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# Dealing with the Past and Peacebuilding in the Western Balkans

Martina Fischer/Ljubinka Petrović-Ziemer

Forschung DSF N° 36



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Martina Fischer/Ljubinka Petrović-Ziemer

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## Abstract

The study investigates initiatives for reconciliation and “dealing with the past” which were undertaken by international organisations, legal institutions and local civil society actors in response to the wars in the former Yugoslavia in the early 1990s. The coherence of objectives and strategies and their implications for peacebuilding, forms of cooperation and learning experiences, and the political resonance of the various approaches were a particular focus of interest. The research concentrated on Bosnia-Herzegovina, Serbia and Croatia, which are linked by their history of ethno-political conflict and are signatory states to the Dayton Peace Agreement (1995), under which they committed to cooperate in order to overcome the effects of war. The inter-country case study was carried out with input from local partners from civil society organisations and academic institutions in 2010 and 2011. In all, 150 interviews were conducted in 28 municipalities.

The results can be summarised as follows: Compared with other post-conflict societies, “dealing with the past” initiatives began very early in the Western Balkans and were very well-resourced by the international community. The Dayton Peace Agreement and various UN resolutions established the basis for this process. In a situation in which local institutions were unwilling or unable to investigate and prosecute war crimes and crimes against humanity to an adequate extent, the International Criminal Tribunal for the former Yugoslavia (ICTY) in The Hague has made an important contribution and has successfully supported local capacity-building for this purpose. The importance of legal processes for the investigation and prosecution of the crimes committed were recognised by all the interviewees without exception, although assessments of the work of the relevant institutions vary; not all of them, by any means, enjoy unlimited confidence.

Surprisingly, the assumption that peace activists would be more sceptical about processes under criminal law was not confirmed by the findings of the research. In fact, all of these actors take the view that the crimes committed during the war must be investigated in a judicial process and those responsible must be brought to justice. Furthermore, civil society actors, by and large, show little difference in their assessment of the legal institutions. The assumption that the representatives of the courts would be sceptical about the establishment of a regional truth commission, seeing it as undermining their work or challenging their authority, was also refuted by the empirical findings. However, representatives of the official Commissions for Missing Persons in particular were highly sceptical towards such an approach, for the reasons stated.

The various TJ protagonists were united in their view that dealing with the past processes cannot remain a task for the criminal justice system alone. International actors in particular have focused strongly on legal processes and especially the role of the criminal justice system. Restorative forms of justice, by contrast, have received much less attention. The same applies to restorative forms of truth-finding as a contribution to healing, trust- and relationship-building. Initiatives in this field have largely been undertaken by civil society actors. However, their proposals for the development of restorative approaches are highly diverse.

The campaign for a Regional Commission for Truth-seeking and Truth-telling about War Crimes in the Former Yugoslavia (REKOM) was initially a common denominator uniting numerous civil society actors (fact-finding). However, among the groups and individuals which support a REKOM and/or have joined the campaign to lobby for its establishment, there are highly diverse notions of the potential afforded by this type of inter-country mechanism. Some would like it to be equipped with a more far-reaching mandate. That being the case, there is disagreement among the groups of actors investigated whether a

REKOM would lead to gains in terms of truth and justice for the groups suffering most severely from the effects of war (victims and their relatives, refugees and displaced persons) and whether it could influence social dialogue on the past in a constructive manner. The same applies to transitional justice strategies developed by governmental institutions in consultation with civil society actors and with international support.

As regards interaction, a number of effective networking arrangements and partnerships were identified between the various levels of action (international/regional/local, governmental/ non-governmental). However, initiatives at the political and societal level tend to run in parallel to each other, rather than being linked. Multi-level approaches focusing on inclusive cultures of remembrance are still absent and are urgently needed. The REKOM initiative, which is being pursued intensively, not only by numerous NGOs from the region itself but now also with the support of several high-ranking politicians, offers potential in this regard. But the process is still in a state of flux, and it remains to be seen whether an institutionalised, transboundary mechanism can genuinely be established in which bottom-up and top-down initiatives meet and create synergies. Above all, it is essential to promote initiatives which are supported by political and civil society actors alike and complement each other.

### **Further perspectives and challenges:**

The field research shows that criminal justice mechanisms to prosecute war crimes in the countries under investigation must be further expanded. Witness support mechanisms and information strategies must be improved. In order to fulfil their tasks effectively, judicial institutions need to foster cooperation on a regional level. Furthermore, monitoring of legal and state institutions by civil society and international institutions remains crucial.

Complementary activities which promote restorative forms of truth and justice also require further support. Measures to investigate the still unresolved cases of missing persons in the region continue to require international funding. Supporting the return of refugees and IDPs and the payment of compensation to these groups remains a crucial issue for regional and international cooperation. And finally, it is still an open question whether war crimes' victims will see any reparations and who will provide the funds for this.

Restorative approaches must take account of the region and its complex war history but, at the same time, also aim to change cultures of remembrance, particularly at the local level (e.g. in cities and municipalities). Marking of sites where war operations and atrocities took place remains a challenge in the region, especially in many areas of Bosnia-Herzegovina. There is a need to develop inclusive forms of remembrance that acknowledge all of the victims regardless of their "ethnic" (cultural, religious or political) affiliation.

Special emphasis should be placed on social areas where perceptions and interpretations of the past are formed, with a particular focus on educational institutions. Initiatives that contribute to opening space(s) for exchange of personal experiences and different views on the past are crucial, as are learning spaces for peace education that help to develop individual and social capacities for respect, tolerance and nonviolent conflict transformation.

The research has been conducted in 2010-2012 and the research report has been finalised in December 2012. The following chapters present a shortened version of an extended study that has been published in 2013 as Berghof Report 18, "Dealing with the Past in the Western Balkans", available as a pdf-file at the Berghof Foundation's website: <[www.berghof-foundation.org](http://www.berghof-foundation.org)>.

## Zusammenfassung

Im Rahmen des Forschungsprojekts wurden Initiativen für Aufarbeitung und Aussöhnung untersucht, die von internationalen Akteuren, juristischen Instanzen und lokalen zivilgesellschaftlichen Akteuren in Reaktion auf die Kriege der frühen neunziger Jahre im ehemaligen Jugoslawien ergriffen wurden. Das Erkenntnisinteresse richtete sich auf die Kohärenz der Ziele und Strategien und ihre Implikationen für Friedenskonsolidierung, Kooperationsformen und Lernerfahrungen und die politische Resonanz der jeweiligen Ansätze. Im Fokus standen die Länder Bosnien-Herzegowina, Serbien und Kroatien, die eine ethnopolitische Konfliktgeschichte verbindet und die sich 1995 als Signaturstaaten des Friedensvertrags von Dayton zur Kooperation bei der Bewältigung von Kriegsfolgen verpflichtet haben. Die länderübergreifende Fallstudie wurde 2010 und 2011 unter Beteiligung lokaler Partner aus zivilgesellschaftlichen Organisationen und akademischen Einrichtungen durchgeführt. Dafür wurden 150 Interviews in 28 Gemeinden durchgeführt.

Die Ergebnisse lassen sich wie folgt zusammenfassen:

Im westlichen Balkan wurden, verglichen mit anderen Nachkriegsgesellschaften, sehr frühzeitig und mit einem hohen internationalen Mitteleinsatz Initiativen zur Aufarbeitung von Vergangenheit ergriffen. Der Friedensvertrag von Dayton und UN-Resolutionen haben die Basis dafür geschaffen. In einer Situation, in der einheimische Institutionen nicht willens oder in der Lage waren, Kriegsverbrechen und Verbrechen gegen die Menschlichkeit umfassend aufzuklären und zu verfolgen, hat das Haager Jugoslawientribunal (ICTY) einen wichtigen Beitrag geleistet und auch den Ausbau einheimischer Kapazitäten für diese Zwecke erfolgreich unterstützt. Die Bedeutung der juristischen Aufklärung und Strafverfolgung wird von den interviewten Akteuren ausnahmslos anerkannt, wenngleich die Arbeit der damit befassten Instanzen unterschiedlich bewertet wird und diese keineswegs uneingeschränktes Vertrauen genießen.

