave the Tribunal the authority to prosecute any cases it wanted to and even to assume jurisdiction away from domestic courts if it so chose. Endowed with significant international funding and a strong mandate for accountability in the region, the ICTY began the investigation and prosecution of international crimes from the region with

¹⁴ To further support the process of strengthening the rule of law, the Tribunal is actively involved in transferring its expertise to legal professionals from the former Yugoslavia so as to assist them in dealing with war crimes cases and enforcing international legal standards in their local systems. In implementing its completion strategy, the Tribunal has transferred several ICTY cases, as well as numerous investigative files, to national authorities and courts in the former Yugoslavia. These transferrals, mainly to courts in Bosnia and Herzegovina, have resulted in many convictions being secured and truly provides a new dimension to the principle that its jurisdiction runs concurrent to national courts. The Tribunal is especially committed to assisting the War Crimes Chamber of the State Court of Bosnia and Herzegovina. The ICTY has also provided substantial assistance to the War Crimes Chamber of the Belgrade District Court as well as the Croatian judiciary dealing with war crimes cases, and will continue to do so.

From <<http://www.icty.org/sid/324#establishing>

much of its early efforts focused on crimes in Bosnia & Herzegovina (Burke-White, 2014 p.6).

Furthermore, it was meant to "hold leaders accountable, bringing justice to victims and giving them a voice, establishing facts and developing international law and strengthening the rule of law" (Nettlefield, 2012 p.3). Following the end of the war in 1995, in the first decade after the signing of the Dayton Peace Agreement, all significant prosecutions of international crimes were undertaken by the ICTY (Burke-White, 2014). During that period, the domestic courts were struggling and there were few cases that were prosecuted with approximately 54 domestic war-crimes prosecutions documented to have reached the trial stage before 2004 (Ibid, 2014). The discourse on the effects and the role of the ICTY arose as a result of the administration from the perspective of 'victim's justice' or a benevolent justice mechanism (Judge Theodore Meron, 2015[Seminar]).

2.2.1 Efficiency of the ICTY

The ICTY record is impressive when one views that all 161 people charged have been indicted and only two cases remain¹⁵. It has achieved great success in certain areas such as: treating rape as a war crime, indictment of a sitting head-of-state and the court was able to impact the evolution of the domestic courts (Nettlefield, 2012). Additionally, the ICTY judgement on *Krstic* case, citing that genocide did in fact take place, was monumental going forward in recognizing the severity of the conflict and for the victims to feel vindicated. As a human rights campaigner stated "[a]fter this decision, there is no negation and refusing of the fact that genocide happened" (Orientlicher, 2010 p.20). Moreover, there is the fact that through the ICTY, the crimes committed in Prijedor; a region overlooked by the ICJ case (*Bosnia v. Serbia*) when passing its verdict on genocide, has provided documentation of these crimes, making those affected feel a sense of vindication (Kemal Pervanic, 2015[Interview]).

There has been an emerging body of research that finds evidence that the tribunals have been beneficial for peace within BiH and other former Yugoslav state. For some the justification for the establishment of these tribunals are based on the belief that it provides "retribution against criminal perpetrators to the restorative impact criminal trials can have on

¹⁵ Ratko Mladić and Goran Hadžić, were arrested and transferred to The Hague, thereby ensuring that none of the 161 individuals indicted by the Tribunal remain at large-
<http://www.icty.org/sections/AbouttheICTY/OfficeoftheProsecutor>

impacted communities” (Burke-White, 2014 p.1). It has also contributed extensively to capacity-building and knowledge transfer between international and national courts, which has been beneficial in assisting in the prosecution of lower level perpetrators (Clark, 2009). In terms of the exit strategy of the Tribunal, local prosecutions have been perceived as vital and Tribunal officials have always envisioned handing off their cases to local authorities when the time came (Bassiouni, 2010)¹⁶. Furthermore, Vice-President H.E Judge O-Gon Kwon points out that the ICTY was intended to be a temporary ad hoc court and was to prosecute those most responsible for grave crimes’ but has benefited the state in remaining active;

[J]ustice and accountability are necessary components to any responsible plan to heal the wounds of the past and to lay a framework for the future of a society that has been wracked by armed conflict...It is so because, although gross violations of people's human rights can never truly be redressed, justice nevertheless remains one of the most important ways to put the past to rest, so that people will not feel the need to exact revenge on their own" (Bassiouni, 2010: 146).

Meernik and Guerrero (2014) contend that the ICTY's role in singling out individuals for primary attribution of responsibility of international crimes allows for the victims and members of those affected to place blame upon specific individuals rather than all members of the ethnic group. Within her report Orientlicher (2010), mentions a conversation with journalist Gojko Beric,

[i]f there was no Hague, Milosevic would probably still be in power. If nothing else, he would at least be the head of his political party. Many ICTY convicts would still be active in politics and at this moment, [come] summertime, these individuals would probably be having their vacations in some resort" (p. 582).

Prominent scholars have pointed out that the trials do bring peace and democracy to countries in transition since they can provide punishment and retribution (Sikkink and Walling, 2007). Although the idea is one that has been controversial, as transitional justice has been thought

¹⁶ There were two UN Security Council Resolutions addressing the closure of the ICTY around the time of the protest: UNSC Resolutions addressing the closure of the ICTY around the time of the protest: UNSC Resolution 1503 (2003) (S/RES/1503, August 28, 2003) and UNSC Resolution 1534 (2004) (S/RES/1534, March 26, 2004)

to work better within countries that, already have or have experienced democracy¹⁷, (Mendeloff, 2004), the Tribunal can provide justice through its ability to determine guilt and also by creating historical and legal truths regarding the wars in the Balkans which is crucial for stabilizing peace in the future (Wilson, 2014).

In terms of reconciliation, the ICTY has been used more constructively in the trans-generational process of reconciliation. Most importantly, the ICTY meets the criteria of reconciliation on two points that are often attributed to being part of constructing reconciliation discourse: justice and truth (Meernik & Guerrero, 2014). For former President Judge Theodore Meron, the core of the ICTY is to provide justice and to support the enforcement of sentences and maintain archives for the historical and future purpose (2015 [Seminar]). Wilson (2005) maintains that through historical records, the ICTY "[c]hallenges the long-held assumption in socio-legal scholarship that courts are inappropriate venues to construct wide-ranging historical explanations of past conflicts" (p. 909; Meernik & Guerrero, 2014 p.387). Staub (2013) also coincides with that point and believes that "effective justice processes inherently acknowledge people's suffering, increase feelings of security as the world says that what was done is unacceptable, and recreate some balance in group relations after victimization diminishes a group" (p. 584-5).

On its webpage, the ICTY notes its list of accomplishments as: holding leaders accountable, bringing justice to victims and giving them a voice, developing international law and strengthening the rule of law¹⁸. Furthermore, when discussing reconciliation, ICTY Prosecutor Dan Saxon points out that defendants who express a focus on reconciliation are soundly applauded by international criminal tribunal (Wilson, 2014 p.17; 2005 p. 559-72).

2.2.2 The ICTY's failure to contribute to reconciliation

Although the ICTY was created by the UN Security Council to advance a number of goals including providing justice, deterring human rights atrocities and advancing peace, it has been extensively critiqued as lacking effectively in these spheres. Meernik & Guerrero (2014) write that when viewing BiH, the "fostering of greater levels of inter-ethnic cooperation and harmony in Bosnia-Herzegovina is often viewed as critical to that country's

¹⁷ It must be pointed out that the relationship between democratization and social movements is complex and not all movements contribute to the democratizing process either

¹⁸ <http://www.icty.org/sid/324>

peace and prosperity" (p. 383); furthermore, although the main objective of the ICTY to provide justice is substantial; since it is a court, it simultaneously stands to deter human rights atrocities and to further advance peace.

