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*MASTER'S DEGREE IN SOUTHEAST EUROPEAN STUDIES*

MASTER'S DEGREE THESIS  
**OBSTACLES TO POST-CONFLICT INTER-ETHNIC RECONCILIATION  
IN BOSNIA-HERZEGOVINA**

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## METHODOLOGY

The thesis is based on literature research of available material in websites. These are mainly derived from relevant articles, publications, newspapers, scientific journals, on-line data base along with material found in libraries. Since the paper is examining the level of reconciliation in BiH available researches and surveys have been used. Initially I collected the materials that were giving a more wide view of my subject and then I worked on more specific articles about reconciliation in BiH. During the reading of the material collected I found out that further reading and research was required on even specific issues. Since the thesis is trying to focus on the view of public opinion about the analysed issues, researches and surveys are collected and are used as references.

## INTRODUCTION

### 1) Introduction

When a violent conflict ends, perpetrators and victims need to resettle to their communities. Especially if this conflict is among different groups in the same state, then things are getting much more complicated. The perpetrators and victims are asked to live side by side. In case all sides believe that they were 'right' and blame the 'other's' for the wrongdoings, then the situation becomes extremely complex. This is where justice and reconciliation come and pursue a role in the everyday life of the people.

All sides in a post conflict society usually look for justice. This often is implemented by the establishment of temporary courts or commissions as an effort to bring a sense of justice to the victims and contribute to the long process of healing. However, since transitional justice is closely connected with the establishment of relations between people, it is very important to highlight the process of reconciliation, the role of civil society and the opinion of individuals in the local level. By examining public opinion and civil society opinion in BiH about the reconciliation process, a very useful outcome can come out. It is the author's view that reconciliation is not a top down procedure. Therefore, citizens' opinion is the most important base for extracting reasonable outcomes for the progress of reconciliation in a post conflict society. This is the way that this paper is trying to extract an outcome about the obstacles of reconciliation in BiH society.

Using international recognized tools like ICTY (International Criminal Tribunal for the former Yugoslavia) and Truth and Reconciliation Committee, in this paper will be tried to answer the question of how these promote reconciliation in a local level. The measurement for the level of reconciliation will be the opinion of the people in the local community.

The tools, as offered by the international community, should be used and take all the positive effects that they can make. On one hand, ICTY as we will see below is referred and recognized by the local community as a tool of justice. However, all sides (Croats, Bosniaks, Serbs) are disappointed from its function but each ethnic group for different reasons. But at least they recognize it as a main tool which brings justice. On the other hand, the possibility of the establishment of a Truth and

Reconciliation Committee as a mechanism to tell the truth for the past, would contribute to peace efforts and encourage interethnic dialogue showing the path for realizing and acknowledging the past and build peaceful coexistence for the future. The absence of that mechanism adds to the sustainability of ethnic division.

Another main issue for a post conflict society is the education. This includes the curricula, the history teaching and history textbooks and the provision of appropriate school infrastructure. The children from all ethnicities need to learn to live together, share together, interact together. After the end of the war and up to now the schooling in BiH and the education don't go to this direction. They actually promote the contrary. The divided curricula and history teaching along with the practice of "two schools under one roof" promote further and deeper segregation of the society and this happen to the most innocent and sensitive part of the population, which are the children and the youth. For that reason this paper does not only focus on the most traditional methods of reconciliation which is justice but also on a less referred cause of division which is education. Therefore, it is examined the level of segregation education caused to children and youth and how this stands as an obstacle to reconciliation process. This obstacle is referred as in addition to the rest social reasons that, according to the public opinion, sustain social segregation (unemployment, slow refugee return and IDPs and their integration to BiH post conflict society).

## 2) The role of Dayton Agreement in post-conflict BiH (Bosnia and Herzegovina)

After the end of the conflict in 1995 Dayton agreement was signed with the aim to bring peace to the region. The agreement created two separate entities shared to three ethnic groups. Those who criticize the agreement refer to the role of the agreement to legitimize the segregation of society by legitimizing "the security through separation" and by creating "de facto partition of Bosnia dividing what had once been a multiethnic country into ethnonationalist entities that acknowledged and effectively rewarded ethnic cleansing".<sup>1</sup>

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<sup>1</sup> Dahlmana, C. & G.O. Tuathailb (2005), The Legacy of Ethnic Cleansing: The International Community and the Returns Process in post-Dayton Bosnia–Herzegovina. *Political Geography* 24 (5, June), pp. 569-599. see pp.577

Although it has been much criticized the credit should be given that at least it stopped the armed conflict. The end of war left 200,000 people killed, died or missing including 16,000 children, 2.2 million refugees or IDPs (Internally Displaced Persons), 15,000 to 20,000 still missing persons and huge damage in housing and infrastructure. The brutality and human rights violations were in a much extensive level. All the three ethnic groups were blaming each other for the war. They all believe that they fought a defensive war. Therefore, the diffused hatred, that atrocities generate, is the main enemy of a peaceful well being. This is what currently BiH society needs to fight.

Dayton agreement paved the way for the initial steps to be taken in order the post conflict society to start function again. However, as Emily Coles suggests the agreement should fix an end date or a “process for constitutional reform”<sup>2</sup>. Dayton agreement and generally the international community should look for a long lasting stability mechanism in order to secure a long lasting peace.

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<sup>2</sup> Coles, Emily (2011) "The Importance of Education Systems in Post-Conflict Settings: The Case of Bosnia-Herzegovina (BiH)" *Honors Projects*. Paper 10.  
[http://digitalcommons.iwu.edu/intstu\\_honproj/10](http://digitalcommons.iwu.edu/intstu_honproj/10) see pp. 24

## CHAPTER I

### 1) DEFINITION OF RECONCILIATION

As it is well-known from most research it is very difficult to define reconciliation since it involves different contexts. It is said that the notion involves the main goal and the process in order to reach this goal.<sup>3</sup> Generally reconciliation is taking place among different types of relationships like between a couple or among neighbors. But our aim is to examine reconciliation in a society after the end of a conflict for example after a war or civil war or an oppressive regime. Using the way the three ethnic groups (Bosnian Serbs, Bosnian Croats and Bosniaks) characterize this conflict, as we will see below, the definition of reconciliation applies to war or civil war.<sup>4</sup> The notion of reconciliation involves the search of justice, truth, healing, forgiveness etc. An important point about reconciliation is that it doesn't try to make things as they were before the conflict but it tries instead to make things move forward.<sup>5</sup> The aim of reconciliation is to find the way to live with ex enemies and to try to cooperate with them. Nobody claims that somebody needs to love necessarily its own enemies but to find the way to share the same society with them. This is a tool for preventing the violence to come back. If there is restoration of some kind of respect for each other needs or fears this will create a strong obstacle for the violence to return.

In the effort to find a definition for reconciliation we can use the one referred into the IDEA Handbook which states that "reconciliation is a process through which a society moves from a divided past to a shared future"<sup>6</sup>. Other scholars have different definitions and approaches to reconciliation. Despite the differences in the approaches they all agree that reconciliation is a process and it has no time limit. Normally gets a

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<sup>3</sup> David Bloomfield, Teresa Barnes and Luc Huyse (2003) "Reconciliation After Violent Conflict A Handbook" a Handbook Series, International IDEA (Institute for Democracy and Electoral Assistance), Sweden see pp. 13

<sup>4</sup> Roland Kostić (2008) "Nationbuilding as an Instrument of Peace? Exploring Local Attitudes towards International Nationbuilding and Reconciliation in Bosnia and Herzegovina" *Civil Wars*, 10:4, 384-412, see pp. 395, To link this article: <http://dx.doi.org/10.1080/13698240802354482>

<sup>5</sup> Sanam Naraghi Anderlini, Camille Pampell Conaway and Lisa Kays (2010) "Transitional Justice and Reconciliation, in *Justice, Governance and Civil Society*", No. 4, *Inclusive Security Sustainable Peace: A Toolkit for Advocacy and Action*, International Alert, Women Waging Peace see pp.3

<sup>6</sup> IDEA op.cit see pp. 13

lot of time, but in the end it has a fulfilled goal which can be for example the unified society. They also agree that reconciliation has different stages of development which depends on the movements and actions of each part and it is a process that only voluntary can be adopted.<sup>7</sup>

In order for this process to be realized, there are used different tools. There are many different approaches of what is most important to take place in order the reconciliation to come true. Many scholars discuss the importance of justice in order reconciliation to be achieved<sup>8</sup>. For this paper's particular case the retributive justice, in an international level, applies on the International Criminal Tribunal for the former Yugoslavia (ICTY). Others relate reconciliation with restorative justice and truth telling procedure, focusing on the role of the establishment of a Truth and Reconciliation Committee.<sup>9</sup>, but most of the opinions agree that the main tools are justice restoration, truth-telling along with apology and forgiveness, reparation or/and restitution and healing of trauma.<sup>10</sup> Below we will discuss the different approaches, trying to understand their level of importance in a post-conflict society.