Die verschiedenen TJ-Protagonisten sind sich jedoch einig in der Einschätzung, dass Prozesse der Aufarbeitung nicht bei der Strafjustiz stehen bleiben können. Vor allem internationale Akteure haben einen starken Fokus auf die juristische Aufarbeitung und insbesondere die Strafjustiz gelegt. Restorative Formen von Gerechtigkeit hingegen wurde bislang weit weniger Aufmerksamkeit geschenkt. Auch restorative Formen der Wahrheitsfindung, die einen Beitrag für Heilungsprozesse, den Aufbau von Vertrauen und sozialen Beziehungen bilden, blieben bislang unterbelichtet. Initiativen in diesem Feld wurden im Wesentlichen von zivilgesellschaftlichen Akteuren unternommen. Jedoch fallen deren Vorschläge dafür, wie restorative Herangehensweisen gestaltet werden müssen, recht heterogen aus.

Mit der Kampagne für eine regionale Wahrheitskommission (REKOM) haben sich viele zivilgesellschaftliche Akteure zwar zunächst auf einen gemeinsamen Nenner (Faktenerhebung) geeinigt. Aber unter den Gruppen und Individuen, die eine solche Kommission unterstützen und/oder sich der Werbekampagne dafür angeschlossen haben, gibt es dennoch unterschiedliche Vorstellungen zu den Potenzialen eines solchen länderübergreifenden Mechanismus. Einige würden diesen gern auch mit weitergehenden Mandaten ausgestattet sehen. So ist bislang unter den untersuchten Akteursgruppen umstritten, ob eine regionale Kommission einen Zugewinn an Wahrheit und Gerechtigkeit für die am meisten unter den Kriegsfolgen leidenden Gruppen erbringen wird (Opfer und deren Angehörige, Flüchtlinge und intern Vertriebene), und ob sie den gesellschaftlichen Dialog über die Vergangenheit konstruktiv beeinflussen kann. Dasselbe gilt für *Transitional*



*Justice*-Strategien, die mit internationaler Unterstützung von staatlichen Instanzen in Konsultation mit zivilgesellschaftlichen Akteuren entwickelt wurden.

Im Hinblick auf die Interaktion lässt sich eine Reihe effektiver Vernetzungen und Kooperationen zwischen den Handlungsebenen (international/regional/lokal, staatlich/nicht-staatlich) identifizieren. Gleichwohl bewegen sich Initiativen auf der politischen und gesellschaftlichen Ebene bislang noch eher parallel, bzw. nebeneinander her als in Verknüpfung miteinander. Mehr-Ebenen-Zugänge, die sich auf inklusive Erinnerungskulturen richten, stehen noch aus und werden dringend benötigt. Die Initiative für eine regionale Wahrheitskommission, die nicht nur von zahlreichen NGOs aus der Region mit Nachdruck verfolgt wurde, sondern inzwischen auch Unterstützung von einigen hochrangigen Politikern erhält, birgt Potenziale hierfür. Es wird sich zeigen, ob tatsächlich ein institutionalisierter, grenzübergreifender Mechanismus etabliert werden kann, in dem sich *bottom-up* und *top-down* Initiativen treffen und synergetisch entfalten.

### **Perspektiven und Herausforderungen**

Die Feldforschung hat verdeutlicht, dass Mechanismen der Strafjustiz zur Verfolgung von Verbrechen in den untersuchten Ländern weiter ausgebaut werden müssen. Mechanismen für den Schutz von Zeugen und Informationsstrategien sind zu verbessern. Um ihre Aufgaben effektiv zu erfüllen, müssen die gerichtlichen Instanzen die Zusammenarbeit auf der regionalen Ebene, d.h. grenzüberschreitend intensivieren. Justiz und Polizei bedürfen weiterhin der sorgsamsten Kontrolle durch zivilgesellschaftliche und internationale Organisationen.

Ergänzend sind jedoch vor allem Aktivitäten erforderlich, die restorative Formen von Gerechtigkeit und Wahrheitsfindung fördern. Maßnahmen, die das Auffinden und die Identifizierung vermisster Personen unterstützen, sind auf finanzielle Förderung durch internationale Akteure angewiesen. Gleiches gilt für die Regelung von Ansprüchen und dauerhafter Perspektiven für Flüchtlinge, Vertriebene und Rückkehrer. Auch in diesem Bereich bedarf es enger regionaler und internationaler Kooperation. Schließlich stellt sich die Frage, wie Opfer von Kriegsverbrechen entschädigt werden sollen, die Behörden und Regierungen weiterhin vor Herausforderungen.

Restorative Ansätze müssen zwar die Region und ihre verflochtene Kriegsgeschichte in den Blick nehmen, sich aber gleichzeitig auf die Veränderung von Gedenkkultur auf der lokalen Ebene (z.B. in Städten und Gemeinden) und in pädagogischen Einrichtungen richten. Es gilt vor allem, Initiativen zu fördern, die von politischen und gesellschaftlichen Akteuren gemeinsam getragen werden, sich wechselseitig ergänzen und Lernerfahrungen ermöglichen. Eine der größten Herausforderungen besteht darin, geeignete Worte, Gesten und Formen zu finden, um Orte zu markieren, an denen Kriegsverbrechen und massenhafte Menschenrechtsverletzungen stattgefunden haben. Das betrifft vor allem ehemalige Kriegsschauplätze in Bosnien-Herzegowina, aber auch in Kroatien. Die Schwierigkeit besteht darin, inklusive Formen des Gedenkens zu entwickeln, die den Opfern auf allen Seiten gerecht werden, ungeachtet ihrer "ethnischen" (kulturellen, religiösen oder politischen) Zugehörigkeit und Ausrichtung. Besondere Aufmerksamkeit sollte auf soziale Räume gelegt werden, in denen sich Geschichtsinterpretationen formieren, wie beispielsweise Bildungseinrichtungen. Initiativen, die den Austausch persönlicher Erfahrungen und unterschiedlicher Sichtweisen auf die Vergangenheit ermöglichen, sind ebenso wichtig wie Erfahrungsräume für friedenspädagogische Ansätze, die individuelle und soziale Fähigkeiten unterstützen, die Grundlagen für gegenseitigen Respekt, Toleranz und gewaltfreie Formen der Konfliktaustragung bilden.

Das Forschungsprojekt wurde im Zeitraum 2010-2012 durchgeführt und der Bericht im Dezember 2012 fertiggestellt. Die folgenden Kapitel präsentieren die Ergebnisse in einer gekürzten Version.

Eine ausführlichere Fassung wurde 2013 als Berghof Report 18, "Dealing with the Past in the Western Balkans" von der Berghof Foundation publiziert. Er ist online als pdf-Dokument auf der website <[www.berghof-foundation.org](http://www.berghof-foundation.org)> erhältlich.

# 1. Introduction: Political Context and Relevant Actors (by M. Fischer)

## 1.1. Dealing with the legacies of the past as a local, regional and international challenge

In the course of the dissolution of the Socialist Republic of Yugoslavia new nation-states formed around ethnopolitical identities which led to policies of exclusion and conflicts in areas with multi-ethnic populations and traditions. In the early 1990s, Bosnia and Herzegovina,<sup>2</sup> Croatia and Serbia were involved in one common scenario of ethnopolitical conflict, with war operations both in Croatia and Bosnia. Bosnia endured the most destructive forms of warfare with around 100,000 war-related deaths and half of the population displaced. The Dayton Peace Accords, facilitated by international negotiators in 1995 ended the war. Governments from Bosnia, Croatia and the Federal Republic of Yugoslavia committed to mutual recognition and the peaceful settlement of disputes, and they also agreed to adhere to the provisions on dealing with the consequences of the war, notably the return of refugees and the prosecution of war crimes (Articles VI and IX), and cooperation with the International Criminal Tribunal for the former Yugoslavia (ICTY), that had been established by the United Nations (UN) in 1993.

