

International Tribunals and the Question of Peace and Reconciliation

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This century has often been described as an Age of Extremes, as a time of violence and barbarism. Political and social instability have characterized conflicts in all parts of the world. Relative stability marked the period of 1945 until 1989.. After 1989, political and socioeconomic changes and upheavals started in the former socialist countries. Some countries like Poland, Czechoslovakia, and Hungary transformed mostly in a peaceful way, whereas other countries like the former Yugoslavia went through a period of war, genocide, and man-made disaster. In trying to understand the aftermath of violent disintegration in the former Yugoslavia, this paper will focus on the war in Bosnia. In addition, I will stress the following points:

1. The interplay between politics, law, and justice in the case of former Yugoslavia;
2. The interplay between international and domestic politics; and
3. Trauma in the political context – The level of the victims

1. The ongoing war in Bosnia and the establishing of the International Criminal Tribunal for Yugoslavia (ICTY)

After the declaration of independence in Slovenia (1991), Croatia (1992) and the vote for independence in Bosnia (March 1992), Serbian nationalism stepped up and became violent. The shelling of Dubrovnik and the sacking of Vukovar, the first major crimes of these wars, was followed by the slaughter of Bosnian Muslims and Croats.¹ “Ethnic cleansing” was declared instrumental in giving the state territorial definition, and mass-killings, terror, rapes and other atrocities accompanied this policy. It was designed to render the territory ethnically pure and ensure a hatred and

¹ See Bass, Jonathan: Stay the hand of vengeance, Princeton 2000.

fear that would endure between Muslims and Serbs. As a result, these communities could never again live together. Huge peace demonstrations were held in Sarajevo, but when a sniper killed a Muslim girl, it became clear to nearly everybody that there would be no peaceful reconciliation. On the contrary, a Bosnian Franciscan stated, "Then the sniper killed a Muslim girl of seven or eight years. She was with her mother, on her hand and he saw that she is a Muslim girl. He could have killed me, thousands of other people who were there, but he killed this Muslim girl. At this point I saw that Milosevic and his people need the war. The non-violent situation in Sarajevo became in this moment an armed fight."²

By the end of 1992, Serbian forces controlled approximately 70 percent of Bosnian territory, nearly 2 million Bosnians had lost their homes, and 1.1 million refugees were dispersed to different countries. The rest of the Bosnians were forced to the three enclaves of Srebrenica, Žepa and Goradže, where the Muslim population held majority. At the same time, Lawrence Eagleburger, Bush's secretary of state and former Ambassador to Yugoslavia stated that there is a "moral and historical obligation not to stand back a second time in this century while a people faces obliteration." In doing so he called for charges against Milošević, Karadžić and Bosnian Serb leader Ratko Mladić for crimes against humanity.³

In January 1993, there was already an interim report for the Security Council, describing ethnic cleansing, mass murder, rape and other atrocities. This interim report and a proposal by UN Secretary General Boutros Boutros-Ghali led to an international tribunal in May 1993 to examine war crimes in former Yugoslavia, known as ICTY, based in Hague.⁴ In September 1993, eleven judges were appointed through the general assembly of the UN and in July 1994, Richard Goldstone was

² In the frame of an Austrian research project, funded from the Austrian Research Fonds, fifty interviews with men and women in former Yugoslavia were conducted.

³ See Bass, Jonathan 2000.

⁴ With the time the notion ICTY became The Hague, or The Hague Tribunal.

appointed as the first chief prosecutor. The expectations of the international community concerning the tribunal were serious but low. "I would not measure the tribunal in terms of how many people go to jail, or top-level people, because the number is going to be very low. Success is a commitment to establish principles of accountability, getting out the truth," was the strong statement of John Shattuck, assistant secretary of state for Human Rights.⁵ Nevertheless, in February 1995, Richard Goldstone indicted 21 Bosnian Serbs for running the Omarska concentration camp, and camp commander Zeljko Meakić was slapped with an indictment for genocide.

Out of the 21 indicted men, only low-level Tadic was available for trial. When his case was opened in 1996, a lot of indicted war criminals were still not transferred to The Hague, which was discussed as a political problem. Because of a reluctant policy on the side of the UN and NATO to enforce its edicts, the tribunal could only inconvenience and stigmatize its suspects, and could only threaten the governments in Croatia and Serbia to report noncompliance to the Security Council. Even after the "fall of Srebrenica" in July 1995, there was not really a breakthrough for the ICTY, because the West did not wish to incur on one side during the preparations for the Dayton peace process by imposing their "war heroes" to persecution and indictment.⁶ At this point, Richard Goldstone was quite sure that peace at the cost of justice would not bring a long-term solution, and therefore, he demanded that the peace agreement in Dayton contain a commitment by the signatories to hand over to the Tribunal those accused of war crimes.