Clark (2009) indicates that the use for the ICTY, through its mechanism of providing 'truth' can aid in reconciliation, and that "the denial of truth breeds resentment, anger and frustration, and thus obstructs the reconciliation process. It does not, however, either support or undermine the notion that disclosure and acknowledgement of the truth, aids in the reconciliation process..." (p.257). Moreover, "[j]ustice may call for truth but also demands accountability. And the institutions for securing accountability-notably, trial courts-may impede or ignore truth" (Minow, 2010 p.9; Stauffer, 2013 p.39). Clark (2009) further advocates for a realistic view of reconciliation existing in BiH and whether the ICTY has helped in changing the perceptions of each ethnic community towards one another (Meernik & Guerrero, 2014; Clark, 2009a, 2009b, 2009c, 2009d). In this regard, the ICTY was meant to provide a means of redress for victims, ending cycles of violence thereby establishing a historical record and individualising guilt.

The problem, according to Subasic & Curak (2012), is that the Tribunal's authoritative record established a limited version of truth since the facts that were established according to the Tribunal's rules of admissibility of evidence only allow for case-concrete facts to be taken into consideration. This hinders the ability of the ethnic groups to reconcile with one another since there is limited information available. There have also been instances where a small number of defence attorneys, at the ICTY, viewing the process of the trials as being fundamentally political in nature and with some of the practices of the ICTY as being unfair. Hartman (2009) has criticized the ICTY Appeals Chamber for improperly denying victims of the mass atrocities the ability to access information critical to their ability to obtain reparation for crimes committed against them.

Palassis (2014) cites the lack of financial reparations of the courts and how there has been lack of victim-oriented reparations approach, which could have assisted in attainment of long-term stability, as a failure on behalf of the ICTY towards the victims. Wilson (2010) acknowledges how, within the UN Security Council's Resolutions, there are inconsistencies on the use of the international Tribunal's prosecutions to reconcile parties to a conflict, deter future conflicts and restore peace, which leave many feeling confused and dejected that the UN cannot create a proper protocol. Resolution 808 (23 February, 1993) declared that an international tribunal "would contribute to the restoration and maintenance of peace" but UN

Resolution 827 (25 May, 1993) established “an international tribunal for the sole purpose of prosecuting persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia” with no mention of a peace-building function (Wilson, 2010 p.16-17).

2.3. Overview of the International Court of Justice

26 February, 2007 marked a milestone stone in the development of international law and introduced state level ramifications for human rights abuses. A sovereign state, or the first time in history, was held on trial for genocide before the International Court of Justice (ICJ). Prior to that, developments to international human rights law were instituted; however, it was based on the expansion of reparation to include a right of victims (Rosenberg, 2008). This development led to an increase in cases demanding reparations for human rights abuses being brought to the ICJ, the principle organ of the United Nations, which has civil jurisdiction over cases brought between states and can offer civil remedies (Ibid, 2008). *Bosnia v. Serbia* arose from a suit brought by the Republic of Bosnia-Herzegovina on March 20, 1993, against the Federal Republic of Yugoslavia regarding its alleged violation of the Convention on the Prevention and Punishment of the Crime of Genocide (Abas, 2007). Regarding Srebrenica, where 8,000 Muslim men and boys were systematically killed in a decreed UN 'safe zone' (Hoare, 2010), the genocide that occurred was perpetrated by the remaining elements of the Yugoslav army in BiH, the VRS¹⁹ which, at this time, had been joined by Bosnian Serbs who were serving in the Yugoslav People's Army (*Jugo slovenska narodna armija*) with both groups acting under the direction from Belgrade, Serbia (Abas, 2007).

As a court with jurisdiction for inter-state disputes with the role to focus on international responsibility of states arising from wrongful acts, the ICJ takes a top-down approach as it focuses on the responsibility of the state and not on the individual (Judge Hisashi Owada: Bassiouni, 2010). While courts such as the ICTY face political and financial constraints thus only charging the high officials in hopes to cut costs and leaving many other perpetrators absent, the ICJ plays a complementary role to "other international tribunals that address directly the issue of pursuit of justice through holding individuals to accountability. In this respect, the function of the ICJ is the determination of international responsibility of states" (Judge Hisashi Owada, Bassiouni, 2010 p. 138). While the outcome of *Bosnia and*

¹⁹ The Army Republika Srpska also known as the Volska Republike Srpske (VRS)

Herzegovina v. Serbia and Montenegro has been heavily criticized, even by members of its court; which will be addressed later in this thesis, its purpose of attempting to find Serbia guilty of its involvement in the Bosnian war and the genocide that occurred in Srebrenica was important in its commencement of the trial for the ethnic communities. The international courts believe that their role is of providing justice and thus accountability is established (Judge O-Gon Kwon, Bassiouni, 2010); for the people, on the other hand, justice and reconciliation go hand-in-hand, If 'proper' justice is achieved than, reconciliation can be facilitated.

2.3.1 Debating ICJ's role in reconciliation within BiH

In the case of *Bosnia v. Serbia*²⁰, the ICJ's verdict found that Serbia had not committed "genocide through its organs or persons whose acts engage its responsibility under customary international law. The Court, however did find that genocide occurred in Srebrenica²¹" (Abas, 2007 p. 871). Ultimately, ICJ acquitted Serbia of genocide and any other related offences and found it to be guilty of failure to prevent and punish genocide (Hoare, 2010). Nonetheless, while the ICJ has been heralded for its jurisprudence lying not in the number of cases it decides on but rather the principle of international law and basic legal reasoning which it sets out in international judgements (Milanovic, 2006), what exists is a paradigm of law and justice that calls for the perpetrators, individuals and states, to be held accountable for their crimes. Within this context, the outcome of *Bosnia v. Serbia* was seen as important for rebuilding BiH as, similar to the ICTY, it would aid in the establishment of the common 'truth' about the conflict (Hays, 2005).

Drumbl (2009), speaking at the Conceptions of Justice in Responding to Conflict conference addressed his belief " that when discussing the role of international courts, in particular the ICJ, addressing conflict [j]ustice transcends the courtroom and the jailhouse. Although accountability for atrocity is a shared cosmopolitan value, pluralism suggests that the process of accountability should take different forms in different place." As Gowlland-Debbas (2009) noted as well, the ICJ's function, regarding responses to harm caused during violent conflict is valuable. He further adds that "early ICJ judgments emphasized the need for state

²⁰ Bosnia-Herzegovina, will be Bosnia, when referring to *Bosnia v. Serbia*

²¹ Heavily influenced by the fact that the ICTY has accepted and proven beyond reasonable doubt that the mass murder at Srebrenica was genocide.

reparations for damage caused, while more recently the Court has stressed the importance of simply recognizing legal breaches and restoring legal relations between states" (Conceptions of Justice in Responding to Conflict [Seminar]). For the *Bosnia v. Serbia* case, it fell into the latter's category which Gill (2007) would agree with. For Gill (2007), although the final verdict given by the ICJ on the case was lacking, he believes that even though there was a lack of financial compensation to Bosnia, it was beneficial for reconciliation efforts between the two groups involved. "Under the circumstances, it was - on balance-probably the wisest thing to put the case to rest after fourteen years of litigation and trust to future developments to provide any additional form of admission of responsibility and possible compensation as part of the process of reconciliation."

Many scholars hold a belief that the ICJ is a vehicle for providing justice and solely should act as such (Hays, 2009); in that capacity regarding the verdict of *Bosnia v. Serbia*, it completed its mandate (Shany, 2009). According to Shany (2009), expectations of international courts, such as the ICJ being used for more than simply justice and law, are not well founded. Although their purpose can be better served by "offering a non-violent outlet for the resolution of simmering low-level and mid-level international conflicts, their contribution to the resolution of [Bosnian war] has been modest." Waters (2008) agrees and believes that using Courts as vehicles for aiding in reconciliation is not well founded "I think really what it suggests is that courts are not very good instruments for achieving reconciliation in international politics... They're not really good narrative history tellers and what we really need in sense are common histories, common narrative, to have reconciliation."

Nonetheless, for many opposing scholars, reconciliation should have played a greater factor in the verdict and as such, the final decision has had a severely negative impact (Rosenberg, 2008). The final decision's impact on the one hand, Bosniaks and Serb communities have come no closer to a unified version of the truth, nor have the Bosnian Serb leaders been ready to truly accept responsibility (Jim Marshall 2015[Interview]). On the other, dealing with Srebrenica, the victims feel a sense of betrayal by the legal system; however, at a state level, it has caused Bosniak and Croat politicians to strengthen their calls for dismantling the RS Entity as a genocidal entity (Abas, 2007). The decision of the Court to rule against Belgrade "says that not only individuals can commit genocide but also states as such" (Grant, 2007).