## 2) RECONCILIATION THROUGH JUSTICE

Transitional justice normally refers to societies that are in the procedure of transforming from a repressive regime to a more democratic rule. The relationship between reconciliation and transitional justice is best reflected in the opinion of Anderlini, Conaway and Kays who refer to their relationship as the “opposite ends of the spectrum”.<sup>11</sup> Reconciliation and justice seem to be the main goals of transitional justice processes.<sup>12</sup> Reconciliation actually in order to be achieved needs the contribution of justice (restorative and retributive).<sup>13</sup> Most of the discussions about justice are focused on the retributive and/or restorative justice. The retributive justice is examined in a sense of the punishment of the perpetrators and the correction of the

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<sup>7</sup> Franklin Oduro (2007) “A Review of the Literature on reconciliation- what do we understand by ‘Reconciliation’?” (Emerging Definitions of Reconciliation in the Context of Transitional Justice). Final Draft. March, 23<sup>rd</sup>, see pp. 20

<sup>8</sup> Louis Kriesberg, Aleksadar Fatic, Abdullahi Ahmed An-na'im, Leberach, David Bloomfield, Luc Huyse.

<sup>9</sup> Kader Asmal, P. Hayner, Donna Pankhurst, James Gibson, Michael Iggnatieff, P. Hayner, C. Perelli

<sup>10</sup> IDEA op.cit see pp. 13

<sup>11</sup> Anderlini, Conaway and Kays “Transitional Justice and Reconciliation”, op. cit. pp 1.

<sup>12</sup> Franklin Oduro “A Review of the Literature on reconciliation” op.cit see pp.4

<sup>13</sup> Ibid. see pp.17



wrong decisions or actions of the past. The supporters of retributive justice believe that this process will prevent the private revenge of the victim; it will strengthen the respect of the rule of law since the perpetrators will be tried and it will create a feeling of fulfillment to the victims.<sup>14</sup>

Furthermore, this process is individualizing the guilt, so the guilt is not imposed to the whole community (ex Serbs, Croats or Muslims). On the other hand as Fletcher & Weinstein suggests the same advantage of individualizing the guilt can be turned into a disadvantage due to the fact that individualizing the guilt prevents the collective forgiveness.<sup>15</sup> At the same time trials prevent the return of the perpetrators in power and it stops the circle of impunity. However, the choice of retributive justice has its own disadvantages. Instead of the reconciliation process to be focused on the victims there are focused on the perpetrators. The trials also can create the feeling of re-victimization of the victim due to the experience again of the same action which was caused by the perpetrator. Furthermore the post conflict trials may be not fair and violate the rule of law or even to lead to injustice and violation of human rights. Another important element is that due to lack of evidence possible perpetrators do not face punishment and the circle of impunity is continuing.<sup>16</sup> Even though there are realistic risks in a theoretical base, below it will be examined the realistic risks of ICTY. Despite all the risks of the trials, many scholars agree that tribunals international or national, permanent or temporary, there are the ones which bring justice and it is these particular elements which lead to reconciliation. Like for example Aleksandar Fatic who believes that the starting point of reconciliation is the criminal justice. Fatic also sees the ICTY as a tool which brings stability to South Eastern Europe.<sup>17</sup>

In our case ICTY is not only supported by scholars but also by the public opinion despite the high controversy by all ethnic groups regarding the level of punishment, or impartiality and other issues. In many cases it is also referred that amnesty is an alternative to retributive justice.

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<sup>14</sup>IDEA, Luc Huyse Justice, Chapter 7, op. cit. see pp. 99

<sup>15</sup> Tove Grete Lie, Helga Malmin Binningsbø, and Scott Gates (2007) "Post-Conflict Justice and Sustainable Peace" Post-Conflict Transitions Working Paper no. 5, WPS4191, Norwegian University of Science & Technology (NTNU) see pp. 4

<sup>16</sup> IDEA, Luc Huyse Justice, Chapter 7, op. cit. see pp.105-106

<sup>17</sup> Franklin Oduro "A Review of the Literature on reconciliation" op.cit see pp 17

### 3) RECONCILIATION THROUGH RESTORATIVE JUSTICE AND TRUTH-TELLING

Another option of justice after the conflict is the restoration of the wrongdoings. Its aim is to restore justice between the perpetrators and the victims along the restoration of relationships among the community. Its goal is not the punishment of the perpetrator but the restoration of the victim. It gives the opportunity to the perpetrator to take the responsibilities of each own actions and try to find a way of restoring the damage caused. It involves the participation directly of the victim and the perpetrator along with a third party who acts as mediator and they have the chance to express feelings and explore the particular offence and also gives the opportunity of restoration without using the justice system while at the same time there can be a progress in the reconciliation by direct compensation of the victim through its own offender. However, the whole process can be undermined by the leaders who use their own political influence in order to affect their favor part.<sup>18</sup>

Restoration of justice it is related to a truth-telling mechanism. The truth-telling procedure is one of the most important elements of reconciliation. The tool that mainly is used in this procedure is the Truth Commission. The reconciliation through Truth Commission is easier to happen in a political level than in an individual level because it prevents the bitterness to be continued in a more collective way. However, it is argued that there are more factors that promote reconciliation and should be adopted; that the truth telling shouldn't monopolize the process.<sup>19</sup>

The Truth Commission is not a judicial body. It has no power to convict and put somebody to jail. But what it can do is to provide a platform for the victims to discuss or even to recommend reparation measures for the victims. As Gloppen (2004) suggests in order to the reconciliation process to be completed it certainly needs that the physical, psychological and social damage caused to the victim to be acknowledged and repaired.<sup>20</sup> Kader Asmal supports that reconciliation is accomplished when the truth of the past has been said and accepted by all parts. This

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<sup>18</sup> Restorative justice is more common to be used in minor offences, but in Northern Ireland case it has been tried to go further and include more serious crimes.

<sup>19</sup> IDEA, Mark Freeman and Priscilla B. Hayner, Truth-Telling, International Center for Transitional Justice, Chapter 8, op. cit. see pp.123

<sup>20</sup> Tove Grete Lie, Binningsbø, and Scott Gates "Post-Conflict Justice and Sustainable Peace" op.cit see pp. 8

is possible to happen only if victims and perpetrators say the truth.<sup>21</sup> It can be said that the Truth Commission is between the amnesty and criminal prosecution.<sup>22</sup> Hayner defines the Truth Commissions as bodies which investigate the past for violations of human rights.<sup>23</sup> On the other hand Ignatieff challenges the power of truth-telling since in his own view truth is related with identity and therefore it is difficult to reconcile through truth.<sup>24</sup>

However, Truth Commissions have the risk that during the procedure the violence can be renewed. The old memories of the past can revive the feelings of conflict between the victims and the offenders. Truth-seeking procedure can make the conflict to come back. Furthermore, it is difficult to ensure the unbiased character of the Committee and there is a risk of having the wrong motives running through the Committee. But on the other hand Truth Commission is a tool that can talk about the truth of the past, creating a report about the facts and give accountability of the perpetrators regarding violations of the past. It also can go further and recommend reparation measures to the victims. As a consequence it can promote reconciliation in social level which will ensure the democratic transition.

In BiH despite the fact that the establishment of a Truth and Reconciliation Committee has been suggested a long time ago, this possibility has never really been seriously examined. This is partly because of political elites efforts to prevent its establishment in order to continue the manipulation of the ethnic groups, and partly because of ICTY's hesitation of the creation of another conflicting body along with victim associations' mistrust. But this is something that it will be properly analyzed below.

#### 4) RECONCILIATION THROUGH COEXISTENCE AND REPARATION

Reconciliation is often connected with the improvement of relationships among those who will implement the relevant policies towards that end. These are not only politicians but also the citizens of the society. Reconciliation is often referred to the literature with a connection with coexistence. That means that former enemies live

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<sup>21</sup> Franklin Oduro "A Review of the Literature on reconciliation" op.cit see pp 14.

<sup>22</sup> Corene Rathgeber (2000) "Truth and Reconciliation in Bosnia and Herzegovina", M.A. Paper presented to obtain the degree of Master in European Criminology, , Faculty of Law, Katholieke Universiteit Leuven, Belgium.

<sup>23</sup> Ibid. see pp. 9

<sup>24</sup> Franklin Oduro "A Review of the Literature on reconciliation" op.cit see pp 15

together. That doesn't mean necessarily forgetting or forgiving but at least to guarantee a level of peaceful coexistence which will not revive the violence of the past.<sup>25</sup> As Clark points out about the society of BiH that it has achieved a negative peace (cessation of hostilities) but not a positive peace (reconciliation).<sup>26</sup> Therefore, it is suggested of at least former enemies find a common area of communication. As Oduro suggests "the building a relationship with the 'other'" has to start from "bottom to up"<sup>27</sup>. Jodi Halpern and Harvey Weinstein indicate that reconciliation can be achieved through rehumanization emphasizing the community reconciliation. They also state the way this can occur. They suggest from the level of neighbor to neighbor, then house to house and then community to community.<sup>28</sup> Despite the importance of individual relationships Alex Boraine emphasizes the necessity of communal reconciliation accompanied with acknowledgement, accountability and responsibility of the past.<sup>29</sup> Particularly in the case of BiH the three ethnic groups should find a way to integrate in a civilized manner. In order for this to happen David Whittaker suggests another prerequisite.<sup>30</sup> This is the material welfare of the people for example basic needs, safety and other public services. In BiH as we will examine below the society is highly challenged from the materialistic point of view since poverty and unemployment is high and therefore the above mentioned fulfillment of the materialistic needs are highly contested. Furthermore, education in BiH, as a public service, instead of contributing to transitional justice it has ended up deepening the segregation in the minds of children and young persons.