The military response to Goldstone came immediately. On the same day, when The Hague Tribunal indicted the leader of the Bosnian Serbs, Radovan

⁵ See Holbroke, Richard: To end a war.

⁶ During the fights in Srebrenica between the 11th and 14th of July 1995, Bosnian Serb forces proceed to slaughter at least seven thousand Muslims at Srebrenica, the single worst crime against humanity in Europe since World War II.

Karadžić, and his military commander, Mladic, the latter was conquering Žepa, one of the declared UN “safe areas”. After that event NATO started by bombing of Bosnian Serb positions, which was at this time easier, because there were no UNPROFOR (UN Protection Forces) forces vulnerable to Serb hostage-taking.⁷ Hard pressed by NATO bombing and by huge and rapid victories of the Croatian and Bosnian army in Northwestern Bosnia, the Bosnian Serbs capitulated. Richard Holbroke brokered a cease-fire for Sarajevo and the Dayton peace process came in his final phase. Nevertheless, when the parties in Dayton reached an accord for the deployment of peacekeepers in Bosnia, the mandate for the International Force remained vague with respect to cooperating with The Hague. Missions to track down wanted men were not foreseen either in the Dayton mandate or in the training provided to the troops. Following Jonathan Bass, the American public was assured by president Clinton, that “we’re not going to be rummaging around in the mountains looking for war criminals.”⁸

When the Canadian Judge, Louise Arbour, succeeded Richard Goldstone, the policy of the Tribunal changed. First, she instituted the practice of issuing sealed indictments, and secondly, she indicted Slobodan Milošević for crimes against humanity in Kosovo. “The evidence upon which this indictment was confirmed raises serious questions about their suitability to be the guarantors of any deal, let alone a peace agreement.”⁹ This was the opposite position of Richard Holbroke who gave the green light for his team to negotiate with Radovan Karadžić and Ratko Mladic during the Dayton peace process.

2. The interplay between the ICTY and domestic political affairs

⁷ Conquering Srebrenica, Mladic took 450 Dutch UNPROFOR troops as hostages against NATO air strikes.

⁸ See Bass 2000, 239.

⁹ In: Bass 2000, 274.

Establishing The Hague Tribunal was an important lesson to take from the international community to react to war crimes and genocide in the former Yugoslavia. The next step, and I think this is a most difficult step, had to deal with the interplay between the demands of international judiciary and domestic policy. The interplay between international and domestic law concerning truth and reconciliation is a very complicated matter, especially when dealing with the political reactions in the different states. Even when the democratic governments that replaced the former authoritarian regimes in Croatia and Serbia made efforts to reform their judicial system, we had to face limited public support for war crimes prosecutions, especially against members of the ethnic majority. Human Right Watch reported that police assistance to war crime prosecutors and investigate judges remain half-hearted; in some cases police officers were themselves implicated in the commission of war crimes. Therefore, effective and fair prosecutions are possible only if governments are seriously willing to commit themselves to create the conditions necessary for crime accountability.

In recent years, government support for domestic prosecutions of members of the ethnic majority has gradually increased in Bosnia-Herzegovina and Croatia. Government officials in Serbia and Republika Srpska have either opposed¹⁰ or grudgingly supported the work of the Hague Tribunal. Official policy in Serbia states the support of domestic prosecutions, but without the intention to arrest fugitives. Instead, the authorities try to convince them to surrender voluntarily, as Carla del Ponto stated.¹¹ The hollowness of their support is evidenced by the fact that there have been few domestic trials in Serbia, and virtually none in Republika Srpska. “It

¹⁰ For example: Under www.slobodan-milosevic.org – October 16, 2004 you can find a file about the ‘Forbidden Srebrenica Report’ where the Republika Srpska Bureau for Cooperation with the ICTY exposed the official Srebrenica report as a fraud.