Abas (2007), contends that the control test that was administered by the ICJ regarding whether or not Serbia was guilty of having been complicit in genocide in BiH was problematic. "[I]t practically made nonsense of the very essence of the attributability principle" (p. 895). One of the main issues that arose during the proceedings was the Court's lack of giving necessary information to the Bosnian legal team (Rosenberg, 2008). This lack of information sharing of

[t]he Court' handling of Bosnia's request that Serbia be required to disclose such vital materials was, to say the least, utterly strange...The Court in *Bosnia v. Serbia* should have granted Bosnia's request, even if Serbia would refuse, with the consequence that Bosnia be allowed to liberally draw its references while the court takes a formal note of the refusal....It is even more troubling that the Court would so glaringly incorrectly apply the provisions of its own Statute on the back of it all" (Abas, 2007 p. 898).

Kress (2007) cites the bafflement of the ICJ finding by stating that "Serbia is responsible for failing to prevent and punish genocide, but said failure does not require monetary compensation"(p. 75). The issue with the verdict was as, Hoare (2010) describes, that it defines genocide so narrowly which comes at a cost for genocide prevention. According to Hoare (2010), the ICJ verdict dictates that "[s]omehow, Serbia was supposed to have guessed that at Srebrenica three years later, the Bosnians Serbs had acquired a genocidal intent. The problem with this is that the court has defined genocide as something that is determined not by actions and evidence, but by what was in the minds of the perpetrators, something that is difficult...to determine" (p. 195). Furthermore, former Vice-President of the ICJ, Judge Al-Khasawneh, agrees that the limited definition that the ICJ verdict essentially given to genocide was, as he stated ill advised;

The Court has absolved Serbia from responsibility for genocide in Bosnia-Herzegovina- save for responsibility for failure to prevent genocide in Srebrenica. It achieved this extraordinary result in the face of vast and compelling evidence to the contrary (2011[Dissent]).

According to Shany (2009), ICJ has been lacking in its capability and ultimately the verdict given did not act as a deterrent for future conflicts. The final decision's impact on BiH's reconciliation process is paradoxical at best (Rosenberg, 2008); "[o]n the one hand, the

Bosniak and Serb communities are no closer to a unified version of the truth, nor are the Bosnian Serb leaders genuinely ready to accept responsibility" (2008 p.149). Some scholars have found that the ICJ decision also "awoke a sense of psychological insecurity among Bosniak returnees, which politicians exploited to the maximum" (Raffi Gregorian, Principal Deputy High Representative, 2007; Rosenberg, 2008 p.150). For Shaw (2007), the verdict was simply a "compromise judgement, giving something to the Bosnian victims but largely denying the Bosnian genocide and exonerating the Serbian state of its role" (www.opendemocracy.org)²².

2.4 Clarification of the role of the ICTY and the ICJ

Both, the ICJ and the ICTY had the ability to aid in the reconciliation of the country on an individual and state level, but there has been a failure on both these accounts. Rosenberg (2008) explains that "[t]here are risks and consequences involved in post-conflict international justice, and as a result, claims about international justice should be tempered to match the reality of what it can achieve in any given context" (2008 p.159). Although citizens within BiH, and those working on reconstructing stable relations among groups, are aware of the limitations of the international courts, a failure to act further did exist. Stauffer (2013) contends that "[a]nyone can refuse to acknowledge the other, can dehumanize, oppress, persecute, or murder the other. But not one inhabits a world such that she escapes her bodily site and evades being affected by other. This is why violence has such a hold on us. We are vulnerable by definition" (p. 41).

²² *The International Court of Justice: Serbia, Bosnia and Genocide*: www.opendemocracy.org

Chapter 3- Methodology

The following Chapter will contextualize the theoretical approach that was used and explain the methodology of the field work and the thesis, while Chapter 4 presents the limitations of the research. This thesis draws upon a wide range of sources, and includes qualitative interviews conducted in Bosnia and Herzegovina in 2014 and 2015 on two different research trips. The use of Bosnia-Herzegovina as a case study was chosen as it allowed for different methods and sources to be used, while also being able to discuss the conflict on a local level through in-depth interviews. The case study design, as approached by Andrade (2009), is to occur in a natural setting with the "intention to comprehend the nature of current processes in a previously little-studied area, it allows the researcher to grasp a holistic understanding of the phenomenon under investigation" (p. 45; Creswell, 1998; Eisenhardt, 1989). The thesis included ethnography, semi-structured interviews (Neuman, 2003), with a social impact assessment of what is occurring with the focus being on reconciliation occurring through justice. Through a constructivist approach, there is the understanding that not all individuals will have the same comprehension of certain concepts (Tuli, 2010) and acknowledges that interviewees may interpret the same questions differently. Further, as reconciliation is an abstract process, it was necessary to establish what each individual believed justice to be, which in turn aids in comprehending their view on reconciliation. The principles of cooperation and reciprocity between individual persons within affected societies are heavily relied upon in the reconciliation process; this becomes crucial to understand the perceptions of individuals who have to reconcile with one another.

3.1 Constructivist Approach

Two major philosophical traditions exist within research theory- positivist and interpretivist²³ (Williamson, 2006) which are two contrasting modes of research on the nature of reality. For positivists, "the field of science, knowledge can only be based on what can be observed and experienced" (Ibid, 2006 p.84), while in the last few decades an argument was made that research practice should focus on understanding "the meaning that events have for the individuals who are being studied (Tuli, 2010 p.3) thereby creating an interpretivist perspective.

²³ Also known as interpretive

For human rights scholars, it is noted that a general divide between analysts who use quantitative methods and those who rely on qualitative ones (Nettlefield, 2012) exists. Contrary to quantitative methodology, which is based on the positivist paradigm, a qualitative approach is an interpretivist or constructivist paradigm and contends that reality is subjective, multiple and socially constructed by its participants (Tuli, 2010). Using this the researcher is permitted to work with individuals using this approach and, as Tuli (2010) explains, "qualitative methodologies are inductive, that is, oriented toward discovery and process, have high validity, are less concerned with generalizability, and are more concerned with deeper understanding the research problem in its unique context" (p. 5). Williamson (2006) further explains how there exists two major constructivist approaches- one focusing on individual, personal constructions and the other on shared meanings that could be said to reflect social constructions. The latter approach was applied to this research, although tenets of individual constructs do play a factor as individuals were interviewed about their own personal experiences. However, due to the work or job they possess, while individually based to an extent, it as well reflects the social outlooks of the group or institution.

The key component of this thesis is based upon how the international legal courts of the ICTY and the ICJ have impacted reconciliation in the region, and comprehends there are various components to consider when attempting to understand the trickle-down effect. As each ethnic group expresses its own historical narrative on the war, attempts to portray the differing perspectives were made. Michael Ignatieff asserts: "Either the siege at Sarajevo was a deliberate attempt to terrorize and subvert the elected government of an internationally recognized state or it was a legitimate pre-emptive defense of the Serbs' homeland from Muslim attack. It cannot be both (p. 38) (Stauffer, 2013:38; Michael Ignatieff [quoted in Minow, *Human Rights in Political Transitions*, p. 62]). Stauffer (2013) argues that it is too simple if seen through the lens of the work required to reconcile post-violence. It must be agreed that Stauffer's analysis of Ignatieff's statement is correct as it "gives us a forensic truth with no regard for the personal or narrative truths that often underlie mass violence and which may also play a role in recovery from violence as well as prevention of further violence" (p. 38).

The human rights ramifications that were explored in the research pertaining to post-conflict societies is broken down by Stauffer (2013) as being Leviansian, based in two ways:

1. By helping us develop more robust understanding of what is lost by human beings who have been violently abused
2. By making clear to us-in a way liberalism cannot- that if we are content to derive our duties only from conditions to which we would consent, we may as well give up on human rights as an aspiration (Stauffer, 2013 p.42).

If we solely maintain an outlook on the lack of reconciliation within BiH and solely apply a legal framework to the discussion, "No one will be reconciled, and many will be left unprotected, in a world where everyone dispatches every legitimate legal duty and nothing more (Stauffer, 2013 p. 42).