The process of reconciliation has to go further than the change of norms or restoration of the procedures. It should go on and reach the recognition and protection of individual rights. In order for a victim to move on needs the recognition of its own suffering, being acknowledged as a victim and even go further to the symbolic restoration of the wrong doing. The reparation of the wrong doing is also very important for the viability of the new regime. Reparation is some kind of a bridge

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<sup>25</sup> IDEA op.cit see pp. 12-13

<sup>26</sup> Janine Natalya Clark (2009) "Judging the ICTY: has it achieved its objectives?", Southeast European and Black Sea Studies, 9:1-2, 123-142, see pp. 132

<sup>27</sup> Franklin Oduro "A Review of the Literature on reconciliation" op.cit see pp.7

<sup>28</sup> Jodi Halpern and Harvey M. Weinstein "Empathy and rehumanization after mass violence" in Eric Stover and Harvey M. Weinstein (eds.), *My Neighbor, My Enemy: Justice and Community in the Aftermath of Mass Atrocity*, (Cambridge University Press, 2004), p.307, found in Franklin Oduro, "A Review of the Literature on reconciliation" op.cit see pp 8.

<sup>29</sup> Alex Boraine "A Country Unmasked" (Oxford University Press, 2000) found in Franklin Oduro "A Review of the Literature on reconciliation" op.cit see pp 9

<sup>30</sup> Ibid. see pp. 13

between the past and the future. It tries to make victims and perpetrators looking backwards and after some kind of compensation both of them to look forward to the future.

This can take place either as economic compensation through financial measures or individual and collective measures or even by the reparation of rights. The financial measures involve money, materials and services that can be provided to the victims. These measures should be taken with much consideration in order to avoid being perceived as buying the victims forgiveness and tolerance. Other measures for compensation are the restoration of employment and the return of property. As far as BiH is concerned the latter is a very complex issue and it hasn't been properly taken care of. This is actually the reason that there are discouraging results in that matter. In order for reparation to be achieved both sides, the perpetrator and the victim, need to agree to the process and also need to use the right act so as the message will be properly passed to the victim.<sup>31</sup> Some reparation tools could be public apology, memorials and monuments construction, but also school curricula.<sup>32</sup> On one hand, apology as a tool of reconciliation in BiH is not much successful. There have been some steps to this end but more should be done for the satisfaction of victims of the war or their families. On the other hand school curricula is more a complex issue in BiH. The schools in BiH use the curricula according to which ethnic group is the majority. Furthermore, they have three different aspects of the war presented into the history textbooks. This is not to exclude other divisive perspectives in other textbooks like for example geography.<sup>33</sup>

However, reconciliation as a political process is often been related to national reconciliation and less with individual reconciliation. But national reconciliation does not automatically guarantee individual reconciliation. To cite Mani

*“National unity and reconciliation are entirely dependent on individuals within society feeling reconciled with each other and with the new state authorities and institutions, as well as on their feeling able to reinvest their trust in the state”.*<sup>34</sup>

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<sup>31</sup> Mohammed Abu-Nimer (2001) “Reconciliation, Justice and Coexistence” Theory and Practice Lexington Books UK see pp. 6-7

<sup>32</sup> UNDP “Facing the Past and Access to Justice from a Public Perspective” Special Report 2010

<sup>33</sup> Valery Perry (2003) “Reading, Writing and Reconciliation: Educational Reform in Bosnia and Herzegovina” European Centre for Minority Issues Working Papers 18 see pp.35

<sup>34</sup> Mani, Rama, (2005) “Rebuilding an Inclusive Political Community After War”, Security

## CHAPTER II

### 1) RETRIBUTIVE JUSTICE AND THE ICTY

In order to find out how the retributive justice works in Bosnia Herzegovina and what progress has been made towards reconciliation it is necessary to examine the achievements of ICTY and the effect of these achievements on the society of BiH.

First of all it is important to mention some general information about the Tribunal. It was established by the UN Security Council in 1993 and “has authority to prosecute and try individuals on four categories of offences: grave breaches of the 1949 Geneva conventions, violations of the laws or customs of war, genocide and crimes against humanity”<sup>35</sup>. According to Janine Natalya Clark the establishment of the Tribunal is based on three main principles: “to deter further crimes, to do justice and to contribute to the restoration and maintenance of peace”<sup>36</sup>. The accomplishment of these principles should therefore add to the reconciliation process.

As far as the aim of ICTY to deter future crimes of taking place, its own success is highly challenged since after the establishment of the Tribunal many atrocities occurred.<sup>37</sup> Srebrenica atrocities for example occurred two years after the establishment of the Tribunal. Furthermore, Kosovo atrocities were not prevented by the existence of the Tribunal which took place on 1998 and 1999. However, it is true that the Tribunal contributed to the momentum for the creation of other Tribunals like the one for Rwanda, Cambodia, East Timor, Libanon. Furthermore, with the arrests of high profile individuals, that is to say Slobodan Milošević or the recent arrest of Ratko Mladić the message has been passed to potential future perpetrators that “nobody is above the law”<sup>38</sup>.

As Neil J. Kritz and Jakob Finci argue ICTY should provide victims with justice while at the same time it should give the message to any potential perpetrator that the international community will not be tolerant in any future atrocities.

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Dialogue 36(4): 511–526. see pp. 513. To find it online visit the link  
<http://sdi.sagepub.com/cgi/content/abstract/36/4/511>

<sup>35</sup> <http://www.icty.org/sid/320> visited on 29/08/2011

<sup>36</sup> Janine Natalya Clark “Judging the ICTY” op. cit. see pp. 123

<sup>37</sup> Sanela Basić (2006) “Bosnian Society on the Path of Justice, Truth and Reconciliation” in Fischer, Martina, ed. “Peacebuilding and Civil Society in Bosnia-Herzegovina”. Transaction Publishers. pp.369

<sup>38</sup> Janine Natalya Clark “Judging the ICTY” op.cit. see pp. 125

Furthermore, Neil J. Kritz and Jakob Finci continue their argument mentioning that ICTY should make clear that the individuals who committed the atrocities are accountable about them. So there is no collective guilt.<sup>39</sup> For many scholars this is the aim of ICTY to mainly individualize the guilt and to prevent categorization of one ethnic group or the other with the collective guilt<sup>40</sup>.

Despite its own aims and principles ICTY has been criticized from all over the world about the fact that it hasn't taken serious measures to find and try the most top head persons responsible for huge amount of atrocities<sup>41</sup>. Furthermore, the Tribunal has been highly contested by the local population in BiH including the political elite and civil society about its own effectiveness in the goal to punish the perpetrators and bring justice. The opinion of the civil society for which the whole procedure has been created is in highly importance. How the ICTY can be expected to achieve its goal and "contribute to the restoration and maintenance of peace in the region"<sup>42</sup> if the society is addressed to is having doubts about the means used for the restoration of justice and the effectiveness of its own achievements? To this respect Klarin refers that 'it is the victims who have the right to decide whether the Tribunal has been a success or failure'<sup>43</sup>. But let's first look at the achievements of ICTY up to now and then examine its relation with the limited trust from the side of the civil society in BiH.

First of all, ICTY has indicted just 161 persons from which less than 100 are the indictments referring to 1992-1995 events of armed conflicts. At the same time thousands of perpetrators are still free and many of them still exercise some kind of power while it has failed to interview many victims<sup>44</sup>. Current records have shown that up to 2010 the Tribunal had prosecuted only one person for genocide<sup>45</sup>.

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<sup>39</sup> Neil J Kritz and Jakob Finci, "A Truth and Reconciliation Commission in Bosnia and Herzegovina: An Idea Whose Time has Come", *International Law Forum*, Vol. 3, No. 1, 2001, p. 50, at 51. Neil J. Kritz is the Director of the Rule of Law Programme at the United States Institute of Peace. Jakob Finci is the Chairman of the National Coordinating Committee for Establishment of the Truth and Reconciliation Commission in Bosnia and Herzegovina. see pp. 51.

<sup>40</sup> Marko Attila Hoare, Sanela Basić, Hideaki Shinoda

<sup>41</sup> Beyazit H. Akman "Tribunal vs. Truth: ICTY and TRC in the Case of the Former Yugoslavia" *HUMSEC*, 2008, Journal, Issue 2, see pp.125

<sup>42</sup> <http://www.icty.org/sid/320/29/08/2011>

<sup>43</sup> Klarin, M. (2004) "The Tribunal's four battles" *Journal of International Criminal Justice* 2, no. 2: 546–57.

