

**The Actual Impact of the International Criminal
Tribunal for the former Yugoslavia on the
Reconciliation Process in
Bosnia-Herzegovina**



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The Actual Impact of the International
Criminal Tribunal for Former Yugoslavia on
the Reconciliation Process in
Bosnia-Herzegovina

-A case study based on in-depth interviews

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Abstract

This thesis explores the actual impact of the International Criminal Tribunal for the former Yugoslavia (ICTY) on the reconciliation process in Bosnia-Herzegovina and analyses possible reasons for this impact. It is a qualitative case study based on in-depth interviews, predominantly with Bosnian Muslims in Sarajevo and staff of the ICTY. The main argument of the thesis is that although the ICTY is believed to be a legitimate and necessary institution, it does not reach its full potential to positively contribute to stable peace. This is due to factors within the ICTY and Bosnia itself. The most notable factor is the politico-economic situation in Bosnia, which paves way for political figures to manipulatively use the Tribunal's work, and the lack of national initiatives for reconciliation. The harsh economic situation also means that the average Bosnian have more primary concerns. The fact that alleged criminals such as Radovan Karadzic are allowed to continue their nationalist rhetoric in the courtroom, as well as the perceived lenient sentences and the hailing of war criminals in the home communities, adds to the frustration and resentment felt by many survivors. All in all, the data collected suggests that the ICTY currently acts to further divide rather than reconcile people within Bosnia. However, it is hoped that as more actors enter the public arena, the judgments of the ICTY will be used more constructively in the trans-generational process that reconciliation is.

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Contents

Abstractv

Acknowledgementsvii

Contentsix

 Map of Bosnia-Herzegovinaxi

 Abbreviations 1

1.0 Introduction..... 2

 1.1 Research Questions..... 8

2.0 Background..... 10

 2.1 The War in Bosnia-Herzegovina 1992-1995 10

 2.1.1 Conflicting Discourses 13

 2.1.2 The Western Contribution to the Bosnian War 15

 2.1.3 War Crimes..... 17

 2.1.4 The Institutionalization of Ethnic Divisions 17

 2.2 The ICTY- Mandate and Mission..... 19

 2.2.1 A Restricted Mandate..... 21

 2.2.2 The Wider Mission..... 22

 2.2.3 Challenges and Expectations of the ICTY 23

3.0 Methodology 28

 3.1 The interpretive constructionist approach..... 28

 3.2 Responsive Interviews 30

 3.2.2 Sampling 31

 3.3 Ethics in the Conduct of Research..... 33

 3.3.2 Reliability and Validity 35

 3.4 Challenges 36

4.0 Theoretical Approach 38

 4.1 Reconciliation as a Prerequisite for Stable Peace 38

 4.3 Justice and Truth 41

 4.4 Transitional Justice and Reconciliation 42

5. 0 Analysis 52

 5.1 A Legitimate Tribunal 54

 5.2 Limitations within the Tribunal 56

5.2.1 Length and Consistency of Sentences	58
5.2.2 The Courtroom as a Public Space	60
5.2.3 The ‘Reconciliation Rationale’ Behind the Guilty Pleas.....	61
5.2.4 The Act of Testifying	67
5.2.5 Truth and the De-monopolization of Facts	70
5.2.6 The Challenge of Communication	73
5.3 Limitations within Bosnia-Herzegovina	77
5.5.1The Politico-Economic Crisis.....	80
5.5.3 Conflict fatigue	85
6.0 Conclusion	90
Afterword	94
Appendix 1.....	96
Appendix 2.....	98
Appendix 3.....	99
Literature.....	104

Map of Bosnia-Herzegovina¹



¹Political map as of today, where you can clearly see the boundary between Serbian Republika Srpska and the Bosnian-Croat Federation. <http://mappery.com/map-of/Bosnia-and-Herzegovina-Map>. Accessed 09.05.2011.

Abbreviations

BiH: Bosna i Hercegovina/ Bosnia-Herzegovina, also referred to as Bosnia or BiH

DOP: Demokratski Omladski Pokret/ Democratic Youth Movement (Sarajevo)

ICTY: International Criminal Tribunal for former Yugoslavia, also referred to as ‘the Tribunal’

ICC: International Criminal Court

ICJ: International Court of Justice

IDC: Istraživačko Dokumentacioni Centar/ Research and Documentation Centre Sarajevo

JNA: Jugoslovenska Narodna Armija/Yugoslav National Army (YNA)

NGO: Non-Governmental Organization

NHC: Norwegian Helsinki Committee

SLBiH: Saveza Logorasa u Bosni i Hercegovini/ Association of the Concentration-Camp Detainees in Bosnia and Herzegovina

TRC: Truth and Reconciliation Commission of South Africa

UN: United Nations

US: United States

UNPROFOR: United Nation Protection Force.

VRS: Army of the Serbian Republic of Bosnia and Herzegovina/Republika Srpska

VWS: Victims and Witnesses Section at the ICTY, The Hague

1.0 Introduction

'Reconciliation has to come. If not, the future will bring great difficulties far over the borders of BiH' (Murat Tahirović, President of the Association for former concentration-camp detainees in Bosnia-Herzegovina, 2011 [personal correspondence])

Ratko Mladić is arrested in Serbia on the 26th of May, after sixteen years at large, and is extradited to the ICTY five days later. Mladić, former commander of the Bosnian Serb Army (VRS), is convicted of being directly responsible for the genocide where approximately 8000 young men and boys were killed in the Bosnian town of Srebrenica (ICTY, 2011²). Immediately following his arrest, an estimated 7000 nationalists demonstrates in the Serb capital Belgrade, and another 3000 Bosnian Serbs protest in his birth place in Bosnia, both crowds hailing him as their savior and protector during the war (BBC, 2011³). Lidija Vukicevic of the Serbian Radical Party states that "cooperation with The Hague tribunal represents treason", after Serbian President Boris Tadić announces that he will not stand in the way for extradition (ibid). Simultaneously, journalist Simon Tisdall at the British Guardian, predicts peace and prosperity for the Balkans as they are allowed to close a brutal chapter of their history, and congratulates 'international justice in its battered form of the UN's international criminal tribunal for former Yugoslavia' on its' victory⁴.

As much as the establishment of the ICTY in itself was not enough to deter further crimes, it is perhaps as unlikely that the sole arrest of Ratko Mladić will prompt such a profound change in society as The Guardian predicts. However, it illustrates the continued relevance of the subject of reconciliation and further delays the closure of a scrutinized international court.

² <http://www.icty.org/sid/10678> Accessed 07.07.2011

³ <http://www.bbc.co.uk/news/world-europe-13589771> Accessed 07.07.2011

⁴ <http://www.guardian.co.uk/commentisfree/2011/may/26/ratko-mladic-arrest> Accessed 07.7.2011

The term 'reconciliation' is in this thesis understood to mean a closing of hostile acts and the altering of destructive attitudes and behavior into constructive relationships that allow for a harmonious coexistence (Brounéus, 2008; Galtung, 2005)⁵. This pragmatic definition refers to reconciliation as a process that involves the reconstruction of social ties, and where the desirable end-state is a stable peace. A closing of hostile acts does not require leaving the past behind but acknowledging what has happened and learning to live with it⁶. While many years may pass before it is clear what the *actual* impact of the tribunal has been, this thesis is written in the belief that local perceptions may give us an indication of this impact at any given point in time.

In a society emerging from conflict, the highest priority should be to establish a lasting peace that enables individuals from different groups to live peacefully together, and that decreases the high risk of a relapse into conflict that is found in post-conflict societies. Jon Elster (2010) believes that one of the prerequisite for stable peace is some kind of psychological healing. There should not only be a cessation of the armed conflict but also of the 'virtual' conflict, that is, the incentives to resume fighting should be removed. This may require the collection of arms from civilians, and the building of trust among the former belligerents. Many scholars believe that international criminal tribunals can be effective in providing relief to victims and paving the way for reconciliation in a war-struck society (see Orentlicher, 2010; Hazan 2006; Halpern and Weinstein, 2004). Transitional institutions such as the ICTY are concerned with injustices caused by conflict and its *raison d' être* is providing justice to victims through the punishment of persons responsible for war crimes. It

⁵ This definition is derived from Galtung and Brounéus and is chosen because it reflects the understanding of the term both by the tribunal's staff and the people interviewed in Bosnia-Herzegovina. It also demonstrates leaving the destructive past behind (closing of hostile acts) by working constructively towards a future where coexistence is harmonious.

⁶ My social science background informs my understanding of the different terms used in this thesis. While I will mention some definitions of reconciliation used in different theories, I ultimately choose to focus on one that is coherent with my professional training. I do, however, find it useful to understand some of the psychological processes involved in reconciling with past atrocities and different groups. See Nora Sveaas for more information on the psychological aspects of reconciliation.

has been argued that criminal tribunals have the potential of having a deterrent effect on further crime by decreasing the risk for retaliation by victims, and by 'closing the circle of violence' (Elster, 2010; Staub, 2006). As a corroboration of these theories, the ICTY has stated that it understands its work to be an important component in the promotion of stable peace through reconciliation (ICTY, 2011⁷). Elster (2010) argues that to provide a stable peace, some sort of psychological healing by the war affected individuals is necessary. Hatreds and grievances need to be replaced as they might trigger further violence (Elster, 2010).

The war in Bosnia-Herzegovina⁸ that lasted from 1992 to 1995 was a devastating conflict that affected the whole international community. There have been conflicting discourses regarding both the reasons for and nature of conflict and to this day the three constituent groups Bosnian Croats, Bosnian Muslims (Bosniaks) and Bosnian Serbs, still hold different truths that portray their in-group as the victims. In the West, it is today largely believed that it was a civil war, although not with equally strong belligerents, and the result of a Serbian aggression based on 'Greater Serbia' ambitions (Mønnesland, 2006). During the war, at least 97, 207 civilians were killed, of which 60 percent were civilians (IDC, 2011⁹). From a pre-war population of 4, 4 millions, 2, 5 million people were refugees by the end of 1995¹⁰ (NDC & Saferworld¹¹, 2010)¹². While there were no winners in the war, everyone in Bosnia-Herzegovina were in one way or another victims (Tokača, 2011[interview]). The international community paid substantially for their earlier indecision to interfere in the war, a

⁷ <http://www.icty.org/sid/324> Accessed 09.06.2011

⁸ I will refer to Bosnia-Herzegovina, which is comprised of The Federation of Bosnia and Herzegovina and Republika Srpska. I recognize that there are also other ethnic groups that may be addressed, but I will focus on the three main groups; Bosnian Muslims (Bosniaks), Bosnian Croats and Bosnian Serbs. This refers to the categorization that was explicitly expressed during the Bosnian war but I acknowledge that these categorizations are not constant, and that not all individuals labeled as Bosnian Muslims are in fact religious, just as not all Croats are catholic.

⁹ This is the number of victims that the IDC has been able to identify. The Norwegian Government operates with 'over 100,000, and the Nansen Network a slightly higher number.

¹⁰ In June 2010, the UNHCR estimated that there were still more than 113,465 registered Internationally displaced persons (IDPs) in Bosnia, with 48,659 living in the Federation and the rest in Republika Srpska (Human Rights Watch 2010).

¹¹ Report by the Nansen Dialogue Center (NDC) and Saferworld (2010)

¹² The war also resulted in a great outsourcing of skilled workers and scientists among others (Tindemans 1996)

price which arguably was higher than it could have been had they been able to respond earlier¹³. As a result of the war, the multiethnic society in former Yugoslavia became severely divided along ethnic lines and former friends and neighbors became enemies. 'Successful' nationalist propaganda by political leaders such as the Serbian President Slobodan Milošević ensured the compliance of a vast number of individuals in collective crimes. In the 'safe area' and town of Srebrenica, around 8000 Bosnian Muslims (Bosniaks) were killed by Bosnian Serb forces in July 1995. This massacre has been defined by both the ICTY and the ICJ as genocide¹⁴. None of the constituent groups were innocent however, and while Croat forces were involved in the persecution of Bosnian Muslims, the Bosnian government supported, among other things, the establishment of the concentration camp Čelebići, where Serbian prisoners of war were detained and subjected to torture and other inhumane treatment¹⁵ (ICTY, 2010¹⁶; Mønnesland, 2008). Sixteen years after the end of the war, the society is still to a large extent divided along ethnic lines, with nationalist parties in power in the two Bosnian entities of BiH Federation and Republika Srpska. The political climate is tense and the maturing civil society has little faith in their government. The government is generally thought to be corrupt and solely serving its own self-interest, that is, of staying in power. Although the inter-group relations are not as hostile as in the aftermath of the war, there is a certain caution within groups and a reluctance to deal with the past in a constructive manner.

The International Criminal Tribunal for the former Yugoslavia was established two years before the end of the conflict, on the 25th of May 1993, as Resolution 827 was unanimously passed by the Security Council of the United Nations. This international

¹³ The international community received 1, 1 million refugees, and Germany which received the highest share of refugees are still spending US \$5 billion annually. The EU alone spent \$865 million from 1991-1996, and the UNHCR \$1 billion in the same period (ibid).

¹⁴ Case by ICJ Bosnia and Herzegovina v. Serbia and Montenegro, determined 26th of February 2007. Facts about Srebrenica can be found at http://www.icty.org/x/file/Outreach/view_from_hague/jit_srebrenica_en.pdf. Accessed 20.06.2011. The legal definition of genocide according to Articles II and III of the 1948 Convention on the Prevention and punishment of Genocide specifies that genocide are certain acts 'committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such'.

¹⁵ <http://www.icty.org/sid/7617> Accessed 19. 06.2011

¹⁶ <http://www.icty.org/sid/7617> Accessed 16.04.2011

tribunal has ‘the power to prosecute persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991 in accordance with the present Statute’ (Art.1, updated statute of the ICTY, 2009¹⁷). These serious violations include grave breaches of the Geneva conventions of 1949, violations of the laws or customs of war, genocide, and crimes against humanity (ICTY, 2011). When discussing the ICTY’s role in a reconciliation process we have to be aware of the restricted mandate that such a Tribunal has, as well as its limited resources and varying public support (Orentlicher, 2010). The ICTY is first and foremost a *criminal* tribunal. The tribunal’s mandate is to prosecute persons responsible for grave war crimes and to provide justice to victims. More explicitly, the tribunal aims to hold individuals responsible and to ensure that groups are not collectively blamed for collective crimes, that is, the ICTY seeks to individualize guilt. While persons at all levels of the chain of command may be charged and sentenced with war crimes, the ICTY only prosecutes the ‘big fish’. As an *ad hoc* and thus temporary court it does not have the capacity to prosecute *all* criminals in the Bosnian war.

However, while the tribunal is established with the ‘sole purpose’ of prosecuting persons, it is established in the conviction that it may contribute to the restoration and maintenance of peace in the Balkan region (ICTY, 2011¹⁸). According to current ICTY President, Judge Robinson, the Tribunal has a fourfold mission:

‘prosecuting persons accused of crimes committed in the former Yugoslavia after 1991, rendering justice to victims of those crimes, deterring further crimes and contributing to the restoration of peace by promoting reconciliation in the former Yugoslavia’ (ICTY President Patrick Lipton Robinson, 2011¹⁹)

Nancy Amoury Combs (2003: 937) argues that ‘institutions like the ICTY can impair the very reconciliation that they seek to advance if the rewards that they hand out

¹⁷ http://www.icty.org/x/file/Legal%20Library/Statute/statute_sept09_en.pdf Accessed 06.05.2011

¹⁸ http://www.icty.org/x/file/Legal%20Library/Statute/statute_827_1993_en.pdf Accessed 05.06.2011

¹⁹ <http://www.icty.org/sid/142>, Accessed 14.01.2011.

themselves become a new source of bitterness'. Overall, the huge amounts of funding that has been invested into the international criminal law approach alone should be sufficient to investigate the usefulness of such an approach (Ryngaert, 2004). Diane F. Orentlicher (2010: 11-12) backs up this statement by emphasizing that 'until recently, few efforts were made to understand the impact of the ICTY and other international courts on the societies most profoundly affected by their work, including their effect on victims and perpetrators. There has not been conducted any opinion polls by the ICTY²⁰, and other opinion polls have been deemed inappropriate or insufficient to use constructively in the tribunals work (Jelačić, 2011 [interview]). That the post-conflict society of Bosnia can relate to the ICTY is crucial, because although the Tribunal is part of a judicial structure set up in the name of international criminal law it is the justice of the people of Yugoslavia that it is fighting for, and in the end it is these people on the ground that decide whether justice has been done. One has to take into account that the families of victims may never feel a complete sense of justice at the prosecution of a criminal, because this will not bring back their loved ones, and no punishment will seem severe enough for the horrendous crimes committed. Therefore it is important that the work of the tribunal is communicated clearly to the affected population, and that their expectations of what the Tribunal can achieve is clarified.

Transitional institutions are established in the conviction that they can contribute positively to the local communities which they are created for. Ervin Staub (1996) argues that institutions are crucial in hindering or promoting reconciliation. Since the South African Truth and Reconciliation Commission (TRC) was established, attention to reconciliation in post-conflict societies has become an essential and routine part of peace building efforts (Brounéus, 2008). Despite this, there is little knowledge about the consequences, both positive and negative, of different types of reconciliation efforts. Karen Brounéus (2008) warns that as long as the effects of such efforts are

²⁰ In spring 2011 the first opinion poll was to be conducted in the region.

not clear, we should be careful of relying on reconciliation to sustain peace, as it may prove to be a too demanding process for a fragile post-conflict society.

1.1 Research Questions

In this thesis I explore two interconnected research questions, namely; what is the *actual* impact of the International Criminal Tribunal for former Yugoslavia on the reconciliation process in Bosnia-Herzegovina, and what may be possible explanations for this actual contribution?

The aim of this thesis is to contribute to the field of transitional justice, by discussing the actual impact of international criminal tribunals (ICTY) on post-conflict societies (BiH). The analysis is based on 18 in-depth interviews with informants, predominantly from within the Bosnian civil society and the ICTY²¹, and is as such a qualitative case study. Secondary literature in the form of scholarly articles and reports will also be used, mainly to provide a theoretical framework for the discussion.

I will first provide a brief introduction to the Bosnian War and the current political situation, with a focus on the international community's role in both the conflict and the peace accords. Thereafter I will outline the theory I will be using, predominantly based on social scientist Jon Elster. The analysis will assess the actual impact of the ICTY in a reconciliation process in BiH, based on the qualitative data that has been collected.

²¹ See Appendix 1 for a list of participants.

2.0 Background

When discussing the ICTY's role in a reconciliation process, it is necessary to establish which reconciliation process we are discussing and who it concerns. As political psychologist Nora Sveaass (2010) rhetorically questions; 'who should be reconciled and with what'. In this thesis the focus is on the people who in one way or another suffered during the Bosnian War, and what they have to be reconciled with are the crimes that took place during 1991-1995. While some background information is necessary for this discussion, the challenge of giving a short introduction to the war in Bosnia and the establishment of the ICTY stems from the fact that there is no consensus, at least not in the region itself, on the origins or facts of the war. More importantly than the mere facts of the war however, is to understand the Tribunal and its impact on the Bosnian society. To understand this, it is necessary to understand the character of the relationship between international actors and local actors in Bosnia, and under which circumstances the Tribunal was born.

2.1 The War in Bosnia-Herzegovina 1992-1995

Despite the fact that Bosnia, as most countries, has been the site of various conflicts throughout history, many have looked to Bosnia for an example of a successful multi-ethnic state. Bosnia is indeed one of the most ethnically heterogeneous countries in Europe, and has been illustratively described as a human mosaic by Noel Malcolm (2004). Especially the Bosnian capital Sarajevo has for a long time been a melting pot of different ethnicities, religions and cultures (ibid). In the Turkish Quarters in Sarajevo you have a Serbian Orthodox Church, a Mosque and a Catholic church on different corners, representing the three most prominent religions and cultural markers of the ethnic groups (Kostić, 2003). The three 'constituent' groups of Bosnia are the Bosnian Serbs, Bosnian Croats and Bosnian Muslims (Bosniaks). The Bosnian Muslims have always been a minority in former Yugoslavia. In 1974, Tito enacted the constitution that defined Yugoslavia as comprised of six republics, with Bosnia-Herzegovina being one of them (Slack and Doyon, 2001). Bosniaks were in this constitution recognized as a people, and made up the majority of the republic of

Bosnia²². The same constitution would later prove to be the blueprint for the disintegration Yugoslavia, but as long as Marshall Tito was in power, the republics were firmly held together and power was centralized by the communist leader (Slack and Doyon, 2001). After the death of Tito in 1980, and especially since the fall of the last communist party in 1990 there was a rise in nationalism and a request for change in the different republics. Serbia felt that it was time to readjust its position in Yugoslavia after they had been unfairly treated and 'side-tracked' under Tito (Mønnesland, 2006).