3.2 Interviews

A reciprocal process, as explained by Johansen (2010), occurs when using qualitative interviewing between the interviewer and the interviewee:

[T]he goal is to achieve a depth of understanding; there is an understanding that the researcher and interviewee are both human beings that contribute to the research, and the research design remains flexible throughout the research (Johansen, 2010: Lee, 1996: Rubin&Rubin, 2005 p. 30).

It was crucial that the author allowed/ allows the individuals to speak without interruptions and the questions were designed to be unbiased such that no leading answers occurred (Neuman, 2003). As Rubin & Rubin (2005) suggest, a useful way of obtaining information from the interviewees is by having open-ended questions at the start of the interview rather than general questions. Although a template existed with two variations, one designed for those working for NGOs and the other for those who worked with the Court, many of the questions were rephrased or were redesigned during the interviews. Many questions were reconfigured or discarded as they relied upon previous answers from the interviewee; this was in order to better suit the individual and create a comfortable interviewing environment. (Outhaite & Turner, 2007). Finally, depending on the interview responses new questions were posed allowing the interview to flow in a new direction that had not been pre-determined; this proved invaluable to the data obtained.

Due to the sensitive nature of some of the questions, the interviewees were informed, in an explicit statement, that they were not obligated/ obliged to answer questions they felt uncomfortable in tackling. Although some critics believe that sympathetic narratives "fail to promote human dignity: how they objectify and further alienate suffering others, allow the experience of emotional response to substitute for the experience of moral responsibility, and vitiate the power of movements for social justice" (Dawes&Gupta, 2014 p.150).

Understanding the experiences of the individuals who lived through the conflict and how these courts have shaped their understanding of how and whether reconciliation can be achieved was crucial to the research.

3.3 Sampling

Since the lens of constructivist research places a strong emphasis on better understanding the world through first hand experiences (Neuman, 2003), the chosen individuals for the thesis were those who worked in organizations within Bosnia and those externally interviewed, were knowledgeable on the ICTY and the ICJ. The sampling consisted of an individual who had worked for the ICTY as a legal officer, a prominent scholar on the Balkans and an individual originally from Scotland but had lived in Bosnia since 1992 working with numerous NGOs in rebuilding efforts. A seminar, in which former ICTY President Theodore Meron was the lead speaker, was used as background knowledge in terms of comprehension of what High Officials felt about the proceedings in which they conducted. As Johansen mentions "it is easy for outsiders to talk about reconciliation, [w]hat is hard to understand is what it must feel like for the people who have to reconcile" (2012 p.32). The remaining individuals were from Bosnia from Prijedor, Banja Luka, Kevlanji and Sarajevo. Those who were interviewed in Bosnia were predominantly Bosniak since the initial contact was Bosniak and the NGOs he worked with were headed by Bosniak members working towards reconciliation and victim reparations. A Bosnian Croat was also interviewed, both in 2014 and 2015 and Bosnian Serbs who had been interviewed in 2014, provided background knowledge on the views held by the different ethnicity. Nonetheless, all those interviewed in Bosnia worked for organizations dedicated to victims and rebuilding efforts. Furthermore, travel to Serbia occurred following the fieldwork in Bosnia, where informal conversations occurred regarding the war and how Serbs felt which was crucial in having a comprehensive view. Mutch (2005) explains the constructivist paradigm bases itself on reality and meanings being socially constructed with people making their own social

realities based on their own perceptions. As such those interviewed are able to understand the reality of their ethnic group based on how the ICTY and the ICJ have affected their communities and a large part of this is based on their work with the different ethnic groups, the ICTY verdicts and the ICJ verdicts which they dealt with on a daily basis."

As Williamson (2010) notes, that although small samples may seem to be unreliable to some critics, the other side is that "generalizations are often tricky to make, even with positivist approaches" (p. 98). Nonetheless, secondary research was conducted as the nature of the interviews required in-depth background knowledge on the topic and supplementary reading was needed to construct a stronger thesis that could explore the topic at hand more introspectively gaining first-hand knowledge of reconciliation and justice and the present day factors that continue to exist.

Chapter 4- Limitations of Research

This Chapter will explain the limitations, ethical issues and challenges that occurred during the fieldwork and research conducted and will present how each problem was tackled to ensure the best methods were practiced.

4.1 Limitations

Shifting through legal research which rests on quantitative data, the organized method in combining deductive logic with precise empirical observations of individual behaviour in order to discover and confirm a set of probabilistic causal laws (Tuli, 2010) which is then used to predict general patterns of human activity (Neuman, 2003), becomes problematic when the research conducted is on human rights issues. Nonetheless, deconstructing legal jargon, possess the risk of ignoring or misinterpreting applicable legal standards (Coomans & et al. 2010). However, while legal research is important when understanding a post-conflict society, there still exists the problem that no one will be reconciled in a world where legal duty solely rests and there is no further exploration on the causes and effects (Stauffer, 2013). Although liberal legalism argues that historical narratives do not belong in a court of law as Tribunals are meant to provide justice and Truth and Reconciliation Commissions (TRC) are designated to aid in reconciliation, many critics assert this has been failing and new methods have begun to emerge. As Wilson (2010) clarifies "[I]aw's epistemology is positivist and realist, demanding definite and verifiable evidence typically produced through scientific, forensic methods. History, however, is more pluralistic and interpretative in both its methods and conclusions" (p. 7).

The issue that arises within BiH is that while many of those interviewed are aware of the mechanics of the court, it can prove difficult for them to distance themselves from their own narratives on the conflict as everyone had suffered to various degrees. While these narratives contribute significantly to the issue that courts of law regularly face, Dawnes & Gupta (2010) mention using Wilson's example which states "[c]ourts of law, it is generally agreed, produce bad history, inadequate accounts of the historical cause of mass atrocities" (151). Nonetheless, narratives, in court cases such as the ICTY and the ICJ, accept that for the "prosecution for genocide and crimes against humanity (...) [it] requires contextualising individual actions within larger group relationships over broad historical periods" (Ibid).

As the thesis seeks to explore how the method of justice can ultimately aid in promote reconciliation, Stauffer's (2013) use of liberal theory to explain reconciliation is touched upon. Through liberal theory, the tenet of upholding rule of law "amounts to making every citizen accountable for his or her actions" (Stauffer, 213 p.30). Although the reconciliation process is dependent on the cooperation and the intermingling between the affected individuals, liberal theory explains that, for example, the ICTY's use of individual accountability amounts to implementing said principles as they ensure that "no group of citizens will either benefit from the privilege of impunity or be held collectively responsible on the basis of their identity (Stauffer, 2013 p. 30). It shed light on the affects the ICTY and the ICJ have had on the situation and how international courts can better serve future post-conflict countries.

4.2 Ethical Considerations

Ethical considerations were a forefront concern, as working within the realm of reconciliation after a mass atrocity is a highly sensitive topic. Permission to conduct research was required from the Institutional Review Board at the University of Tromso. Considering the informal nature of the interviews, consent was asked of the individuals with the promise that the interviewee was free to not answer any question they did not want to, they could remain anonymous and they were free to terminate the interview at any point. Further, they were informed the ways in which their interview would be used and if it was to be used in an external work, they would be notified immediately and asked for their permission. A recorder was utilized, although Rubin & Rubin (2005) have noted that the practice of using a consent form and recorder can shift the balance between the interviewer and interviewee, creating a setting, in which the interviewee feels obligated to answer in a specific manner.

The most important ethical consideration was the emotional impact that could be caused through the questions (Lee, 1996). With this in mind, those chosen were individuals who deal with reconciliation and the persisting trauma existing within BiH, and as such, they are more open to discussing the residual implications from the war. Nonetheless, the majority of those interviewed had witnessed murders, had family members killed and/or been interned in a concentration camp. Lee (1996) has argued that a benefit that can be obtained is that the researcher is in a position to 'feel the pain' that the interviewee emits, which may aid in alleviating the emotional and stressful toll it may have on them. Meerima (2015[Interview])

explained that for many, discussing their experiences was therapeutic as they had limited means to come to term with their experiences. Although being an outsider to the experiences of the country, Dwyer & Buckle (2009) believe that coming from an external location can aid in not clouding the experiences that occurred and there is less of an issue of separating personal experiences to that of the participants. Ensuring that 'truthfulness' was established was important (Neuman, 2006), and while the interviews were highly sensitive in nature, it would nonetheless operate with the authentic rather than the valid (Ibid, 2006).