<sup>44</sup> Sanela Basić "Bosnian Society on the Path of Justice, Truth and Reconciliation", op.cit. see pp.368

<sup>45</sup> It is Radislav Krstić Bosnian Serb who was a low commander during the conflict.

According to ICTY official records, from total 84 completed cases<sup>46</sup> concerning these early years of 1990s, almost the 13% have been acquitted, 11% have been convicted from 5 to 10 years imprisonment, 18% between 6 to 10 years imprisonment, from 11 to 15 years of imprisonment sentenced the 17% of the cases, 16 to 20 years of imprisonment the 21% and over 21 years of imprisonment the 15%.<sup>47</sup> In life imprisonment have been sentenced only the 5% and they are only from Serbian side (Table 1 in Annex I). Marko Attila Hoare is also accusing the Tribunal that has “treated Serb perpetrators extremely leniently” and that it has “disproportionately targeted Bosnian Serbs”<sup>48</sup>. He also mentions that only with the indictment of Slobodan Milošević the ICTY has been “effectively personalising the guilt of what had been a joint criminal enterprise, a collectively planned and executed criminal project”<sup>49</sup>. Contrary to this view, the analysis of ICTY data shows that individuals from Serbian side<sup>50</sup> have been sentenced more than those sentenced from Croatian or Muslim side. More particularly approximately 67% of ICTY decisions concern Serbian side individuals while for Croatian side<sup>51</sup> is 24% and for Bosniak side<sup>52</sup> the 10%. This is not to imply that Serbian side is unjustifiably accused, but to suggest that this record would probably make Serbian side citizens feel that ICTY treats them unfairly. This perception can cause further division of Bosnian society among the ethnic groups and particularly the Bosnian Serbs who believe that they are treated unequally with the other two ethnic groups. Therefore, according to them justice, as we will see below, is highly challenged.

The most recent arrests of Goran Hadžić<sup>53</sup>, former President of the Republic of Serbian Krajina and Ratko Mladić<sup>54</sup> the Chief of the Bosnian Serb Army might add

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<sup>46</sup> Counting doesn't include the withdrawn cases, the cases on trial and the cases where the accused has died during or after the end of the proceedings.

<sup>47</sup> The whole table can be found Table 1 in Annex I

<sup>48</sup> Marko Attila Hoare “Bosnia-Herzegovina and International Justice Past Failures and Future Solutions”, Kingston University, Kingston upon Thames, UK East European Politics & Societies May 2010 vol. 24 no. 2 191-205 see pp. 191

<sup>49</sup> Marko Attila Hoare “The Capitulation of the Hague Tribunal,” Henry Jackson Society, 16 June 2005, <http://henryjacksonsociety.org/stories.asp?pageid=49&id=298>.

<sup>50</sup> Serbian side refers to either individuals who are Bosnian Serbs, Serbs, Croat Serb, Montenegrins, Yugoslavs who have fought for Yugoslavia army or individuals who fought for them.

<sup>51</sup> Croatian side refers individuals with Croat origin and Bosnian Croat origin.

<sup>52</sup> Bosniak side refers to Bosnian Muslims.

<sup>53</sup> He was indicted in 2004 for crimes against humanity and war crimes allegedly committed in eastern Slavonia, Croatia, between 1991 and 1992. He was arrested on 20<sup>th</sup> July 2011.

<sup>54</sup> The arrest took place on 26<sup>th</sup> of May 2011 after 16 years of evading arrest. He is accused for genocide, crimes against humanity and war crimes allegedly committed during the 1992 to 1995 conflict in Bosnia and Herzegovina.



to the Tribunals achievements but it is highly contested if this can change the overall outcome of the Tribunal's almost 20 years mandate. The arrests came after very strong political pressure to the local political elites. This also happened many years after the end of the conflict. As Sanela Basić indicates, the slow progress on the arrest of high profile individuals is caused partly because of lack of the will on behalf of the local political and military elite in Serbia and Republika Srpska (RS) which were giving strong back-up to both Ratko Mladic and Radovan Karadžić<sup>55</sup> and partly because of lack of will on behalf of the international community to bring them to justice<sup>56</sup>. The latter is also supported by Hideaki Shinoda who argues that the international community actions towards Milošević indictment was "politically calculated" because the timing of the issuance of his indictment coincided with the time that the western leaders stopped perceiving him as a "peace-accord-broker".<sup>57</sup>

Contrary to the opinion that ICTY hasn't been effectively address and prosecute the vast majority of perpetrators is the opinion that ICTY wouldn't have the capacity to deal with thousands of prosecutions. Sanela Basić refers to the existence of around 8 to 12 thousands war criminals. Clark Natalya Janine refers in this respect that ICTY's "161 indictments only scratch the surface". Therefore, the power of the Tribunal in individualizing the guilt is limited. Hence, guilt exists in the society and each ethnic group is still living aside with the collective guilt imposed to the other ethnic group.<sup>58</sup> That means that even though the ICTY makes each own efforts to individualize the guilt, the collective blame is still alive through the thousands of individuals who should be prosecuted for atrocities and still enjoy their freedom. Therefore, how reconciliation can be achieved when still the victims cannot "see" the justice. As Volf points out justice must not only be done but also be seen to be done. However, not only victims should "see" the justice but also the perpetrators and the rest of the population of the society.

If there was trust from locals towards the Tribunal then they would understand that the trials distinguish the perpetrators from the ethnic groups.<sup>59</sup> Furthermore, if

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<sup>55</sup> Radovan Karadžić was initially indicted in 1995 and arrested in 21 July 2008. Information driven from [http://www.icty.org/x/cases/karadzic/cis/en/cis\\_karadzic\\_en.pdf](http://www.icty.org/x/cases/karadzic/cis/en/cis_karadzic_en.pdf) accessed on 30th August 2011.

<sup>56</sup> Sanela Basić "Bosnian Society on the Path of Justice, Truth and Reconciliation" op.cit pp.362

<sup>57</sup> Hideaki Shinoda (2001) "Peace-building by the rule of law: An examination of intervention in the form of international tribunals", Institute for Peace Science, Hiroshima University, pp 10, accessed at: [www.theglobalsite.ac.uk](http://www.theglobalsite.ac.uk).

<sup>58</sup> Janine Natalya Clark "Judging the ICTY" op.cit.

<sup>59</sup> Sanela Basić "Bosnian Society on the Path of Justice, Truth and Reconciliation" op.cit. see pp.371

that was the case it wouldn't take so long to arrest Ratko Mladić and Radovan Karadžić. But as it will become obvious from below argument this is not the case. The ICTY enjoys much distrust among the different ethnic groups and especially the Bosnian Serbs<sup>60</sup>.

Five years after the end of the conflict and still the opinion about the ICTY reflected to the below mentioned research, was dividing the ethnic groups instead of unifying them. The research of Kristen Cibelli and Tamy Guberek issued in 2000 in local NGOs of the two entities of BiH, observed that not only ICTY didn't have brought justice but also had reinforced collective divisions. Specifically, NGOs from Federation had positive view of ICTY due to its "authority to punish" while in Republika Srpska the general view was that ICTY "disproportionately targets their side". One of the interviewees in Banja Luka also mentioned "It has to prove that it is a court for everyone – not just a sword for one nation". Generally, both entities had more expectations when ICTY was established. Federation was hoping that the justice would come fast while Republika Srpska that the justice would be equal. Federation and Republika Srpska were both disappointed about the strategy used regarding the arrests. In Federation it was much believed that the arrests were not many and that ICTY should focus and work more on this. On the other hand, in Republika Srpska there was a general feeling of mistrust on the sufficient evidence that the arrests were based on.

However, the two entities<sup>61</sup> agreed at least at one thing that they both perceive the strategy of ICTY with disdain. Although each entity has each own reasons to believe this. On one hand, the Federation perceived this because ICTY, back then, had targeted only few of the high top individuals accused of war crimes and because of lack of efficiency towards this direction; while on the other hand Republika Srpska was challenging the "unbalanced" indictments in terms of their own ethnicity. Furthermore, both entities agreed that didn't have much information about ICTY so they don't really understand its works and procedures, therefore, they would be willing to receive more information about it. However, there was an effort to change this and make the information about ICTY and its proceedings easier accessible to the public. This initially started with the adoption of ICTY Outreach Programme in 1999

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<sup>60</sup> Bosniaks and Bosnian Croats are much more cooperative with the Tribunal.

<sup>61</sup> The majority of 70% of both entities.

which took measures for the translation of the Tribunal's decisions and increase the use of available modern tools to inform the public in BiH.<sup>62</sup>

Despite the differences emerged by the research between the two entities it is important to mention that half of the NGO's of both entities were believing that ICTY could contribute positively to the establishment of reconciliation.<sup>63</sup>

This research made apparent the divided opinion of the two entities regarding the ICTY, however they both recognized the mandate of the Tribunal "to hold trials and deliver punishment for war crimes".