International missions that monitored the implementation of this agreement have put a great deal of emphasis on legal accountability, in particular the investigation and prosecution of war crimes, and finding the missing. They assisted the governments of Croatia, Bosnia and Serbia in establishing national War Crimes Chambers and Transitional Justice strategies that are expected to serve both accountability and fact-finding. In addition, this international assistance addressed the reconstruction of war-affected areas, diminution of the military potential and demobilisation of former combatants. All this contributed to a certain degree of stabilisation. The prospect of EU membership has helped to initiate reforms and provides a framework for improving regional cooperation among political and economic institutions (Calic 2005, 13). But due to the unequal development and special features of the countries in question, there is an ambivalent dynamics ongoing in the region. Croatia joined the EU in July 2013, Serbia is accepted as an official candidate for accession (along with Montenegro and Macedonia), while Bosnia-Herzegovina is still far from taking such a step.

Cooperation with the Hague Tribunal was one of the criteria set by the EU for the governments in the Western Balkans – along with others, such as establishing the rule of law and fighting corruption. According to the recent EU monitoring reports many of these criteria have been met. However, serious deficits remain in all of the countries – including Croatia – with regard to establishing standards for human rights, rule of law, border control, and political and economic accountability and transparency.<sup>3</sup> Furthermore, all three countries are still facing unresolved disputes either at a cross-border level, or tensions at a local community level, fuelled by diverging interpretations of history, selective forms of remembrance and diverse notions of victimhood. This is particularly the case in Bosnia,

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<sup>2</sup> Henceforth: Bosnia, or BiH.

<sup>3</sup> See Working Documents released by the European Commission on (1) Croatia, (2) Serbia, and (3) Bosnia:  
(1) <[http://ec.europa.eu/enlargement/pdf/key\\_documents/2012/package/hr\\_rapport\\_2012\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2012/package/hr_rapport_2012_en.pdf)> (accessed 31 August 2012);  
(2) <[http://ec.europa.eu/enlargement/pdf/key\\_documents/2012/package/sr\\_rapport\\_2012\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2012/package/sr_rapport_2012_en.pdf)> (accessed 31 August 2012);  
(3) <[http://ec.europa.eu/enlargement/pdf/key\\_documents/2012/package/ba\\_rapport\\_2012\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2012/package/ba_rapport_2012_en.pdf)> (accessed 31 August 2012).

which remains under international supervision and suffers from political deadlock due to constant power struggles between relevant political leaders of different constituencies. The societies in the region are still far from reconciliation.

Reconciliation between and within the societies of Bosnia, Serbia and Croatia very much depends on the question of whether and how the political leaders and the societies are able to cope with the legacies of the violent past. Citizens in all of these countries, although to different degrees, are still facing these legacies on a daily basis. Families are still searching for missing relatives<sup>4</sup>, and authorities have to manage the return and reintegration of refugees and displaced persons as well as the restitution of their property.<sup>5</sup> Many of those who lost their relatives, health, or homes during the wars are still waiting for acknowledgement. In all three countries people are struggling with the past in various forms. Many civilians as well as ex-combatants have to cope with painful memories because they left the war as physically or psychically injured persons. Media and political leaders are constantly making reference either to war events or different interpretations of history, although for very diverging purposes.

Furthermore, legal institutions as well as diverse civil society organisations are trying to deal with the past in a more proactive and constructive way, claiming – first of all – for accountability and fact-finding. Furthermore, they struggle to sensitive political leaders and society for the need to establish inclusive cultures of remembrance and education based on facts instead of distortion of history. They are convinced that, given that the wars of the 1990s had regional dynamics, efforts for dealing with its legacies also has to consider the regional dimension. However, the challenge remains to address the legacies of the past in a way that avoids the repeating or deepening of the pain and enables the societies to establish cultures of remembrance that acknowledge past injustice and crimes, and the suffering of the victims of all sides that were involved in the war(s).

## 1.2. Political context in Bosnia-Herzegovina, Serbia and Croatia

Implementation of the Dayton Peace Agreement and cooperation with the Hague Tribunal was one of the criteria set by the EU for the governments in the Western Balkans – along with others, such as establishing the rule of law and fighting corruption – as a prerequisite for the countries' accession. According to the recent EU monitoring reports many of the criteria have been met. However, serious deficits remain in all of the countries – including Croatia – with regard to establishing standards for human rights, rule of law, border control, and political and economic accountability and transparency.<sup>6</sup>

The prospect of EU membership has helped to initiate reforms and provides a framework for improving regional cooperation among political and economic institutions (Calic 2005, 13). But due to the unequal development and special features of the countries in question, there is an ambivalent dynamics ongoing in the region. Some countries have come closer to the mark than others: Negotiations with Croatia have been concluded and this country

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4 10,000 persons are still missing from the war in Bosnia, 2,000 from the war in Croatia, and 900 from the Kosovo war, According to the International Commission on Missing Persons (ICMP). See <<http://www.ic-mp.org/icmp-worldwide/southeast-europe/bosnia-and-herzegovina>>.

5 According to the Commissioner for Human Rights of the Council of Europe, a total of 438,000 refugees and displaced persons were still waiting for durable solutions to their claims in the region of the former Yugoslavia by the end of 2012; see <<https://wcd.coe.int/ViewDoc.jsp?id=1904893>> (accessed 31 August 2012).

6 See Working Documents released by the European Commission on (1) Croatia, (2) Serbia, and (3) Bosnia:  
(1) <[http://ec.europa.eu/enlargement/pdf/key\\_documents/2012/package/hr\\_rapport\\_2012\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2012/package/hr_rapport_2012_en.pdf)>;  
(2) <[http://ec.europa.eu/enlargement/pdf/key\\_documents/2012/package/sr\\_rapport\\_2012\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2012/package/sr_rapport_2012_en.pdf)>;  
(3) <[http://ec.europa.eu/enlargement/pdf/key\\_documents/2012/package/ba\\_rapport\\_2012\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2012/package/ba_rapport_2012_en.pdf)>.

hopes to join the EU in July 2013. In March 2012, the European Council accepted Serbia as an official candidate for accession, along with Montenegro and Macedonia, while Bosnia-Herzegovina is still far from taking such a step. In all three countries, governments and parliaments are eager to fulfil the standards set by the EU when it comes to reforms of legislation. At the same time the implementation of laws – a precondition for a functioning “rule of law” – is still deficient. In all the countries of the region, there is ongoing conflict between the proponents of modernisation in line with EU standards and those who oppose such processes. Transitions from a socialist to a capitalist economic system have been burdened by massive corruption scandals (Despot and Reljić 2011; Donais 2002) and there are still economic sectors where legal economies and shadow economies overlap or are even connected by structures related to organised crime (International Crisis Group 2012, 7).

Furthermore, state-building processes remain controversial or inconclusive. Montenegro's and Kosovo's independence had major repercussions on the developments in the region, particularly in Serbia and Bosnia-Herzegovina. Status issues which were unresolved for many years (as in Kosovo), dysfunctional administrations in sophisticated power-sharing structures (in Bosnia), and feelings of insecurity as a consequence of the recent war experience mean that in some places, citizens' faith in state institutions and identification with the polity have not been able to develop. Almost all the countries – although to very different degrees – struggle with the uneasy presence of parallel societies and divided communities.

## **Bosnia-Herzegovina**

Bosnia-Herzegovina's political system, established by the Dayton Peace Accords (DPA), is based on two entities, the “Federation of Bosnia-Herzegovina” (FBiH, primarily inhabited by Bosniaks and Bosnian Croats) and the “Republika Srpska” (RS, primarily inhabited by Bosnian Serbs), and institutions at the state level. These include a State Presidency consisting of three representatives from the Bosniak, Croat and Serb communities,<sup>7</sup> a Parliament and a Council of Ministers. Bosnia was set up as a semi-protectorate in 1995, with an international High Representative who coordinates the implementation of all civilian aspects of the DPA, in cooperation with an international Peace Implementation Council (PIC).<sup>8</sup> As a consequence of the Dayton constitution, state institutions remained weak, and entity institutions were more powerful from the very beginning. This imbalance and the very complex administrative structures of the new federal system contributed to a situation where agreements on reforms (i.e. in the educational system or security sector) were constantly obstructed.<sup>9</sup> Deficits of coordination by international actors have further contributed to this situation (International Crisis Group 2011a, 1).