Slovenia was the first Yugoslav republic to declare itself a sovereign state, in June 1991. The Yugoslav National Army (JNA) responded to this declaration with aggression, and a ten-day war followed (Malcolm, 2004). The JNA was a remnant from Tito's partisan army, and was originally intended as a communistic and atheist army for all the Yugoslav people (Mønnesland, 2006). There were however, a disproportionately large number of Serbs and Montenegrins, and by the time Slovenia declared independence, the army was practically representing Serb interests (Mønnesland, 2006). Croatia declared its independence a few months later, and had to endure a much more devastating seven months war with Serbia, where it lost much of its territory. In 1992, Bosnia was recognized as a sovereign state by the European community and the U.S. When Bosnia was declared independent, Bosnian Croats and Bosnian Serbs found themselves to be the minority of the country and feared the consequences. This fear made them highly susceptible to external nationalist rhetoric, which had been growing since Tito's death (Slack and Dayon, 2001). They were further edged on by Serbian President Slobodan Milošević and Serbian intellectuals such as Dobrica Costic (Mønnesland, 2006).

The Croatian president Franjo Tuđman and Serbian President Slobodan Milošević both expressed their fear for the 'democratic bomb' that they considered Bosnian Muslims to be. Tuđman was concerned about 'their [the Bosnian Muslims]

²²In 1992, Bosnia consisted of 43 % Muslims, 31 % Serbs and 17 % Croats (Mønnesland, 2008). According to Mønnesland (ibid) this ethnic composition made Bosnia politically weak.

inclination towards an increasing birth rate' (Uzelak, 1998: 466 in Slack and Doyon, 2001: 145). Ratko Mladić the chief of staff of the Bosnian Serb Army²³, stated that one should look out for Muslim women who were 'production machines' (Slack and Dayon, 2001). Bosnian Muslims had previously been a minority in Yugoslavia, and there existed no single Muslim entity in the region to watch their back when they declared independence. The success of the independent predominantly Muslim Bosnia was thus dependent on the support by the international community (Slack and Doyon, 2001). The ethnic composition and geographical situation of Bosnia meant that the republic was not easily overlooked, and in 1991 Croat President Franjo Tuđman and Serbian President Slobodan Milošević started discussing how to split the republic, without regard to the Bosnian Muslims (Mønnesland, 2006). The three constituent groups within Bosnia-Herzegovina were divided among their views, but both Croats and Muslims wanted sovereignty, unlike Bosnian Serbs. The aggression on BiH by Serbia commenced in the most strategically situated cities of Bosanski Brod and Neum, with a clear ambition: to expand the Serbian territory by two thirds of Bosnia (Mønnesland, 2006). The international Community could not come to agreement on the right response to the aggression, and apart from providing some humanitarian assistance, they largely failed to intervene (Malcolm, 2003; Mønnesland 2006; Shoup & Burg 1999).

The Bosnian Serb Army (VRS), the Yugoslav National Army (JNA) and Serb paramilitary forces sought to ensure that the Serbs remained the majority, by killing and expelling Bosnian Muslims in Bosnia-Herzegovina (Malcolm, 2003). Detention camps, rape camps and systematic mass killings were calculated methods used to ensure the separation of the ethnic groups. The majority of the victims were Muslim, approximately 65 percent (IDC, 2011), but serious atrocities were also committed against Bosnian Serbs and Croats. Of the victims, 25 percent were Bosnian Serbs and 8 percent were Bosnian Croats (IDC, 2011).

²³ Ratko Mladic is one of two war criminals indicted by the ICTY who until the 26th of May was still at large. Goran Hadzic is still at large.

During those four years of warfare, at least 97,207 civilians were killed²⁴ (Research and Documentation Centre Sarajevo 2011), 174,000 were injured and from a pre-war population of 4, 4 millions, 2, 5 million people were refugees by the end of 1995 (NDC & Saferworld, 1996)²⁵. '[T]he extent of the devastations was so vast that virtually everyone is a "survivor" of some sort' (Artz, 2010: 231). It has been established by the ICTY that the mass killings in Srebrenica where approximately 8000 boys and men were killed was genocide (ICTY, 2011). One should not forget the psychological damage that is still suffered as a consequence of warfare, the unwanted children conceived by rape during the war, and the loss and destruction of property that made a return home difficult, if not impossible. These are all consequences of the war that doubtlessly have a great impact on the post-conflict reconciliation process, which, one should remember, also concerns the psychological healing of perpetrators (Sveaass, 2010).

2.1.1 Conflicting Discourses

Various discourses have been advanced concerning the causes for war and accountability for crimes. The debate has taken place at all levels of society, be it at the political level, civil society and among international actors. This conflict of discourses can also be spotted in the different perceptions of the Tribunal, as groups have expected the Tribunal to confirm their views by indicting criminals from the groups they view as guilty (Kostić, 2007). The inability to agree on these contended issues have nourished the virtual conflict, where there is an absence of trust and acceptance of the current situation. According to Tokača (2011 [interview]), there needs to be a de-monopolization of fact and an embracement by all groups of one fact-based truth. Likewise, Tahirović (2011, [interview]) holds that a reconstruction of society is not possible if people keep denying facts. At the moment, the conflict is

²⁴. In 1991, Bosnian Muslims constituted 1, 9 million, or 44% of Bosnia; Bosnian Serbs 1, 4 million or 31%, Bosnian Croats 760,000 or 17% and others 8%.

²⁴ This is a disputed number, but the exact number of casualties is in this case not that important. More important is the fact that grave atrocities were committed, among them ethnic cleansing.

²⁵ The war also resulted in a significant emigration of skilled workers and scientists, among others (Tindemans 1996)

passed on to the younger generation by providing them with different curricula according to which ethnic group they are from. One informant stated that she feared how this division of society would affect her child, when seven six years old children no longer described their classmates by personal characteristics but by ethnicity, informing their parents at the end of the school day that they are sitting next to a 'Serb boy' or a 'Croat girl'.

In the period of 1992-1994 in particular, the reason for the breakout of war was largely debated in the western media; people from the region itself did not so much question the reasons for outbreak of war as offer different explanations that they understood to be the truth. 'Ancestral hatreds' was one popular explanation in the West (International commission on the Balkans, 1996). According to this 'Balkanist' line of argumentation, the peoples from the Balkans are especially violent and not to be compared with the civilized Western Europe (ibid). That the war was a result of a 'clash of civilizations', that is, between Islam and Christianity, is another hypothesis offered for the Bosnian War in the West (International Commission on the Balkans, 1996). A more balanced argument, and perhaps more relevant today, is that there were a number of incidents, including Marshall Tito's death in 1980, the breakup of Yugoslavia, and the rise of nationalism after the collapse of communism around 1989-1991 that helped trigger the war that erupted in Bosnia in 1992 (Malcolm, 2004). Mønnesland (2011 [personal correspondence]) concludes that the war can be characterized as a combination of a civil war and a war between states, thus a war within Bosnia but as the result of a foreign aggression.

In Bosnia, the three constituent groups had, and to a great extent still have, separated beliefs about guilt which confirm their own groups' position as victims. A general trend is that all three groups claim to have committed crimes only as defendants in the war when they attempted to protect themselves from other group's aggression. Among Bosnian Muslims the belief is that the war was a result of

Serb aggression, seeking to realize its 'Greater Serbia' ambitions (Sušić²⁶, 2011[interview]). Bosnian Serbs generally claim the war to be a civil war, something that provokes strong emotions within the Bosniak population (Sušić, 2011 [interview]) who rejects the notion that the different sides fought equally. Many Bosnian Croats claim that there was a foreign aggression from Serbs, Bosniaks or both²⁷. The explanations for the breakout of war in Bosnia are thus still divided among ethnic lines in Bosnia (Kostić, 2007).

2.1.2 The Western Contribution to the Bosnian War

'The international community is always the same. When I was working for an UN organization during the war, the WHO, and they were asking for advice on how to distribute the food, I remember one commentary from a staff in the WHO; "we are not trying to improve your life, we are just trying to help you survive". I have never forgotten that sentence because it describes so well how the international community thinks; "At least they are not going to die hungry". Well, that was the start of the war. In the end we were hungry and still died' (Informant #1, co-worker in the WHO during the war, 2011[interview]).

The quote above was a reply to how the ICTY was impacting the region. The informant feels that the ICTY is simply following strict procedures and relieving itself of any further commitment to improve the lives of Bosnians. She draws parallels with the ICTY and the indifferent attitudes of humanitarian staff that she encountered during the war. Because the ICTY is an establishment of the UN, with the support of various external actors, it is thus important to understand the role of the international community during the war.

The international community's involvement in the war has been scrutinized and criticized, as is only right if one is to believe Bose (2002). There was a lack of clarity of mandate and aims, and the international community was divided in their opinion

²⁶ Bosniak Historian, working for the Department of War Crimes in the University of Sarajevo, BiH.

²⁷ Needless to say, there are people that do not support any or these views or that have views differing from the majority of their own ethnic group. However, Kostic (2010) find that that the opinions concerning the outbreak of war are clearly divided among ethnic lines, with each group claiming to be victims.

about the proper role to take on (ibid). Malcolm (2004) bluntly states that the biggest contribution that the west made to the Bosnian War was the destruction of Bosnia. The war was perceived by the West as a civil war where the three belligerents Bosnian Serbs, Bosnian Croats and Bosnian Muslims were fighting for territory (ibid). Bose (2002) is of the opinion that the international community's involvement had such an impact on the war that they should be regarded as a fourth belligerent. The UN troops in Bosnia, under the name of UNPROFOR, were part of a peacekeeping mission to ensure stability in Bosnia, and later also in the Former Yugoslav Republic of Macedonia. Ironically, there was no peace to keep at the time when these forces were employed and they did not have the mandate to protect the Muslim population. UNPROFOR had initially been established by the UN to ensure demilitarization in Croatia in 1993. When the conflict in Bosnia escalated, their mandate was extended to oversee humanitarian relief deliveries to Bosnia. Later they were also given the mandate to establish 'safe-areas' in order to protect the Muslim population and to monitor that the no-fly zone was complied with (UN, 2011²⁸). Six safe areas were established by the UN²⁹. The aim was to monitor and keep the Muslim population under threat safe. However, their mandate was quite restricted in that they could only open fire if they themselves (the troops) were under attack (Bose, 2002). Their limited power meant that they acted as hostages by preventing the UN to use air strikes (Malcolm, 2004). The international community and in particular the US who had just lost soldiers in a peacekeeping mission in Somalia, feared that the troops would either be hurt in a potential air strike or by retaliation attacks (Malcolm, 2004). Despite these limitations of the UNPROFOR and the severe consequences, Norwegian deputy Minister of Defense Espen Barth Eide states that considering its mandate³⁰ we have to conclude that this was a fundamentally successful operation that we can learn from in other humanitarian interventions (Seminar NUPI, 14.04.2011):

²⁸ <http://www.un.org/en/peacekeeping/missions/past/unprofor.htm>. Accessed 30.05.2011

²⁹ in Sarajevo, Tuzla, Bihac, Srebrenica, Gorazde and Zepa

³⁰ Its mandate was first and foremost to make sure that food was delivered to the civilian population

'They died from bullets, not from hunger. People were healthy and full when they were shot'³¹ (Barth Eide, Seminar at NUPI 14.04.2011)

He agrees however, that the establishment of safe zones was based on unrealistic expectations and impossible to keep considering the limited means they were given.

2.1.3 War Crimes

What is clear in retrospect was that ethnic cleansing was not a side-effect of war but central to the fighting and to the overall project of Serbian leaders who wanted to create a homogenous and extended Serb area (Malcolm, 2004). Besides the distasteful statements from nationalist politicians concerning the democratic threat that they considered Muslims to be, the atrocities and the way in which they were committed are also evidence of the ethnic cleansing of Bosnian Muslims. In Foča, there were so-called 'rape camps' that held girls and women of all ages, with the single purpose of raping and impregnating women of fertile age (ICTY, 2010³²).

Victims have described how their perpetrators would tell them during the rapes that they were going to give birth to a 'Serb Child' (ICTY, 2010³³). It was not uncommon that civilian Bosnian Serbs had to take part in the torture and killing of their Muslim relatives (Malcolm, 2004). If there had been doubt concerning the aspect of ethnic cleansing however, the ICTY confirmed that the killings of approximately 8000 Bosniak boys and men by Bosnian Serb armed forces could be characterized as genocide.

2.1.4 The Institutionalization of Ethnic Divisions

'(...) never again should those powers which had a direct interest in the fate of the Balkan region hold back in feeble indecision. They must stay intimately involved if they want to help transform the proverbially chaotic, bloody, and unpredictable Balkans into a stable, peaceful, and dependable Southeastern

³¹Own translation from Norwegian: 'De døde av kuler ikke av sult. Folk var friske og mette da de ble skutt' (Espen Barth Eide, 14.4.2011, seminar NUPI) <http://www.nupi.no/Arrangementer/Kommende-arrangement/Har-vi-laert-noe-fra-Balkan>

³² ICTY's 'Bridging the Gap' series, Foca, 2010.

³³ ICTY's 'Bridging the gap' series, Foca, 2010

Europe of the future' (Report of the International Commission on the Balkans, 1996: 9³⁴).

The Bosnian war was terminated by the Dayton accords, which institutionalized the ethnic divides by establishing a tripartite political system with the three constituent groups rotating the Presidency every three months (International Commission for the Balkans, 1996). As will be shown in the analysis, the current political division of Bosnia greatly impacts how the sentences of the ICTY are used by politicians, and thus in turn how the Tribunal is perceived by the Bosnian people. To better understand the lens through which the informants view the Tribunal it is necessary to have a basic idea about how the political system works today.

There had been several previous attempts to find a peaceful solution by international actors, but the peace agreement that managed to end the physical conflict took key US diplomat Richard Holbrooke three months to negotiate with leaders from the three belligerent parties. The Dayton Accords divides Bosnia into two separate autonomous entities; Federation of Bosnia-Herzegovina where the majority are Bosnian Muslims and Croats and Republika Srpska where 90 percent of the population is Bosnian Serb. A third self-governing entity is the Brčko District, which is formally under both Republika and the Federation. The quota system is thought to ensure representation by all groups, regardless of which President is in seat (Malcolm, 2004). Bosnia thus had to cope with a political transformation from communism to democracy at the same time as the difficult transition to peace. '[T]he degree of effectiveness of the enormously ambitious international experiment in state-making and democracy-building in Bosnia (...) is a matter of some dispute' (Bose, 2002: 3-4). The peace agreement has been much criticized, perhaps most of all for 'rewarding' Serbs for their war actions by granting them their own entity within Bosnia. For survivors that perceive the war as a result of Serbian aggression and a Serbian quest of territory, it is unacceptable that the ethnically cleansed Srebrenica is

³⁴ This Commission was established in 1995 by the Aspen Institute Berlin and the Carnegie Endowment. It seeks to investigate the reason for the Balkan conflicts and focuses especially on the involvement of external actors.

part of the Bosnian Serb Republika Srpska. The Dayton Accords was perhaps necessary to provide peace at the time, but the lack of satisfaction with the current divisions of territory and power indicates that it is far from a peaceful solution (Tokača, 2011[interview]). At the time of writing, there are signs within Bosnia-Herzegovina that warns of an escalation in the conflict that has been simmering under the surface since the end of the war. In *Aftenposten*³⁵ on the 12th of May 2011³⁶, it is speculated whether the country is heading for a new division, as citizens in Republika Srpska are voting for independence the following month. Valentin Intzko, the UN High Representative for Bosnia, states that this is the worst crisis since the peace agreement was signed and worries that if the parties do not take one step back, popular uprising is likely (Aftenposten, 12.03.2011). Likewise, at a seminar arranged by the Norwegian Helsinki Committee in Norway, several Balkan-experts³⁷ recently met to discuss a possible violent outcome of the Bosnian situation and what needs to be done³⁸.

2.2 The ICTY- Mandate and Mission

*'We need this tribunal. Naturally, it has done something good, who else would prosecute these persons? The plan was good, now it has to be executed'*³⁹,
(Informant #2, Responsible for the Diplomatic Protocol during the war, 2011 [interview]).

The International Criminal Tribunal for the former Yugoslavia was established on May 25, 2003, on the basis of Resolution 827 which was unanimously passed by the Security Council of the United Nations (ICTY, 2010). This international tribunal has 'the power to prosecute persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991 in accordance with the present Statute' (Art.1, updated statute of the ICTY, 2009).

³⁵ Independent newspaper in Norway

³⁶ <http://www.aftenposten.no/nyheter/uriks/article4118542.ece>, Accessed 12.05.2011.

³⁷ Mønnesland, Medzida Kreso, Envir Djuliman and Vildana Selimbegovic among others.

³⁸ <http://www.nhc.no/?module=Articles&action=Article.publicOpen&id=618> Monday 23 May, 2011.

³⁹ Own translation from French: 'On a besoin de ce Tribunal. Naturellement, il y avait fait quelque chose bien, qui d'autre pourrait poursuivre ces personnes? Le plan était bon, mais maintenant il faut le réaliser.'

These serious violations include grave breaches of the Geneva conventions of 1949, violations of the laws or customs of war, genocide, and crimes against humanity (updated statute ICTY, 2009). The Tribunal has primacy over national courts as it was established in the belief that national judiciaries in former Yugoslavia could or would not take the responsibility of prosecuting war criminals. In the first years and to a large extent still, the Tribunal and its mandate has been both misunderstood and misrepresented within former Yugoslavia, which has put it in a tricky position to reach its mission of 'the restoration and maintenance of a lasting peace' (ICTY, 2011). Anyone, disregarding their position of authority, may be held accountable for war crimes (Artz, 2006: 229). Today, the ICTY has indicted a total of 161 persons, 125 against whom the proceedings have been concluded and 36 who are still in ongoing trials. The two most notorious alleged war criminal who are currently in The Hague are Radovan Karadzic⁴⁰ and Ratko Mladić. The Tribunal aims to close in 2013 even though one person indicted of major war crimes, Goran Hadžić, is still at large, and defendant Ratko Mladić has recently been transferred to The Hague (ICTY, 2011)⁴¹. The ICTY has struggled to find financial support since it was initiated; even the advocates of the tribunal backed away once the issue of funding was brought up. The countries that were responsible for two of the biggest financial contributions were Pakistan and Malaysia, who are both predominantly Muslim (Hazan, 2004). The ICTY has proved to be an extremely expensive project; its annual budget exceeding \$200 million after year 2002, and amounting to \$301,895,900 in 2010 (ICTY, 2011)⁴².

⁴⁰ Karadzic is indicted for genocide, extermination, murder, persecutions, deportation, inhumane acts, acts of violence the primary purpose of which was to spread terror among the civilian population, unlawful attack on civilians, taking of hostages. For more information on the case of Karadzic see http://www.icty.org/x/cases/karadzic/cis/en/cis_karadzic_en.pdf. Accessed 05.07.2011

⁴¹ http://www.icty.org/x/cases/hadzic/cis/en/cis_hadzic_en.pdf Accessed 06.06.2011
Ratko Mladic was arrested close to Beograd, Serbia on the 26th of May 2011 and transferred to the ICTY on the 01.06.2011. His trial started the 03.06.2011.

⁴² For a more detailed budget, see <http://www.icty.org/sid/325> Accessed 08.07.2011

2.2.1 A Restricted Mandate

The ICTY is first and foremost a criminal tribunal. The tribunal's mandate is to prosecute persons responsible for grave war crimes and by that providing justice for victims. It is intended to ensure that international laws are followed by individuals, as it is not in the ICTY's jurisdiction to prosecute states⁴³. More explicitly, the tribunal aims to hold individuals responsible and to ensure that groups are not collectively blamed for collective crimes. By this, it aims to remove the stigma that may come with being a member of a certain group. While persons at all levels of the chain of command may be sentenced on war crimes charges, the ICTY only prosecutes the 'big fish'. As an *ad hoc* and thus temporary court it does not have the capacity to prosecute all criminals in the Bosnian war.

The ICTY was the first international criminal tribunal to be established since the Nuremberg and Tokyo Tribunals following the Second World War. The ICTY is however quite distinct from the previous tribunals, primarily because it was established in the midst of war and secondly because it was established to prosecute the crimes in what was largely understood to be a civil war. Since the UN only has jurisdiction to establish *ad hoc* courts, there follows a completion strategy⁴⁴. As part of this strategy is a plan for strengthening the national judiciaries. The national war crimes tribunal in Bosnia has been set up to prosecute the less significant war crimes suspects than those that the ICTY given their attention to. The staff of the ICTY has to a large extent sought to transfer knowledge, both practical and juridical to the national courts (Hocking, 2009). Not only knowledge however, but also cases have been transferred to the local criminal courts. This has been done both to relieve the Tribunal and to ensure a gradual adjustment of the local courts to international standards (ICTY, 2011). Eventually, it is hoped that the local courts will function entirely on their own with the same standards as that of the international tribunal (Finci, 2011 [interview]).