Going towards a more recent view about the opinion of the two entities about the Tribunal we can examine the UNDP's opinion poll issued in 2005<sup>64</sup>. According to this research the division about public opinion's view about ICTY is still obvious. On the question regarding their view in ICTY, almost the 70% approves or thinks that it is necessary. However, the around 45% of the public opinion in Federation believes that it hasn't done a good job, but they recognize the necessity of the Tribunal's existence. For the same question Republika Srpska's public opinion give only around 26%. It is quite interesting in this poll that the percentage of people who believe that ICTY hasn't done a good job although it is necessary are Bosniaks with 46,4% while the other two ethnicities have quite lower percentages (Croats 22,2% and Serbs 29,8%).<sup>65</sup>

On a much current survey conducted again by UNDP in 2010 it is also apparent the high level of dissatisfaction on all NGOs and victims associations about the outcomes of the trials. In the question regarding to whether "the documentation of international courts represents the best basis for discussion about what happened during the war in BiH" only around 30% of Republika Srpska respondents agreed with this statement while more than 76% in the Federation. The most supportive opinion is the one from Bosniaks with 83,4% and less supportive those of Serbians with 26,5% (the Croats give 59,4%)<sup>66</sup> A quite interesting point here is that in the two

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<sup>62</sup> Kristen Cibelli and Tamy Guberek, "Justice Unknown, Justice Unsatisfied?: Bosnian NGOS speak about the International Criminal Tribunal for the Former Yugoslavia" (Boston, MA: Tufts University, 2000), pp. 7-8, available on [www.hrdag.org/resources/publications/justicereport.pdf](http://www.hrdag.org/resources/publications/justicereport.pdf). They compiled their database and conducted their interviews in 1999.

<sup>63</sup> Ibid.

<sup>64</sup> This research was conducted using the tried and tested quantitative methodology of UNDP's Early Warning System reports, made by Prism Research of BiH.

<sup>65</sup> UNDP "Justice and Truth in Bosnia and Herzegovina: Public Perceptions" EWS Special Report, Early Warning System Special Edition 2005.

<sup>66</sup> UNDP "Facing the Past" op. cit.

last mentioned researches Bosniaks seems to be the most supportive to the operation of ICTY while at the same time very much disappointed with it. This is probably because initially Bosniaks had shown much trust to the Tribunal that it would bring justice, but now they are quite disappointed with the limited level of punishment given to the perpetrators or the slowness of the procedure<sup>67</sup>.

All the above mentioned researches have shown that no much improvement has been made in the local public opinion of BiH about the trust to ICTY proceedings. Both entities recognize it as an important tool of justice but at the same time agree that they are not satisfied with the level of justice that has been achieved.<sup>68</sup> The joint opinion of the two entities has come from different starting points. In the Federation large amount of people have limited trust on ICTY judgments because of the lenient level of punishment to the perpetrators while in Republika Srpska believe that the Tribunal is biased against their ethnicity's role during the conflict. Therefore, back to the question on whether ICTY has added to the reconciliation process as a tool of retributive justice it can be illustrated that only justice which derives from trial proceedings could not bring reconciliation to post conflict areas. As O'Connell has stated:

*"Generally... those seeking to help traumatized survivors heal should put less faith in trials. Instead, they should devote greater attention to non-judicial initiatives that may address psychological after-effects of human rights violations more reliably"*<sup>69</sup>.

An effort to judge ICTY on its own, without considering the broader picture of reconciliation process, would probably lead to subjective result. It would probably be divided to the "advocates" and the "opponents" of its proceedings.<sup>70</sup> It can be seen instead as an additional tool, as one more element which adds on the reconciliation process. To cite Basić, seek for retributive justice "must be supplemented with additional instruments directed toward societal healing and transformation of

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<sup>67</sup> P. Stefan, L. O'Donoghue, and A. Dedic. "Transitional Justice in Bosnia and Herzegovina. Findings of a Public Survey" paper presented at Conference: "Pathways to Reconciliation and Global Human Rights" Sarajevo, 16-19 August 2005, United Nations Development Programme, BiH see pp.6

<sup>68</sup> UNDP "Facing the Past and Access to Justice from a Public Perspective" Special Report 2010 op. cit. see pp 9

<sup>69</sup> O'Connell, J. (2005) "Gambling with the psyche: Does prosecuting human rights violators console their victims?" Harvard International Law Journal 46, no. 2: 295-345.

<sup>70</sup> Nebojsa Bjelakovic "Reconciliation, Truth, and Justice in the post-Yugoslav States," *Southeast European Politics* 3, no. 2-3 (2002): 163-167, see pp.164

the relationships between ethnic groups”<sup>71</sup>. Going further deep in this process it would be useful to examine other elements of reconciliation. From the latest research of UNDP it is illustrated that people in BiH have the need to “give their own account of what happened and to go through the trauma release process in public”<sup>72</sup>. The victims along with the rest of the population know that they cannot find all their answers through legal proceedings.<sup>73</sup> There is a need to find out the cause behind the event and the hidden background of the atrocities. A very useful mechanism for this purpose is a Truth and Reconciliation Committee which could be helpful for this. However, regarding the level of importance between justice and truth about the past this public survey reveals that public opinion places the former as first priority and the latter as second after justice has been achieved.<sup>74</sup>

## 2) RESTORATIVE JUSTICE AND TRUTH AND RECONCILIATION COMMITTEE

Dealing with the past is a prerequisite for the achievement of a long lasting peace. History of Yugoslavia has revealed that if old traumas remained silent and are not solved on time then the memory of suffering will travel along with the next generations and there is a high risk that this trip will probably end up to a new conflict. As what Tito did after the second World War where he prohibited any productive dialogue about the wrongdoings during the war.<sup>75</sup> Therefore, the need to talk about the past after a conflict, and particularly in our case in BiH, seems to be highly important. The ICTY on its own could not possibly deal with all elements of the past. Retributive justice through ICTY can only deal with individual guilt.<sup>76</sup> But what about the other forms of guilt established during a conflict? Karl Jaspers a German theologian talked about four categories of guilt in the aftermath of Nazi regime. These were the criminal, political, moral and metaphysical. The ICTY deals

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<sup>71</sup> Sanela Basić “Bosnian Society on the Path of Justice, Truth and Reconciliation” op.cit see pp. 381

<sup>72</sup> UNDP “Facing the Past and Access to Justice from a Public Perspective” Special Report 2010, op.cit see pp 13.

<sup>73</sup> Ibid.

<sup>74</sup> Ibid. see pp. 9

<sup>75</sup> Sanela Basić (2006) “Bosnian Society on the Path of Justice, Truth and Reconciliation” in Fischer, Martina, ed. “Peacebuilding and Civil Society in Bosnia-Herzegovina”. Transaction Publishers, pp.357

<sup>76</sup> Neil J Kritz and Jakob Finci, “A Truth and Reconciliation Commission in Bosnia and Herzegovina: An Idea Whose Time has Come”, op.cit.

with the criminal guilt and gives the chance to the victims to get a “sense of justice” at least to some point. It certainly tries to distinguish the collective guilt of the ethnic groups and put all its efforts to individualize the guilt to these particular individuals who committed war crimes. Jaspers also talking about the moral guilt refers to individuals who remained passive while a crime was committed and about the acknowledgement of responsibility on their behalf; that is to say the moral guilt. The solution for the examination of this kind of guilt is the Truth and Reconciliation Committee.<sup>77</sup> The establishment of such a Committee it would not only examine the stories of the people who lived in BiH during the conflict but also it will give the chance for public recognition and acknowledgement of truth. This would probably pave the way for the creation of an agreed by all sides, common history record. As it is presented below, researches have shown that the public opinion of BiH is positive in establishing a Truth and Reconciliation Committee. But as up to now this hasn’t been successful.

Below it will be referred the importance of the establishment of a Truth and Reconciliation Committee and how this would promote the rebuild of trust in the post conflict BiH. However, Truth and Reconciliation Committee would not be a panacea of the completion of restorative justice. Therefore, other mechanisms should be implemented in order for restorative justice to be promoted. For example these could be community programmes, promotion of employment or dealing with the social services discrimination<sup>78</sup>. But how far these factors have gone already? This part of the paper will focus more on the possibility of establishment of a Truth and Reconciliation Committee and the examination of the educational system and how it has affected the current youth and the children. How the history textbooks in the school curricula has actually promoted division of the ethnic groups instead of unity. It is suggested in this paper that the education and particularly the history teaching should be highlighted during the reconciliation process acknowledging its importance in the process of restoring the divisions of a multi ethnic society.

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<sup>77</sup> Neil J Kritz and Jakob Finci, “A Truth and Reconciliation Commission in Bosnia and Herzegovina: An Idea Whose Time has Come” op.cit.