Representatives of the three constitutive groups in BiH continue to express diverging ideas on the future state structure. Serb representatives promote a confederation combined with a very high degree of autonomy for the entities, while Bosniak representatives want a more federal state based on more powers for the overarching state institutions. In recent years, political confrontation has increased. Influential Serb representatives pointed to

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7 Bosniaks, Croats and Serbs are recognized as “constituent peoples” in the preamble of the Constitution of BiH. However, the legal framework determines that the Serb representative in the presidency is elected in the RS, while the Croat and Bosniak representatives are elected in the FBiH.

8 The Office of the High Representative (OHR) oversees the implementation of civilian aspects of the Dayton Peace Agreement and regularly reports to the Peace Implementation Council (PIC) that includes delegations of the US, EU Presidency and Commission, Russia, Germany, UK, France, Italy, Japan, Canada and Turkey.

9 For in-depth analyses of Bosnia's development since 1995, see Bliesemann de Guevara 2009; Bieber 2006; Chandler 2008, Fischer 2007b; Fischer 2010; Gromes 2007; 2008; International Crisis Group 2010; 2011a,b; Solioz 2011.

Montenegro's and Kosovo's independence and suggested that inhabitants of the RS should have the right to hold a referendum to decide whether they want to be citizens of BiH. Influential Bosniak representatives insisted on empowerment of state institutions and some called for the abolition of the entity structure, which fuelled further polarisation. Croat parties raised their voices, calling for the establishment of a third entity. These tensions were palpable in the election campaigns in late 2010. The elections resulted in a substantial swing towards the Social Democrat Party (SDP). However, in 2011 the country experienced a massive crisis.<sup>10</sup> In the course of these tensions, the formation of the government took 16 months. In February 2012, a coalition was agreed by the Social Democrats (SDP), the Party of Democratic Action (SDA), the Union of Independent Socialists (SNSD), the Serb Democratic Party (SDS), the Croat Democratic Union (HDZ), and HDZ 1990.

However, in Bosnia, state-building is still incomplete, and some aspects of the Dayton Peace Accords have to be clarified. Constitutional reforms are seen as a must by the international institutions, as the Dayton constitution is not compatible with EU standards. As a consequence of Bosnia's model of consociational democracy, Serbs who are resident in the Federation and Bosniaks or Croats living in the RS are excluded from being elected to the Presidency, because entity populations have to vote for "their" respective candidates. Moreover, persons who do not match any of the ethnic categories face disadvantages when it comes to positions and jobs in public administrations. In short, the Constitution of BiH discriminates against those who do not assign themselves (or are assigned) to the three constitutive nations but to minorities. International initiatives aimed at facilitation of these sensitive topics between the conflicting constituencies have been repeatedly disrupted and to date, no consensus has been achieved. The international overseers face a dilemma, as Serb parties increasingly oppose international involvement, while Bosniak parties are calling for more powerful intervention, and Croats hope for support for their concepts of reforming federal structures. International pressure on constitutional change is seen as an aspiration to "revise the outcomes of the war and restructure what is currently a confederally constituted state into a unitary state in which the Bosniaks, as the largest ethnic group, are the titular nation. Offered the choice whether, despite the uncertain outcome of the accession process, to agree to such demands or to insist on their political rights as a national group, they do not hesitate to make a decision and vote against any change to the status quo" (Despot, Reljić and Seufert 2012, 4-5; translated by H. Crowe). There is a danger that the country will become deadlocked again and again, which might increase the "no future" feeling that is widespread, especially among the young generation, and constantly fuelled by the bad economic situation.

## **Serbia**

During the research period, Serbia's government, chaired by Prime Minister Cvetković and the Democratic Party (DS), explicitly supported EU accession.<sup>11</sup> The pro-EU course also had a staunch advocate in President Boris Tadić, who also sought to advance good-neighbourly relations with Croatia. At the same time, international expectations were not entirely met as government politicians from different parties had clearly stated that for them a unilateral statement of independence from Kosovo was not acceptable, pointing to the Constitution that defines Serbia's territorial integrity. A common pattern of discourse was

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10 For an analysis of the factors and dynamics of the recent crisis, see Džihic 2010; Gromes 2012; ICG 2010; 2011a, 2011b.

11 For an analysis of recent political developments in Serbia, see Clark 2008; International Crisis Group (2008; 2011c; 2012); Becker and Engelberg 2008; Listhaug et. al 2011; Petritsch et. al 2009.

also to avoid clear definitions of borders or to keep this vague, which occasionally implies a measure of tacit support of rhetoric of autonomy that is expressed by Republika Srpska's government in Bosnia. However, although the government in Serbia had declared that it wanted to settle the conflict and find a solution that is acceptable for both sides, violent incidents at the border between Serbia and Kosovo have repeatedly been reported, apparently also fuelled by actors involved in organised crime. Rapprochement was blocked for a long time, on the one hand, by the German government, suspecting that such incidents were supported by the government of Serbia, and on the other hand by the government of Romania, which expected concessions for the protection of the Romanian constituency in Serbia. After concessions on Kosovo and regulation of minority rights, Serbia was granted accession candidate status in March 2012.

Coping with the socio-economic and political problems is a serious challenge for Serbia. The privatisation of former socially-owned companies, breakdown of companies, and cuts in social welfare programmes have created a difficult situation for much of the population. According to official statistics, 8% live in poverty, which particularly affects jobless people, children, single mothers, refugees and IDPs, and ethnic minorities, such as the Roma. At the same time, economic structures are prone to corruption due to a lack of regulatory authorities and independent media. Reforms of education, healthcare and social insurance, the judiciary and the military are still incomplete. Another challenge is to manage peaceful coexistence of minorities and majority populations in different areas of the multicultural state. Relations between Serb and Albanian constituencies in South Serbia and relations between Serbs and Bosniaks in Sandžak are tense. In Vojvodina, the positions of those who promote autonomy and those who oppose the concept have to be balanced.

In 2011, anti-democratic movements, and in particular the nationalist Serbian Progressive Party (SNS) led by Tomislav Nikolić, mobilised against the government and demanded early elections. Regular (presidential and parliamentary) elections were held in May 2012. Contrary to the outcomes predicted by surveys, Nikolić finally won the Presidency, with the SNS gaining 24% of the votes. The new government, which consists of the Serbian Progressive Party (SNS), the Socialists (SPS) and the United Regions of Serbia (URS), will be headed by Ivica Dacić (leader of the Socialists and once the right-hand man of former President Slobodan Milošević).<sup>12</sup>

## **Croatia**

Croatia has been a NATO member since 2009 and the Croatian government signed the EU accession treaty in December 2011. At the time of writing it was awaiting the final recommendations of the European Commission for Croatia to become the 28<sup>th</sup> member of the European Union in July 2013. During the research period, the country was governed by the Croatian Democratic Union (HDZ) and Prime Minister Jadranka Kosor. Elections in December 2011 brought a majority for the Social Democrat Party (SDP) and led to a new government coalition of Social Democrats (SDP) and the Croatian People's Party – Liberal Democrats (HNS), led by Prime Minister Zoran Milanović.

In recent years, Croatia's governments were eager to fulfil international expectations and meet the EU's criteria for institutional and legal reforms. This was backed by a consensus among all the relevant political parties, although some populist voices tried to raise anti-European rhetoric in the period when Slovenia blocked the accession process. Presidential elections in 2009 and elections in 2011 showed a decline of ethno-nationalistic forces, but

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12 <<http://www.balkaninsight.com/en/article/new-serbia-ministers-to-be-sworn-in>>.

it is assumed that these still hold relevant power in state administrations and have some potential for populist mobilisation. However, like other countries in the region, Croatia was also strongly affected by the international financial crisis. The country has also experienced several corruption scandals in the past three years. As political parties and administrations were involved in these crimes, citizens' trust in democracy has suffered as well.

Ethnopolitical conflicts play less of a role in Croatia than in Bosnia. The majority of the population is Croatian, as a consequence of the war operations in the early 1990s: the war between pro-independence forces and the Yugoslav army left about one-third of the country in ruins and resulted in the flight of more than 250,000 Serb citizens.<sup>13</sup> Today the Serb minority has decreased to an estimated 5% of the population. Nevertheless, there is some potential for social conflicts. In particular, the war-affected areas of Eastern Slavonia and the Krajina suffer from massive poverty, and some municipalities are also marked by distrust and parallel societies. Furthermore, economic experts express concerns about the huge welfare gap between urban centres and some rural areas.