⁴³ Only the permanent International Criminal Court (ICC) may prosecute states for atrocities

⁴⁴http://www.icty.org/x/file/About/Reports%20and%20Publications/CompletionStrategy/completion_strategy_18may2011_en.pdf Accessed 06.06.2011.

2.2.2 The Wider Mission

While the Tribunal was established with the sole purpose of prosecuting persons, it is established in the belief that it may contribute to the restoration and maintenance of peace in the Balkan region (resolution 827). In the process of sentencing the Tribunal also contributes to establishing the facts of the war, and their archive contains large amounts of 'facts' that concern the history of former Yugoslavia anno 1991-1995. Antonio Cassese, former President of the ICTY, states that they hope the tribunal will prompt reconciliation by establishing facts about the Bosnian War and prosecuting persons responsible of war crimes (ICTY, 2011⁴⁵).

The tribunal emphasizes the fact that a major achievement of the Tribunal is the actual physical removal of war criminals. Hypothetically, this makes it easier for people to return to their home communities and to put the past behind them (ICTY, 2011)⁴⁶.

Current ICTY President Patrick Lipton Robinson (2010) states that the Tribunal has a 'fourfold mission of prosecuting persons accused of crimes committed in the former Yugoslavia after 1991, rendering justice to victims of those crimes, deterring further crimes, and contributing to the restoration of peace by promoting reconciliation in the former Yugoslavia'. It should be clear that the words *mandate* and *mission* have very different meanings and should not be confused. The Tribunal is of course under no obligation to achieve this mission, nor may they be able to do so, but by prosecuting persons responsible for war crimes, President Robinson believes that they can promote reconciliation in the former Yugoslavia. Stating a mission does not necessarily mean more than expressing a wish to move in a certain direction, in this situation towards stable peace. However, both ICTY staff Nerma Jelačić (2011[interview]) and Ernesa Ademagic (2011[interview]) expresses the concern that the reason for Bosnians' disappointment in the Tribunal might stem from

⁴⁵ <http://www.icty.org/sections/AbouttheICTY> Phrase at top of page.

⁴⁶ <http://www.icty.org/sections/AbouttheICTY>

unreasonable expectations as to what the ICTY may provide for the people of former Yugoslavia.

It is natural to ask from which source Bosnians got so high expectations of the Tribunal. It may be argued that it is because many Bosnians do not have a clear understanding of what an *ad hoc* tribunal is, or that they had an unreasonable idea of the international community as having unlimited resources (Scoorl & de Smit, ICTY VWS, 2011). However, the statements from high officials such as Robinson may be misinterpreted. A report assessing the legacy of the ICTY (UN, 2010) is more cautious in its wording. It emphasizes that although reconciliation is connected with the ICTY's mandate, the final responsibility for reconciliation lies with the Bosnian people and their politicians. However, the statements with more explicit wording are the ones that are the most accessible on the website of the ICTY. Arguably, the difference between mission and mandate can easily be lost on someone who is not too familiar with the judicial terms.

2.2.3 Challenges and Expectations of the ICTY

'The ICTY is the path to the creation of true international law, the laboratory of a future international criminal court' (Hazan, 2004: 49). This is the belief that, according to Pierre Hazan (*ibid*) in the very beginning drives the elected judges, who are still, one year after the tribunal's establishment, living in a 'legal vacuum' (Hazan, 2004: 49). The tribunal has so far not been given the means to perform the work that it was set up to do. The law professors and state prosecutors that are the judges have little knowledge of the former Yugoslavia, which effectively keep them at a distance from the real world and the people in it⁴⁷. The material that they produce is incomprehensible to the lay-person 'thus rendering the tribunal's message nearly impossible to communicate clearly' (Hazan, 2004: 51). John Hocking (2009), registrar of the ICTY counter-argues that no one requested that the lawyers communicated

⁴⁷ While it is not common practice in international law to appoint lawyers that are country experts, the lack of knowledge of the region was in one informant's opinion (N. Susić) partly responsible for the delay in trials and one may question if this impacts the Tribunal's role in processes on the ground.

their work either. Communicating the work of the tribunal to people on the ground has always been a challenge. Lawyers were not used to communicating their work, but rather believed that the facts spoke for themselves (Jelačić, 2011 [interview]). While this is perfectly acceptable *modus operandi* in legal profession, it may nonetheless function as an obstacle to the impact of the legal material on the reconciliation process. Lawyers often presume that if anybody should want to understand a court's work, the facts are there for people to do so (Hazan, 2004). This was not actually the case, for two main reasons; the current situation of the region and lack of translation in local languages or in lay-man terms.

The rules applying for an international criminal tribunal are rather different from that of the national courts, and the nature of the Bosnian war as well as developments in transitional justice meant that the ICTY in many ways was the first of its kind. For instance, because the ICTY was established in the midst of war, allowing a person to be free until accused, as is the norm in national justice, was impossible. This could easily be mistaken for impunity, as what was also the case with Milošević when he was not charged earlier than 1995, despite the pile of evidence against him⁴⁸. As Jelačić (2011 [interview]) points out, the ICTY have learnt by doing, and now they give advice to other international courts, including its 'sister tribunal' for Rwanda (ICTR).

At the time of the ICTY's establishment, the states of former Yugoslavia were still at war and access to anything else than the state regulated and heavily biased media was severely restricted. The intentions behind the establishment of the ICTY have been largely debated, and questioned by the same international community who failed to intervene when the worst atrocities were committed in the Bosnian war. Pierre Hazan (2004: 21) believes that 'In brandishing the threat of an international court, Western diplomats hope to hide their own impotence'. Hazan (ibid) proceeds to explain how the final decision to create the ICTY came hand in hand with the

⁴⁸ There was also resistance from the U.S and several others when the ICTY wanted to indict Milosevic in the midst of peace agreements, as it was feared that this would endanger the whole process (Malcolm, 2004).

political benefits of doing do⁴⁹. In the Balkans, the views on the ICTY have been as divided as the views on the war. At the time of its establishment, survival was at the top priority of communities in the region (Jelačić, 2011[interview]), and the tribunal was established nine hundred miles away from the people it sought to bring justice to. Furthermore, the information and facts concerning the tribunal were only accessible in English and French, the two working languages of the tribunal. No records were available in the local Slavic languages, and as a result of this, most people could not understand the tribunal's work even if they would have access to it. In addition to the language barrier, the verdicts of the tribunal were not communicated in lay-man terms and so even if the transcripts had been available in local languages, a lay-person with no prior knowledge of the juridical terms would struggle to understand it (Orentlicher, 2010). The state controlled media were also a means of controlling the information regarding the Tribunal for the political leaders, and they took advantage of it. Serbian President Milošević early on referred to the ICTY as an illegitimate construction by the international community for the Bosnian Muslims, and especially targeted towards the Serbs (Malcolm, 2004).

An outreach program was established in 1999 when it became clear that few people understood the mandate of the ICTY, and that people not only distrusted, but despised the Tribunal for various reasons (Jelačić, 2011[interview]). For the current President Kirk MacDonald, this worrisome problem needed to be properly addressed and she took the initiative to repair the gap between the Tribunal and people on the ground (Jelačić, 2011[interview]). The Outreach program was the first of its kind. It was aimed at bridging the gap between the tribunal and people on the ground in former Yugoslavia. It was first questioned by the legal community and treated as a somewhat legal abnormality (Finci, 2011 [interview]). The outreach program has ensured that the transcripts were translated into local languages, and have sought to make that information available to the general public. Not only online, but also

⁴⁹ It is for instance believed by Pierre Hazan (2004) that French President Mitterrand at the time hoped that this would relieve him of the potential accusations of complicity after the war.

through seminars, workshops and so forth both in The Hague and the different states of the former Yugoslavia.

The Tribunal has also established its own 'Court Records Database' which 'contains every public documents filed in the Tribunal's court proceeding, from the very first in 1994, through to today' (John Hocking, 2009: 5). The database contains more than 150,000 documents and is available to those that are interested. Enver Djuliman (2011 [interview]), head of the education unit at the Norwegian Helsinki Committee (NHC), recognizes fact-finding as one of the key contributions of the Tribunal.

3.0 Methodology

'A case study is an empirical inquiry that investigates a contemporary phenomenon within its real-life context, especially when the boundaries between phenomena and context are not clearly evident' (Yin, 2003: 13)

When asking research questions by 'how' or 'why', it is appropriate to use a case study as a research strategy, according to Yin (2003). Furthermore, this particular thesis analyses current events on a local level, and it is possible to access the individuals which are part of these events. The case study approach allows for different methods and sources to be used (Yin, 2006), although in this case the basis of analysis are the in-depth interviews I conducted, which I will explain further in the following sections.

3.1 The interpretive constructionist approach

What I seek to find out in this thesis is the subjective perceptions from a specific group of individuals on a particular topic. Secondly, I want to find out why this topic is perceived in such a way. As such, the thesis is written in an interpretive constructionist approach⁵⁰. A reconciliation process is dependent on the cooperation and reciprocity between individual persons within the affected society, and as such it is crucial to understand the perceptions of the individuals who have to reconcile. A constructionist researcher does not believe that everyone puts the same meaning into concepts and is aware of the fact that interviewees might understand the same questions differently (Rubin & Rubin, 2005). Furthermore, since reconciliation is a rather vague concept that does not have measurable parameters, it is necessary to establish what each informant understands by the term.

I chose to interview individuals working in organizations rather than gathering a sample of the Bosnian population for the following two reasons. First, I did not have the means to gather a *representative* sample from the population. Secondly, as a junior researcher without prior knowledge or means of responding appropriately to a

⁵⁰ See Rubin and Rubin (2005) for a comprehensive introduction to the qualitative research and in particular the constructionist approach.

potential re-traumatization, I preferred instead to deal with individuals who were likely to have dealt with the past experiences and who were keen on discussing them. This inductive questioning was chosen in the belief that ‘spending a large amount of time observing or interviewing a small number of people offers greater opportunity to know them better’, and that once the informants get familiar with the researcher they are more likely to reveal additional information that may not be included in their standard procedures of interviews (David & Sutton, 2004: 28). Except for two Dutch representatives of the ICTY who worked in Victims and Witness Support VWS, as well as one Norwegian Balkan expert, all informants were Bosnian, and in general Bosnian Muslim. The majority were also from Sarajevo. Regardless of the organization they worked with, the interviewees tended to get very personal and to display fractions of their own personal lives. Quite a few informants were obviously moved by discussing the prospect of reconciliation and required small undisturbed breaks in the interview. I found these personal displays highly valuable, as it enabled me to understand the sentiments of people that had experienced the war up close, and their motivation for engaging in organizational activities⁵¹. In other words, it was possible to gain-depth into the respondents’ feelings and perceptions.

While positivists look for general tendencies across individuals, constructivists want to see the ‘syntheses of understandings’ that is the result of interviewing different individuals. Schostac (2006) emphasizes that an interview is not a simple tool to use, and that a researcher will never capture the full meaning of what an informant says. Humans use their prior knowledge to process new information, and in many cases interpret what they hear slightly differently than what was intended, especially if you consider that the language spoken may not be the researcher’s or the informant’s mother tongue (Schostac, 2006).

In seeking to assess the ICTY’s contribution to reconciliation, this thesis is an evaluation research; a research that ‘involves the evaluation of an organizational

⁵¹ Most of these personal displays are not included in the written paper, as I found them too personal, or the informants specifically stated that they were not authorized to make such personal statements on behalf of their organization.

strategy or the deliverance of a service.’ (David & Sutton, 2004: 29). I use exploratory forms of research (interviews) to reveal subjective perceptions of the tribunal’s contribution to reconciliation. However, as a criminal tribunal’s primary aim is not to promote reconciliation, the dissertation also has a deductive side to it. Through use of theory and research I discuss what role the Tribunal could potentially have in a reconciliation process. I chose to conduct interviews because the secondary literature on the subject did not satisfactorily answer my questions when it comes to its actual impact. As reconciliation is understood as a process that is still ongoing in Bosnia, there will be new issues to discuss as time goes by. Thus, although there does exist literature on the subject, at any point in time will it be possible to contribute to the literature. Furthermore, individuals are the key components of the reconciliation process, and as a result their perceptions cannot be ignored.

3.2 Responsive Interviews

Qualitative interviewing is a reciprocal process between the interviewer and the interviewee, in which the researcher should accept that he subjectively processes and analyzes the data collected (Lee, 1996). Such responsive interviewing has three characteristics: the goal is to achieve a depth of understanding; there is an understanding that the researcher and the interviewee are both human beings that contribute to the research, and the research design remains flexible throughout the research (Lee, 1996; Rubin & Rubin, 2005). Ultimately, what you want with the interview is to expand your knowledge and follow-up question aid you in pursuing new discoveries. However, there is a fine line between probing into something that the informant said and imposing views on the interviewee. While subjective interpretations by the researcher may be inevitable, he should seek to remain as open-minded as possible and not to interfere more than necessary with the informant’s speech. Rubin & Rubin (2005) suggests that a good way to detect what the informants is willing to share and what matters the most for him, is to start by asking open-ended and rather general questions. This allows the informant to demonstrate what he finds most important when discussing the subject, and helps

him to warm up to the interview. The interviews that I conducted were unstructured in nature with solely a few headlines under which I sought to direct the informants. As a rule, more sensitive issues should be delayed until later on in the research, and the participant should repeatedly be reminded that the interview is intended to be used in research. The involvement of the researcher carries with it an ethical duty to protect the informant from harm. As a rule of thumb, any kind of interview should be a positive experience for the interviewee and no harm be it physical or psychological, should be inflicted on the individual in question (Rubin & Rubin, 2005). Lee (1993) argues that in-depth interviews may be the most suitable way of collecting data on sensitive or emotional issues, as they are often full of ambiguity and contradictions.

3.2.2 Sampling

How does one decide whom to interview? The number of respondents may be restricted in qualitative research, but the choice of informants should not be accidental. The informants should be chosen based on their first-hand experience with the issue in question, in this case the ICTY, the war in BiH, or reconciliation efforts in the local community. If they do not have first-hand experience, they should be knowledgeable about the research problem- that is, reconciliation in Bosnia or the impact of transitional institutions on their host communities (Rubin & Rubin, 2005). A third criteria for sampling could be that the informants provide perspectives that are new (ibid). In this case, the informants chosen were from a group that are generally overshadowed by those who have more negative attitudes towards the tribunal, or they tend to be treated as part of a group rather than individuals with perspectives based on their experience and knowledge rather than ethnic affiliation.

Two fieldtrips were conducted in order to gather information for this thesis. The first trip I conducted was to the ICTY headquarters in The Hague, Netherlands. This trip was intended to provide me with a better understanding of the role of the ICTY in Bosnia-Herzegovina, as viewed by representatives of the tribunal itself. As well as getting a clearer picture of the mandate and goals of the Tribunal, this trip also helped me to better understand the massive apparatus behind such a tribunal. While

I had prepared to talk with representatives with judicial background that I imagined would defend the Tribunal's work at all costs, I was surprised to find myself interviewing former journalists and psychologists, some of who came from former Yugoslavia. I gained more knowledge than I could have hoped for and found the trip immensely helpful in understanding the Tribunal's work. Specifically, it made me more aware of the fact that the Tribunal is an organ established by the UN Security Council that is there first and foremost to prosecute individuals. In The Hague, the interviews I had prepared for were initially more structured, with several questions that I was intent on getting answers to. My interview guide however got thinner after each interview and in the last interviews I only had a few guidelines as to in what direction the discussion should head. All of my informants, including those at the ICTY were apparently engaged in the topic and already seemed to have a plan of what they wanted to say during the interview, regardless of the questions I asked. The majority strayed from both the topic and the few questions I had prepared, and almost all desired more time than the one-hour I had requested from them.

The trip to Bosnia-Herzegovina was conducted because I wanted to talk with organizations who work directly with Bosnian people in the Federation of Bosnia-Herzegovina, and which have an understanding of the current level of reconciliation in Bosnia. I was also curious to see whether the staff from these organizations had a view on the ICTY that reflected that of the public. I therefore also conducted a small number of interviews with persons in BiH, mostly unprovoked 'talks' by curious and friendly civilians in the streets. The trip increased my understanding and sensitiveness for the contemporary situation, and like one Bosnian Muslim girl told me; 'it is easy for outsiders to talk about reconciliation. What is hard is to understand what it must feel like for the people who have to reconcile'⁵².

⁵² Talk with a Bosnian Muslim girl in a bookshop in the Turkish quarters Stari Grad in Sarajevo

3.3 Ethics in the Conduct of Research

'Informed consent means the knowing consent of individuals to participate as an exercise of their choice, free from any element of fraud, deceit, duress or similar unfair inducement or manipulation' (Berg, 1998 in David & Sutton ,2004: 18)

Deceiving participants is, according to David and Sutton (2004), understood by many researchers as necessary for gathering the information that they are seeking. A participant, when informed of the reasons for conducting research, might provide answers that he believes are expected of him rather than genuinely answering the questions. The most common argument for deceiving participants is that the data collected by deceiving participants are of better value to the greater good (ibid). Those that adopt a contradictory stand to this, namely that violations of ethical principals cannot be justified by the greater good are said to take a de-ontological ethical position (David and Sutton, 2004). This approach emphasizes the universality and non-tradability of human rights.

The arena of reconciliation after mass atrocities is a highly sensitive one. Although hard to predict, informants from Yugoslavia might be cautious to talk to a foreign researcher about such sensitive issue. Since atrocities were being committed on such a huge scale, most people are in one way or another 'survivors' of the brutal war. Therefore, the issue of re-traumatization will have to be taken into account. Since carrying out research in this area will in itself raise many ethical questions, I opted for informed consent as a junior researcher who needs to take certain precautions. Especially when writing on a subject correlated to the field of human rights, it seems absurd to argue in favor of deception.

As a student at the University of Oslo, I was obliged to seek permission to conduct the research from an Institutional Review Board (IRB) at the University. This implied creating an interview guide, a consent form, as well as informing the board of measures taken to protect the confidentiality of the informant. Consent forms proved to be a challenge when conducting informal interviews, by formalizing the process

and intimidating informants who insisted that the interview was only 'a talk'. This is a common challenge, according to Rubin & Rubin (2005). Recorders have the potential of further restricting the informants in their speech. I used a recorder only when the individual I interviewed talked on behalf of their organization, or when they were completely comfortable with using it. In the cases where I feared this would obstruct the flow of conversation, I did not bring up the subject. In some cases informants revealed more personal matters once the interview was formally over and the recorder switched off. When entering a conversational partnership (Rubin & Rubin, 2005) a consent form and recorder tends to shift the balance between interviewer and interviewee and to create fear that what is said may potentially be used against the interviewee (even if this is not the case).

Other important ethical considerations include avoiding disturbing your informant emotionally or causing unnecessary stress (Lee, 1996). With such a sensitive topic as the one in this thesis, this is tricky, as all informants have some kind of personal connection with the issues in question. To minimize the stress, it was emphasized at the start of each interview that if there were any questions the interviewee could not or preferred not to answer to they could simply state so without any further implications. Although most of the informants tended to get more personal as the interview proceeded with, this was solely the choice of the informant himself, and as the interview came to an end, it was sought to leave the informants with an all-over positive feeling. Thus, when finalizing an interview, I sought to move away from the difficult subjects and to focus on the positive conversational partnership instead. Lee (1996) argues that in a conversational interview the researcher is in a position to 'share the pain' with the interviewee, which may relieve the interviewee of some stress. However, the researcher should also be aware of his own emotions and be cautious of becoming an outlet for the interviewees' feelings (Lee, 1996). Rubin & Rubin (2005) reminds us that the same logic applies for interviews and conversations. Conversational repair may be needed to clarify vague concepts and general politeness and etiquette should be maintained throughout the interview.

3.3.2 Reliability and Validity

Reliability refers to what extent a research may be reconstructed or repeated at a later time. This is not usually achievable in qualitative studies as the working environment is dynamic and constantly changing (Neuman, 2006). This kind of a qualitative case study does not allow for any generalizations because there are only a limited number of informants from a selective section of society. A representative analysis would arguably need to have an equal number of informants from all three ethnic groups⁵³. The vague notion of reconciliation may, however, confuse participants contributing in a larger survey, as they reply according to whatever they perceive as reconciliation. ICTY spokesperson Nerma Jelačić believes that if opinion polls are to be of any use, they have to be thorough and find out the reasons behind the answers given. An additional issue is that with such a normative and abstract notion as reconciliation, one may question whether it is possible to generalize no matter how large the sample.