¹¹ Press Release, Carla del Ponte, Prosecutor of the ICTY, 23.11.2004 (CDP/P.I.S/917-e).

remains the case that nine years after Dayton, the authorities of Republika Srpska have not apprehended a single individual indicted by the ICTY.”¹²

In 2002, the Hague Tribunal announced their intention to refer all cases – but not involving the main political and military figures from the Yugoslav wars – to the national courts in the region, with the exception of Serbia.¹³ “There is a legitimate concern that a country like Serbia, which is not willing to arrest indictees, will not either be interested in, or capable of, trying alleged war criminals domestically. The networks supporting persons accused of war crimes are so powerful there, that they can interfere with the judicial proceedings, including by intimidating witnesses (...), or even by threatening the stability of the country. Both in Serbia proper and in Kosovo, aggressive nationalist rhetoric are being used in smear campaigns against the Tribunal and its Prosecutor.”¹⁴ This comprehensive statement of the Chief Prosecutor refers to another problem of the ICTY – the ethnic bias of the tribunal. Based on trial monitoring, Human Right Watch has concluded that bias by the judiciary has influenced trials in Croatia, Bosnia-Herzegovina, and Serbia. Looking to Serbia it became clear what it meant: In the past three years only Serb defendants had been prosecuted by Serb judges and prosecutors. The only cases in Republika Srpska involve defendants of Serb ethnicity. Besides ethnic bias on the part of judges and prosecutors, the key obstacles for fair and effective trials include poor case preparation by prosecutors, inadequate cooperation from the police in the conduct of investigations, poor cooperation between the states on judicial matters, and ineffective witness protection mechanisms.¹⁵

¹² Press Release, Carla del Ponte, Prosecutor of the ICTY, 23.11.2004 (CDP/P.I.S/917-e).

¹³ In fall 2004, the request for two referrals to Croatia, and motion to referrals to Bosnia-Herzegovina were made by the ICTY. But there is no indication that any cases will be transferred from the ICTY to the Serbian judiciary.

¹⁴ Press Release, Carla del Ponte, Prosecutor of the ICTY, 23.11.2004 (CDP/P.I.S/917-e).

¹⁵ According to Human Right Watch, these obstacles were found in Croatia as well as in Bosnia-Herzegovina and Serbia.

At the end of this chapter, Carla del Ponte tried to find an answer for the question about the achievements of the ICTY since his implementation. “Although significant progress was achieved, it has to be stressed that a number of obstacles which are outside of the Tribunal’s control may still derail the completion strategy.”¹⁶ She addresses two important obstacles to achieve completion: The lack of co-operation of the states in arresting and transferring to The Hague people who have been indicted,, and the failure to find important key indictees, like Radovan Karadžić, Ratko Mladic, and Ante Gotovina. Before these men are not arrested and referred to The Hague, the work of the ICTY would not be completed. Therefore del Ponte urged the governments of Croatia, Serbia, and Bosnia-Herzegovina to overtake their responsibility in bringing these fugitives to The Hague.

3. Between Venegance and Forgiveness: Trauma in the Political Context

Dealing with the political level of law and judiciary in post-war societies, the question had to be asked: Must all societies pursue prosecutions in order to comply with international human rights standards? We can find different responses to this question. For example, East Germany extended public access to secret police files after 1989, and Czechoslovakia started screening and removing from public office officials and civil servants involved in the old regime. These are less aggressive responses than prosecution, but they satisfy people’s need to know what happened. Even though the successor states of former Yugoslavia did not bring these issues to their national political agenda, and even though there was consideration that foreign-imposed trials may cause a nationalist backlash, it became clear that “international tribunals are better than the usual alternative, which is simple venegance by aggrieved parties. It is not that these complicated and often muddled trials are too

¹⁶ Press Release, Carla del Ponte, Prosecutor of the ICTY, 23.11.2004 (CDP/P.I.S/917-e).

noble to question; it is that the other options would be worse.”¹⁷ As first results from my field research show, the wish for truth and justice is – at least in the female interviewees – stronger than the longing for vengeance or revenge, which I want to demonstrate with the following narratives from Croatia and Bosnia.¹⁸

“I’m still an expelled person with no rights.” - Female from Srebrenica

In May 1993, troops of Arkan and Seselj (paramilitary troops of the Bosnian-Serbian Army) entered Srebrenica. First, they looted our houses, and then they burned them. We hid ourselves in the forests around the city, but after the “big burning“, we came back. It was better to be in the city, although everything was nearly destroyed. Life was difficult in these days: The bombing and shelling went on, a lot of refugees (approx. 60.000) from other cities were in the town, and we hadn’t enough to eat. The international aid didn’t really reach us at this time. But then we started to organize ourselves and the humanitarian aid from the International Community was slowly provided. In summer 1993, Srebrenica was declared as an UN-safe area. We thought that the nightmare will be over; that the world is with us and that there will be no more killing, bombing and so on and so forth. This more or less peaceful situation lasted until summer 1995. By then the Bosnian Serbs started again with heavy bombing, even though we were declared as a UN protected zone. But the UN troops withdrew from Srebrenica to the UN-base Potocari and we were asked to move with them.