In a referendum on 22 January 2012, a majority of Croat voters endorsed the prospect of Croatian membership of the EU. However, it is important to mention that although 60% of voters supported EU accession, turnout at the referendum was only 44%; the 60% majority therefore corresponds to a total of only 29% of the electorate. The majority of the population reacted with indifference or rejected a project that had been defined as an overarching objective by governments for years. This is also connected to controversial opinions on how to deal with the past: "When some of Croatia's military leaders were handed over to the Tribunal and found guilty of war crimes, large sections of the Croatian population regarded this as a national defeat. The lack of support for accession to the EU in the referendum in January 2012 must be seen in this context" (Despot, Reljić and Seufert 2012, 4).<sup>14</sup>

### Common problems and challenges

Although politics and society in Bosnia-Herzegovina, Serbia and Croatia are marked by very different conditions, there are some commonalities:

The societies in all three countries – albeit to different degrees – have to deal with the legacies of the wars of the 1990s on a daily basis: there is an ongoing need to search for missing persons, for management of refugee return, integration of IDPs and restitution of property. According to the International Commission on Missing Persons (ICMP), 10,000 persons are still missing from the war in Bosnia, 2,000 from the war in Croatia, 900 from the Kosovo war and 13 from Macedonia.<sup>15</sup> In Bosnia in particular, news magazines regularly report on exhumations, discoveries of mass graves and funerals. Authorities in all three countries have to cope with the highly sensitive task of return and reintegration of refugees and displaced persons. In Bosnia, the process of refugee return has come to an end; however, there are IDPs in collective accommodation who are still waiting for solutions. In Serbia, 52,000 Serbs who fled or were expelled from Croatia, 21,000 Serbs who left Bosnia and 210,000 IDPs from Kosovo (97,000 of whom are considered

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13 During and after the military operation "Storm" hundreds of civilians were killed, and thousands of houses burnt down. As of December 2011, 132,608 Serb minority returnees were registered by the UN Refugee Agency. See <[http://www.unhcr.hr/eng/images/stories/news/stats2012/unhcr\\_statistical\\_report\\_december\\_2011.pdf](http://www.unhcr.hr/eng/images/stories/news/stats2012/unhcr_statistical_report_december_2011.pdf)>. However, it is estimated that approximately 50 per cent of these re-settled and the others only occasionally visit their former homes. For an analysis of the ambivalence of Croatia's past and the policy of the Tuđman regime in the 1990s, see Ramet et al. 2007; Tanner 2010.

14 Original quote in German, translated by H. Crowe. For a detailed analysis of the discourse in Croatia, see Melčić 2007.

15 See <<http://www.icmp.org/icmp-worldwide/southeast-europe/bosnia-and-herzegovina>>.



vulnerable) are waiting for solutions.<sup>16</sup> Solutions for these people depend on cross-border cooperation and the political will to deal with a number of sensitive issues (e.g. property restitution and reparations, and political representation in local communities that reflects ethnic affiliations).

Furthermore, the societies are marked by antagonisms that have developed or deepened in post-war situations, between victims and perpetrators of war crimes who have to face each other in local communities, between refugees, IDPs or returnees and resident populations, between war profiteers and those who lost their property, winners and losers of the economic transformation and, last but not least, between urban and rural cultures and populations, based on stereotyped perceptions. Tensions are often fuelled by propaganda that is based on relativisation of war crimes, competition over victim numbers, and selective remembrance.<sup>17</sup> In some places, war criminals or suspects are still seen as heroes. This became obvious on several occasions when governments have extradited fugitives. Protests by veterans' unions and nationalists were organised in Serbia and the RS in Bosnia after the detention of the former Bosnian Serb commanders Ratko Mladić<sup>18</sup> and Goran Hadžić<sup>19</sup> in July 2011. Similar reactions could be observed in Croatia when the ICTY sentenced the former commanders Ante Gotovina and Mladen Markač.<sup>20</sup> Both were convicted of "persecutions, deportation, plunder of public or private property, wanton destruction of cities, towns or villages, murder, inhumane acts, and cruel treatment" against Serb civilians in the Krajina region during the military offensive known as "Operation Storm" in 1995. The two commanders were sentenced on 15 April 2011 to 24 and 18 years of imprisonment by the ICTY Trial Chamber in a first instance verdict that stated that both had participated in a "joint criminal enterprise" planned by military officials and the then Croatian government led by President Franjo Tuđman (United Nations/ICTY 2011). War veterans and nationalist parties joined in public protests against the verdict and celebrated the suspects' contribution to the "Homeland Defence War". Public celebrations were also held when the Appeals Chamber of the Tribunal, on 16 November 2012, revised this verdict and released both commanders.<sup>21</sup>

Finally, the societies in all three countries face unresolved conflicts either at a local or cross-border level, although to very different degrees. In Serbia in particular (with regard to Kosovo) and in Bosnia, relevant politicians and media still engage in ethno-nationalistic rhetoric on a daily basis. In Bosnia, tensions are reflected by increasing numbers of hate crimes in divided communities that particularly target returnees and members of minority communities.<sup>22</sup> Attacks are reported against minorities and vulnerable groups such as Roma, and also against homosexuals, lesbians, trans- and bisexual persons in all three countries. In Bosnia and Serbia in particular, violent incidents against these minorities have repeatedly occurred in recent years, initiated by religious and radical groups.

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16 See <<https://wcd.coe.int/ViewDoc.jsp?id=1904893>>.

17 See Obradović 2012; Ramet 2007.

18 Ratko Mladić was Commander of the Main Staff of the Bosnian Serb Army (VRS) from 1992 to 1996. He is indicted for genocide, persecutions, extermination, murder, deportation, inhumane acts, terror, unlawful attacks, and taking of hostages. <[http://www.icty.org/x/cases/mladic/cis/en/cis\\_mladic\\_en\\_1.pdf](http://www.icty.org/x/cases/mladic/cis/en/cis_mladic_en_1.pdf)>.

19 Goran Hadžić was President of the government of the self-proclaimed Serbian Autonomous District Slavonia, Baranja and Western Sirmia (SAO SBWS) and President of the Republic of Serbian Krajina (RSK). He is indicted for a variety of criminal acts, including murder, torture, deportation, cruel treatment, wanton destruction of villages, and plunder of public or private property. See <[http://www.icty.org/x/cases/hadzic/cis/en/cis\\_hadzic\\_en.pdf](http://www.icty.org/x/cases/hadzic/cis/en/cis_hadzic_en.pdf)>.

20 Ante Gotovina was Colonel General of the Croatian Army (HV) and Commander of the Split Military District from 1992 to 1996, and overall operational commander of the southern portion of the Krajina region during Operation Storm. Mladen Markač was Commander of the Special Police of the Ministry of the Interior of the Republic of Croatia from 18 February 1994, with responsibility for the Special Police, and also served as Assistant Minister of the Interior; following Operation Storm, he held the rank of Colonel General. See <[www.icty.org/x/cases/gotovina/cis/en/cis\\_gotovina\\_al\\_en.pdf](http://www.icty.org/x/cases/gotovina/cis/en/cis_gotovina_al_en.pdf)>.

21 <<http://www.balkaninsight.com/en/article/gotovina-and-markac-found-not-guilty>>.

22 In order to combat such crimes, the OSCE mission to BiH issued a handbook (OSCE Mission to BiH/ODIHR 2010) and held round tables with representatives of local authorities. See <<http://www.osce.org/bih/74693>>.

### 1.3. Actors in transitional justice and dealing with the legacies of the past

The International Criminal Tribunal for the former Yugoslavia (ICTY) has taken the lead in prosecuting war crimes and crimes against humanity and in documenting facts. It has indicted 161 persons for serious violations of international humanitarian law committed in the territory of former Yugoslavia. 126 proceedings have been concluded and 64 persons have been sentenced. 35 proceedings are ongoing.<sup>23</sup> The ICTY has set up regional offices in Sarajevo, Belgrade and Zagreb to counter a huge deficit of acceptance<sup>24</sup> which prompted the ICTY to set up an “outreach strategy” in order to maintain closer contact to the media and civil society (Hodžić 2007a). However, as the ICTY for a long period served as the only comprehensive cross-border mechanism for fact-finding and prosecution of war crimes, it continues to be an important point of reference, also for human rights and victims’ groups. The ICTY also engaged in capacity building for domestic judiciaries and contributed to the establishment of institutions for war crimes prosecution in Bosnia-Herzegovina, Serbia and Croatia.