As is especially the case with qualitative interviewing, the researcher also to some extent affects the outcome of the interview, which means that even if the working environment was somewhat constant, the relationship between the researcher and the interviewee would be impossible to replicate (Rubin & Rubin, 2005). Validity on the other hand, refers to how well the research reflects the reality and thus indicates the 'truthfulness' of the research (Neuman, 2006). Thus, in the case of qualitative interviewing, it refers to how well the data collected from the interview matches the social reality. As Neuman (2006) notes, qualitative researcher have a tendency to operate with *authentic* rather than *valid*. That is, the authenticity of the research relates to how well the researcher is able to convey the interviewee's reality or perspectives to the audience. A qualitative case study may allow for a greater internal validation. That is, the in-depth interviews allowed me to achieve a clearer picture of what the reality of my informants looks like. The open-ended interviews encouraged

⁵³ Arguably, one should also have representatives from all age groups as well. As has been specified by other authors, direct survivors of the conflict may react to the ICTY differently than those who are too young to remember or who did not personally experience losing someone close to them or being the victim

the informants to discuss what they found to be most important, and as a result, interesting contributions to the study would often appear as diversions from the questions. By not setting a strict time limit for the interview, many of the interviews took a more personal turn after the most pressing matters had been covered.

3.4 Challenges

The biggest practical challenge I had during the research was to establish the time of the interviews in Bosnia, and although I had initially planned a substantial number of interviews there were quite a few that fell away for different reasons. The language barrier was an obstacle to conducting interviews with victim's organizations who generally only spoke the Slavic languages. No one I met knew of translators, and the meetings were difficult to plan as everyone preferred to communicate via mail. Some of the interviews fell away, among others the interview with Mothers of Srebrenica, but some organizations agreed to answer interview questions by mail. By simply getting written replies, the dynamic aspect of the unstructured interviews performed face-to-face was lost. However, it also facilitated the process of accessing the necessary information by not providing informants with space to diverge too much from the questions. In such a way, the answers were more concise and to the point than the answers given in the interviews.

What separates this thesis most distinctively from other similar research is that the large majority of the informants are Bosnian Muslims who live in or are from Sarajevo. According to my informants and other authors, the cities that were ethnically cleansed, unlike Sarajevo, are where you find the greatest hostility towards other ethnic groups and denial of the war crimes that took place (Ademagic 2011 [interview], Jelačić, 2011 [interview]). In other literature based on either qualitative interviews or especially quantitative studies, there is a separation and comparison between the answers given by members of each of the three Bosnian constituent groups. This distinction has not been made in this thesis for two separate reasons. First, the material would have to be quite extensive in order to generalize and compare among informants. Second, and perhaps most importantly, that in surveys

where the three ethnic groups are represented, the perceptions of Bosnian Serbs have a tendency to overshadow the perceptions of the other groups because overall this is the group that has been the most unfavorable of the Tribunal. Although exceedingly important in the discussion, it is also important to listen to those that have generally been more positive, and to hear their justifications. Needless to say, it is not as clear cut as to say that Bosnian Serbs are negative and Bosnian Muslims are positive, rather, it is important to capture the dimensions of these attitudes.

Sarajevo, which was under siege during the war and which did not in any way escape the consequences of warfare, has rarely been the focal point of discussion. What makes Sarajevo interesting to discuss in terms of reconciliation is that this capital has always been, and still is, a melting pot of different cultures, traditions and religions. That it has the greatest concentration of Bosnian Croats, Bosnian Serbs and Bosnian Muslim, and still is regarded as the most tolerant city in Bosnia makes the views of those that inhabit it extremely intriguing.

Furthermore, the individuals interviewed here are predominantly individuals that are currently, or that have been involved in reconciliation efforts. Some of them have also cooperated with the Tribunal, such as the IDC, and have good knowledge of its jurisdiction and mandate. Because of this, it is highly interesting to hear their opinion on the *de facto* role of the ICTY. This is not to say that perceptions of 'ordinary' citizens are not just as valuable, but if these informants should support the views found in quantitative studies, this would be a valuable finding. Arguably, it could indicate that the perceptions of the ICTY are not simply the product of manipulation by the media and politicians, or too high expectations.

4.0 Theoretical Approach

Besides establishing who should reconcile with what, we also have to determine whether we are talking about reconciliation on an individual or on a societal level. Can there be reconciliation at a societal level without it occurring on an individual level first? In this thesis reconciliation will be dealt with as an issue that needs to be addressed for the sake of allowing individuals from different groups but within the same community to live together harmoniously. The theory that is used is mainly derived from Jon Elster, and as stated in the very introduction, understands reconciliation as 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, as a criminal tribunal seeking to prosecute individuals for war crimes, meets the criteria of reconciliation on two points that are often part of the reconciliation discourse; justice and truth. This chapter is not based on a complete review on reconciliation theory or transitional justice, which are both extensive fields of study⁵⁴. It will only be focused on the aspects of transitional justice that are likely to have an effect on reconciliation and thus stable peace. Elster has a critical (rational) approach to reconciliation that offers certain loose parameters to reconciliation, which in turn facilitates the discussion.

4.1 Reconciliation as a Prerequisite for Stable Peace

'Justice is an indispensable ingredient of the process of national reconciliation. It is essential to the restoration of peaceful and normal relations between people who have lived under a reign of terror. It breaks the cycle of violence, hatred and extra-judicial retribution. Thus peace and justice go hand in hand' (Antonio Cassese, former President of the ICTY⁵⁵).

⁵⁴ For more information on transitional justice, and in particular the ICTY, see Morten Bergsmo

⁵⁵ In a statement on the ICTY's web page. <http://www.icty.org/sections/AbouttheICTY>

In a post conflict society, the priority should be to build a stable peace (Elster, 2010). The risk of a relapse into conflict is greatest in the immediate aftermath of violent conflict, and tends to decrease as time goes by (ibid). Directly after the fighting stops, it is necessary to learn to live together again and cope with everyday matters. Individuals from the three constituent groups of BiH were forced to coexist after the fighting stopped, and many victims faced, and to a large extent still face the reality of meeting their perpetrator on a daily basis. In Bosnia there were several villages that were completely ethnically cleansed during the war, making a return to home communities an immense challenge for survivors. The three and a half year long war was a costly one, not only financially, but with high social costs to the societies involved and to the societies in the nearest proximity who received the bulk of the refugees. The Dayton Accords that ended the war provided a sudden stop to the fighting, but could not address the profound causes of conflict, nor provided a long-term solution to stability in the region (Tokača, 2011 [interview]).

Durable peace is, according to Elster (2010), made up of several components. First you have the actual cessation of armed conflict, which the Dayton Accords successfully achieved. You also need a cessation of the 'virtual conflict' however, which can be said to be an acknowledgment or acceptance of the fact that the war has ended, and the removal of incentives to resume fighting. The collection of arms from former combatants and presence of an unbiased peacekeeping force are examples of initiatives to achieve this. The third component of stable peace is 'civic peace', which inhabits what I understand to be an aspect of reconciliation; some sort of psychological healing. In Elster's (2010) view, characteristics of civic peace are the acknowledgment of the new post-conflict regime by public officials and an overall peaceful society with low rates of petty crime. In Bosnia, there can hardly be said to be an acceptance of any post-transnational regime as the government is still to a large transitional, neither is there a sufficient cooperation of leaders to create any such thing. The rate of petty crime is increasing, especially among the youth in the

bigger cities, as the economic situation is steadily deteriorating (NDC & Saferworld, 2010).

Hatreds and grievances need to be replaced as they might trigger further violence (Ester, 2010). In Bosnia today, there is so far no census on the facts of the war, and the level of psychological healing is debatable. While the different ethnic groups seem to cooperate well on a daily basis, there have been no national reconciliation efforts and there are factors that suggest that the underlying causes of conflict are still present and threatening the peace (Tokača, 2011 [interview]; Ademagic (2011 [interview]; NDC & Saferworld, 2010).

Reconciliation is without doubt considered an essential part of peace building (Brounéus 2008). Despite this, 'very little has been known of the advantages, risks and obstacles connected with the different types of reconciliation and truth telling efforts in societies emerging from conflict' (Brounéus 2008; 10). The truth and reconciliation efforts in South Africa in the aftermath of apartheid started a new international trend of promoting reconciliation as a means of dealing with the past and moving on together into the future. Reconciliation in its traditional form was connected with religion, in which the goal was to re-establish the damaged relationship between God and the human being (Skaar & Andreassen, 1998; Vetlesen, 1995). Today, reconciliation is part of a routine response to societies emerging from conflict (ibid). There are however few empirical studies on the effects of reconciliation and 'methodology has been largely ignored within the field of reconciliation' (Brounéus 2008; 12).

Jelačić (2011 [interview]), ICTY spokesperson, is skeptical to the term reconciliation because she believes that it is an overused term that is about to lose its meaning. Likewise, Balkan-expert Svein Mønnesland (2011 [interview]) calls the term 'sugar sweet', and highlights that while it is a very popular term to use when discussing the Balkans, it is not something we are too fond of using when dealing with our own past (Mønnesland 2011 [interview]). For instance, in dealing with the atrocities of the

Second World War, nobody demanded the Holocaust victims to reconcile with their Nazi perpetrators. Yet at the same time, we demand that people from the former Yugoslavia adapt to our expectations (ibid). Brounéus (2008) warns that a fragile post-conflict society may not be ready to take on the demanding challenge that reconciliation is.

In order to achieve an understanding of reconciliation which may be of practical use, Brounéus (2008) proposes that we break it down into smaller fragments. Her definition of reconciliation reflects her psychological background; 'a societal process involving mutual acts of past suffering and the changing of destructive attitudes and behavior into constructive relationships toward sustainable peace' (Brounéus, 2008: 12). What is useful with this definition is its emphasis on the role of reconciliation to enable coexistence and sustainable peace. Furthermore, reconciliation is understood as 'a *process*, not a specific state at a particular moment in time' (ibid: 12). The two main gaps in the field of reconciliation are according to Brounéus a lack of conceptual and methodological clarity and a lack of empirical research on truth telling. Truth-telling has been promoted as one of the main methods used to achieve reconciliation, as exemplified by truth and reconciliation commissions.

While truth telling will not be especially addressed in this dissertation, besides the effects of testifying, the point made by Brounéus (2008) is interesting to note. In the case of Bosnia, the establishment of a truth commission is being debated even after the ICTY has been in existence for seventeen and a half years. This suggests that truth commissions contribute with something substantially different than that of a Tribunal, even if the truth is also sought established by facts from the judicial processes.

4.3 Justice and Truth

'Justice may serve the goal of truth, when truth is produced as a by-product of the ordinary workings of the justice system' (Elster, 2010: 5). The search for the truth can, according to Elster (2010), take a variety of forms. Representatives of the ICTY state

that one of the Tribunals main contributions to the states of former Yugoslavia is to be part of the creation of a public record of the Bosnian War. They proudly state that they have over two million pages of publically available document that will be part of the Tribunal's legacy. They acknowledge their limitation in creating a common narrative of the war, as they only help establish the truth though the lens of criminal justice (ICTY Press release, 17.05.2001). So why is truth important when we speak of reconciliation? Truth helps ensure that no one can deny the facts and states clearly that 'this is not tolerable'. It is an important statement for victims who might not otherwise be believed. Furthermore, 'public knowledge of the identity of wrongdoers may, at least partially, serve the justice of wrongdoing' (Elster, 2010; 10). Public contempt may for instance be regarded as a cruel form of punishment, but not one that Elster recommends. He insists of leaving the task of punishing perpetrators to the courts. When left up to the victims of war, the quest for justice is an uncivilized one; the 'rough justice' of naming and shaming without providing sufficient evidence is one that should be avoided (Elster, 2010).

Truth, when offered in its right form, may impact civic peace by providing the information needed for lustration. Knowing the background of public officials can help keep them from getting in a position where they are able to transmit destructive opinions to the public, through nationalist rhetoric or direct statements that contradicts a national reconciliation. Several of the leading politicians in Republika Srpska have for instance in later times denied several of the established war crime facts, such as the detention camp at Omarska and the genocide in Srebrenica (Tokača, 2011 [interview]; Jelačić [interview], 2011; O. Sušić, 2011 [interview]). They have requested a revision of history, something former President Claude Jorda of the ICTY warned specifically against (ICTY Press release, 17 May 2001).

4.4 Transitional Justice and Reconciliation

'I think reconciliation is a very private and individual emotion. I think that the whole society at large has to put all the elements there so that people can reach that stage mentally and to say that "okay, I'm ready to move on and to forgive

and to accept what has happened". But you cannot just say that, by putting a hundred or two hundred or a thousand people at trial that you can reconcile people' (Jelačić, ICTY spokesperson, 2011 [interview]).

Transitional justice is concerned with injustices caused by a conflict and its main components are the punishment of perpetrators and reparations for the victims. Transitional institutions, such as the ICTY, may be argued to act as a deterrent to further crime through punishment and to provide a more stable post-conflict society (Elster, 2010). I will distinguish between the two judicial terms restitution and retribution, which are both important in the transition from conflict to peace. Retribution concerns punishment as an accepted and appropriate response to criminal acts. Restitution on the other hands concerns the reparation to victims, for instance by providing with them with property, as well as dignity, that was unrightfully taken from them during conflict. While the goal of restitutive justice can be said to re-establish the status quo that existed before the crimes took place, this is of course impossible in post-conflict setting. While sufficiently compensating for the lost ones is impossible, getting the perpetrators to pay sufficient compensation for material goods is also a challenge. Many offenders will not have the economic means for such and the tribunals have restricted means as well. The reason why retribution may be important in transitional justice is that lack of compensation may lead to additional grievances and thus a demand for punishment from the victims (Elster, 2010). This belief is supported by a statement from a former camp detainee in Bosnia-Herzegovina:

'By the very act of convicting, [the ICTY] has provided moral satisfaction to the majority of the victims, which is also the purpose of the Tribunal'⁵⁶ (Murat Tahirović, President of the Association for former concentration-camp detainees in BiH, 2011)

⁵⁶ The answer was given in Bosnian, and the translator specified that there were inconsistent sentences, therefore I include the statement here: Samim cinom presude dao je moralnu satisfakciju vecini zrtava sto l jeste cilj osnivanja Tribunala.

The ICTY deals first and foremost with retributive justice, which is the punishment of criminal acts. Retribution may be considered by some as a way for perpetrators to take part in the rebuilding society (Staub, 2006), by helping to establish the truth and providing justice to victims, thereby allowing them to move on. Punishing individuals is another way of stating that the atrocities committed were not the work of a specific group or entity. It is important to specify that this does not take away the collective characteristic of collective crimes, such as those committed in Bosnia. It solely means that an individual from a certain ethnic groups is not responsible as a result of being a member of that specific group (ibid).

Justice and peace have often been thought to contradict each other. In the Bosnian case, both France and Britain were skeptical to the ICTY because they were afraid that the fear of prosecution by the current political leaders in Bosnia would endanger the peace process. The fear was that Milosevic would refuse to negotiate peace if he knew that once the agreement was made, he would be prosecuted. The founders of the ICTY had hoped that the establishment of the Tribunal in itself could function as a deterrent to further crime, but it soon became clear that this was not the case⁵⁷.

Elster (2010) believes that what is more plausible than a leader refraining from the (mis)use of power is a leader that keeps his power for the fear of prosecution. If this is right, and future leaders will in no way be intimidated by the presence of an institution with the power to prosecute him, then Elster (ibid) believes that advocates for this kind of system will have some explanation problems. 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. If an international criminal court has no deterrent effect what so ever, and if it does not affect the stability of peace, advocates would have to show that 'net effect in the future exceeds the cost of a delayed peace in the present' (Elster, 2011: 11). 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

⁵⁷ The genocide at Srebrenica happened two years after the establishment of the Tribunal

well take 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. Elster (2010) seems to be of the opinion that whether victims benefit psychologically from judgments by the ICTY depends very much on what that judgment constitutes. From the victim's point of view, knowing who the offender is *and* knowing that he will go free is likely to generate resentment and bitterness rather than catharsis and healing (Elster, 2010: 12). Andreassen & Skaar (1998: 18) hold that *the effect of* a legal settlement after conflict may be reconciliation or division, stabilization or de-stabilization, all depending on how the settlement is executed and perceived. While it may be necessary to ensure democratization, it may have short term negative effects on the societies involved by triggering a backlash. Whether the legal settlement in turn contributes to reconciliation is contingent upon whether the public believes that justice has been done.

In measuring the extent of reconciliation, it is often assumed that the more reconciliation 'events', the more successful the community in question has been in achieving it (Brounéus, 2008). Reconciliation events are however not necessarily an indicator of achieved reconciliation, if anything it could be argued that the stronger attempts of reconciliation, the stronger indication that there is a lack of reconciliation (Brounéus, 2008). However, it is important to remember the definition of reconciliation applied in this dissertation that emphasizes a will to work constructively together and to reconstruct social ties. If there is a will to work together and to arrange such events, it is also an indication of a positive societal development where change is likely to happen. Social ties may be improved in working together with such events (Galtung, 2005). Thus what is important is not necessarily to distinguish between events and accomplishment but rather to seek to understand what the gap is between, in this case, the tribunal's attempts at reconciliation and the actual contribution of the tribunal in terms of reconciliation or the local perceptions of such.

As stated on page three, the ICTY is first and foremost an *ad hoc* tribunal intended to prosecute individual persons responsible for war crimes. The expectations that we have for the Tribunal should be reasonable (Orentlicher, 2008; Clark, 2009), as it is in no position to be the sole promoter of reconciliation. As a product of the UN, neither can the tribunal function without the support of the international community. It has financial constraints as well as constraints by its mandate that unquestionably impacts its reach and work. Despite this, I argue that international courts can potentially have an impact on reconciliation by two factors in particular; by bringing justice to victims and by creating a forum for victims suffering may be acknowledged. That an institution has implications that it could not foresee is not unusual, although several conventions specifically state that an action should not be undertaken if it is likely to have adverse *de facto*⁵⁸ effects on the individuals involved⁵⁹. While it is clear that the ICTY has to take into consideration its actual effect on individuals involved, it is difficult to argue against the prosecution of war criminals on these grounds if one believes in restitutive justice. Mirko Klarin (2009) holds that public opinion is only minimally influenced by what actually happens at the tribunal, but admits that the majority of the population has a strong opinion about it. Furthermore, while Milošević largely ignored the Tribunal, the political leaders of today use it wisely in their game of political manipulation. It is these leaders and local elites that help shape public opinion, more than the tribunal itself, according to Klarin (2009).

Petar Finci (2011 [interview]), the senior information assistant at the ICTY's outreach program, exemplifies the plea bargains as a major contribution to reconciliation. He highlights that guilty pleas help establish the question of guilt beyond doubt. Inherent in this is the belief that it is necessary to establish the facts in order to reconcile. A guilty plea or 'a statement of guilt' is an agreement between the prosecutor and the accused (ICTY, 2011⁶⁰). The Trial Chamber is not part of the agreement but has to accept it for it to be valid, which is only done if it is believed that the confession is

⁵⁸ In reality, actual, as opposed to *de jure*

⁵⁹ This is the case for instance in the convention of women's rights

⁶⁰ <http://www.icty.org/sid/26> Accessed 04.07.2011

‘voluntary, informed, and unequivocal’, and if the facts found by the Tribunal support the statement. Guilty pleas are perceived to render a trial unnecessary, and some charges may be withdrawn if the accused pleads guilty on parts of the indictment. So far, twenty such guilty pleas have been made⁶¹. Combs (2003), however, specifies that if the sentences the ICTY hands out are seen as rewards rather than punishments, this can be an additional source of bitterness for the victims and work against reconciliation. Combs’ reasoning was confirmed by one of my informants in Sarajevo who knew very well that Plavšić had served her time in a prison in Sweden with the best comfort available, thus rewarding her complicity in killing thousands of Bosnian Muslims⁶². Finci’s view is, according to Orentlicher (2010) a common view among the tribunal’s supporters. Dražen Erdemović (case IT-96-22) was in 1998 sentenced to five years for personally having killed 70 civilians and contributing in the killing of 1200 Bosniaks after he pleaded guilty. To explain the reasoning behind this sentence, the Trial Chamber II stated that ‘discovering the truth is a cornerstone of the rule of law and a fundamental step on the way to reconciliation’ (Orentlicher, 2010: 59). It should be mentioned that Dražen Erdemović is still coming to The Hague to witness against other defendants, and has supplied important evidence over the years (Finci, 2011 [interview]).