<sup>78</sup> Haider, Huma. "(Re) Imagining Coexistence: Striving for Sustainable Return, Reintegraton and Reconciliation in Bosnia and Herzegovina." *The International Journal of Transitional Justice* 3 (2009): 91-113. see pp.96

### 3) TRUTH AND RECONCILIATION COMMITTEE

*“All those who work in favour of establishing the Commission for Truth and Reconciliation are committed to that work, among other things, because of the need of a large number of people to tell their experiences from the last war, the need to write them down and to store them somewhere, the need that all somehow pass catharsis. Without such purification, there is a serious risk that such accumulated sober experiences transform into everlasting intolerance with which it is hard and difficult to live.”*

Srdjan\_Dizdarevic

President of the Helsinki Committee for Human Rights in Bosnia and Herzegovina (2002)

Much discussion has been made for the establishment of Truth and Reconciliation Committee for BiH. It is broadly recognized that the three ethnic groups of BiH have their own version of the truth and different history of events during the war. Therefore it is a great fear that the three different stories will perpetuate the conflict. As Kritz has cited about the Bosnian leader who participated in a war crimes commission *“he and his counterparts are in the process of creating three conflicting versions of the truth, and if we keep going along this path, fifty years from now our grandchildren will fight again over which one is correct.”*<sup>79</sup> The establishment of a Truth and Reconciliation Committee would put the victim’s story as priority in contrast to the retributive justice which places the perpetrator in the center of attention. With the expression of the different stories and possibly through dialogue a single version of the story could be established.<sup>80</sup> It would examine not only the story of the victim but also the other parameters that can lead to a conflict such as political elites, the role of media, the educational system, the religious and government institutions. This examination will give the opportunity for a broader understanding of the social and cultural elements which led to the conflict. To cite Basić it would investigate the environment that has caused “such enormous human suffering”.

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<sup>79</sup> Kritz, N.J. (1998) “Is a truth commission appropriate in the former Yugoslavia?” see pp. 3 [online]. Available: <http://www.wits.ac.za/csvr/pubstrc.htm>. (January 27, 2000). found in Corene Rathgeber “Truth and Reconciliation in Bosnia and Herzegovina” op.cit.

<sup>80</sup> Ibid. see pp27

According to the advocates of the creation of a Truth and Reconciliation Committee there is a need to create one, not so much because truth is hidden but because there are many truths.<sup>81</sup> As Jacob Finci states it can help to face the past openly “although painfully as a sting of a healing needle which saves a life but the sting itself hurts”. It is also claimed that it is part of the healing process. The crisscrossing procedure that was suggested would give the opportunity to see the “others” opinion about the events and get the entire picture of the truth. This would probably lead to the understanding of “others” point of view. To cite Finci “Some of the testimonies will hurt us, no doubt, but it is better to take that bitter pill now instead when it is too late”<sup>82</sup>.

When the above mentioned discussion was taking place<sup>83</sup> there were concrete plan suggested for the establishment of the Committee. Its advocates had planned the operational details. They were suggesting that the participants of the testimonies will be people who were there during the war in BiH and are willing to say what happened during the war. The Truth and Reconciliation Committee would focus on victims and would involve public hearings so as everybody, from all ethnic groups, would be able to hear. There was also the suggestion for those who granted amnesty to participate so as some unrevealed stories would be encouraged to be mentioned. A very important suggestion was the examination of the role of media during the war and how they got involved in the rise of hatred.<sup>84</sup> The Truth and Reconciliation Commission would not give amnesty to the perpetrators. This is something unique for a Truth and Reconciliation Committee since this provision will probably discourage the vast majority of offenders to admit their guilt of the fear of prosecution.<sup>85</sup> Furthermore, it would use its own mechanisms to reveal the individuals who rejected the orders of their officials and didn’t commit the crimes they were asked to commit. To cite Kritz and Finci who characterize the individuals who resisted to participate in war crimes despite grave risks as “real war heroes”. Sanela Basic goes further and refers to the

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<sup>81</sup> Neil J Kritz and Jakob Finci, “A Truth and Reconciliation Commission in Bosnia and Herzegovina: An Idea Whose Time has Come” op.cit.

<sup>82</sup> Ibid.

<sup>83</sup> That is 23-24 April 2002, in Stockholm during the International Forum Truth, Justice and Reconciliation.

<sup>84</sup> Finci, J. (2002) ‘Why do we need a Truth and Reconciliation Commission?’ presented in April 23-24, in Stockholm International Forum TRUST, JUSTICE AND RECONCILIATION.

<sup>85</sup> As for example what happened with the South African Truth and Reconciliation Commission where some perpetrators didn’t get amnesty and faced criminal prosecution. Found in [http://en.wikipedia.org/wiki/Truth\\_and\\_Reconciliation\\_Commission\\_\(South\\_Africa\)](http://en.wikipedia.org/wiki/Truth_and_Reconciliation_Commission_(South_Africa)) & Corene Rathgeber “Truth and Reconciliation in Bosnia and Herzegovina” & Basic



draft law of the Committee “to promote a feeling of friendship and reconciliation between peoples of BiH” by using tools as for example forums where information about “human rights abuses can be heard” and “recommending even symbolic reparations to victims”.<sup>86</sup>

The duration of its own function had also been foreseen which it would be from eighteen to twenty four months, not too short but also not too long so as to be able to include a high range of stories which need to be told. Then recommendations would be prepared and finally it would be asked from the government or the Council of ministers to make annually reports to the Parliament about the implementation of the recommendations.<sup>87</sup> The recommendations would focus on legal, political and administrative measures which would promote reconciliation and mutual understanding along with acknowledgement of the wrongdoings, establishment of memorials.<sup>88</sup>

However, all these preparations and recommendations from experts, intellectuals and scholars haven’t led to the establishment of a Truth and Reconciliation Committee although the public opinion is positive and supporting on this. As the research of Cibelli and Guberek showed, the 78% of local NGOs interviewed expressed their support in that idea. Both in Federation and in Republika Srpska, although in less extent, it was expressed the need of a mechanism which would gather “facts for a national historical record and collecting positive stories from the war”.<sup>89</sup> Furthermore, a most recent opinion poll of UNDP issued in 2005 presents that more of the majority of people in both entities recognize the need for the establishment of Truth and Reconciliation Committee.<sup>90</sup> After so many years of discussion about the matter it is surprising that the UNDP’s opinion poll of 2010 appears that the vast majority (almost 61%) of citizens interviewed in both entities were not aware about what a Truth and Reconciliation Committee is. But from those who asked that they know what it is, nearly 90% were positive in the establishment of such a Committee.<sup>91</sup>

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<sup>86</sup> Sanela Basić “Bosnian Society on the Path of Justice, Truth and Reconciliation”. op. cit. pp.374

<sup>87</sup> Finci, J. (2002) op. cit. see pp. 4

<sup>88</sup> Sanela Basić “Bosnian Society on the Path of Justice, Truth and Reconciliation”. op. cit. see pp.378

<sup>89</sup> Kristen Cibelli and Tamy Guberek, “Justice Unknown, Justice Unsatisfied?” op. cit. pp. 21-22

<sup>90</sup> P. Stefan, L. O’Donoghue, and A. Dedic. “Transitional Justice in Bosnia and Herzegovina” op. cit. see pp. 7

<sup>91</sup> UNDP “Facing the Past and Access to Justice from a Public Perspective” Special Report 2010 op. cit. see pp 24-25.

The above mentioned surveys rise a question of why a Truth and Reconciliation Committee hasn't been established yet, since the civil society in BiH shows a positive attitude towards this and can "see" the need for it. A brief answer to this can be summarised to the mistrust of victims associations and the fear of ICTY (at least initially) as it is referred to the latest survey. Victims have the tendency to look for the punishment of the perpetrator as the most preferable way to restoration of justice. Due to limited information about how this would work the victims showed considerable suspicion<sup>92</sup>. They had the impression that the Committee would end up "to focus more on forgiving and forgetting, rather than on the establishment of truth and justice for victims"<sup>93</sup>. ICTY on its own behalf was having doubts about how they would both work at the same time. There was the concern that this would cause overlap in the investigation procedure and the establishment of such a Committee would "undermine Tribunal's efforts". With the meaning that it would create an alternative of cooperation to the witnesses. Furthermore, there was the fear that due to the different approaches they would arrive in "contradictory findings".<sup>94</sup> Furthermore, the establishment of a Committee would definitely need the support of political elite. The division of the two entities has not encouraged the unity of the citizens. The ethnic identity divisions are still there something that the politicians use in order to maintain and even deepening the anger and hatred. As Sanela Basić states it is highly unlikely that the government and the Parliament will take positive steps for the creation of Truth and Reconciliation Committee.<sup>95</sup>

Therefore, although there have been efforts for the establishment of such a Committee, the talks have been suspended since May 2006. However, the creation of a Committee cannot be seen as panacea for the search of truth-telling and fact-finding. As Hizkias Assefa states in an effort to criticize these kind of Committees "In a number of instances, these commissions have been able to go as far as obtaining voluntarily acknowledgment of guilt by offenders." And he continues that they have not gone further to take measures to "compensate and repair the relationship vis a vis their victims."<sup>96</sup> This can only be treated as an additional tool to the effort of

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<sup>92</sup> UNDP (2009) "Transitional Justice Guidebook for BiH", Sarajevo, pp. 28, available at [http://www.undp.ba/upload/publications/executive\\_ENG\\_WEB.pdf](http://www.undp.ba/upload/publications/executive_ENG_WEB.pdf)

<sup>93</sup> Sanela Basić "Bosnian Society on the Path of Justice, Truth and Reconciliation". op. cit. see pp.382

<sup>94</sup> Ibid. see pp.373-374

<sup>95</sup> Ibid.