#### **Institutions for war crimes prosecution in Bosnia, Croatia and Serbia**

A Section for War Crimes of the Court of Bosnia-Herzegovina was inaugurated in 2005 as a permanent state-level organ designed to deal with grave breaches of international humanitarian law. Designed as a hybrid court, international staff was employed, to be phased out after a five-year period.<sup>25</sup> In Croatia, four specialised war crimes chambers were formed in 2003 within the County Courts in Zagreb, Osijek, Rijeka and Split.<sup>26</sup> In Serbia, a specialised War Crimes Chamber of the Belgrade District Court and a War Crimes Prosecutor’s Office were established in 2003.<sup>27</sup> All the above-mentioned institutions were created with international support and will continue to take on a central role with regard to fact-finding and accountability. Finally, in all three countries, several thousand war crimes cases have to be concluded by domestic courts and prosecutors. Many suspects have left their former place of residence and are at large in their own or other countries. As authorities in all three countries decided not to extradite fugitives, progress in this area largely depends on the political will for cooperation among the governments in the region, as well as on monitoring by international actors and civil society organisations (CSOs).

#### **Civil society actors: Grassroots activities at a local and regional level**

In Bosnia-Herzegovina, Serbia and Croatia, a number of civil society initiatives have been working hard to counter the distortion of facts or biased politics of remembrance. Most of these organisations rely on funding from foreign donors and work without significant political support from governments and parliaments in the region. Their activities cover a variety of tasks. They focus on fact-finding, human rights and victims’ advocacy, dealing with trauma, creating empathy for different narratives and inclusive cultures of remembrance, and facilitation of dialogue.<sup>28</sup> Their work includes collecting information and documenting facts about war victims, supporting families searching for missing persons,

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23 See <<http://www.icty.org/sections/TheCases/KeyFigures>> (accessed 4.2.2012).

24 For an analysis of the ICTY’s acceptance and impact on societies in the region, see Allcock 2009; Arzt 2006; Mertus 2007; Fletcher and Weinstein 2004; McMahon and Forsythe 2008; Nettelfield 2010.

25 For an overview of the development of the judiciary in BiH, see Ivanišević 2008; OSCE Mission to BiH 2005.

26 For an overview of the development in Croatia, see OSCE Mission to Croatia 2003; 2005.

27 For an overview of the development in Serbia, see Ivanišević 2007; OSCE mission to Serbia and Montenegro 2003.

28 For an overview of CSOs’ activities in the field of dealing with the past, see Fischer 2011a; Franović 2008; Rill, Smidling and Bitoljanu 2007; Rangelov and Theros 2009; Belloni and Hemmer 2010.

marking places of atrocities, oral history projects, and advocating for alternative representations of history in schoolbooks. Some CSOs focus on peace education, dialogue and relationship-building in divided communities or between people from different constituencies. Others are working closely with the Hague Tribunal and/or national war crimes chambers, monitoring trials and providing legal, psychosocial or political advice for witnesses and victims.

CSO activities aim to complement fact-finding and dismantle discourses marked by denial. In 2005, for instance, a video uncovered by the *Humanitarian Law Center (Belgrade)* provided evidence of the killing of several young Bosniaks by soldiers belonging to a special police unit (Scorpions) under Milošević's command.<sup>29</sup> Another example is the Population Loss Project set up by the *Research and Documentation Centre (IDC)* in Sarajevo. The Centre corrected the figures that were generally cited by official sources (Bosnian government sources usually quoted that 200,000-250,000 persons had been killed during the war in BiH, see Pupavac 1997, 1) and finally presented a total of 97,920 war-related deaths for which data have been verified (Tokača 2008, 60). CSOs have also put a focus on gender aspects of transitional justice (Vušković and Trifunović 2008). In Bosnia in particular, NGO campaigns contributed to raise awareness and generate support for the women who were raped during the war (Baumann and Müller 2006). Other organisations engage in facilitation of dialogues and exchange of narratives; they include the Center for Peace Studies (Zagreb), the Center for Peace, Nonviolence and Human Rights (Osijek) and Miramida Centre (Groznan), the Nansen Dialogue Centres (in Sarajevo, Banja Luka, Mostar and Osijek), and the youth group Odisej (Bratunac). Some of the CSOs focus on dialogue and community building on a local level; others have a cross-border or regional focus. One example is the regional peace work of the Centre for Nonviolent Action (CNA) based in Sarajevo and Belgrade, which has developed training formats for nonviolent action and organised public discussion forums where war veterans from different sides speak about their personal experiences (Fischer 2007c; Center for Nonviolent Action 2002). Initiatives for regional dialogue and reconciliation have also been supported by organisations with religious backgrounds and by youth organisations, such as the Youth Initiative for Human Rights (in Novi Sad, Kragujevac, Niš and Sarajevo).

Furthermore, *victims' groups*, together with *human rights activists* and *psychologists*, are engaged in searching for missing persons. In Bosnia in particular, a huge number of associations of victims, detainees, displaced persons and relatives of missing persons emerged that contributed to fact-finding (Gentile 2008). Victims' groups are influential in shaping discourses on dealing with the past. At the same time they are often at risk of being manipulated for political purposes and ethno-nationalist discourses. The same applies to *veterans' unions* (Moratti and Sabić-El-Rayess 2009, 30). Only recently have victims' associations of different (Serb, Bosniak and Croat) constituencies begun to overcome ethnic barriers and taken cautious steps towards cooperation. Both victims' and veterans' groups play an important role in the context of public commemorations.

### **The REKOM Initiative**

The Documenta Center (Zagreb), the Research and Documentation Centre (Sarajevo) and Humanitarian Law Center (Belgrade) established cross-border cooperation on dealing with the past in 2004. In 2006, they initiated a campaign to establish a regional fact-finding mechanism for the countries of the former Yugoslavia. After a two-year consultation

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<sup>29</sup> The video was presented in evidence at the Hague Tribunal; it was broadcast by all public TV stations in Bosnia-Herzegovina and also disseminated in (then) Serbia-Montenegro, triggering debates (Kandić 2008, 64).

process (with regional forums held in Sarajevo, Zagreb, Belgrade and Prishtina), 108 local CSOs and 77 individuals from various countries signed an agreement in October 2008 and in March 2011, a statute proposal was agreed by members of the coalition that proposes the establishment of a “Regional Commission for Establishing the Facts about War Crimes and other Gross Violations of Human Rights Committed on the Territory of the Former Yugoslavia in the period from 1991-2001”.<sup>30</sup> The coalition aims to gather one million signatures to be delivered to the governments together with a request to pass a decree on establishing a commission. At the time of writing, 542,000 individuals have signed up in support of the initiative and 1,800 groups and individuals are members of the coalition. The initiative is also supported by the Prime Ministers of Kosovo and Montenegro, by the Presidents of Serbia (Tadić) and Croatia (Josipović), by 188 artists, and by a variety of international organisations such as the United Nations Development Programme (UNDP), the UN High Commissioner for Human Rights, the European Commission and European Parliament, and the Council of Europe.<sup>31</sup>

### **IGOs and INGOs addressing the legacies of the wars of the 1990s**

In all three countries, the EU and OSCE<sup>32</sup> maintain departments that monitor democratisation and legal and institutional reforms. Their mandates are closely related to the *EU accession process* and the *Dayton Peace Accords* (DPA) that obliges the governments of all three countries to cooperate with the Hague Tribunal and across the region. EU delegations monitor the governments’ cooperation with the ICTY and their efforts to deal with issues related to human rights, minorities, refugees, justice, and home affairs. In Bosnia, the *Office of the High Representative* (OHR) is also involved in this area of activity. The OSCE’s mandate in all three countries includes war crimes prosecution monitoring. It maintains war crimes sections and departments dealing with law enforcement and rule of law, human rights, organised crime and corruption. The OSCE oversees judicial and police reforms, monitors elections, and implements activities to enhance interaction of courts, ministries, media and civil society.