Orentlicher (2010) places no trust in the ‘reconciliation rationale’ that is used to legitimize the guilty pleas. She believes rather that this is a convenient practice to spare the Tribunal of valuable time and money. Combs (2003) is of the same belief, saying that ‘a guilty plea even in the most straightforward case, then, is tremendously valuable in time and resource savings (...)’ (Combs, 2003: 935). Rather than appreciating the expression of guilt and remorse from defendants, Bosnian victims felt that the short sentences disrespected those that had suffered, and that it was inconceivable that even if they admitted to the crimes they were not appropriately

⁶¹ The defendants who have pleaded guilty are: Milan Babić, Predrag Banović, Miroslav Bralo, Ranko Češić, Miroslav Deronjić, Damir Došen, Dražen Erdemović, Miodrag Jokić, Goran Jelisić, Dragan Kolundžija, Darko Mrđa, Dragan Nikolić, Momir Nikolić, Dragan Obrenović, Biljana Plavšić, Ivica Rajić, Duško Sikirica, Milan Simić, Stevan Todorović, Dragan Zelenović. <http://www.icty.org/sid/26> Accessed 04.07.2011

⁶² Informal talk with a woman in Sarajevo

convicted for them (Orentlicher, 2010). Ryngaert (2009: 277), however, who in 2006 conducted a survey in Bosnia on what restitution measures victims prefer states that '(...) people did not put the prosecution of the perpetrators at the top of their list, but two other matters: financial restitution and sincere apology'. Combs (2003) agree that when done right, guilty pleas may help advance reconciliation. However, while establishing the truth may be an important aspect of reconciliation, she specifies that it is even more damaging to victims when they feel that the defendant is being rewarded for his/her crimes (Combs, 2003). Hazan (2004) argues that the way the Tribunal communicates its work may help to determine its' success. In other words, perceptions of the Tribunal matter. If people have a certain understanding of the ICTY they are likely to interpret its work in a way that confirms their beliefs. The fact that the Tribunal only began communicating its work to Bosnians in 1999/2000 means that people had already to a large extent formed an opinion based on the restricted and heavily biased information they had access to. Human Rights Watch (2008) elaborates on the role of the outreach program and states that outreach is absolutely necessary to help people understand the work of the ICTY, and to limit the space for misunderstandings and misinterpretations. By combating prejudice, Human Rights Watch thus believes that the possibility of these trials having an effect on societal healing is increased.

Another problem with reconciliation initiatives is that they may be no more than a show for the audience, so to speak. 'Reconciliation initiatives may be signals more to the international community, than to the population' (Brounéus, 2008), and formal apologies by political leaders may be one such initiative. Elster (2010) sharply criticizes the belief that public apologies are at worst harmless, and warns us of the highly damaging effects. Such apologies presupposes a form of essentialism, that one has to apologize as if belonging to the same group as a perpetrator somehow means that one is responsible for his acts committed fifty years ago. It assumes exactly what the ICTY says it wants to prevent by holding individuals accountable; to state that it is not one entity that is responsible for the crime, but individual persons. The idea that

an entity can be held accountable is 'downright pernicious' (Elster, 2010). The long term effect of public apologies may very well be that there is more to be sorry for. It reinforces essentialist beliefs and is demonstrably dangerous. In light of this, and the ICTYs objection to collective responsibility, one might question its encouragement of the symbolic gesture of guilty pleas, which I shall come back to later.

Symbolic reconciliation gestures may leave one to think that one has dealt with the issue sufficiently and that it can be left (Tokača, 2011 [interview]). Tokača, President for the Research and Documentation Centre in Sarajevo mentions the Nuremberg tribunals as a good example of this. A few war criminals were prosecuted in a short time (up to one year), and left the international community to believe that enough had been done in the dealing with past crimes. Today, it is clear that the atrocities were not sufficiently dealt with and that even today there is incomplete knowledge of certain aspects of the Second World War⁶³.

Vetlesen (2005) believes that there is a gap between what is required for a legal proceeding and what is required for reconciliation, and that the process of reconciliation may lack the formality that is required in a courtroom. Reconciliation is an emotional process that can only be successful if the parties involved are able to see their adversary as an individual⁶⁴. He believes that the divide between perpetrator and victim is more blurred in a process of reconciliation, where the act of seeking forgiveness and the act of forgiving are closely related. Vetlesen (2005) emphasizes that forgiveness, which he believes is a necessary condition for reconciliation, may come unprovoked but that it in that case is an empty gesture. Victims, he believes, will search for regret in their perpetrators to find it right to forgive. As a result, the reconciliation process in Bosnia is a slow one, as there are few signs of regret and apologies from the convicted war criminals⁶⁵. In a similar line of

⁶³ Such as the complicity of the Norwegian state and police in deporting the Norwegian Jews

⁶⁴ That is, not as a member of a group but as a particular individual

⁶⁵ At the time of Vetlesen's writing, Ratko Mladić and Radovan Karadzic were still at large and Biljana Plavšić was the only defendant who had come with a public apology.

thought, Kostić (2007) states that the ICTY's sense of justice might be something very different from victim's sense of justice.

Vetlesen (2005) believes that by demanding that the victims take a first step and forgive without apologies, reality is distorted by making the victim equally responsible for the crimes committed against him as his perpetrator. Public apologies will likewise expect something of a victim that the public has no right to expect, and may release the personal guilt of each individual perpetrator by assuming responsibility on their behalf. He also believes that this should be the victim's decision, and that negative feedback if the victim declines to forgive is an infringement of his privacy and the wrong way to respond. Thus, for Vetlesen (*ibid*), the first move should without doubt be taken by the perpetrator. This statement displays the problems of a juridical process versus the emotional process that reconciliation is. From a victim's point of view⁶⁶, reconciliation can be sought too early, when the victims have a need to let the perpetrators face reality and to acknowledge the suffering of the victims. A demand for reconciliation may too soon close a wound that only the victims have so far felt (Vetlesen, 2005). Rather than hindering a necessary process and acting cowardly, resentment can in this way be seen as a way of securing a truthful reconciliation when the time is right. Vetlesen recognizes that the feeling of resentment can be taken too far until it becomes a question of power and vanity, but his most important point here is that the privacy of a victim should not be interfered with, and that seeds planted in infertile soil are unlikely to root.

⁶⁶ Vetlesen elaborates on the point of view of Jean Amery, a Holocaust survivor.

5. 0 Analysis

In this section I analyze the actual role of the ICTY in the reconciliation process, based on the data collected from the interviews. Some secondary literature will also be used, together with data collected in seminars and public statements and articles from the ICTY.

Possible explanations for local perceptions may help shed light on the gap between the Tribunal's stated contribution to reconciliation and the local perceptions of the Tribunal's actual impact on reconciliation. As stated in the introduction, this belief is grounded in the understanding of reconciliation as a process, not an end-state. Although it will never be fully possible to establish a causal relationship between the reconciliatory efforts of ICTY and the reconciliation events taking place at a local level, it seems fair to state that few Bosnians are oblivious to the Tribunal. The emotions that the proceedings and judgments of the ICTY stir among the Bosnian public make it seem reasonable to suggest that there is a certain correlation between events at Tribunal and events in Bosnia-Herzegovina. The potential of the ICTY to affect opinions is further indicated by the recorded⁶⁷ changed perceptions of the Tribunal after a sentence has been determined (Jelačić, 2011 [interview]).

Jelačić (2011) acknowledges that the actual impact of the ICTY may be larger than the ICTY as a tribunal initially accounted for:

'I don't think you can view a mandate such as that of the ICTY or any other court to be so strictly legal. Because obviously what you do has a much wider impact on the societies than the work of an ordinary national court that deals with criminal cases from everyday life. So it does have these wide implications, and as such we have a role to play in the reconciliation process' (Jelačić, spokesperson for the ICTY, 2011 [interview]).

⁶⁷ Questionnaires/ surveys that as been performed after a sentence that indicates at least that people has a tendency to adjust their immediate opinion of the ICTY.

The high expectations that have been held for the ICTY has not only come from the international community however, it has also come from representatives of the Tribunal itself. John Hocking (2009: 3), ICTY registrar, believes that ‘if you look at the matter globally’, the ICTY has both had a deterrent effect on atrocities in former Yugoslavia, and has contributed to the restoration and maintenance of peace in the region. Hocking also holds that the ICTY has been a leader in the field of conflict resolution and post-conflict development. It should be specified that if the ICTY contributed positively to the reconciliation process this would certainly be welcome; the problem arises when the ICTY claims to make a positive contribution and then later relieves itself of any responsibility when it is confronted with the missing reconciliation.

Finci (2011 [interview]) remarks that as reconciliation is stated in Chapter VII in the Resolution, it is also part of the Tribunal’s mandate. The Tribunal works towards the goal of reconciliation by prosecuting persons, but a tribunal can only do ‘as much’ (Finci, 2011 [interview]). When asked about his method of assessment when it comes to the ICTY’s impact on reconciliation, Finci (2011 [interview]) replies that there are no parameters to measure reconciliation and that it should be kept in mind that the ICTY is only a criminal court: its main aim is not reconciliation. On the ICTY’s website, the mission of reconciliation and how they aim to achieve it is however stated clearly:

‘Simply by removing some of the most senior and notorious criminals and holding them accountable the Tribunal has been able to lift the taint of violence, contribute to ending impunity and help pave the way for reconciliation (ICTY, 2011⁶⁸).

Enver Djuliman (2011 [interview]), lawyer and Head of the education unit at the Norwegian Helsinki Committee, points out five different areas in which the Tribunal has contributed positively to reconciliation: by creating a forum where survivors of the conflict can be seen, heard and acknowledged; by contributing with judicial facts;

⁶⁸ <http://www.icty.org/sections/AbouttheICTY> Accessed 27.05.2011

by a de-collectivization of guilt; by showing the public that good deeds were also performed by the individuals from different groups and lastly, by giving survivors back their faith in justice. Some of these contributions may be described as indirect consequences of the Tribunal's work rather than actual measures taken by the ICTY. For instance, the ICTY is actively seeking to establish judicial facts which in turn may give the victims a feeling of being heard and to give them faith that there are institutions that are prepared to protect them. That the ICTY states what is wrong and right may have a deterrent effect may leave the victims feeling acknowledged, and by punishing the perpetrators, other atrocities are deterred and victims are relieved of their need for vengeance. As Djuliman (2011 [interview]) states; the need for justice will not disappear until it has been satisfied. To individualize guilt is something that the Tribunal itself states as an important objective of prosecution. However, it is paradoxical that individual responsibility is established in The Hague, but that the criminals are later cherished as war heroes that acted on behalf of their communities (Djuliman, 2011 [interview]).

5.1 A Legitimate Tribunal

All of my informants recognize the Tribunal as a legitimate institution that it was indeed necessary to establish. There is a common understanding among my informants that if it had not been for the tribunal, the war criminals eventually indicted by the ICTY would have remained free and most likely retained their positions in Bosnia-Herzegovina. This point of view is indicated by former camp detainee Murat Tahirović:

'We have a clear perception of the ICTY and it is very positive. This is for the simple reason that the highest responsible for the crimes in BiH were punished or will be (an indictment has been preferred)'⁶⁹ (Murat Tahirović, President of the

⁶⁹The question asked was 'How do you perceive the ICTY and why?' The answer was given in Bosnian: 'mi imamo vrlo jasan stav o icty a on je izuzetno pozitivan, iz jednostavnog razloga glavni kreatori zlocina u BiH su kaznjeni ili ce biti (optuznice podnignute)'. The translator found the text hard to translate due to lacking words or inconsistency in sentences, and therefore the original answer in Bosnian is included.

Association for former concentration-camp detainees in BiH, 2011, [personal correspondence]).

Retribution is not only considered as a right response to the atrocities, but the unquestionable consequence of committing war crimes. There exists a widely held belief that without the ICTY, there would be no prosecution. According to Murat Tahirović (2011 [personal correspondence]), the trials conducted by the national courts are at times so ‘tragi-comic’ that they alone serve to justify the establishment of the ICTY. When I posed the question of what impact the ICTY actually has on reconciliation in Bosnia, the answers diverged greatly among my informants. However, I was able to identify two commonly held beliefs, namely, that the tribunal inhibits a potential power to affect reconciliation, and that the tribunal is not living up to this task.

The explanations for this gap in the thought potential contribution and the actual contribution could be blamed on unreasonable expectations of an international criminal tribunal. Jelačić (2011 [interview]) curiously notes that the ICTY seems to be judged harder than other international courts but proceeds to explain how the staff of the ICTY themselves apply higher parameters to their work, and thereby are less easily satisfied by their own achievements. She also believes that the expectations for the Tribunal are at times just too high:

‘(...) you have elements that think that this is a court, and its mandate is only to ensure that those that are indicted get fair trials and that we ensure that it happens in a court to certain standards (...) But then you have other opinions which is (...) that this tribunal is through these trials supposed to contribute to wider efforts on reconciliation, peace building, stability in the region etc. It is kind of a mission impossible for courts to do’ (Jelačić, Spokesperson for the Registry and Chambers and Outreach Program of the ICTY, 2011 [interview]).

Interestingly, Klarin (2009), who investigated the role of the ICTY trials on public opinion, found that the individuals that were ‘first-hand’ victims⁷⁰ of atrocities during the war were those who held the greatest expectations of the Tribunal and simultaneously those that expressed greatest disappointment in the prosecutions. However, also those that were most disappointed supported the Tribunal as an establishment. According to Klarin (2009), some justice is better than none and people are well aware that without the ICTY the war criminals would have remained at large.

The informant’s explanations for the limitations of the Tribunal were to a large extent in accordance with criticisms of the Tribunal in the secondary literature, but also highlighted some contemporary obstacles for the fulfillment of its potential role, such as the current politico-economic climate and conflict fatigue. Reasons for the failure to live up to its potential role in reconciliation can be placed in two main categories: factors stemming from the Tribunal itself, and politico-economic factors within Bosnia-Herzegovina. Together, these findings help to understand the lens through which the ICTY is viewed in Bosnia. The views of my informants may indicate focal points in the discussion on reconciliation, and suggest to Tribunals where their attention may be directed when performing outreach activities.

5.2 Limitations within the Tribunal

The informants highlighted different aspects of the ICTY that limited its contribution to reconciliation. Nedim Jahić, law student and political activist in the Youth Initiative for Human Rights (YIHR) recognized the geographical situation of the Tribunal and the processes themselves as factors that limit the Tribunal’s role in reconciliation:

‘The Tribunal is too far away, the processes too long.’ (Nedim Jahić, Youth Initiative for Human Rights, 2011 [interview])

⁷⁰ Klarin (2009) distinguishes between those that were direct victims of rape, torture, relatives of murdered etc, and those that were indirectly victims of war by living in Bosnia and witnessing the atrocities.

Another informant blames its partial failure to contribute on the limited number of prosecuted:

'The role of the ICTY in relation to a reconciliation process in BiH has not met the expectations because the ICTY has only prosecuted and punished those at the highest level of command' (Murat Tahirović, President of the Association for former concentration-camp detainees in BiH, 2011 [personal correspondence])

In some cases the limitations of the Tribunal were related to the ICTY as an establishment by the international community. As a result, the ICTY seemed to be the institution towards which all frustration was directed, even if the frustration stemmed from the UN's actions during the Bosnian war rather than the actions of the ICTY. One informant, who was responsible for the Diplomatic Protocol during the war, believes that some of the reason for the failure to contribute more to reconciliation can be traced to the ICTY's staff's limited knowledge of the Bosnian context:

'I don't think that the judges and the liaison officers always understand. It is a story that is very difficult to understand, it cannot be an easy job for them' (Informant #2, responsible for the Diplomatic protocol during the War, 2011⁷¹ [interview]).

Another informant shares the feeling that Bosnia is a case that must be difficult to understand if you are not from the region yourself:

'We are used to trouble. There has always been trouble in this country, that's just the way things are. I think it's hard for foreigners to understand. We make jokes about ourselves and laugh at all the trouble we are in, what else are we supposed to do? But we are always the losers in our jokes' (Informant #5, Sarajevo, 2011 [interview])

⁷¹ Own translation from French to English: *'Je crois que les juges ne comprennent pas toujours, les officiers de liaison non plus. C'est une histoire qui est très difficile de comprendre, cela n'est pas un travail facile pour eux'*

These statements insinuate that the ICTY remains a product of the international community that perhaps does whatever is in its power to help people in the region, but that will always be an imposed solution. The staff at the Victims and Witnesses support at the ICTY explained how some witnesses thank them for ‘trying to help them’, but then sadly announces that then they have to return to the reality of their lives. This could indicate that they look at the ICTY as something alien to them, and that failure to see substantial changes in the society as a result of the verdicts hinders an embracement of the Tribunal. What is interesting to note is that to become part of the judiciary at the ICTY one cannot have any affiliation with the region as one fears that this will cause bias and lack of legitimacy in the region (Hazan, 2004). It is hard to imagine that having a Bosniak prosecutor would constitute an advantage to the legitimacy of the Tribunal, but that informants lack faith in the judgments because they think that the judiciary does not quite understand the context is highly intriguing.

5.2.1 Length and Consistency of Sentences

Bosnian Serbs’ biggest criticism for the Tribunal’s work⁷² has generally been that the majority of those indicted has been Bosnian Serbs, although it is untrue that they have been the only group that has received long sentences. In fact, the first individuals who received long prison sentence were Bosnian Croats (Jelačić, 2011 [interview]). One problem that Jelačić (2011 [interview]) acknowledges is the lack of information regarding atrocities committed against Bosnian Serbs. It is correct that the perpetrators during the war were also Bosnian Croats and Muslims, but the fact that many Bosnian Serbs have not acknowledged the Tribunal has ironically been an obstacle to prosecuting individuals for war crimes committed against them (Finci, 2011 [interview]). Cooperating with the Tribunal would mean the same as acknowledging it; therefore few Bosnian Serbs have been available to aid the Tribunal in mapping atrocities against their own constituent group. The ICTY has in some cases

⁷² With emphasis on work, as the biggest problem has been that a substantial percentage of Bosnian Serbs actually do not recognize the Tribunal as a legitimate institution.

simply not had enough facts, or enough witnesses to testify against potential war criminals (Finci, 2011 [interview]). Bosnian Croats have argued that a disproportionately large number of Croats have been indicted as compared to how many Croats actually committed atrocities. The advocates of such a view arguably view the role of the Tribunal as proportionately reflecting the war crimes and prosecuting accordingly, rather than prosecuting based on evidence. For someone who believes in retribution, prosecution as a right response to crimes, should however disproportionate the number of those who committed crimes may be, support the prosecution of alleged war criminals. Whether the ICTY indicts or not should in other words be based on evidence, not on ethnicity.

Bosnian Muslims have in general been the group that has been the most positive to the tribunal, even though the Tribunal has lost some of their support in the recent years (Jelačić, 2011 [interview]). The reason for this may be that the majority of war victims were Bosnian Muslims, and as a result they saw the establishment of the Tribunal as a way to hold their perpetrators accountable. This may also be an explanation for why the support had been somewhat reduced in the later years, according to ICTY registrar John Hocking (2010). Bosniaks simply did not expect other Bosniaks to be indicted (Hocking, 2010, Duric, 2011 [interview]). One of the biggest critiques of the Tribunal, by all constituent groups, is that its sentences are too short and that the convicted war criminals are released too soon and allowed to return to the communities in which they committed unspeakable atrocities. Most of those convicted only serve two thirds of their time in prison, even when the sentences they are given are short (Orentlicher, 2010).

Enver Djuliman (2011 [interview]) contends that although victims frequently complain about the length of sentences, this is in reality a minor concern that should not be emphasized too much. From a victim's point of view, what is most important is that the Tribunal creates an arena where they are seen, heard and acknowledged. However, Djuliman also argues that the Tribunal may play an important role in giving people back their faith in justice and in institutions. This is important in order for

people to feel secure in their environment, and to let their guard down. The need for justice will not disappear by itself, but will remain until justice is done (Djuliman 2011 [interview]). Thus, even if the length of sentences is not the key to reconciliation, it is important that justice is felt by the survivors of the conflict.

5.2.2 The Courtroom as a Public Space

One source of anger among the Bosniak informants was that the defendants were allowed to use the courtroom as a public space to disseminate their nationalist views. Especially one informant got agitated when she started talking about this, and claimed that the speeches held by political leaders such as Karadzic and Milosevic reminded people of the pre-war era in which that kind of nationalist propaganda was commonplace. It provoked her so much that she was unable to watch the trial broadcasted, and she blames the Tribunal for allowing it to happen.