On July 11th the evacuation of Srebrenica started. There were buses waiting that were supposed to bring us to the UN-base; the first separation started, when young men didn’t board the buses but went instead to the forests. My son was one of

¹⁷ Bass 2002, 285

¹⁸ During my field research about the violent disintegration of former Yugoslavia, fifty interviews with men and women were conducted.

them and this was the last time I saw him. The situation was totally chaotic, grenades came from everywhere; there were shootings; some people were in buses, some tried to escape; dead and wounded people; children crying and so on and so forth.

I came with the rest of my family to the UN-base Potocari, which was already crowded with some 30.000 people from Srebrenica. The whole night the base was granaded, and on the next day the Serbian Army, the troops of General Mladic, came and started to separate men and women. They took away my brother, and in the following night we could hear screaming and shouting. It was horrible. The next day it became clear what had happened. They had slaughtered the men and raped the women; 570 women never came back.

The following day the military started with the deportations: Whereas the women, small children and elderly people were forced to enter the already waiting buses, the men and juvenile children were not allowed to board the buses. They took my husband to the side and this was the last time I saw him. I had to enter one of the waiting bus, but I was shocked and paralyzed with fear. The bus driver said that he couldn't help us and he had to bring us to Tuzla. On the way we saw killings, dead bodies, and again and again some militaries stopped our buses and took out young women, who never came back.

Finally, we arrived in Tuzla and months went by. I was searching for my son, my husband, and other family members. Whereas my son was never found, I could identify my husband in the year 2000, when they lifted a mass-grave in Zvornik. He is now buried in Potocari, which became a memorial site for the victims of Srebrenica.

I'm still an expelled person with no rights. In the Republica Srpska, I don't have the same rights like the Serbian population, and in the Croatian-Muslim Federation, I don't have rights because I'm not a citizen of the federation. To seek justice, I'm working in the organization of the "Mothers of the enclave Srebrenica and

Zepa“ which is an NGO and does, besides other things, a lot of work on the disappeared (to register, identify, and bury them) and try to help their families.

“I seek justice towards a single person.” - Female from Sarajevo

My father was killed near the mosque, which means somebody selected him because he was a Muslim. As far as we know know, it would be possible to trace back this killing. Yes, I wanted them to be punished. If I could figure out who killed my father I would seek justice and the indictment of this person. But otherwise I don't have anything against the people (referring to the Bosnian Serbs) because that would be irrational. You can hate a concrete person, but not the whole nation. Therefore, I would seek justice towards a single person, and at this point I would give no quarter.

“This is my duty as medical doctor.” - Female from Baranja

At the end of the war I was working in the ambulance of the Hospital in Baranja (East-Croatia). An old man was brought for treatment and he asked me if I would know where he is. I denied, but when he mentioned the name of his wife I started to recognize him. He was in jail because during the war he and his wife (both Serbs) had killed 16 Croats in a very perfidious way. They searched the birth register, figured out the Croats and went to visit them for coffee, and then they killed them. I asked him for the reasons and he answered: “I did it for my people.” Then he asked me if I will still give him medical treatment. To be honest, for a second I thought I could kill him and nobody would know. But then I said, yes, of course. This is my duty as a medical doctor. He was taken by the UNPROFOR and is now in a jail in Serbia to wait for his trial.

“I didn’t want to hate a whole nation.” - Female from Banja Luka

When the Bosnian Serbs took over Banja Luka, the police raided and looted flats and houses of the Muslim population. First, the police came to the house of my grandparents and expelled them with force. They were old, stayed their whole life in this house, and now had nowhere to go. Afterwards, the same happened to my parents. I was the last in the row. When they came to my flat, the police officer took his gun on my head and forced me out of my flat. Later, I lost my job too. But I didn’t leave the city because this is what they wanted us to do – to become an “ethnic cleaned” city.

After the war I saw this police officer in a coffee shop and my first reaction was revenge. But then I realized that if I would react in this way, the process of forgiving could never begin. And I didn’t want to spend the rest of my life hating a whole nation. I ordered a coffee for this police officer and he came to my table to ask who I am. I told him the story and he started to recognize me. I said, “I could look in your eyes before and I could do the same now.” He lowered his eyes and asked me to forgive him. That is what I did! Since this time, peace has become real for me.