UN organisations are also involved in processes related to the implementation of the DPA. The United Nations Development Programme (UNDP) supports transitional justice processes, provides support for vulnerable people, refugees and IDPs and cooperates with victims’ and war veterans’ groups. UNDP also assists institutions and civil society to develop strategies for transitional justice. The United Nations Refugee Agency (UNHCR) supports refugees and IDPs, monitors return and reintegration and facilitates cooperation between governments to find durable solutions for these groups. UNHCR also maintains close cooperation with NGOs.

Apart from the above-mentioned international and regional organisations, government departments (embassies or ministries) are also active in bilateral programmes. Furthermore, INGOs, political foundations and private donors are engaged in initiatives that focus on dealing with the legacies of the past. Their activities range from support for democratisation and civil society building, education for tolerance, facilitation of relationship-building in divided communities, and inter-religious dialogue, to human rights monitoring and war crimes prosecution monitoring. IGOs and INGOs have also actively supported cross-border engagement of CSOs for dealing with the past in the region;

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30 <<http://www.zarekom.org/Proposed-RECOM-Statute.en.html>>.

31 See <[www.zarekom.org/RECOM-Initiative-Voice/RECOM-Initiative-Voice-1/2011.en.html](http://www.zarekom.org/RECOM-Initiative-Voice/RECOM-Initiative-Voice-1/2011.en.html)>; <[www.zarekom.org/news/index.7.en.html](http://www.zarekom.org/news/index.7.en.html)>.

32 At the end of 2011, the OSCE declared the mandate in Croatia successfully completed and closed its office in Zagreb.

examples are the regional cooperation among the documentation centres that were established in Sarajevo, Zagreb and Belgrade, and the REKOM campaign over recent years.

### **Governments and state institutions**

Although by signing the Dayton Peace Agreement in 1995, the governments committed themselves to dealing with the legacies of the war and to cooperation with the Hague Tribunal, in practice there have been differences in terms of their willingness to cooperate with the ICTY in the years that have passed. Above all, Croatia and Serbia's policies regarding the extradition of suspected war criminals or evidence material related to such cases have at times given cause for complaint.<sup>33</sup> Recent assessments by the ICTY state that this policy has improved. The arrests and extraditions of the fugitive Ante Gotovina, and, finally, Ratko Mladić and Goran Hadžić are considered a "milestone" in this respect.<sup>34</sup>

However, the official politics of remembrance in all three countries have for a long time focused on the selective commemoration of war victims, each generally characterising its own "constituency" as the main victim.<sup>35</sup> These discourses were largely determined by varying interpretations of the recent past, as well as by experiences and narratives from the Second World War, or ancient myths (Popović 2003). Only in recent years, moderate politicians from RS in Bosnia-Herzegovina, Serbia (or, until 2006, Serbia-Montenegro) and Croatia have made public apologies (Fischer 2008a). Public gestures that show empathy with the victims of the "other" side are still rare and continue to be controversial.

Governments' activities to trace the fate of the *missing persons* in the first years after the wars were organised either at a national level or, in the case of Bosnia, at entity level. Later on, in Bosnia, a Missing Persons Institute (MPI) was created in 2000, in response to an initiative launched by the OHR for a "Joint Exhumation Process" that permitted the three former warring parties to conduct exhumations relevant to their own missing persons on the "opposing side's" territory.<sup>36</sup> The International Commission on Missing Persons (ICMP) was tasked to facilitate cooperation between the respective entity authorities, and in 2005 the Council of Ministers of BiH took on the role of co-founder of the MPI. Through ICMP, cooperation was also enhanced on a regional level to some extent, with the *Commission for Missing Persons* of the then Federal Republic of Yugoslavia and the *Office for Detained or Missing Persons* in Croatia. On 25 January 2012, the EU announced that it will continue funding exhumation activities in the Western Balkans for another two years.<sup>37</sup>

Apart from allowing the establishment of legal bodies and searching for the missing, governments and parliaments have not been very proactive in supporting further *fact-finding initiatives* in the region. Initiatives to set up commissions on a national level have been either half-hearted or have received very little political support.<sup>38</sup> Facilitated by international organisations (i.e. UNDP and OSCE), in recent years some initiatives were launched to link activities for transitional justice with confidence building. In Bosnia, in 2008 the Council of Ministers of BiH agreed on a Transitional Justice Strategy and is cooperating on its implementation with legal institutions, parliamentarians, journalists and experts from civil society. In 2008 and 2009, consultations were held in Fojnica, Brčko and

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33 See Zoglin 2005; McMahon/Forsythe 2008; Subotić 2009.

34 Letter by ICTY President Patrick Robinson to the UN Security Council, see United Nations Security Council 2011.

35 See Kuljić 2009; Ramet 2007; Teršelić 2008.

36 See <<http://www.ic-mp.org/icmp-worldwide/southeast-europe/bosnia-and-herzegovina>>.

37 See <<http://www.ic-mp.org/press-releases/eu-and-icmp-donation-agreement/#more-1493>>.

38 See Mira Buljugić, No Progress for Sarajevo Truth Commission, <<http://www.bim.ba/en/51/10/2327>>/. See <<http://newsvote.bbc.co.uk/mpapps/pagetools/print/news.bbc.co.uk/2/hi/europe/2828173.stm>>; Hatschikjan 2005.

Mostar, in order to enhance dialogue on TJ issues together with victims' and veterans' organisations, women's groups, youth organisations, peace and human rights NGOs, and representatives of academic institutions and faith communities.

As a result of participants' recommendations, the Council of Ministers issued a decision on forming an Expert Work Group for drafting a Strategy on TJ in BiH and an Action Plan for its implementation. Three pillars were defined: 1) verifying facts, 2) reparations and memorials, and 3) institutional reforms.<sup>39</sup>

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39 For more details, see UNDP 2009; UNDP 2008a.

## 2. Theoretical Approaches and Research Design (by M. Fischer)

### 2.1. Transitional justice, reconciliation and conflict transformation<sup>40</sup>

The concept of *transitional justice* (TJ) was introduced by the international human rights movement. At first it referred to the judicial process of addressing human rights violations committed by dictatorial regimes in the course of democratic transition. Later, the term also came to be used for dealing with war crimes and massive human rights abuses committed in violent conflicts (Kritz 1995; Minow 1998, 2002; Teitel 2000). The concept has been widely discussed by peacebuilding agencies engaged in war-torn societies during the past two decades, and along the way, it has gradually extended its meaning. Today it covers the establishment of tribunals, truth commissions, lustration of state administrations, settlement on reparations, and also political and societal initiatives devoted to fact-finding, reconciliation and cultures of remembrance.<sup>41</sup> Alexander Boraine (a former member of the South African Truth Commission and founder of the International Center for Transitional Justice, ICTJ) has made an important contribution to the discussion by suggesting that retributive justice should be complemented with restorative justice.

#### Holistic understanding of transitional justice

Boraine strongly advocates a holistic interpretation based on five key pillars: accountability, truth, reparations, institutional reform and reconciliation (Boraine 2006, 19-25):

*Accountability* derives from the fact that no society can claim to be free or democratic without strict adherence to the rule of law; there are mass atrocities and crimes that have been so devastating that civilisation cannot tolerate their being ignored. Yet in cases of large-scale human rights violations such as those which occurred in the former Yugoslavia, Rwanda or Sierra Leone, it is impossible to prosecute everyone. Given the limits to the law and prosecution, and although criminal justice is important, additional activities are needed that focus on documenting the truth about the past.

Within *truth recovery*, four different notions are covered: objective or forensic truth (evidence and facts about human rights violations and missing persons), narrative truth (story-telling by victims and perpetrators and communicating personal truths and multi-layered experiences to a wider public), social or dialogical truth (truth of experience that is established by interaction, discussion and debate) and healing or restorative truth (documentation of facts and acknowledgment to give dignity to the victims and survivors).

In this context, *reparations* also play an important role, as they belong to the few efforts undertaken directly on behalf of the victims. Nevertheless, reparations need to be closely connected to other processes aimed at documenting and acknowledging truth; otherwise they could be interpreted as being insincere.