'People are very frustrated. They do not think that Karadžić should be on television at all. He is allowed to get publicity and to say the same things as he was saying during the war. For many, he is their [teacher]. People listen and learn from him, people, professors, even the judges in The Hague. He is manipulative and charming. I met him one time when I was a young girl. He was one of the few academics who invited me for coffee. He has a sense of humor, was charismatic, people like to be around him. You don't see that, but that's why he shouldn't [stand a trial]. He knows how to manipulate as a skilled psychiatrist, and he is good with people' (Informant #1, co-worker at the WHO during the war, 2011 [interview]).

Enver Dani Čomaga (2011 [interview]), President of the Youth Democratic Movement also holds that the worst about the trials is that the defendants are able to rant as much as they want, while the witnesses (victims) are severely restricted in their speech. Čomaga believes that witnesses are asked questions without having any knowledge of how the judicial system works, and that they are manipulated by the defendants and defense lawyers. Social workers Helena Vranov Šchool and Tiago de

Smit at the Victims and Witness Support (VWS) at the ICTY confirm that many of the witnesses were stressed by the fact that they were confined to responding to questions. Many come to The Hague expecting to tell their story, and are disappointed when there is no room for it:

'This is the first time that they [witnesses] are encountering legal proceedings. They think (...) that somebody ask them questions of what happened that night because they don't believe them (...). And sometimes victims believe that they are going to be allowed to tell their whole story, that they can tell everything' (Schoorl & de Smit, Victims and Witnesses Section ICTY, 2011 [interview])

That the courtroom is by some perceived as a public space for the speech of alleged war criminals, rather than for the acknowledgment of victims' suffering is an important finding, and contrasts with what Djuliman (2011 [interview]) emphasizes as important for reconciliation.

5.2.3 The 'Reconciliation Rationale' Behind the Guilty Pleas

Guilty pleas are important, because like Combs (2003: 937) emphasizes; 'institutions like the ICTY can impair the very reconciliation that they seek to advance if the rewards that they hand out themselves become a new source of bitterness'. As already stated Finci (2011 [interview]), at the ICTY, believes that the 'guilty pleas' are without doubt beneficial for reconciliation, as guilt is established without doubt.

The Plavšić case (IT-00-39 & 40/1), which was concluded in October 2002, is interesting in many ways. First because it was the one case that was mentioned by every single informant, and secondly because Biljana Plavšić was the first person in a position of power during the war to plead guilty. Some informants referred to the case as a disgrace to the Bosniak victims, others use it to exemplify the lack of political reconciliation, especially in Republika Srpska. The Plavšić case has been one of the most contended judgments of the ICTY, because Plavšić later confessed in an interview that she was not guilty and did not feel remorse for the victims, but had only pleaded guilty because she knew that this would benefit her (Combs, 2003).

Biljana Plavšić, known as the 'Serbian Iron Lady' by Bosnians, was a Bosnian Serb nationalist leader and a close ally of Karadzic. She was both the Serbian representative to the BiH Presidency from 1990-1992, and a co-president to the Serbian Republic of BiH. Plavšić once referred to Bosniaks as 'a genetic defect on the Serbian body', and supported the campaign of ethnic cleansing which was executed when she was a co-president for the Serbian republic. Plavšić was initially charged with eight counts, including genocide, complicity in genocide, crimes against humanity and murder. During the war, Plavšić had de facto control and authority over members of Bosnian Serb armed forces. According to the ICTY, she 'participated, planned, instigated, devised and executed the persecution'⁷³ of the non-Serb population in 37⁷⁴ municipalities⁷⁵. She is thought to have embraced and supported the ethnic separation that resulted in the death and expulsion of several thousand non-Serbs in Bosnia. When she was first indicted in 2001, Plavšić pleaded not guilty on all charges. In 2002, she pleaded guilty on count three; persecution on political, racial and religious grounds, a crime against humanity (ICTY, 2011⁷⁶). This was accepted, and the genocide charges dropped, as the prosecution found that her guilty plea was 'an unprecedented contribution to the establishment of truth and a significant effort toward the advancement of reconciliation' (Combs 2003; 931). This statement is grounded in the belief that truth is one of the founding blocks for reconciliation and without the establishment of such, suspicion and ethnic hatred can (re)escalate into violence. The prosecutors went so far as to summon two witnesses from the South African Truth and Reconciliation Commission that confirmed the prosecutor's trust in truth as a prerequisite for reconciliation (Combs, 2003). Plavšić was sentenced to eleven years after some dispute between the defense and the prosecution concerning her old age (seventy-two years at the time of prosecution).

⁷³ ⁷³ http://www.icty.org/x/cases/plavsic/cis/en/cis_plavsic_en.pdf Accessed 29.05.2011

⁷⁴ Banja Luka, Bijeljina, Bileća, Bosanska Krupa, Bosanski Novi, Bosanski Petrovac, Bratunac, Brčko, Čajniče, Čelinac, Doboј, Donji Vakuf, Foča, Gacko, Hadžići, Ilidža, Ilijaš, Ključ, Kalinovik, Kotor Varoš, Nevesinje, Novi Grad, Novo Sarajevo, Pale, Prijedor, Prnjavor, Rogatica, Rudo, Sanski Most, Šipovo, Sokolac, Teslić, Trnovo, Višegrad, Vlasenica, Vogošća and Zvornik

⁷⁵ Today, there are 142 municipalities, before the war there were 109.

⁷⁶ http://www.icty.org/x/cases/plavsic/cis/en/cis_plavsic_en.pdf Accessed 29.05.2011

The guilty plea and constructive efforts for the post-conflict society fell in her favor- the chamber explicitly stated that she had a 'positive impact on the reconciliation process [in former Yugoslavia]' (Combs, 2003: 933). In her guilty-plea statement, Plavšić said the following:

'There is a justice which demands a life for each innocent life, a death for each wrongful death. It is, of course, not possible for me to meet the demands of such justice. I can only do what is in my power and hope that it will be of some benefit, that having come to the truth, to speak it, and to accept responsibility. This will, I hope, help the Muslim, Croat, and even Serb innocent victims not to be overtaken with bitterness, which often becomes hatred and is in the end self-destructive' (Biljana Plavšić, guilty plea statement at the ICTY, 17th December 2002)⁷⁷

Following her guilty plea statement, the Trial Chamber found that the statement included a confession of guilt, signs of remorse and an objective of reconciliation. This, together with the disclosure of a serious crime made the guilty plea a positive contribution to reconciliation in Bosnia and in the region. Plavšić was also crucial in the acceptance of the Dayton accords by Republika Srpska. These were all mitigating factors that reduced Plavšić' sentence, despite the fact that she was in a superior position during the war and had full awareness of the crimes committed in Bosnia. Plavšić was sentenced with eleven years for prosecution on political, racial and religious grounds, and served her time in Sweden from the 26th of June 2003. She was granted early release in 2009, partly because of the time she spent in detention during her trial (ICTY, 2011⁷⁸).

The practice of 'guilty pleas' is a practice inconceivable to most Bosnians who are not familiar with the term from their national judiciary system (Finci, 2011 [interview]; Orentlicher, 2010). It stems from the Anglo-Saxon judicial system and states that whether a prosecuted person pleads guilty and shows remorse this is to benefit the prosecuted (Finci, 2011 [interview]). From the ICTY's perspective, as an institution

⁷⁷ http://www.icty.org/x/cases/plavsic/cis/en/cis_plavsic_en.pdf Accessed 29.05.2011.

⁷⁸ http://www.icty.org/x/cases/plavsic/cis/en/cis_plavsic_en.pdf Accessed 29.05.2011

concerned with prosecuting guilty persons, the positive consequence of establishing the facts beyond doubt will exceed those of an early release of a war crimes criminal into his/her home community. Hopefully, it will also act as an incentive for more war criminals to be open about their roles in the war and to reveal information regarding yet again other criminals (ICTY, 2010). Čomaga explained with disgust how Biljana Plavšić was flown into Bosnia by the President's private Jet and welcomed as a war hero. To him, this was more a sign of the lack of reconciliation and acknowledgment on a political level, and devastating to the victims of Plavšić:

'Saying that you are guilty is not enough. Maybe if you show that you're sorry for it. She didn't contribute at all to reconciliation by saying that she's guilty. Okay, if she says she is sorry we can work together for a better future' (Ernad Deni Čomaga, President of the Democratic Youth Movement, 2011)

Čomaga thus distinguishes between acknowledging guilt and apologizing for committed crimes. In his view, saying that you did commit the crimes and then getting a low punishment just shows that you can get away with severe crimes- the opposite of the deterrent effect that the Tribunal seeks to promote. However, if Biljana Plavšić would have followed her confession with a sincere apology, this could be regarded as something that could be met by a mutually positive gesture- that of moving one step closer to a future together. Čomaga (2011 [interview]) expresses the feeling that those wise enough to plead guilty are rewarded for their crimes.

For others, the Plavšić case was an indication of the dysfunctions of the tribunal, exemplified by its inability to sentence with consistency (some low ranking criminals received longer sentence than high ranking officials) and its incapability to condemn the crimes that were committed during the war. For yet again others, the way Plavšić was hailed a war hero in Serbia even after she has confessed the compliancy in the murder of thousands of Muslims is a sad example of the sentiments that persist from the war. Thus, this case serves as an illustration of the lack of reconciliation and recognition of the suffering of victims. None of the informants could argue that the

case in any way aided their ability to put the past behind them, but rather, it increased the distrust of the tribunal and the willingness of Bosnian Serbs to acknowledge the committed injustices. Staub (2006) argues that it is important that trust is rebuilt between individuals and groups after a conflict, in order for a process of reconciliation to take place.

The Plavšić case seems to have decreased the trust of Bosnian Muslims vis-à-vis Bosnian Serbs. Accordingly, it has decreased the trust in the tribunal, and thus is important for the effect other verdicts will have on the society. Clearly, this case shows that the justice system does have an impact on inter-group relations, by triggering certain responses within the two groups. The fact that the Plavšić case was received so fundamentally different by Bosnian Serbs and Bosniaks is a further indication not only the mistrust between the groups, but also of the lack of cooperation towards building a common future- an indication of reconciliation.

The ICTY may thus be said to demonstrate the state of reconciliation by offering a verdict (a contagious issue) to the public. This does not necessarily say that the Tribunal directly affects the direction the reconciliation process takes, but it would be naïve to say that it does not have an impact at all. Reconciliation is a two-way process, and acts from one group will thus trigger responses from the other. Trust is an important factor if the groups are to coexist harmoniously. Simultaneously, it can also prove a reciprocal process whereby suspicion may replace trust if groups do not believe they have reason to trust the other. If the Plavšić case, as indicated by the informants, demonstrate that the Bosnian Serbs cannot be trusted, this is likely to generate distrust among the constituent groups that interpret its actions as a threat to themselves. In addition, nationalist politicians (or simply politicians who benefit from negative sentiments towards out-groups) might make use of this feeling of distrust, or perhaps willingly exacerbate it. For instance, most people in Bosnia do not know how beneficial Plavšić' statements were for the prosecution of other war criminals, but they all know that she was granted a relatively low sentence, and that

she served her term in one of the best prisons in Sweden where she had, among other things, a sauna (Orentlicher, 2010).

'Take Biljana Plavšić: did you know that she served her time in a Swedish prison? She had the top comfort in her prison. And I don't know what position she had during the war but she was one of the leaders (...) responsible for many killings. Criminals hope to come to The Hague because they get less[er] punishment than in the local courts' (Informant #1, co-worker at the WHO during the war, 2011 [interview]).

If the Tribunal is not able to effectively engage in outreach and thus justify their own actions, the floor is open for those who wish to exacerbate and make personal use of certain actions. One may counter-argue that the contagious issues brought up by the tribunal would have to be brought up sometime, by some other institutions. The only argument one may justly forward is that if the tribunal had been able to work faster, they might have avoided painful memories of the past that lingering for many years after the atrocities took place. One has to take into account that the Tribunal has to deal with a number of unforeseen factors which is obviously none of the ICTY's fault. Mønnesland (2011 [interview]) also argue that if the Tribunal has used less time on the trials, someone else would criticize them for that. From a judicial perspective, they are right in giving the defendant time to build up his defense and in ensuring that the dignity of the defendant is maintained. The most important issue here however, is whether the turns and twists of the reconciliation process is a consequence of the ICTY's actions- regardless the original intention of the ICTY.

As Jelačić (2011 [interview]) correctly points out, the mandate of the tribunal is to ensure that the defendants are ensured just trials. This is not the same as saying that the victim's sense of justice is justified. Sveaas points to the formality and bureaucracy of the International tribunal as obstacles to contribute to reconciliation, and rightly enough, the sentences need to be based on hard evidence and to be in accordance with international standards. Plavšić sentence was as such a just

sentence, from the Tribunal's perspective. However, it did not satisfy the scholarly quest for justice.

However, unless the Tribunal is able to convert the victims to the judicial approach where a sentence is just if it is the result of correct judicial proceedings, the victim's quest for justice will most likely remain psychologically motivated. Thus, if the tribunal is to have an impact on reconciliation it has to be regarded as legitimate, and the sentences that it hands out has to be viewed as just *by the victims*. Most important, the victim has to feel that justice is being done to them. If this is not the case, the sentences are likely to cause just more resentment and bitterness. As Tokača (2011 [interview]), points out, it is not the work that the tribunal performs that is the key to reconciliation, but what the local communities make out of it. Only by being sufficiently processed by the people themselves can the work of the tribunal have an impact on reconciliation. Therefore, it is crucial that people have confidence in the ICTY.

5.2.4 The Act of Testifying

Testifying in a court room is not the same as testifying in front of a Truth and Reconciliation Commission. In such a commission, the victims are allowed to tell their story for it to be recorded and used in the 'construction' of a national history. In the courtroom however, there is no room for tales, and the prosecution witnesses are restricted in their speech as to what is necessary for the prosecution of the indicted individuals. Thus, the establishment of fact, as understood by the Tribunal, is quite different from the establishment of truth at a truth commission. As an example, Djuliman (2011 [interview]) believes that a truth commission could complement the ICTY by creating a space where the whole truth about the Bosnian War could be found, and that in contrast to the Tribunal, survivors' needs should be placed first and then the institution built around it.

The Victims and Witnesses Section at the ICTY has full responsibility for the witnesses for both defense and prosecution, from the time that they are called in to testify to

when they leave the Tribunal. The witnesses stay at the ICTY for an average of four to seven days. They check on the witnesses four to six weeks after they have returned to their home communities, as to ensure that further support is provided by the regional offices or other officials in the region whenever needed. The staff at VWS see it as their main responsibility to minimize the post-traumatic stress that witnesses may experience and to influence survivors' expectations. The stress experienced by witnesses is generally very high. Many have never travelled abroad, they do not know the language or customs in the Netherlands, and they do not know how the legal system works. Some believe that they will be locked up for as long as they are in The Hague, that they will not be allowed to walk around freely (Schoorl & de Smit, VWS, 2011). In addition, re-traumatization occurs whenever terrible memories from the war come back to haunt the survivors, and when they are in a close physical proximity to their perpetrators (Schoorl & de Smit, VWS, 2011). To complicate matters;

'(...) the comparison [between] the suffering they have endured and the sentence [of the perpetrator] does not match. Even though this might be the highest possible sentence, it is still not high enough because there is too much suffering involved, there is so much emotion' (Schoorl & de Smit, Victims and Witnesses Section, ICTY, 2011).

The support section seeks to compensate somewhat by being there and listening to the victims. They stress however that they are not able to give much feedback to the victims during the trials in fear of altering evidence.

'[testifying] has short and long term impacts and you see someone [who] are so happy that they came, they told, they testified...but the same thing can trigger very negative or difficult emotions, or trigger trauma which will then cause them suffer for an additional two years or longer. For some it will not' (Schoorl & de Smit, Victims and Witness Support, ICTY, 2011 [interview]).

According to the Victims and Witnesses Section, testifying was for witnesses more often than not a case of re-traumatization. As stated previously, while many witnesses expected to be allowed to tell their story, testifying in a court room is a more centered on the defendant, and not the witness. The witness is there primarily to provide evidence in favor of or against the defendant. The strain of the witnesses does not automatically decrease by time, and some witnesses expressed that they found it more emotionally challenging for each time they testified. The level of stress and re-traumatization was high, according to the support group, and there was little evidence of psychological healing as a consequence of testifying:

'One would expect that when you do something for the tenth time, and especially outsiders who are not familiar with trauma expect this, it must be logical that it becomes easier (...). But we are seeing more that it's actually the opposite, that it takes them two or three weeks to get back into the daily rhythm (...) They explain that they know that every time it becomes harder (Victims and Witnesses Section, ICTY, 2011 [interview])'

VWS specifies that there has been very little research on the effects of testifying, and that they can only take into account what they experience with witnesses. Despite the emotional challenge of testifying, the victims often express a determination to tell their stories. There are in general two sentiments that drive them to testify. Many express the feeling that they owe to their loved ones to speak up about what happened and thus to ensure that it does not happen again. At the same time, they wish to show that they managed to survive despite all odds:

'To say "I survived this, I'm still here" (Schoorl & de Smit, Witness and Victims Support, ICTY, 2011 [interview])'

To Helena Schoorl (VWS, 2011 [interview]), reconciliation means that people accept each other's suffering and try to rebuild their life together. Even though reconciliation has not been brought up as a motive for testifying, there seems to be a belief among witnesses that if they bring forward the truth and it is also

acknowledged, then reconciliation may be an end-result. Schoorl (2011 [interview]) believes that reconciliation is a rather vague notion, and that survivors cannot fully grasp it at the time of the very real experience of testimony. Those who most clearly express concern for reconciliation are policymakers or individuals that deal with issues related to the past war, either in politics or civil society. The staff at VWS believes that the current situation in Bosnia prevents people from concentrating on reconciliation:

'Some say that "you have such a great service here, trying to help us, but then we have to go home to the reality". He doesn't know if he is going to be able to feed his family tomorrow because someone else wants his job [who] is a friend of such and such' (Schoorl & de Smit, Witness and Victims Support, ICTY, 2011 [interview])'.

5.2.5 Truth and the De-monopolization of Facts

Tokača (2011 [interview]) at IDC articulates the importance of providing hard facts concerning war crimes, so that people who have different ideas can go and check for themselves. He believes that after the research center identified some 100, 000 victims by name, there is no way a politician or any other individual could deny it, simply because they can check the information for themselves. Political activist and member of the Youth Initiative for Human Rights agrees that what is needed to promote reconciliation is hard facts:

'No longer methodology but facts. There is a need for reasonable analysis to understand what happened. False facts mock the victims' (Nedim Jahić, YIHR 2011 [interview])

While the President of DOP, Çomaga (2011 [interview]), does not contest the importance of facts, he specifies that if the truth about crimes is established without the perpetrator being punished, facts themselves will not help the reconciliation process. Rather, it may signal to perpetrators that they can commit heinous crimes, such as genocide, and get away with impunity.

Jelačić (2011 [interview]) points out that certain information such as exact location of mass graves and personal recollections of the war years may not necessarily be of value for the Tribunal, but may be of tremendous value to survivors. While this may be a concern for the outreach program, the prosecutors do not seek to gather such facts from the defendant unless it directly affects the case, as is only natural in a criminal court. This has been one of the criticisms of the tribunal, and it is essential in terms of reconciliation. The tribunal claims that it aims to establish facts about the war, but the facts that it provides might not be most constructive to victims healing. Furthermore, as Tokača (2011) emphasizes, the IDC handed information concerning the conflict to the tribunal in order to aid with prosecution, not the other way around. This raises the question of whether not another institution may be equally equipped at establishing facts.

'Of course, using the ICTY to collect sources is possible, but we know a lot of things, even without the ICTY.' (Tokača, President of IDC, 2011 [interview])

Furthermore, as justice is only a small part of reconciliation, fact-based truth⁷⁹ is absolutely necessary. However, its usefulness in the reconciliation process depends on how these facts are received by the public:

'Fact-based truth is very important, but the question is how we will deliver all this information to the public. How to ensure accept of this information. How to open social dialogue about the past, how to unlock victims from the past. We need the past of course but not because of the past- because of the future' (Tokača, President of IDC, 2011 [interview]).

Fact-based truth may still be used selectively in order to manipulate public opinion, as has been seen the case in Bosnia. Tokača is all too aware of the use of the past for political reasons, and the 'mythologization' of the past for the benefit of one's own ethnic group. He believes that a major obstacle for the reconciliation process today is

⁷⁹ I emphasize fact-based, because the different versions of the war events circulating in Bosnia are believed by each constituent group to be the truth but it is not fact based.

that even when facts are available, people from one ethnic group are not interested in finding out what happened to individuals from other ethnic group. Without taking into consideration that atrocities were committed by all sides in the conflict, it is easy to state that one's own group were the victims and thus only acted in self-defense. The victimization triggers a 'blame- game' that removes any incentives to move away from the past and into a common future.