4.3 Challenges Tackled

Differentiating between the different narratives that were heard and how they pertained to the human rights framework was important to decipher (Dawnes & Gupta, 2014). Language posed a possible challenge; however, an interviewee who was also a contact, was able to act as a translator on three occasions within the Republic of Sprska. All other interviews in the region were in English as those interviewed spoke the language fluently. Any interviews conducted outside of the country or any seminars attended were all in English-speaking regions. The possibility of becoming too emotionally involved was a consideration. Nonetheless, Andrade (2009) contends that for some researchers, the criticism regarding the use of qualitative approaches and interpretive case study; lies in the belief that the researcher through the nature of close interaction with the interviewees, becomes a "passionate participant" (p. 45). This is not a pitfall for Andrade (2009), but rather adds depth to the problem being studied/ problem in question.

Gaining access to Bosnian Serbs was not possible due to time constraints and travel restrictions. Although in previous field work (2014), the opportunity did arise to discuss reconciliation in the country with two Bosnian Serb activists, the research conducted in 2015 did not allow for it to occur. Mitchell (2007) emphasises that events can be misunderstood when interpreted out of context. As such, secondary literature was used to provide alternative narratives on the experiences created by the ICTY and the ICJ and conceptualized all their narratives. A key concern was a failure to account for variations in conflicting discourses (Ragin, 2007); this was encountered due to cancellations of some interviews, because of conflicting schedules. To offset this, during the period in which research was conducted in Sarajevo, individuals met in informal settings and were asked if they were willing to be interviewed/ were willing to participate in an interview. As Bickman & Rog (2009) advise

the number of resources available determines the degree of certainty one can accrue. As such, maximizing the time that the research was being conducted in BiH was crucial. Discussing the events of the war and individual perceptions of impact of the ICTY and the ICJ was possible through obtaining external contacts in Sarajevo through informal conversations.

Chapter 5- Findings

This chapter will explore the effects of the ICTY and the ICJ and their ability to foster reconciliation while addressing human rights from an individual to a state level. The hope is to shed light on the gap that seems to exist between these international justice mechanisms and local perceptions

While it is noted that reconciliation is a process and the achievement of stable peace within the country takes time, there has been growing animosity in recent years, with many speculating that another conflict is possible (Vahidin, 2014 [interview], Kemal Pervanic; Jim Marshall; Drazen Crnomat, Emir Hodzic, 2015 [interview]). Another conflict is possible which puts into question the tribunal's work within a peace and reconciliation context. The emotions that the verdicts and procedures have elicited make it reasonable to assume that there is a correlation between the events that took place between these legal institutions and the events occurring in Bosnia-Herzegovina.

5.1. Peace through Justice

In a post-conflict society in which human rights abuses were committed and when dealing with International institutions that work in conjunction with the United Nations, a failure exists on both an individual and state level for the ethnic communities regarding how the courts have affected the reconciliation process. For the Security Council, the ICTY was a means to ensure justice and that it would aid in "[putting] an end 'to the widespread and flagrant violations of international humanitarian law' (Orientlicher, 2010 p.36). The Security Council further justified its existence by prosecuting those responsible for the atrocities in a manner which "would contribute to the restoration and maintenance of peace"(Ibid, p. 38).

Far from being a vehicle for revenge, [the ICTY] is a tool for promoting reconciliation and restoring true peace. If responsibility for the appalling crimes perpetrated in the former Yugoslavia is not attributed to individuals, then whole ethnic and religious groups will be held accountable for these crimes and branded as criminal. In other words, 'collective responsibility'- a primitive and archaic concept-will gain the upper hand; eventually whole groups will be held guilty of massacres, torture, rape, ethnic cleansing, the wonton destruction of cities and villages... Thus the establishment of the

Tribunal should undoubtedly be regarded as a measure designed to promote peace by meting out justice in a manner conducive to the full establishment of healthy and cooperative relations among the various national and ethnic groups in the former Yugoslavia. (Orientlicher, 2010 p. 40).

While there has been considerably negative feedback on the Courts, both in Republika of Srpska and in FBiH, the two main factors that are commonly identified as the two strongest held beliefs, being, firstly, the ICTY and the ICJ potentially having the power to affect reconciliation within the country and secondly that they were not able to meet expectations.

Vahadin (2014) reflected on the ramifications stemming from the conflict and how it required many years for him to overcome not only the physical trauma, but mental as well, "for many years, I did not want to get married or have children because I did not want my kids to be taken to a concentration camp" (Interview). While acknowledgement by those interviewed of the two courts being necessary vehicles for enforcing accountability, there is still lingering disappointment that more was not done.

5.2 Republika of Srpska and ICJ

One of the main problems, that has frustrated NGOs working on reconciliation arising from the lack of the ICJ's verdict of applying the charge of genocide throughout BiH, was the prosecution team being ill-equipped and that there was no mechanism in place to ensure accountability on their part. Edin Ramovic (2015[Interview]) explains that everything that was offered up as facts was already out there through the ICTY cases and the additional information they presented was not properly conducted;

They said they took six weeks and shifted through information that was not checked properly and also included propaganda material. Officially they claimed after everything that had happened at the Hague court, that 20,000 people were killed in Prijedor. They also claimed that 20-30 people were killed in the Trnopolji camp which was not the case [Kemal was at that camp and can verify], 381 people were actually killed there (Edin Ramovic (2015[Interview])).

Kemal Pervanic (2015[Interview]) goes on to explain as to why the figure given was near impossible:

[T]hey didn't consult anyone from Prijedor to double check those claims, the figure of 20,000 people that were killed was what had been used during the war, and the number was less. The Serbian defence said it was [approximately] 1000 people killed. The figure used by the Defence team was 10 times more precise than the figure used by representatives of the Bosnian State. The figure of [3176 people killed in Prijedor is more accurate], because if there was 20,000 people killed then that would be practically every male figure killed. It was a missed opportunity to present real facts. So by actually doing a shitty job and by using the verdicts from previous trials at The Hague they actually devalued the importance of those judgements. A court verdict is a court verdict so, we are not supposed to bring them into any sort of question [afterwards]. The lead lawyer, he is completely anonymous when we talk about international law, there was a lot of money involved in the process as well. There was a lot of politics involved and justice was the least concern in this case. It was one ugly episode in our lives that we better forget if we want to move forward with our lives.

Sudbin (2015[Interview]) agrees and adds that a continuing belief that exists within the region is that the local communities were not supported during the trial and that they were offended by the downplay of the mass graves that were discovered in the region²⁴. "Where I come from, this is a place where you can see the results of genocide, the true results of genocide. You have also right in Kozarac hundreds of new, reconstructed houses, [because] everything [had been] destroyed. You have more than 1800 civilians killed in three days. In another instance you have 103 children killed as well in the region" (Sudbin Music, 2015[Interview]). Rudina Jasini (2015[Interview]), a legal officer who worked on the Haradinaj case at the ICTY, believes that the ethnic communities perceptions on the ICJ verdict is dependent on the individual. Reconciliation is more of a question that lays on the burden of the civil society groups to produce results that reconcile different ethnic communities, rather than the ICJ, since the ruling is based on the evidence put forth by each legal team (Rudina Jasini, 2015[Interview]). This is similar to the view former ICTY

²⁴ Approx. 57 Mass graves: Stari Kevljani, Jakarina Kosa, Redak (Prijedor), Hrastova Glavica (Sanski Most) and Jama Lisac (Bosnska Krupa)

President, Judge Theodore Meron, holds as the primary concern to be to provide a fair form of justice and if it aids in reconciliation, then it is viewed as a job well done (2015[Seminar]).

H.E. Judge Hisashi Owada cites that the International Court of Justice's;

role is to focus on international responsibility of states arising from international wrongful acts....when it comes to its implementation, however, the international community has been confronted with the reality that jurisdictional or material limitation can lead to a shortfall of justice, by putting the blame to a handful of individuals-however high their hierarchical positions are- while running the risk of leaving unaddressed the rest of the victimized and victimizing community (Bassiouni, 2010:138).