<sup>96</sup> [http://www.gppac.net/documents/pbp\\_f/part1/2\\_reconc.htm](http://www.gppac.net/documents/pbp_f/part1/2_reconc.htm) accessed in 31/08/2011.

reconciliation and as Sanela Basic suggests that the creation of “dealing with the past has to go beyond truth and justice”.

## CHAPTER III

### 1) OTHER TOOLS FOR RECONCILIATION

Despite the level of reconciliation that ICTY or/and a potential Truth and Reconciliation Committee could bring, these efforts are not enough for a post conflict society to establish a viable and long lasting peace. According to Wolff regardless the success of these methods “it is clear that the past must be dealt with as a part of the reconstruction process if it aims to be successful”<sup>97</sup>.

The current situation in BiH is not very encouraging about the level of reconciliation that has been achieved. However, “basic freedoms have been restored (freedom of movement and religion)” and police and defense reforms have been undertaken.<sup>98</sup> Steps have been taken for refugee and IDPs return. According to UN report for the Development Goals in BiH, the amount of refugee and IDPs return outreach one million. This is less than a half of the total number of people displaced during the war.<sup>99</sup> However, the number of people first returned differs from the number who permanently decided to live in their houses or communities.<sup>100</sup> In the meantime, the property repossession and reconstruction is a very complex issue and not much attention has been given to guarantee this for returnees.<sup>101</sup> According to the European Commission against Racism and Intolerance in Republika Srpska around the 20 to 30 percent of the returnees to whom the property has been returned, actually live there.<sup>102</sup> It is suggested that many returnees left again because of the limited economic conditions. Furthermore, people prefer to live in a community of their own ethnic group. Except from the lack of economic opportunities, it is safety reasons along with persistent segregation among ethnic groups that push returnees to live their

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<sup>97</sup> Coles, Emily, "The Importance of Education Systems in Post-Conflict Settings, op. cit. see pp. 31

<sup>98</sup> P. Stefan, L. O'Donoghue, and A. Dedic. "Transitional Justice in Bosnia and Herzegovina" op. cit. see pp. 1

<sup>99</sup> Heimerl, Daniela (2005) "The return of refugees and internally displaced persons: From coercion to sustainability?", *International Peacekeeping*, 12:3, 377 — 390 see pp. 377

<sup>100</sup> Williams, R. "Post-Conflict Property Restitution and Refugee Return in Bosnia and Herzegovina: Implications for International Standard-Setting and Practice", in *NYU Journal of International Law and Politics*, vol. 37, no. 3., 441, 2006

<sup>101</sup> Haider, Huma. "(Re) Imagining Coexistence" op. cit. see pp.93

<sup>102</sup> European Commission against Racism and Intolerance (ECRI), *Report on Bosnia and Herzegovina* (15 February 2005) found in Haider, Huma. "(Re) Imagining Coexistence" op. cit. see pp.96

original inhabitant area.<sup>103</sup> Furthermore, according to EU progress report of 2010 the unemployment record reveals dispiriting results. Around 24% is the overall unemployment and almost 49% in youth population.<sup>104</sup> It is referred that returnees are more in threat of unemployment due to the continuing discrimination in the access to employment.<sup>105</sup> To cite Olzak and Woodward unemployment increase competition among to the limited jobs available something that gives to elites the chance to “mobilize people along ethnic lines”.<sup>106</sup> Considering the youth unemployment there is a great threat for mass youth emigration. In a survey for youth opinion about the reconciliation process an interviewee mentioned that:

*“This might sound bad but I hope that I will leave this country and never come back because our standards are low. . . . We are so behind the rest of the world. . . . I do not see progress happening in this country, since all the young people leave Bosnia and Herzegovina after they complete secondary school here. I’m getting out of here as soon as possible! (16-year-old female, BiH)”*

They also believe that the economic situation of their country is one of the reasons that reconciliation cannot be achieved. The most worrying outcome of the same research is that the majority of the interviewees are pessimistic about the reconciliation process due to the current political deterioration in BiH.<sup>107</sup>

As mentioned in the definition given above, reconciliation includes the prospect of a shared future. The outcome of this research indicates that imagining a shared future is currently challenged.

The society has not gone forward towards reconciliation and division based on ethnic groups is still apparent. This outcome can be derived not only by the fact that there are no many intermarriages any more, but also that the media are still separated according to ethnic group. But what is much more frightening is the continuing

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<sup>103</sup> Haider, Huma. “(Re) Imagining Coexistence” op. cit. see pp.97

<sup>104</sup> EU Progress Report 2010 see pp. 27

<sup>105</sup> Ibid. see pp.22

<sup>106</sup> Found in Paula M. Pickering, "Generating Social Capital for Bridging Ethnic Division in the Balkans: Case Studies of Two Bosniak Cities," *Ethnic and Racial Studies* 29, 1 (2006): 79-103. see pp. 96

<sup>107</sup> Clare Magill and Brandon Hamber “If They Don’t Start Listening to Us, the Future Is Going to Look the Same as the Past”: Young People and Reconciliation in Northern Ireland and Bosnia and Herzegovina INCORE-International Conflict Research Institute, Northern Ireland, UK, Youth Society 2011 43: 509 originally published online 11 October 2010 online version in <http://yas.sagepub.com/content/43/2/509>

segregation of the education system along with the history presented to school textbooks. To cite Emily Coles in BiH “There is no consensus as to how history should be taught.”<sup>108</sup> While at the same time history records as a way to perceive the war period looks very important to the population of BiH. This is indicated by UNDP survey of 2010. However, there is difference between the entities of how this can happen. In Federation the majority of population would like to see this through history textbooks while in RS they prefer to treat with this period in 20 years. This difference, as it will be presented below, indicates the lack of reconciliation in terms of the reconstruction process in BiH.<sup>109</sup>

Trying to answer the question of status of the developments regarding the reconciliation process the peoples’ view should be examined. Since reconciliation in a post conflict society depends a lot on the way the different ethnic groups perceive the character of the conflict<sup>110</sup> it is interesting to refer to a survey conducted in 2008 examining the public opinion view about the state of BiH. According to the findings of the survey the opinions are completely divided. From Bosniak part the 94% claims that it was an aggression while in Serb part the 84% perceived it as a civil war. Another interesting point is that the majority of the interviewees from all sides agreed that their group “fought only defensive wars”.<sup>111</sup> Interestingly enough the outcome of the survey shows that two-thirds of the population in BiH are optimistic for the prospect of a common future without the presence of international supervision. However, due to the different perception of their past, it can be said, that reconciliation has a lot of work to do in order to be achieved.<sup>112</sup>

## 2) EDUCATION IN BiH

*“At present, education in BiH is generally being manipulated as a means to divide, to segregate, and to encourage negative thinking about the ethnic ‘other’.”*<sup>113</sup>

Janine Natalya Clark

<sup>108</sup> Coles, Emily, "The Importance of Education Systems in Post-Conflict Settings" op. cit. see pp. 40

<sup>109</sup> Ibid. see pp. 41

<sup>110</sup> Roland Kostić (2008) “Nationbuilding as an Instrument of Peace?” op. cit. see pp. 394

<sup>111</sup> Ibid see pp. 395

<sup>112</sup> Ibid. see pp. 396

<sup>113</sup> Janine Natalya Clark (2010) “Education in Bosnia-Herzegovina: The Case for Root-and-Branch Reform”, *Journal of Human Rights*, 9:3, 344-362, pp.352 To link this article: <http://dx.doi.org/10.1080/14754835.2010.501269>

The absence of reconciliation can also be revealed from the three different approaches in school history books. With the comparison of how the history textbooks are referring to the recent past it is indicated the strong disagreement among the three entities. The books for Serb pupils refer to the period of the war as a civil war, Bosniak books as an aggression and the books for Croat pupils as a defensive war.<sup>114</sup> However, the disagreement for the perception of the war in history textbooks goes deeper and reveals further segregation of the perception of the past. The Bosnian Serb textbooks highlight the “threatened and unfairly treated Serb nation against the oppressive Croat and Muslims (p. 29)”<sup>115</sup>. Describing the 1990s it mentions a lot Ustaša when it is referred to Croats. It also presents the Bosnian Serb participation in the conflict as a defense in order to protect their territory from Yugoslavia separation. On the other hand the Bosniak history textbook refers more about Serbians than Croats, pointing out the goal for Greater Serbia. It also describes the Serbs “as enemies and destroyers” when it is referred to recent history.<sup>116</sup> Furthermore, it is noted that each ethnic group is influenced by their kin-state. The Bosnian Serbs are influenced by Belgrade, Croat Serbs by Zagreb, while Bosniaks have no kin-state to reflect their opinions. For that reason they seem to be more open to new texts.<sup>117</sup>

Thus, all history textbooks are used to portray the others as enemy something that doesn't serve reconciliation.