Elster (2010) is skeptical of public statements, and believes that apologies uttered decades after atrocities took place could somehow enforce the idea of collective responsibility. However, in several cases the prosecuted war criminals have been welcomed as heroes by their home communities or by members of their own ethnic groups upon their release from prison. Several informants found this devastating to behold, as this is evidence of the lack of acknowledgment of victims suffering and denial of guilt in war crimes. Arguably, by assessing the strong effects that these acts have, the prosecutions by the ICTY could render a positive effect if the ethnic groups would condemn the war crimes committed by the war criminals from their own ethnic groups, rather than welcome them home as heroes.

Interestingly, contrary to the theory offered by Elster, who states that public apologies are capable of doing more harm than good, Kostić (2007) finds that 70.8 percent out of a random sample of 2,478⁸⁰ strongly believe that public apologies from politicians could advance reconciliation. Kostić' informants believe that a public apology is a strong reconciliatory signal that could help people to reconcile with the past. This does not necessarily mean that they believe in forgiveness; 50 percent of the individuals Kostić interviewed stated that they would never forgive perpetrators, while 45.5 percent believe that one should forgive but not forget⁸¹. While Čomaga (DOP, 2011 [interview]) believes that apologies may facilitate the reconciliation process, this does not necessarily mean that forgiveness should follow automatically:

⁸⁰ Kostic has performed detailed surveys with a random sample of 2478 individuals from different communities and from the three constituent groups of BiH. There is an even number of Bosnian-Croats, Bosniaks and Bosnian-Serbs.

⁸¹ Only 2,9 % believes in forgiving and forgetting.

'Reconciliation is not about forgetting or even forgiving. Some perpetrators should not even be forgiven, like Karadžić. But one shouldn't blame a nation for the wrongdoing of individuals. Reconciliation involves working together towards a common future' (Ernad Deni Čomaga, President of DOP, 2011 [interview]).

Enver Djuliman (2011 [interview]) is of the opinion that public apologies may have a positive impact on the reconciliation process, if satisfying certain conditions. First, the apologies have to be sincere, unlike Plavšić' apology which she withdrew after her return to Belgrade. Secondly, the apologies have to be implemented on a local level. That is, a public apology should be an unspoken promise about efforts to contribute to reconciliation, for instance by providing the resources needed to rewrite history books. It needs to be clear what concrete roles each institution and each individual working in that institution should have- responsibility needs to be appropriately delegated. Djuliman (2011 [interview]) disagrees with those that claim an apology should only come from a person that has been directly involved in the atrocities of which the apology is sought for. In his view, it is completely acceptable, almost expected, for a person in a central position to apologize on behalf of his community or ethnic group. Unfortunately, Djuliman (2011 [interview]) believes that the lack of involvement by local actors may be explained by the concept of 'stolen justice', that they let the Tribunal take what should be their responsibility in dealing with the past.

5.2.6 The Challenge of Communication

'We did have communication with the world but we didn't have communication with the region' (Jelačić, ICTY, 2011 [interview]).

The Outreach Program was established in 1999 to deal with the gap in knowledge between the Tribunal and people on the ground in former Yugoslavia. Former President Gabrielle Kirk McDonald realized that it was a real problem that the Tribunal was despised by people on the ground (Jelačić, 2011 [interview]), and that this prevented the Tribunal from bringing justice to the people. In 2000, the outreach staff was assigned to work on communication, the position of spokesperson was

established, and the documents were translated into local languages. While Finci (2011 [interview]) believes that an outreach program could not have been established earlier due to the war, Jelačić (2011 [interview]) believes that at least such efforts could have been made, as it should have been evident from the start that the verdicts did not speak for themselves. For instance, Jelačić inquires that it would have been possible to translate the tribunals work into the local languages from the start. The impact would perhaps have been limited, since the ICTY was established in the midst of war and when people were mostly concerned with survival. As she points out, they could not move around freely on the ground and educate people until many years after the tribunals' establishment. At the same time, she acknowledges that the seven years gap between the time when Tribunal was set up and the Outreach Program was established had a lot to say for perceptions of the tribunal. Jelačić' coworker in the regional office in Sarajevo agrees with her:

'When the Outreach program was started you cannot say that it started something new because the perceptions of the tribunal as already established'
(Ernesa Ademagic, ICTY Outreach Office Sarajevo, 2011 [interview])

Even after the war, politicians' negative propaganda targeting the Tribunal persisted, and the question remains whether the program came into existence too late to close the gap that had already been formed between the people and the institution. The Tribunal has limited resources, and the Outreach program does not seem to constitute a priority now that it is heading for closure. Jelačić (2011, [interview]) expresses the frustration that there was so much that they wanted to do and so little resources to do it (budget cuts affected all sectors of the tribunal). She believes that if one is to overcome what has been 'embedded in their heads' in the last ten years, one needs to constantly replay positive messages over a longer time period, something that the Outreach program has neither the time nor the resources for. Referring to the seminars the Program has conducted in different areas in Bosnia, Jelačić (2011 [interview]) is convinced that she has seen some positive changes of attitudes. For instance, several of the participants in the seminar held in Foča were

surprised to learn about the crimes that took place in this particular district in Bosnia, claiming that they had never known what really happened. Jelačić believes that if such random information can influence people's opinions, then more thorough and directly targeted campaigns could potentially have an even bigger impact. Hopefully, other bodies can continue the work of the Outreach program after the Tribunal has closed, she hopes. Ideally, the Outreach office wants to establish information centers that can have a proactive and dynamic role in communicating the Tribunal's legacy:

'I think that the Tribunal is committed to fulfilling its task or mandate to contribute [to reconciliation], but I think that the situation on the ground is too complicated really (...) I think that the biggest problem is the lack of involvement from the politicians, they are basically undermining the work of the Tribunal' (Ernesa Ademagic Outreach Sarajevo, 2011 [interview]).

One Bosnian informant in Sarajevo recognizes the difficult Bosnian context that hampers the ICTY's work, but not everyone agrees that the Tribunal is doing what is in its power to reach its mandate:

'You know, I don't even think [reconciliation] is on their mind. It is not the [purpose] of the Tribunal' (Informant #1, co-worker at the WHO during the war, 2011 [interview])

However, despite the Outreach program's best intentions, and possibly good performance, budget cuts severely limits its scope and application. There is currently only one staff member working in the Sarajevan Outreach Office, and even she was no longer officially employed, but waiting for a replacement. Similarly to Jelačić (2011 [interview]), Ademagic (2011 [interview]) emphasizes the problem of funding and the will to deal with so many additional matters comprehensively. The President of DOP, Čomaga (2011 [interview]), has little faith in the Outreach program, arguing that in order for it to be effective it should be directed from the main office in The Hague. He believes that the regional offices are under deficient supervision which impairs their overall credibility. Čomaga had never personally been invited to any Outreach

activities but Jahić, his co-activist at the YIHR had been invited once. They were both of the opinion that the Outreach activities were narrowly targeted and in particular directed towards the victims' groups. This was not improved by their common view that the victims' organizations are the right arm of the politicians.

The Media in Bosnia-Herzegovina is still politically controlled and divided along ethnic lines. Upon the announcement of a sentence by the ICTY, the different media channels routinely comment on it seconds after the announcement, before they could possibly have had the chance to carefully read and understand the justification for the sentence (Finci, 2011 [interview]; Jelačić, 2011⁸²). As John Hocking (2010) states, people in former Yugoslavia are fine with the tribunal until members from their own constituent groups are indicted. Although there is less and less coverage of the work of the tribunal (Sadikovic, 2011), some sentences still make the headlines and are the source of debates within political and social circles alike. The sentences are wavered as a sign of the partiality of the tribunal, and whether the sentences are long or short, or whether the indicted are Croat, Serb or Muslim, someone seems to have a problem with a sentence. Since the establishment of the Tribunal, Bosnian Serbs have been its most vocal critics. In Republika Srpska, there is still a greater skepticism towards the Tribunal than in the Federation (Sučić, 2011 [interview]). Despite this, the Tribunal has not sought to specifically target Bosnian Serbs audience (Jelačić 2011 [interview]). Murat Tahirović argues that not necessarily everyone has a problem with the sentences, but their voices are stifled by those who prefer to maintain the situation as it is:

'The war profiting circle has a stronger voice than the ordinary man on the street who out of fear for a new war rather keeps his mouth shut' (Murat Tahirović, Association for former concentration-camp detainees in BiH, 2011 [personal correspondence])

⁸² Both Jelačić and Finci are former journalists

5.3 Limitations within Bosnia-Herzegovina

The ICTY cannot be blamed for limitations within BiH which inhibits the ICTY in its work. However, as long as the discussion is on the *actual* contributions, and an important aspect is how the affected population perceives the Tribunal, this aspect may be crucial in understanding its limited impact. As Mønnesland (2011 [interview]) notes, the difficult political and economical situation in Bosnia is affecting all areas of the society. The reality shapes the lens through which we see the world around us, and Bosnians would be a rare exception if this was not the case also with the Tribunal.

Republika Srpska politicians are currently calling for a revision of the history of Bosnia-Herzegovina, something that creates great frustration among Bosnian Muslims (Sušić 2011, Tokača 2011). According to Williams (1996), 'Republika Srpska remains a state within a state whose *raison d'être* is the call for the expulsion and murder of tens of thousands of Muslims'. Williams' sharp criticism of Republika Srpska resembles the views that I found among my informants in Sarajevo. There is a belief that as long as Bosnia is divided into the two entities carved out by the Dayton agreement, genuine reconciliation is impossible.

'Dayton needs to be totally put aside. What is Dayton? It is totally wrong to call it peace accord. It is only an agreement that was used to stop the war and violence. And what else? That's it. It's enough. War is over. Dayton did not resolve many structural problems. Deep root causes of conflict are still here and it is crucial to [address them]' (Tokača, President of IDC 2011 [interview]).

For some, the fact that Republika Srpska exists at all, is a confirmation of the passivity of the international community which acquiesced to cede to the Serbs what they had won by illegitimate means. When asked about the will to work constructively together towards a common future, DYM President Čomaga (2011 [interview]) argues that the biggest problem with this is not on a personal level, but on a political level. In one statement he confirms that, as long as the political situation remains the same,

there will be causes for conflict as soon as people from different ethnic groups start discussing politics:

'The regular contact between people is not the problem- we are fine. In Sarajevo, you will not know whether the person sitting next to you is a Bosniak or a Serb. The difficulties arise when you start discussing politics. When you talk about how the country is organized, you realize that everybody has different opinions on the future of this country' (Ernad Deni Čomaga, DOP President, 2011 [interview]).

Jelačić (2011 [interview]) believes that if people are to ever reconcile, the negative messages that have been repeated constantly since the beginning of the war have to be countered by positive messages. The political messages played today are simply more sophisticated versions of the messages dissimilated by nationalist leaders before and during the war. Rather than calling each other names, they convey similar sentiments through speeches and press releases (Jelačić, 2011 [interview]).

'I think if you drew a graph of how the communication [among] Bosnians has developed since ' -95, you'd see it rising slowly, then peaking in term of trust and potential positive impact, movement towards reconciliation around 2003/2004, and now we are going back. We are really going back now' (Jelačić, ICTY Spokesperson, 2011 [interview]).

The outreach events have demonstrated that people are willing to modify their beliefs if they are provided with sufficient 'evidence' to back up views to the contrary. For instance, when visiting Foča, Outreach staff experienced that people were grateful for having been educated about the atrocities that took place there. Considering just how much one such outreach activity can affect people's minds, Jelačić is positive that, if given the necessary resources to perform more targeted and consistent campaigns in Bosnia, this would have a huge impact on people's attitudes towards other ethnic groups and views on war time events. Positive messages should

be abundant and constant, but they do not necessarily have to be transmitted solely through the ICTY (Jelačić, 2011 [interview]).

One of the projects that the Research and Documentation Centre in Sarajevo (IDC) has been working on is a book called *Signals of the Heart*. This book aims to share 'positive' stories from the Bosnian War:

'Politicians never bring up positive stories. We consider this a very big contribution to reconciliation. You know, war is not only blood and tears. There are good examples of how people help each other, how even some of them risk their lives. And this is also a very special dimension of war. This is something that can help me and everybody in the process of reconciliation. How [to gain] respect for each other' (Tokača, IDC, 2011 [interview]).

The ICTY is not a place for positive stories. As a tribunal, its role is to highlight those aspects of the war that may contribute to the prosecution of war criminals. However, when discussing the actual impact of the ICTY on a reconciliation process, the fact that the Tribunal solely focuses on the negative aspects of the war is important to mention. As mentioned earlier, one informant stated that the messages communicated by Karadžić were provoking, and she does not doubt that people are actually listening to him. Borth Ademagic (2011 [interview] and Tokača (2011 [interview] warns that the attention and sympathy needs to be shifted over to the victims rather than the perpetrators:

'In the Balkans you have something which is a 'culture of hero'. We have to change that. (...)We want to promote a culture where not only soldiers, but simple people are heroes. You have to be very brave to help someone who is not from your [own] flock' (Mirsad Tokača, IDC, 2011 [interview])

However, Djuliman (2011) believes that one of ways in which the ICTY is actually contributing to reconciliation is by showing how individuals from different groups helped each other during the war. This is in his view not used enough by the Tribunal but is certainly a positive consequence of (some) trials.

5.5.1 The Politico-Economic Crisis

When asked about what was needed in order for reconciliation to take place, Jelačić (2011 [interview]) unequivocally pointed out the need for political reform. As long as there is no reform, the efforts of the ICTY are likely to fail. It is hard to speculate whether a different political situation would increase the Tribunal's impact in the region, but according to informants, the current politico-economic situation is the main hindrance to the reconciliation process. Many feel powerless in the confrontation with the strong political forces (interviews with informant #1, 2011; Jelačić (2011); informant #2, 2011):

'It's a huge machine that you have to fight. That you can't fight whether you have a huge Outreach program or not, I can't force national TV-stations to broadcast the trials, or to have an interview with me, or to stop interviewing these people who they already know what they will tell them' (Nerma Jelačić, ICTY Spokesperson, 2011 [interview])

The current political situation was a great concern for all of my informants, disregarding their positions and backgrounds. According to Čomaga (2011 [interview]), there are no problems between the ethnic groups on a daily basis. The problem arises once individuals from different groups start discussing politics. He believes that the reason for this is that the different constituent groups have fundamentally different views on what the future of the country should look like. According to him, people should focus on the more acute contemporary problems that all citizens of Bosnia have, regardless of their ethnic affiliation. He lays his trust in dialogue and the mobilization of youth in solving common problems, as a way to achieve reconciliation. Nedim Jahić (2011 [interview]) in YIHR believes that if people from different groups could be forced together to enter dialogue, this would be the first necessary step towards reconciliation.

In other words, what both Čomaga and Jahić request is a common factor that could unite individuals across ethnic boundaries. To avoid politics in order to avoid conflict

does not offer a solution, as it fails to address the root problems, but at the same time Čomaga insists that if individuals from different ethnic groups can find a focal point, they might discover that they are not fundamentally different from each other. Furthermore, if you apply this train of thoughts to the ICTY, it may say something about its potential effects on intergroup relations. By retaining the focus on atrocities committed during the war and on the conflict between the ethnic groups, the ICTY may help to maintain group divisions. On the other hand, one could argue that the prosecutions that the ICTY is responsible for, and especially its focus on the individual responsibility of crimes, could offer an opportunity for groups to unite against criminality. For instance, if a Serb politician were to condemn the crimes committed by Radovan Karadzic, the former could make a powerful symbolic statement by showing his opposition to crimes committed against all groups. While unlikely, such an action could help change the perception the groups have of each other, a prerequisite for reconciliation (Staub, 2006; Brounéus, 2008). Unfortunately, until now politicians have solely been using ICTY judgments for self-promotion.

Journalists covering the trials are getting fewer in number, and there is now only one Bosnian journalist agency that broadcasts from The Hague⁸³ (Sadikovic, 2011). The trials shown on national television, dubbed in Slavic languages, are still rather difficult and time-consuming to watch for the ordinary citizen. As a result, there are few simple ways for people to critically assess politicians' statements regarding the ICTY. It is well understood among the informants that the politicians are selective in their statements regarding the Tribunal and that they use the verdicts to gain publicity. Thus, although informants recognize that the Tribunal alone cannot be blamed for its limited impact on reconciliation, they nonetheless decry its limits since it has become a political tool for nationalists. The ICTY may be said to indirectly reinforce nationalist ideas in the following two ways: by nationalist political actors who use the verdicts

⁸³ There is reason to believe that this interest will be revived by the upcoming prosecution of Ratko Mladić, judging by the increased coverage following his arrest.

manipulatively to promote views of their own group as the victim, and by offering a forum for nationalist ideas.

Staub (2006) points out a paradox of establishing individual guilt of 'collective crime', whereby the population of a war-torn country may refuse to take responsibility for the national reconciliation process. The most important contribution of a tribunal, according to Staub, is that victims are allowed to put the past behind them. The argument behind this reasoning is that once survivors feel that justice has been done they can move on and focus on the future. However, after mass atrocities such as those committed in the Bosnian war, justice may never be tangible. Obviously, not everyone who was responsible for war crimes can be prosecuted, and perhaps most importantly, a number of years in prison will not make up for the thousands of innocent people who have been killed. Trials themselves may, however, provide a certain psychological satisfaction, having an independent and neutral body such as the ICTY confirming that atrocities were committed.

There was an expressed concern that neither the citizens nor the leaders of Republika Srpska are willing to accept the verdicts of the ICTY or the established facts of the war. Osman Sušić, a Bosniak historian, is outraged by the symbolic rejections of the established facts of the war, by individuals within Republika Srpska. On the day of the commemoration of the Srebrenica massacre last year (11th July), Bosnian Serbs in Republika Srpska held a commemoration ceremony for fallen Bosnian Serb soldiers. To Sušić, this was such a provoking act that he bears no hope that the ICTY may have an impact on reconciliation. Soldiers who voluntarily participated in the fighting should not be equaled with innocent persons that were murdered at Srebrenica (Sušić, 2011 [interview]). The fact that some Serbian perpetrators are being protected⁸⁴ while Bosnian Muslims have surrendered the alleged war criminals of their own ethnic group is for Sušić yet another indication of the lack of reconciliation.

⁸⁴ Susić was in particular referring to Ratko Mladic, who at not yet been arrested at the time of the interview. According to him, pictures of Mladic in Belgrade were abundant, and he had no doubt in his mind that Serbian politicians were protecting him.

Republika Srpska's failure to acknowledge the crimes committed by members of their own constituent group was a reoccurring theme in the interviews. While some informants claimed that the reconciliation was taking place as long as politics were kept out, the discourse changed substantially as soon as they started to discuss Republika Srpska's refusal to recognize the tribunal as a legitimate organ, as well as politicians' manipulative use of the Tribunal's verdicts. The words *'amongst us'* and *'we'* used in the discussion on inter-group relations on a daily basis were quickly replaced by *'us'* and *'them'* with regard to the ethnic groups. This indicates that the effects of the ICTY's actions still evoke strong divisions in society. The question is, however, whether these divisions are simply pinpointed or exacerbated by the Tribunal. In other words, does the ICTY sustain ethnic divisions by serving as a constant reminder of the refusal to accept both the past and the accountability by members of their own in-group?

Another major concern in Bosnia is the current economic crisis, where an estimated 47 percent of the population is unemployed. The insecurity and frustration was evident among several of the informants, and the staff at ICTY recognized unemployment as a significant obstacle to the ICTY's work:

'(...) today, I don't think that people even think about the Tribunal. They have enough to think about just trying to survive, to find bread to eat. The unemployment rate is nearly half the population; do you know how that affects a society?' (Informant #1, co-worker at the WHO during the war, 2011)

The economic situation, according to Informant #2 (2011 [interview]) also facilitates political manipulation, as people are more susceptible to believe something that may help to improve their situation or to place blame on others. Many young people do not see any point in studying, because they know that they might not find a job afterwards, and it is a struggle to finance the studies. One informant, a PhD student in philosophy said that he was certain that he was not going to easily find a job when he was done with the dissertation. Despite top grades, he believed that he was not

eligible for jobs at the University in Sarajevo because he did not know the right people (Informant #4, 2011 [interview]).