For Jim Marshall (2014/5[Interview]) things are even more difficult when an entire society becomes traumatized and becomes entrenched in this 'us' versus 'them' mentality. He further explains that Dayton was the catalyst point that entrenched the notions of their being an ethnic divide between the three communities which was further compounded with the number of verdicts that the ICTY gave out to each ethnic group and then with the ICJ verdict adding to the already existing divide between Bosniaks and Bosnian Serbs (2015[Interview]).

5.2.1 Genocide and Human Rights within the ICJ

Within a human rights context, the ICJ has had a diminishing effect on holding states accountable for the act of genocide; "[t]he Court failed to appreciate the definitional complexity of the crime of genocide and the need for a comprehensive approach in appreciating closely related facts, the role of General Mladic and the Scorpions in Srebrenica being a prime example" (H.E. Judge Al-Khwasaneth, 2011[Dissent]). Genocide, as defined by the *Convention on the Prevention and Punishment of the Crime of Genocide*, means acts committed with the intent to destroy, in whole or in part, a national, ethnical, racial or religious group (United Nations, 1948). Kress (2007) expands and questions whether those involved in creating the Genocide Convention would agree with how the ICJ found the definition of genocide to have been understood. He further explains that:

[t]he Court had a duty to explain how a collective intent to destroy the Srebrenica part of the Bosnian Muslims could be reconciled with the concept of physical or biological group destruction to which the judgment generally adheres. Instead, it relied on the ICTY appeals judgment in Krstic, which held that the atrocities committed in Srebrenica 'would inevitably result in the physical disappearance of the Bosnian Muslim population at Srebrenica....the ICJ's endorsement of this passage is perplexing (2007 p.629).

Psychologically speaking, the lack of healing has created a rift between the court and civilians. Distrust exists and a fear "[that] suppressed trauma, will come out...this reconciliation is on the surface, there is no real reconciliation. [We] don't see it with friends, in the community, we don't see it" (Adis Hukanovic, 2015[Interview]). While in the present day, the different ethnic communities interact with one another on a daily basis, the potential for reconciliation is not fostered which is additionally hindered by those in government. Sudbin Music explains his meeting with the Mayor of Prijedor, "in 2007, I met Mayor [Marko] Pavic, he has black humour, very cold. He said "oh hi, I decided to complain against ICTY decision, you had a census in Kozerac and you have 500 citizens more than in 1992, more Bosniaks than before the war, How about that genocide?' something like this, and then laughs" (2015 [Interview]). Injustice, in the 2007 verdict, is felt within Republic of Sprska, by Bosnian Croats and Bosniaks, centred on the perceived vindication of Bosnian Serbs (Edin Ramulic, 2015[Interview]). Rosenberg (2008) points out in her article;

[t]he decision's impact on BiH's reconciliation process on the other hand, is paradoxical at best. On the one hand, the Bosniak and Serb communities are no closer to a unified version of the truth, nor are the Bosnian Serb leaders genuinely ready to accept responsibility. On the local level in Srebrenica, victims feel betrayed by the legal system, and their disillusion with the court of law has only been deepened (2008 p. 150).

Nonetheless she argues that although BiH was on the brink of a war after the ICJ decision, "there are risks and consequences involved in post-conflict international justice, and as a result, claims about international justice should be tempered to match the reality of what it can achieve in any given context" (2008 p.159).

5.2.2 Srebrenica aftermath in Republika of Srpska

The genocide and the human rights abuses that occurred in Srebrenica and the lack of a guilty verdict for Serbia of attempting to institute a 'Greater Serbian state' has not been positively accepted by many including Former Vice President H.E. Judge Al-Khasawneh, who believes that Serbia should have been found guilty of genocide (2011[Dissent]). For Judge Al-Khasawneh, the verdict given was worse than a failure to act (2011[Dissent]);

[c]oupled with population transfers, what other inference is there to draw from the overwhelming evidence of massive killings systematically targeting the Bosnian Muslims than genocidal intent? If the only objective was to move the Muslim population and the Court is willing to assume that the Bosnian Serbs did only that which is strictly necessary in order to achieve this objective, then what to make of the mass murder? (H.E. Judge Al-Khasawneh, 2011[Dissent]).

Further confusion with the ICJ verdict lies in the ICJ finding of Serbia guilty of systematic mass killings of Bosniaks in 1992 without genocidal intent but not of systematic killings with genocidal intent (Hoare, 2015[Interview]). Further, Ratko Mladic, Commander of Bosnian Serb forces 1992-5, was found guilty of genocidal intent in Srebrenica but somehow there was a lack of evidence that he did not possess genocidal intent in other parts of Bosnia (Jim Marshall 2015[Interview]; Marko Hoare 2015[Interview]; Rosenberg, 2008). For Hoare (2015 [Interview]), political reasons were behind the verdict given and Shaw (2007) believes that the "[t]hese decisions, while politically convenient, amount to nothing less than genocide denial by one of the world's highest legal authorities, and bring[ing] the law into disrepute" (www.theguardian.co.uk). Moreover, as the ICTY and the ICJ shared information, the verdict was "not consistent with the findings of the ICTY relating to genocide or with the actions of the Prosecutor, including decisions not to charge genocide offences in possibly relevant indictments, and to enter into plea agreements" (H.E. Judge Al-Khasawneh, 2011[Dissent]). Ultimately, although there has been some satisfaction that genocide was found to have occurred in Srebrenica those interviewed continue to believe that it has undermined the mass atrocities that occurred all over the country and that the verdict instituted was politically based (Jim Marshall, 2015; Sudbin Music[2015]). It was a grave disappointment for the Bosniaks, namely those who reside in Republic of Sprska and who were interned in the

concentration camps that existed in the region as they hold first row seats to the Serbian vindication on the matter which has severely affected inter-communal reconciliation.

5.3 Republika of Srpska and the ICTY

Although the ICTY's records within the Republic of Sprska has been lack lustre, there have been some notable achievements. The Tribunal passed judgements related to the crimes that occurred in the Prijedor municipality regarding the camps of Omarska, Keraterm and Trnopolji²⁵ which were established by Serb forces for non-Serbs, with many of those who were detained being interrogated, beaten and many not leaving the camps alive (Jim Marshall, 2015[Interview]). Within Keraterm "beatings, rape and sexual assault were perpetrated in the camp, as well as harassment, humiliation and psychological abuse" (Kemal Pervanic, 2015[Interview]). The ICTY's work in Prijedor for Bosniak individuals has been referred to as "...very important [when] they started to arrest people and was very important to locals from 1998-2003. I think without this, our returnee process would have been very much different and very difficult. It was a great message to the poor majority local Serbs, [who] started to think different[ly]..." (Sudbin Musić, 2015[Interview]). Edin Ramulic further agrees with the Tribunal being beneficial to a degree

[relation to people indicted within Prijedor and Banja Luka] [t]he Tribunal has helped at least to remove some individuals from certain institutions so, our first efforts to return to Prijedor [were possible]. At the time, I worked as a journalist when first attempts were [made] to return. So through that line of separation, I saw the Police Chief and the Mayor, they were both accused of genocide, so one was killed when he resisted arrest and one was convicted. They wouldn't allow Bosniaks to come close to Prijedor and if the courts have not acted in their cases it would have been impossible to come back. So, at the time it would have been impossible to come back in 1998-9 maybe in 2000...without the work of the Courts, we couldn't talk about impact, by just removing those individuals from positions of responsibility, things have changed, if we talk about nothing else (2015[Interview])

²⁵ The camps were established by the Serb forces for non-Serbs and all those detained were interrogated. Almost all experienced some form of beating or torture and many did not survive the camps. With Keraterm; beatings, rape and sexual assault were perpetrated in the camp, as well as harassment, humiliation and psychological abuse. From the three, Omarska, is the most infamous with around 5.000-7,000 Bosniaks and Croats were held in appalling conditions with many dying.

For Bosniaks victims, the ICTY's role in denialism has ultimately shielded entire communities or groups from being labelled as collectively responsible for others' suffering and mass crimes committed in these communities (Orientlicher, 2011). At Trnopolji, the perpetrators have, to this day, denied that it was a concentration camp, but rather they have stated it was meant as a safe haven for Bosniak residents in the region (Kemal Pervanić; 2014[Interview]). However, if the ICTY had indicted those working the camps, it would have created a narrative of human rights abuses having been committed, rather than continuing the cycle of denialism.