It is not only history textbooks that are based on ethnic differences but also the whole curricula is divided. The curricula each school uses depends on which ethnic group is the majority. The OSCE report of 2005 refers to the fact that not only the schools use different curricula but these are also “ethnically coloured throughout the State”<sup>118</sup>.

This division in the curricula is very dangerous for the future generations' peaceful well being. Since children are taught different versions of history or geography then in some time in the future when they will have reached adolescence they might find themselves in a position to defend what they have learned at school

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<sup>114</sup> Sanela Basić “Bosnian Society on the Path of Justice, Truth and Reconciliation”. op. cit. see pp.367

<sup>115</sup> Pilvi Torsti (2007) “How to deal with a difficult past?” History textbooks supporting enemy images in post-war Bosnia and Herzegovina, *Journal of Curriculum Studies*, 39:1, 77-96. pp. 86-89. see pp. 87. To link this article: <http://dx.doi.org/10.1080/00220270600765278>

<sup>116</sup> Ibid.

<sup>117</sup> Valery Perry “Reading, Writing and Reconciliation”, op. cit. see pp. 34-35

<sup>118</sup> Janine Natalya Clark “Education in Bosnia-Herzegovina”, op. cit. see pp.347

and this can revive the conflict. To cite Brocklehurst in her study in 1999 she concludes that “segregation of education and prejudices in teaching” are very important reasons of a sustained conflict.<sup>119</sup> Clark goes further and suggests “unless and until segregation and exclusion are replaced with integration and inclusion, the prospects for genuine reconciliation remain somewhat remote.”<sup>120</sup>

Dayton agreement, as most peace agreements<sup>121</sup>, focus more on the ways to stop the fighting and establish peace rather than to include provisions for education. Most peace agreements are concerned more about the political and security issues. Particularly Dayton agreement gave the jurisdiction to the entities for the formation of the education system.<sup>122</sup> This led to the division of separate education systems and numerous curricula. As Emily Coles cites “Divided education systems assist in the perpetuation of ethnic prejudices...”.<sup>123</sup> For that reason Dayton Agreement has been accused by intellectuals for “federalizing and provincializing” education and “made it the playground for cultural separatism”<sup>124</sup>. Pingel also gives responsibility for the segregation of education to the local politicians who “instrumentalized the educational institutions in their respective spheres of influence...”<sup>125</sup>

There were efforts to change the way the history textbooks refer to the other ethnic groups. One important step was taken on 1999 when an agreement (Agreement on Removal of Objectionable Material from Textbooks to be used in Bosnia and Herzegovina in the 1999-2000 School Year) signed by all ministers of education. The change of the offensive material in the textbooks was the prerequisite for BiH to be recognized by the Council of Europe. These materials should either be removed by blackening the text or be annotated with a phrase which was referring, apart from others, that the text was “under review”. This was not applicable only for history textbooks but also others. The result was not very satisfactory. The blackened texts although indeed were covered, it was very easy for the children to see behind it,

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<sup>119</sup> Found in Pilvi Torsti (2007) “How to deal with a difficult past?” History textbooks op. cit. see pp. 92

<sup>120</sup> Janine Natalya Clark “Education in Bosnia-Herzegovina” op. cit. see pp. 344

<sup>121</sup> Falk Pingel “Can Truth Be Negotiated?” History Textbook Revision as a Means to Reconciliation. In: Annals of the American Academy of Political and Social Science, 2008, pp. 181–198, see pp 182

<sup>122</sup> Ibid. pp. 186

<sup>123</sup> Coles, Emily, “The Importance of Education Systems in Post-Conflict Settings” op. cit. see pp. 44

<sup>124</sup> Falk Pingel “Can Truth Be Negotiated?” op. cit. pp. 186

<sup>125</sup> Ibid.



something that was increasing their interest in reading it. Furthermore, even three years after the signature of the agreement the old books were still used.<sup>126</sup>

A possible explanation for the slow progress is what Perry suggests that BiH authorities didn't have the will to implement the reform and the lack of International Community's mechanisms to reinforce it.<sup>127</sup> However, another reason that is suggested for the failure of the reform implementation is the parents' absence of will to help towards that direction. To cite C.H. Williams family together with the education "is the most important agency for cultural reproduction, socialization and identity formation"<sup>128</sup>. The level of division is apparent in the way the parents think about the schooling of their children. According to Perry parents are afraid that their children will be indoctrinated in another ethnic group.<sup>129</sup> Thus parents seem that they are not ready for taking a step towards an integrated curricula.

And probably this was the reason why the "Two schools under one Roof" programme got so much support. The agreement for that programme was signed by the Ministries of both entities in 2002. The aim of that programme was to encourage refugees and IDPs to return their homes by offering to the parents solutions to their concerns regarding the school system. The agreement was giving the choice to the parents to decide in which school their child would go according to the entity or canton and also decide even the curricula. With this way the children ended up in some occasions to share the same school but to get into it from different entrances. The building of the school was separated according to ethnicity. Therefore, although the agreement was made to solve the problem of returnees and encourage them to come back it ended up to be another mechanism to sustain division. To cite Bozic despite the positive intentions of the agreement it actually "helps to sustain the fundamental cause of segregation by maintaining a system that shields politicization of education (national subjects)".<sup>130</sup> As a result of this analysis it is clear that education, schooling and history teaching play a main role in the future integration in a divided post conflict society. Depending on the way these issues are confronted they can promote reconciliation or push further the level of division and deepen segregation.

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<sup>126</sup> Pilvi Torsti (2007) "How to deal with a difficult past?" History textbooks op. cit see pp. 80

<sup>127</sup> Valery Perry "Reading, Writing and Reconciliation" op. cit. see pp. 52

<sup>128</sup> Ibid. see pp.7

<sup>129</sup> Ibid. see pp. 33

<sup>130</sup> Janine Natalya Clark "Education in Bosnia-Herzegovina" op. cit. see pp.347

## CONCLUSION

From the analysis above certain outcomes can be derived. Regarding ICTY, as retributive justice mechanism, it can be said that it has a positive role in the reconciliation process but with a lot of drawbacks. It is indeed a Tribunal which has contributed to justice as an example of an international court which gives the message to the future perpetrators that international community will not be tolerant with war crimes. However, in a local level and particularly in BiH the outcome is more complex. ICTY has succeeded to pass the message to civil society that it is necessary tool for justice. On the other hand, it hasn't achieved to persuade the society for its own contribution to reconciliation. It is highly mistrusted by both entities and all the three ethnic groups. On one hand, it has been perceived as quite lenient in its punishments while on the other hand it has been perceived as biased.

Through the three researches referred above during the last decade there is no much improvement on the public opinion about the role of ICTY and its contribution to justice and reconciliation.

Moving into the contribution of restorative justice to reconciliation and examining its most popular tool which is the Truth and Reconciliation Committee, it can be said that neither in that field there has been progress. Although much discussion has been made for the establishment of a Truth and Reconciliation Committee, the progress has been freezed. Such a mechanism would contribute to the healing process and the understanding of 'others'. It would also promote the truth of the past and would possibly result to the establishment of common history record. Furthermore, it would give a much more positive perspective of a shared future. Unfortunately, the fears of the past have prevented the establishment of such a mechanism. The ICTY with its initial fears for the contradictory role, the victims associations' hesitation to trust a non judicial body along with the political elite's backward way of thinking have created a negative environment for this to happen.

The other elements analyzed above which evidence the progress of BiH towards reconciliation, doesn't show either very positive messages. The refugee and IDP's return issue hasn't made much progress after the initial steps taken and from those returned the records are not much encouraging about the level of integration in their society. Many of the refugees and IDP's either preferred not to go back or to stay

to the place where they are majority. This happens due to lack of guarantees for their safety or discrimination. The unemployment records are again much discouraging. Something that makes them feel more threatened in a less protective environment. Another important element which deepens the segregation in an already divided society is the education system and schooling system. From the analysis above it is indicated that the history textbooks reflect the story of each ethnic group. So the adults' views are passed to the children and youth. The current divided society injects with the same poison the future society. This is a vicious circle that is much threatening the future peace and of course the reconciliation process.

Therefore, the overall outcome of this paper has not proved that enough steps have been made towards finding the truth for the past and building a shared future. Segregation is still there in BiH society. However, it is well known that reconciliation takes time and as Bloomfield, Barnes and Huyse cite "...it is a process that is deemed to require a long time, and whose timing cannot be determined, forced or paced"<sup>131</sup>.

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<sup>131</sup> Bloomfield, David; Teresa Barnes & Luc Huyse, eds, 2003. "Reconciliation After Violent Conflict: A Handbook". Stockholm: International Institute for Democracy and Electoral Assistance, found in Mani, Rama, 2005 "Rebuilding an Inclusive Political Community After War", op. cit. see pp. 514

## ANNEX I

Table 1

Range of Punishment	
Acquitted	11
Sentenced from 1 to 5 y of imprisonment	9
Sentenced from 6 to 10 y of imprisonment	15
Sentenced from 11 to 15 y of imprisonment	14
Sentenced from 16 to 20 y of imprisonment	18
Sentenced from 21 and over y of imprisonment	13
Life Imprisonement	4

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