Thus, both the political and the economic situation in Bosnia not only affect how the Tribunal is viewed in the region but also create room for political manipulation. The proceedings of the Tribunal are by some informants uncomfortable, or even unbearable to watch, because they know that everything that is said is going to be used against the Tribunal's best intentions- that of bringing justice to victims. Up until this point, it seems that the Tribunal is used constructively by people who prefer the status quo, to reignite rather than unite. Tokača (2011 [interview]) holds that the Dayton Accords stand as a counterweight to the ICTY by legitimizing and concretizing consequences of the war. By defining people by their ethnic affiliation, you are removing their status as a universal human being and reducing people to one dimension of their identity (Tokača, 2011 [interview]). Similarly, Adis Duric (2011 [interview]) agrees that people are so occupied with defining themselves according to which group they belong to that they forget to work together like they used to before the war. The pressures to define oneself as a member of a certain group both from individuals and the institutions may obscure the view of the ICTY as an institution seeking to provide justice to *all* victims of the war. Rather, the quest for justice becomes one that is only satisfied if it confirms the view of one's own group as the rightful victims. In a situation where everyone regards themselves as victims, fighting for justice resembles a tug of war- where there can only be one winner.

Enver Djuliman argued in 2001 that people in Bosnia were not ready to replace myth with truth, which could explain the failure to use the sentences constructively (Tokača, 2011). When asked if this is still the case, Djuliman replies that the situation could have been otherwise had the 'bearers of reconciliation'⁸⁵ done their job. That is, it is the role of local actors such as politicians, the media, and others in the public space to pave way for an acknowledgment of the fact-based truth.

⁸⁵ 'forsoningsbærerne'

5.5.3 Conflict fatigue

According to one informant, the tribunal has 'used up' its' time. It has been fifteen years after the war ended and people who were interested in the court proceedings have lost interest by now. The trials are so long and difficult to follow that most people do not have the time or the patience to do so. According to one informant, people are tired of dealing with the conflict, and want to put the past behind them:

'It has taken so long. We need to move on now' (Informant #2, responsible for the Diplomatic Protocol during the Bosnian War, 2011).

She wonders aloud how the Nuremberg trials could take a few days after such a prolonged and bloody war as the Second World War, and the ICTY trials take years, even though they have all the evidence they need to prosecute alleged war criminals. The proceedings of the Tribunal seems to last indefinitely while there are few changes in the Bosnian society. Despite the frustrations with the long-drawn trials however, she emphasizes that the ICTY was necessary to establish:

'We need this tribunal. Naturally it has done something good, who else would prosecute these persons? The plan was good, but now the plan has to be executed'⁸⁶, (Informant #2, responsible for the Diplomatic Protocol during the war, 2011).

Despite this, the delay in the prosecutions, and the initial failure to indict Milošević before after the genocide, has made Informant #2 doubt the intentions of the prosecutors. She believes that former ICTY prosecutor Carla Del Ponte had access to documents that would have proven the complicity of several war criminals, but that she was bribed [by the Serbs] to withhold it. She also argues that there exists enough evidence to apprehend alleged war criminals and to speed up the judicial process, but that there are strong factors, both regionally and within the ICTY, that work against it. Ernesa Ademagic (2011 [interview]) believes that there is not only a conflict fatigue in Bosnia, but also a 'tribunal fatigue'. People are fed up with trying to cope with the

⁸⁶ Le plan est bon, mais maintenant on doit le réaliser

difficult issue of war crimes, at the same time as they are feeling the strain of the unhealthy political climate. The editor of *Dani* weekly, Faruk Borik (Sadikovic, 2011) believes that it is human nature to shy away from dreary subjects, and that this can explain the waning interest for the Tribunal. As one informant expresses it:

'Sarajevo is my home, but the city is polluted with history. There is just so much frustration, anger... Once in a while I just have to get out of the city, go elsewhere...I think for many people we are not here, not there. It's hard to explain...' (Informant #1, co-worker at the WHO during the war, 2011 [interview])

A few of my informants expressed the view that the slow process of reconciliation was somehow connected with international actors' interest in maintaining the status quo. Informant #2 (2011 [interview]) believes that the current situation is convenient for many people living in the region, and that they would not want it to change even if they could. She believes that the expats living in Bosnia are benefitting from this situation of non-reconciliation:

'The situation as it is today is convenient for a lot of people. They are living like small kings [des petits rois] here' (Informant #2, Responsible for the Diplomatic Protocol during the war, 2011 [interview])

Some politicians are happy with the status quo because it helps them to stay in power. According to this informant, political figures neglected potential fallout of Dayton until after they figured out how they could profit from it, and then they whole-heartedly embraced it. The political system allows them to take advantage of the ethnic rivalries to gather votes (Informant #2, 2011 [interview]). Ademagić (2011 [interview]) supports this view by explaining how politicians contact victim groups that represent their own constituent group right before an election. The stories of the victims are used to project the self-image of losers of war and to emphasize the need to stand together against the excesses by the other ethnic groups. This creates a powerful discourse that has the potential for remobilization, even though many

individuals suspect political manipulation. Čomaga believes that many of these groups do not even constitute 'real' victims but are politicians, or civilians employed with the purpose of strengthening the victimization discourse.

Informant #2 (2011 [interview]) believes that some people have benefitted financially from the Dayton Agreement, and that Bosnia is now full of new rich [des nouveaux riche] who desire no change. Simultaneously, she believes that there are ordinary people in Bosnia who want to change the status quo.

As Tokača (IDC, 2011 [interview]) points out, the Tribunal is not enough to have a profound impact the reconciliation process; the data from the Tribunal has to be utilized by the people in the region to have an impact. The ICTY has thus not exhausted its role with the final verdict, but will continue to matter as long as its work is interpreted by those for whom the justice was meant for in the first place- the people of former Yugoslavia. It is likely that the legacy of the tribunal will live on and will be interpreted, misinterpreted, rejected and abused many times over, before one day we are able to establish with certainty its role in the reconciliation process.

Today, it does not matter what the ICTY says, it will not make a difference. Everything what the ICTY achieved though long and painful, meticulous processes of prosecuting war criminals who have violated human rights, basic human rights. On the other [hand], there's no change [in society]. It means that they won. They [the war criminals and their supporters] are winner of this contest (Tokača, IDC, 2011 [interview]).

All the time and resources that have been invested in the ICTY warrants a study that would gauge its actual achievements. Eventually, it has to do with how it has affected the people on the ground. Elster (2010) argues that reconciliation efforts are far from being harmless, and thus one should be careful to claim that the ICTY has at worst not had any impact on reconciliation. It can as well be that it has damaged the fragile reconciliation process that is taking place in Bosnia.

Tokača, (2011) believes that the issue of recondition is not being properly addresses and that it is a miscomprehension to give the ICTY responsibility for reconciliation. He believes that the ICTY is but a small and very crucial piece of the puzzle, and that what really matters is how this piece is used by those individuals or groups that have to reconcile:

'(...) [S]imply [put], if someone wants to put this problem [reconciliation] only to the ICTY and [ask] how we can- after genocide, war crimes, and crimes against humanity- be reconciled? [Ask] how you can reconcile inside the ICTY and reconcile through court decisions then it is wrong. It is totally wrong' (Tokača, IDC. 2011 [interview]).

According to Tokača, justice is the first step forward toward positive peace⁸⁷, and thus to reconciliation. However, there can never be complete justice as there is no way of prosecuting all criminals. The ICTY is a temporary institution that sooner or later will fulfill its mandate, leaving the unfinished work of reconciling to the affected population groups, however effective this process may be. He believes that one important function that the ICTY may have is the potential of opening up social debate and dialogue. That the high-ranking criminals are prosecuted is a prerequisite for reconciliation. However, that depends on whether the Bosnian society changes for better. He believes that without actual political reform there is no chance for reconciliation in Bosnia and that without this Bosnia will remain in a state of a perpetual conflict.

'Reconciliation is not an ad hoc work. It is a trans-generational process and will take a long time. The ICTY is only one dimension of it (...). We need to understand the nature of and reason for the conflict. All actors need to be involved: the civil society, the court...Justice is always the first step to reconciliation, and through reconciliation we can find truth (...) The ICTY has one important role: bringing highly responsible criminals in front of [the] court. What happens after is up to the

⁸⁷ Tokača uses the concept of positive peace as according to Galtung

*people of Bosnia. How they use the judgments of the ICTY in social reconciliation
(...) ICTY is maybe 10 percent of what is needed in Bosnia [in order to reconcile]’
(Tokača, President of the research and Documentation Centre in Sarajevo, 2011
[interview]).*

6.0 Conclusion

There is a general belief among my informants that it was right to establish the ICTY, and that the prosecution of war criminals is an absolute necessity for reconciliation to take place. Furthermore, without the ICTY it is likely that war criminals would not only still be at large, but that they would have kept their positions in the society.

Regarding the Tribunal's actual contribution to reconciliation however, the views diverge greatly among my informants. While there are some structural factors stemming from within the tribunal that limit its contribution, most factors are human made and within Bosnia-Herzegovina. Two such factors within the ICTY are the perceived lenience of the sentences, and the failure to restrict alleged war criminals in their speech. Several informants request more positive stories from the war, show signs of conflict fatigue. The fact that individuals within the civil society of the most tolerant and multi-ethnic city of Bosnia have concern about the Tribunal and the general situation on the ground is an indication that negative perceptions of the ICTY are not necessarily the result of political manipulation and misinterpretation of the Tribunal's role. Several of the informants work actively towards reconciliation and are well aware of the restricted mandate and jurisdiction that the ICTY as an *ad hoc* court has.

Tokača, President of the Research and Documentation Centre in Sarajevo, believes that Tribunal in itself cannot contribute to reconciliation, and that stating that it should is outright wrong. What is important is what happens as a result of the prosecutions, that is, how Bosnians use the Tribunal's work.

It is clear to see that the Bosnian public is not oblivious to the ICTY and that its work does impact the situation on the ground. The sentences in particular are the subject of heated debate and discussions, and its verdicts are used manipulatively by politicians as well as NGOs from all constituent groups. As a result, the Tribunal, although not solely responsible for the outcome, does have a significant role in the fragile reconciliation process taking place in Bosnia. Furthermore, the actions

undertaken by the Tribunal have certain indirect consequences that impact the reconciliation process, both positively and negatively.

The ICTY as an institution established by the UN and consisting of around a thousand employees comes with its own strength and limitations that are important in determining what impact it has on the Bosnian society. Despite the Tribunal's structural limitations however, there is reason to ask whether the Bosnian public are ready to accept what the Tribunal has to offer. There is a stark contrast between the universality of human rights and individualization of guilt that the Tribunal seeks to promote and the institutionalized ethnic divisions of the Dayton Accords. Politicians use the Tribunal's work manipulatively to justify their actions, and the lack of public condemnation of crimes demonstrates that the constituent groups are still clinging on to their version of the truth. The judgments by the ICTY could potentially reunite people against injustice, but in reality they act to divide people in their views on culpability and according to ethnic affiliation. When a sentenced war criminal such as Biljana Plavšić is hailed as a war hero in Republika Srpska, despite pleading guilty in the murder of over a thousand Bosniaks, this is for Bosniaks an illustration of the incapability of (Bosnian) Serbs to acknowledge victims' suffering and a step back in the reciprocal process that reconciliation is.

While there are a substantial number of reconciliation efforts in Bosnia, the political tensions present a major obstacle to their implementation. The sentences of the ICTY are not used constructively, but rather manipulatively by nationalist leaders and others benefitting from the current, non-reconciled, situation. Likewise, the harsh economic situation means that, like in the immediate post-conflict years, many individuals are too preoccupied with sustaining a dignified life for themselves and their loved ones. That the ICTY not only creates an arena where the suffering may be acknowledged but also allows the rhetoric of alleged criminals like Karadzic prompts survivors to turn away from the broadcasted trials and to await its closure. While justice is without doubt wanted, there is also a sense of conflict fatigue and a wish to lay everything to do with the war behind them.

That the sentences of the ICTY in some cases causes bitterness and resentment among victims is to be taken seriously, and should not be dismissed, even if they were to be caused by unrealistic expectations by survivors. It is crucial that justice is felt by those in need of reconciliation, and if it is not then measures should be taken to find out why. In the case of Biljana Plavšić, it is quite obvious that apart from the perceived lenient sentence, the biggest cause for resentment was the way that she was welcomed as a war hero in Belgrade. This is not in the power of the Tribunal to alter, but perhaps a re-evaluation concerning the reconciliation rationale behind the guilty pleas is needed. Despite the fact that the conditions limiting the tribunal's role in reconciliation may largely be found within Bosnia-Herzegovina itself, it should perhaps be questioned if the ICTY can be relieved of all responsibility. As is the case with UN conventions, *de facto* implications should be taken into consideration before any measures are undertaken, even if these measures in theory benefit the individuals involved. For the moment it seems right to conclude that, according to the informants, the *de facto* implications of the ICTY is a further ethnic division of the Bosnian society. If the ICTY does act to further divide groups and hinder the reconciliation process, this is a problem that should be addressed accordingly. There is a contradiction in the way the ICTY accepts and promotes the potential it has to promote change in Bosnia, yet at the same time defends itself from any negative feedback by stating that as a Tribunal, it can only do 'as much'.

However, it is hard to imagine anyone taking responsibility for prosecuting war criminals, and removing them from power, if not the ICTY. Justice is without doubt needed, and is, as former ICTY President Cassese states: 'an indispensable ingredient of national reconciliation'. The quest for justice is not likely just cede by itself, it will remain until justice is found.

One can only hope that as more local actors enter the public arena, the ICTY's will be used to its potential- to reunite people by standing together against injustice and looking towards a common future.

Afterword

The war in Bosnia is not a concluded chapter, even though 16 years has gone by since its termination. Neither is the ICTY likely to have outplayed its role in the reconciliation process, despite its closure approaching.

The situation in Bosnia may seem grim, but the people I interviewed are still positive that things will change for the better, and that further conflict can be avoided by commitment of local actors and the international community to find a more permanent and ideal political solution than that of the Dayton Accords. As long as the Dayton Accords are considered not only a construct of the war but also a reward for war actions, it is unlikely to facilitate reconciliation. The problems that Dayton poses in terms of coming to terms with the past and implementing the idea of human rights is an area that it would be highly interesting to further analyze. It is ironic that a creation by the international community- the peace accords- prove to be so problematic in terms of the implementation of another international institution- the ICTY. In a white paper published spring 2011 by the Norwegian government (Meld.st.17, 2010-2011), it is concluded that many of the international reconciliation efforts in Bosnia since the war has worked against their intentions but that this is hard to determine for sure. A more thorough assessment of the *de facto* impacts of measure taken to promote reconciliation in post-conflict societies is crucial. It should be taken into account that in many instances the international community is pressured into commitment and that at the time it may not be possible to evaluate all options, or to provide a permanent solution. As in the case of Bosnia, the Dayton Accords was pushed through as a temporary solution that could satisfy all parties to the negotiations. A more permanent, or 'just' solution, may not have currently been available.

However, regarding the immediate need for relief and the demands to act without hesitation, more research need to be devoted to understanding the impact different solutions could have on the affected society.

It would also be interesting to do a comparative study on the different international courts and their impact on the society and see if the ICTY has offered any valuable lessons to the other courts. An article by Artz (2006) suggests that the International Criminal Tribunal for Sierra Leone has been more positively achieved in the affected communities than the ICTY in former Yugoslavia. Staff at the ICTY also acknowledges that they have a good contact with representatives of the other courts, and that others learn from their mistakes (Jelačić, 2011 [interview]). In any study relating to the impact of the transitional institutions, individuals within the civil society and survivors of the conflict should be included in order to get an appropriate picture of the situation on the ground. The result of such research should not be a 'blame-game' where all the actors involved seek to relieve themselves of the responsibility for failures, but should rather act to open up a platform for constructive social dialogue. This platform should be characterized by a problem-solving approach where each actor should be rewarded for his/her ability to find solutions, not to avoid blame.

Appendix 1

List of Informants

Name	Organization	Position/ Relation to the Bosnian War
Nerma Jelačić	ICTY, The Hague	ICTY spokesperson. Former journalist.
Petar Finci	ICTY, The Hague	Senior Information Assistant, ICTY Outreach Program. Former journalist.
Helena Vranov Schoorl	ICTY, The Hague	Support officer, Victims and Victims Section (VWS). Social worker with background in psychology.
Tiago de Smit	ICTY, The Hague	Support officer, Victims and Victims Section (VWS). Social worker with background in psychology.
Ernesa Ademagic	ICTY, Sarajevo Regional Office	Information assistant for the ICTY Outreach Program, Sarajevo. A new registry liaison officer was under recruitment; therefore she met for an informal interview.
Ernad Deni Čomaga	Democratic Youth Movement (DOP)	President (and founder) of DOP. Human rights activist and law student at the University of Sarajevo.
Osman Sušić	Institute for the Research of Crimes Against Humanity and International Law, University of Sarajevo	Historian
Nedim Jahić	Youth Initiative for Human	Human Rights activist, student at the

	Rights (YIHR)	Faculty of law at the University of Sarajevo
Mirsad Tokača	Sarajevo Research and Documentation Centre (IDC)	President of IDC.
Murat Tahirović	BiH Union of Former Camp Detainees (SIBiH)	President of SIBiH.
Enver Djuliman	The Norwegian Helsinki Committee	Head of the Human Rights Education Department
Informant #1	Previously worked for the WHO (World's Health Organization) in Sarajevo	Co-worker at WHO during the War.
Informant #2	-	Responsible for the Diplomatic Protocol during the Bosnian War, Language Professor.
Informant #3	-	Muslim girl in Sarajevo
Informant #4	-	Phd student in philosophy
Informant #5		Man working in a market in the Turkish Quarters of Sarajevo.
Adis Duric	-	Originally from Mostar, BiH. Former camp detainee.
Svein Mønnesland	University of Oslo	Professor at the Department of Literature, Area Studies, and European Languages.

Appendix 2

30.02.2011

My research question is: What role does the ICTY have in a reconciliation process in Bosnia-Herzegovina, according to local actors?

With these questions I seek to understand your thoughts and perceptions on issues relation to the ICTY and inter-group relations in Bosnia today. Please feel free to provide long or brief answers, or to ignore certain questions.

- Can you please state your position and main occupation at the organization
- How would you describe the situation between different ethnic groups (inter-group relations) in Bosnia today?
- What do you feel is the general view of the ICTY in BiH?
 - Has this view changed during the years?
- *(Following the last question)* What do you believe may be the explanations for this view?
- Briefly, can you please say something about what you feel that the tribunal's main contribution to Bosnia is?
- What do you view the achievements of the tribunal in terms of the reconstruction of society in Bosnia?
- What is your method of assessment?
- How would you yourself define reconciliation?
- What is currently the most urgent matter that needs to be dealt with in the Bosnian society, to promote reconciliation?
- Is the presence of international actors needed to maintain peace in Bosnia?

Appendix 3

University of Oslo

Boks 1072 Blindern

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Consent to Participate in Research

TITLE: The role of the International Criminal Tribunal for Former Yugoslavia (ICTY) in a reconciliation process in Bosnia-Herzegovina

INVESTIGATOR: Kristine Johansen

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1432 Ås

SOURCE OF SUPPORT:

The study is being conducted as partial fulfillment of the requirements for the Masters of Philosophy in Peace and Conflict Studies at the University of Oslo.

PURPOSE:

You are being asked to participate in a research project that investigates the role of the International Tribunal of former Yugoslavia in a reconciliation process in Bosnia-Herzegovina.

RISKS AND BENEFITS:

There are no inherent risks foreseen in this study. I will ask questions to your thoughts and perceptions concerning the ICTY's role in a reconciliation process, as well as general questions regarding the peace and reconciliation process in former Yugoslavia.

COMPENSATION:

You will not receive any compensation for participating in this study.

CONFIDENTIALITY:

You will be asked if you prefer to remain anonymous or if your name and position can be

cited in the research. No personal identity will be made in analysis if you prefer. All recorded and written materials and consent forms will be stored in a locked file at the investigators work office with access only to the investigator. The materials will only be used for purposes of this research project. All personal data, with the exception of the thesis, will then be anonymised when the task is completed in November 2011.

RIGHT TO WITHDRAW:

You are under no obligation to participate in this study. You are free to withdraw your consent to participate at any time.

SUMMARY OF RESULTS:

A summary of the results of this research will be supplied to you, at no cost, upon request.

VOLUNTARY CONSENT:

I have read the above statements and understand what is being asked of me. I also understand that my participation is voluntary and that I am free to withdraw my consent at any time, for any reason, without penalty. I can stay anonymous if I wish. If I should decide at a later time (before the paper is published) that I wish to stay anonymous I may inform the investigator of this. On these terms, I certify that I am willing to participate in this research project.

I understand that should I have concerns about my participation in this study, I may email the investigator, kri.johansen@gmail.com. I can also contact Anton Weiss-Wendt, advisor of this study, at anton.weiss-wendt@hlsenteret.no or contact at the University of Oslo Anne Julie Semb, at a.j.semb@stv.uio.no.

Participants Signature

Date

Investigator's Signature

Date

Literature

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