For those within Republika of Srpska, one of the primary complaints of the ICTY has been its creation of national heroes through its verdicts, such Slobodan Milošević, as indicated in the following;

[A]ll of the war criminals that are sentenced here in Prijedor are heroes... It did not have an impact on the government on a local level because they are still denying that 103 children were killed here, more than 3170 people civilian victims were killed here in Prijedor. There are no monuments telling that story, there are monuments for the killed Serbian soldiers telling the public narrative that we were the victims, we have the right to claim the label as civilian victims not the Bosniaks, that is the public narratives and the verdicts didn't change that. There was no communication between ICTY and the local government, Edin [Ramulic] mentioned a trial, that begun last year for 12 Serbs who committed crimes against civilians here in a village, to Prijedor. You have all the verdicts and all the trials and the facts and you still have now in 2013, 2014, a potential war criminal working as a police officer here. The guy that Edin mentioned who was honoured as the best coach last year, he was prosecuted for executing Serbian civilians in front of a mosque, and one of the civilians, one of the persons from the group who was meant to be executed survived, he was a witness to that case and yet he [the coach] was still allowed to live free here and to defend himself at his trial. It is not normal, you have someone who survived the shooting and lives here and he [the coach] is walking free and teaching kids and a hero to the kids. The media paints him as a hero and something for the future. It hurts (Adis Hukanovic, 2015 [Interview]).

Although all of this does not mean that reconciliation follows justice inexorably or easily, it does mean that without justice being instituted, human rights abuses are harder to implement

and enforced. Eventually, a variation of the true narratives can occur on each side, which subsequently cements feelings of animosity and leads to further strife. During an interview, Kemal Prevanić (2015), he spoke of the lasting effects that are still occurring in Bosnia. With the lack of a clear narrative and with people within Bosnia feeling that the international courts failed in providing a form of justice, many people in RS continue to remain in positions of power and thus continue to foster a rhetoric in which independence should be established; this could possibly lead to another civil war. Edin Ramulic (2015), who was in Keraterm camp and left after three days to fight for the Bosnian army, speaks of his brother, who did not survive the camp. He believes that:

Reconciliation means, above all, that the Serbs, who were responsible for these abominations, admit what was committed....The concept of justice is important for those who might suffer some kind of violence in the future, to some kind of violation because those who need justice [most] are already dead. I listened to the people who took part in court proceedings and received their punishments, people were still unhappy with those verdicts, they were still saying this was not justice (Interview).

5.3.1 ICTY Sentencing Pattern

The longevity of the trials at the ICTY and the final sentences given have provided a mixture of incredulity and anger for the victims (Orientlicher, 2010). Edin Ramulic (2015) observed, "[i]n Prijedor, generally speaking, people are not satisfied with the sentencing policy of the ICTY. Those who were found criminally responsible for atrocities in Omarska and Keraterm camps have received sentences that are three, five, six, seven years" [Interview]. Although some individuals have received harsher sentences, such as 25 years in prison for Zoran Zigic, or 15 years for Dusko Sikirica (Orientlicher, 2010), most of the individuals have typically never served it in full. The problem is further detailed in Art. 28 of the ICTY's Statute, allowing for the President of the Tribunal to "grant early release to a convicted person when he or she becomes eligible under the law of the State where s/he is serving her/his sentence" (Ibid, 2010 p. 52). The common practice has been to grant early release to defendants who have served two-thirds of their sentences with the ICTY President commonly citing rehabilitation as a relevant consideration and means for the ICTY to be more benevolent and just (Judge Theodore Meron, 2015[Seminar]). Prior Judges have cited as well, previous convicted persons having been eligible for early release, as reasons for

continuing with the practice (Bassiouni, 2010). It has been difficult for victims within all the respective communities to become consolidated with the rhetoric the ICTY claims; moreover, for the defendants who have served or are serving, the limited amount of time that actually is spent in prison does not foment guilt and repentance.

5.3.2 Apologies

The lack of an apology from those who perpetrated many of the crimes during the Bosnian War has left many resentful Bosniaks and further alienated from Bosnian Serbs. Wilson (2010) explores how the courts can be overly selective and limited in scope, and due to the nature of courts not focusing on historical and socio-political components of the conflicts, they tend to overlook the main characteristics of the war. An example given is of the Nuremberg trials, where historians such as Donald Bloxham (2001), Saul Friedlander (1992) and Michael Marrus (1997) have claimed that the International Military Tribunal did not adequately address the most important Nazi crime of all- the mass extermination of European Jews. Instead an incomplete and impoverished historical record due to crimes against humanity where crimes against peace and conspiracy to wage an aggressive war occurred (Wilson, 2010 p. 9).

Attempts at informing the public of the trials and what each defendant and witness has said have proved to be difficult. Although the ICTY designed an Outreach program, it was not instituted until 2006, which for many was too late, as lasting impressions had already been set. Furthermore, the Outreach program, has not been very well instituted and people remain ignorant of the dealings within the Court which could have helped to shape a more positive outlook (Jim Marshall, 2015[Interview]). Apologizing, in the case of BiH, would have been the most effective, however, the lack of an apology is apparent.

The President of Republika of Srpska, Milorad Dodik, has been vocal on his views of the Bosniak community in RS and the unnecessary need for apologies when he stated; “[r]epresentatives of our government go there each year [referring to the commemoration in Potocari near Srebrenica]. However, we do not think we should apologize every time we go there, because we have still not heard an apology from the other side (Dodik, 2011). Dodik's views of the Bosnian War having occurred due to Muslim aggression and his testimonial on behalf of Radovic, who has claimed that the acts committed were taken up as a defence against the Bosniak (Kemal Pervanic, 2015[Interview]), has limited the possibility of

reconciliation. If politicians are unable to recognize the need for eliminating tensions between the ethnic communities and cause further rifts, it does not bode well for the future of the region, where rising tensions already exist.

Chapter 6-Concluding Thoughts

In the present day, the numerous debates regarding the causes for war and how to administer accountability for the crimes committed, occur regularly in BiH. The NGOs working with the ethnic communities involving post-conflict justice, understand that each side has experienced and participated in some form of violence and human rights abuses have been committed on all sides. Yet, even following efforts from civil society groups, there remains unwillingness and inability to face the crimes or the victims, which in turn affects the possibility of reconciliation. As such the international Courts instituted to address the human rights abuses that occurred within the country could have impacted the communities involved and promoted domestic development and furthermore enhanced the capacity of national judicial institutions in the region (White, 2014) while also providing a deterrent effect for future conflict. Currently, with wars and conflicts occurring in certain parts of the world such as Syria, Central African Republic, DRC, to name a few, the ICTY and the case brought to the ICJ, was important to analyse, in terms of its effect on establishing justice, but ultimately reconciliation which in turn hopefully cements lasting peace

Through the vacuum of the ICTY and the ICJ, reassembling social relationships after the conflict is possible, however, international justice has experienced shortcomings namely when it is measured against victims and perpetrator's claims, being that victims feel 'let down' by the courts. Furthermore, prevention of future crimes is not eroded but rather continue to permeate within the system. A balance needs to exist to properly utilize these international legal mechanisms in the hopes of achieving reconciliation and protection of human rights by challenging and reviewing the basic premises on which international justice is founded upon. As explained by Rosenberg (2008):

[t]he 'truth seeking value' of international justice for mass atrocities is a part of the proponents' claim that international justice is vital for the reconciliation process. It is argued that trials promote reconciliation by creating viable, durable historical record[s] that can serve as a basis for national consensus (p. 137).