All these narratives show that these women had to face living after war, totalitarian terror, genocide, or other mass atrocities. Armed conflicts often mean a loss of livelihood, abuse, and rape. When people are forced for political reasons like terror and war to undergo traumatic events such as rape and violence, these occur in especially adverse conditions. In many cases, there are no preparations and these circumstances are experienced as catastrophic or traumatic, often connected with feelings of overpowering helplessness. In the case of Bosnia, many men and women survivors made their traumatic experience (destruction of their homes, forced

expelling, rape) by people who had previously been neighbors. The emotional consequences of the disruption of social bonds goes along with a loss of confidence and trust in other people, as a kind of destruction of personal and social connectedness. In this context, the experiences of war and terror could be seen as a central assault on the dignity of men and women, leading to a loss of confidence in the world. Backed with these psychological aspects,¹⁹ these narratives show the importance of justice on a personal level. Besides international efforts of dealing with war crimes, these women want to give testimony, try to face their perpetrators, seek out justice on an individual level, and then they can start to forgive. These narratives show also very clearly, that there are different levels of truth and reconciliation: The ICTY as huge international framework (like the narrative from Sarajevo), the domestic level of judiciary (like the narrative from Baranja and Sarajevo), and the efforts on the level of the individuals. Only the latter can forgive, because forgiveness is something between human beings and needs the facing of victim and perpetrator (like the narrative from Banja Luka). Furthermore, these narratives show not only the connection between justice and peace, they also break with the prejudice of the “ancient hatred“ in the Balkans. If truth is based on justice (on the elaborated interplay between the different levels), if there is a process of public acknowledgment of what had happened, truth and reconciliation can be more than rhetoric.

Let me conclude these considerations with the short statement. I think the political efforts inventing the ICTY were important steps towards justice and peace. Although there is some criticism, I agree with Jonathan Bass who wrote that this kind of legalism will never make up for the lives lost, but legalism is all we have now.²⁰ It does not make up for the losses, but the invention of international and national law

¹⁹ At this point I don't discuss the impact of unresolved history for truth and reconciliation, but I want to stress the importance of dealing with the past for reconciliation in post-war societies.

²⁰ Bass, Jonathan: Stay the hand of vengeance: the politics of war crime tribunals. Princeton 2002.

and justice is an important level for recovering from individual experienced trauma. “Justice is essential to strengthen the rule of law, soften the bitterness of victim’s families, and remove an obstacle to cooperation among the parties.”²¹ With this approach, the interplay between political circumstances and individual violent experiences are put into the focus of attention and therefore become crucial for truth and reconciliation processes. The work with victims of political violence you can make the clients understand, that the traumatic event was not a personal failure, but has to do with the violated political circumstances. Therefore it is necessary that politics take over responsibility for what had happened, even if they deny their responsibility, hide, or escape. Inventing trials like the Hague Tribunal for accusing the misleading of political power (like torture, rape, and mass-killings) and for naming the perpetrators is an important first step towards truth and justice. It is even more important, as the truth about war crimes is suppressed and neglected.

4. Epilogue

Hannah Arendt is right when she stated that we are unable to forgive what we cannot punish and we are unable to punish what has turned out to be unforgivable, and it would be wrong to do nothing. Beside the powerful realist criticism of war crime trials, that such efforts will perpetuate a war, or destabilize post-war efforts to build a secure peace, I will state – out of my long time experiences in former Yugoslavia – that this kind of legalism will never make up for the lives lost, but legalism is all we have now. Or to say it with Madeleine Albright: “Justice is essential to strengthen the rule of law, soften the bitterness of victim’s families, and remove an obstacle to cooperation among the parties. It will help ensure that our forces can depart Bosnia without the fear that renewed violence threatening U.S. interests might one day

²¹ Albright Madeleine in a speech before the Hague Tribunal in 1997.

return. It will establish a model for resolving ethnic differences by the force of law rather than the law of force."²²

If we believe that peace in post-war societies has different layers (like economic stability, some kind of prosperity and perspectives for the future), justice has to be seen as 'a parent to peace'. Therefore I would like to see the Hague Tribunal as a parent to peace in former Yugoslavia, because the treatment of the past through international and national law, as well as through remembering and forgetting shapes not only the present, but also the future of entire post-war societies. Trying to come to terms with truth and reconciliation, a narrow route between too much memory and too much forgetting has to be taken. "Nations like individuals need to face up to and understand traumatic past events before they can put them aside and move on to normal life."²³ Whereas nations had to deal with their past on a collective level, victims and their families have a moral right to know and to gain right-security and justice on an individual level. The interplay between both can finally lead to peace and reconciliation, but it will take time.

²² Albright, Madeleine addressing the Hague Tribunal in 1997.

²³ Rosenberg, Tina in Minow, Martha: *Between Vengeance and Forgiveness. Facing History after Genocide and Mass Violence*. Boston 1998, 118.