According to Elster (2010), in a post conflict society, the main priority should be to build a stable peace, which can be achieved through administering of justice. Although the ICTY and

the ICJ have failed in many regards, it cannot be said that the dissolution and removal of courts which provide justice would be an acceptable outcome. Realpolitik proponents have not, however, abandoned their opposition to international criminal justice, and they offer arguments that accountability can take different forms than that of criminal prosecution for all perpetrators of such crimes, they also argue that every conflict is *sui generis* and that establishing and maintaining peace requires different strategies which are needed to achieve reconciliation (Bassiouni, 2010 p. 472). While those interviewed in BiH are aware that the trials will not bring back family members (Adis Hukanovic, 2015[Interview]), it does not dispel the trauma of being raped or held in a concentration camp, being tortured or being kept in horrible conditions, those interviewed do not expect perfect justice to be instituted but they do seek to establish a form of satisfaction that something is being done to ensure that they are being heard (Orientlicher, 2012). Johansen (2012) states:

Human right advocates argue that a transition to peace may take longer time if an efficient judicial system is present, but that the peace will be longer and more stable...Lack of a deterrent effect of physical violations might be said to mean that the ICTY does not contribute to the closing of hostile acts. However, a closing of hostile acts may very well place at a more psychological level as victims are allowed to 'close a chapter' of their life as the perpetrators are sentenced for the crimes they committed against them...whether the legal settlement in turn contributes to reconciliation is contingent upon where the public believes that justice has been done (p. 5).

Regardless of the outcomes given by the ICTY and the ICJ, and some of the positives noted, the actual contribution they have had to reconciliation has been mostly negative. Within certain parts of Bosnia, the residual effects of the war are still apparent; "there is no community anymore which is a great shock [reference to Kevljani]. Kevljani village numbered about 800 before the war, only 50 residents remain and many of them live alone (Kemal Prevanic, 2014[interview]). I don't think it will ever come back.... The life that we had before." Frustration is readily apparent within the people interviewed, towards the ICTY and the ICJ. In Kevelanji village, two mass graves were found with the remains of 605 individuals from several villages. The second grave was only discovered in 2004, buried 7m deep, "[t]hey left the village alive and were killed somewhere, and their bodies were dumped in a mass grave in their own village" (Kemal Prevanic, 2014[Interview]). What frustrates these individuals, is the lack of administering indictments by the ICTY towards the

individuals who were active participants in the acts committed. When research was conducted in the area, many individuals had mentioned they were aware of who had been involved or at the very least a suspicion in the matter. Yet they would still run into those potentially involved in shops, on the street, etc. Regarding how the ICJ could have impacted the region in a positive manner, considering the second mass grave was found in 2004, an indictment on genocide in the region, could have been found. Two mass graves proves intent to eliminate a group, quite effectively.

It is not hard to see why forgiveness and ultimately reconciliation has been difficult to achieve, and Dayton has not aided in this respect either. Jim Marshall believes DPA, although marking the end of the war, further cemented the political and ethnical divisions; "It has been described as glorified ceasefire, which it is definitely not the type of document that should be used to build a state. And this allows nationals within the country to build minor states, so the state exists through paper, through Dayton...but doesn't really exist at all" (2014[Interview]). The ethnic divisions and the political rhetoric are readily apparent with grave occurrences impacting the ability to reconcile with one another in the region, as in RS, there has been a view of the 'true victims' being Bosnian Serbs. Moreover, there has been a lack of memorialization for the victims of any of the concentration camps in RS, including the infamous Omarska camp, where massive atrocities were committed (Kemal Prevanic, 2015[Interview]) but rather memorialisation's established for Bosnian Serb soldiers exists an example being one in front of Trnopolje. For Bosniaks and Bosnian Croats living in the region, it is a daily reminder that underlying tensions continue to exist with political figures continuing to exacerbate the situation, portraying their own ethnic narratives.

While a number of reconciliation efforts in BiH exist, the political tensions present a major obstacle to the possibility of their implementation. The sentences given by the ICTY are used to create nationalist leaders, with each glorifying their own members. Due to the makeup of the government of Bosnia, politicians have been able to use both the Tribunal's work and the ICJ verdict, to justify their own actions, and the lack of a public condemnation of crimes, it only continues to further the national narratives of the ethnic communities involved. When a sentenced war criminal such as Biljana Plavsic is considered a war hero in RS, despite the fact that she had pleaded guilty in the murder of over a thousand Bosniaks, one can see how it is hard for the Bosniak side to want to work with Bosnian Serbs towards reconciliation, and in the same context the reciprocal nature of reconciliation of Bosnian Serbs towards Bosniaks

and Bosnian Croats. All of this is compounded with the lack of a genocidal verdict from the ICJ regarding *Bosnia v. Serbia* and recently *Croatia v. Serbia*, has not aided in impacting reconciliation.

Within this context, the UN created the United Nations Inter-regional Crime and Justice Research Institute (UNICRI) which was intended to compile expertise into a best-practices manual from investigations to trials to appellate proceedings (Bassiouni, 2010). This has the capability of creating historical narratives of the trials for the ethnic communities to be aware of what did occur during the war and for future institutions to create better practices that may aid in creating stable peace. Nonetheless, forgiveness is hard to achieve, as the younger generation have been raised in a country that is divided with clear distinctions made between the ethnic communities on a daily basis, and what each side claims to be their own historical assessment.

I think it is much more difficult to work with young people than with older generation, of course there is this part of the older generation, we believe them, [though] they betrayed our trust, but when it comes to, let's have coffee together, it is so much easier for the older generation to sit and have a relaxed conversation than with young people (Vahidin, 2014[Interview]).

The lack of a proper forum in which the ethnic groups can work with one another and foster reconciliation has been detrimental to the continual animosity and tensions existing in the country. Finally, one can only hope that although the ICTY is ending its proceedings in the coming years, the NGO groups and the members interviewed continue their work and their attempts to work with all three groups in the hope to eliminate growing tensions and provide true peace.

Recommendations

One of the most important things to note is that the removal of the ad hoc Court's, would not be beneficial for the states that have experienced conflict. The Court helps in providing justice and holding individuals accountable for the crimes committed which can deter future outbreaks. However, better methods in providing justice need to be in place.

First, working with the civil society groups in the region and the NGOs, can better serve to ensure the communities are aware of the proceedings and to deter acts of violence or revenge from occurring. As well, working with said groups while court proceedings of individuals are occurring can ensure that the citizens understand the process and the longevity of the trials. This can aid in eliminating impunity and each side working against one another.

Second, although a Truth and Reconciliation Commission has been seen as a positive, the Outreach program created by the ICTY was a good mechanism but poorly instituted. Creating better practices can ensure a greater result. Moreover, witness protection must be better managed. While, it is recognized that it is hard to help the hundreds of witnesses that provide testimonies against defendants, many more would come forth if they knew they would not be targeted upon returning home. Once again working with civil society groups in the region could be beneficial in this area, as many groups already exist in attempts to fill the gaps that the institutions fail to administer.

In terms of the ICJ, the court should have ensured that both legal teams were properly equipped to handle the case and that there was as much information provided for each. Finding a greater verdict in terms of Genocide would have had a better effect on the country, as it has only created more divisions. Finally, ensuring that all the information is available for each legal team, rather than allowing certain documents to be 'blacked out' or dismissed, only served to further ensure that a lack of a proper genocide verdict would be instituted. The political fear that seems to exist with not handing a greater Genocide verdict, has been in some respects the downfall of the Court in the Balkans, only serving to create further impunity and allowances for the countries involved in crimes against humanity and human rights abuses.

A balance needs to exist to properly utilize these international legal mechanisms in the hopes of achieving reconciliation and protection of human rights by challenging and reviewing the basic premises on which international justice is founded upon.

Appendix 1

Map of Bosnia-Herzegovina



Appendix 2

List of Informants

Name	Organization	Position/ Relation to the Bosnian War
1. Rudina Jasini	ICTY, The Hague	Legal Officer
2. Edin Ramulic	Prijedor Izvor Association of Women	Bosniak/ Concentration Camp Survivor
3. Adis Hukanović	Psychologist	Bosniak
4. Kemal Pervanić	Forgiveness Project, Pretty Village	Bosniak/ Concentration Camp Survivor
5. Marko Attila Hoare	Professor at Kingston University	Scholar on Balkans
6. Jim Marshall	Wenham Hogg	Former NGO worker and history scholar on Bosnia-Herzegovina
7. Sudbin Musić		Bosniak
8. Dražen Crnomat	Kulturologija	Bosnian Croat/
9. Vahidin Omaranovic	Center for Peacebuilding	Bosniak/ Concentration Camp Survivor
10. Meerima	N/A	Bosniak/ Sarajevo Resident

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