*Institutional reforms*, according to Boraine, form a prerequisite both for truth recovery and reconciliation. In particular, truth commissions should not focus only on individual hearings but also on institutional settings, and call to account those institutions directly responsible for the breakdown of a state, repression or human rights violations.

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40 An extended version of the overview of the debate on TJ and reconciliation has been published in the Berghof Handbook for Conflict Transformation (see Fischer 2011b).

41 For an overview of the state of research, see van der Merwe et al. 2009; Thoms et al. 2008; Backer 2009.

*Reconciliation* is seen as a long-term process that must be accompanied by acknowledgment of the past, the acceptance of responsibility and steps towards (re-)building trust. Its starting point depends on the specific situation in a society. Although the concept is ambivalent and regarded with scepticism, due to its Christian connotation, Boraine sees a need to achieve “at least a measure of reconciliation” in a deeply divided society by creating a “common memory that can be acknowledged by those who created and implemented an unjust system, those who fought against it, and the many more who were in the middle and claimed not to know what was happening in their country” (ibid., 22).

As both practitioners and academics have emphasised, a holistic approach requires, furthermore, a “gender lens”. The ICTJ has therefore added gender justice to its agenda, alongside criminal prosecutions, truth commissions, reparations programmes, security sector reform and memorialisation efforts. Given the experience of the systematic rape as part of warfare in the Balkans and other regions, feminist researchers and women’s rights activists have pushed forward the debate on gender-specific war crimes (Allen 1996; Stiglmayer 1992) and focused on the question of how legal standards have to be modified in order to end impunity in relation to violence against women (Pankhurst 2008). Furthermore, researchers, human rights and peace activists have raised awareness that a better understanding of gender, culture and power structures is needed to appropriately analyse the causes, dynamics and consequences of conflict and violence.<sup>42</sup>

### **Reconciliation and conflict transformation as multi-level processes**

Together with transitional justice, the concept of reconciliation has gained importance among peace practitioners and is also extensively discussed by the academic literature on peacebuilding and conflict transformation. Most authors define reconciliation as a process rather than an end state or outcome, aimed at building relationships between individuals, groups and societies. The need for reconciliation is emphasised in particular for societies that have gone through a process of ethnopolitical conflict, as these are marked by a *loss of trust, inter-generational transmission of trauma and grievances, negative interdependence* (as the assertion of each group’s identity is seen as requiring the negation of the other group’s identity) and *polarisation*. Given that antagonists live in close proximity, not addressing these legacies means risking that they will form the causes of new spirals of violence. Reconciliation is regarded as being necessary to prevent the desire for revenge.<sup>43</sup> The concept has also been discussed in the context of contrition, mercy and forgiveness (Truth and Reconciliation Commission of South Africa 1998; Lederach 1995, 1997; Rigby 2001). Others have argued that reconciliation processes will not necessarily lead to forgiveness (Minow 1998, 17), as this is considered to be a power held only by those victimised. Bloomfield suggests a rather pragmatic understanding “that does not depend on peace and love, and forgiving”; reconciliation, according to this view, is “a process of gradually (re)building broad relationships between communities alienated by sustained and widespread violence, so that they can over time negotiate the realities and compromises of a new, shared socio-political reality” (2008, 264).

It has been argued that reconciliation is a necessary requirement for lasting peace, and that it needs the orchestration of top-down and bottom-up processes (Bar-On 2007, 81; Bar-Tal/Bennink 2004, 27). Civil society actors have a special role to play in this regard (Assefa 2005; Kritz 2009; Kriesberg 2007; Bloomfield 1997; 2006a). Bloomfield (1997)

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42 See Nikolić-Ristanović 2000; Slapšak 2000; Basić 2004; Đurić-Kuzmanović et al. 2008.



suggests that the interaction between the structural (top-down) and cultural (bottom-up) approaches should be addressed. He sees them as complementary, and outlines that the top-down and bottom-up terminology itself points to some movement, “downwards or upwards from the starting point, some degree of relation or convergence” (Bloomfield 2006b). Furthermore, he highlights that “interpersonal reconciliation – the cultural approach – operates necessarily and by definition from the bottom-up, starting at the individual or small group level, where reconciliation involves personal interaction directly between people who have fed each other’s grievances and who need such interaction to help them define the terms of their future co-existence” (ibid.) The top-down approach is defined as the realm where political actors try to support civic trust-building and political reconciliation, and democratic reciprocity, “where the goal is less to achieve deep understanding and more build adequate working relations as free of, and protected against, subjective engagement” (ibid.). However, the question is very much, where both spheres meet, whether civil society can form the “transmission belt” (White 1996) between state and society, or “between, on the one hand, grass-roots initiatives, victim advocacy, interpersonal interactions, encounter and dialogue work, documentation and human rights work, and, on the other, the national, society-wide process of legal and constitutional reform, truth commissions, national reparation schemes, development policy, political power-sharing, and so on” (Bloomfield 2006b, 2).

Overcoming power asymmetries is also mentioned as crucial for reconciliation (Kriesberg 2007; Bar-On 2007). Furthermore, as Kriesberg (2007, 254) emphasises, there is a need to address imbalances in suffering. Often, both sides have suffered injuries at the hand of the other, although not in equal measure, and reconciliatory actions are often ineffective because they fail to reflect the given asymmetries. Moreover, reconciliation can only take place if it entails significant complementary reciprocation: if members of one side assert truths that are ignored or denigrated by the other, their assertion is hardly a mark of reconciliation, as the *truths need to be shared or at least acknowledged* to indicate some degree of reconciliation on that dimension. Expressions of regret or apology and acts of contrition must also be recognised and in a sense accepted by the other side, if reconciliation is to progress. Similarly, terms that only one side deems *just* and the other regards as *unjust* do not indicate a significant level of reconciliation on that dimension. Therefore reconciliation in post-war societies has four dimensions: *shared truth, justice, regard and security* (Kriesberg 2007; 2004).

In a similar way, conflict transformation theory has outlined that overcoming ethno-political conflicts in particular requires a focus on structural, behavioural and attitudinal aspects. According to Johan Galtung (1996, 70-126), it is necessary to transform the relationships, interests, discourses and the very constitution of society. Hugh Miall (2004, 75-77) believes that the meaning of a conflict depends largely on the *context* from which it arises (culture, governance arrangements, institutions, social roles, norms, the rules and codes in place). In conflicts involving ethnicity, minorities or challenges to state structures, the very existence of the state is at issue. *Relationships* involve “the whole fabric of interaction” (ibid., 76) within the divided society as well as beyond, i.e. with other societies. Poor relationships between groups are all too often a trigger for conflict, and remain a critical hindrance to peacebuilding efforts in post-war settings. Moreover, the attitudes of the conflicting parties are shaped by previous relationships: their behaviour is based on their memory of what has happened in the past and expectations of what may happen in the future. *Memories* are part of each party’s socially constructed understanding of the situation, shaped by culture and learning, discourse and belief. The way groups remember and construct their past is often central to the mobilisation for conflict, and thus a crucial matter to address.

## 2.2. Research design

The research is based on the core idea that societies recovering from war and dictatorship have to follow a holistic approach that builds on prosecution of mass crimes in accordance with international legal norms, but moves beyond this and includes elements of forensic and objective/factual, narrative, dialogical/societal and restorative forms of truth recovery. Furthermore, TJ initiatives should aim at institutional reforms to induce a change of the systems of justice and security, and should seek to set up procedures for compensation. Finally, in order to set up restorative approaches, multi-level processes, both top-down and bottom-up approaches, are needed in order to reach a minimum of a broader societal consensus at some stage. In terms of research, this means that the interaction of different actors and compatibility of their initiatives should be a focus of interest. A better knowledge of the respective strategies, concepts and underlying assumptions is a first step in this direction and may help to enhance processes of (self-) reflection.

### Research goals

The study investigates the coherence and compatibility of approaches of actors who have a specific focus on dealing with the legacies of the past (“protagonists” of transitional justice), such as the ICTY and the domestic courts, state-driven fact-finding commissions, international and bilateral donors, international NGOs and foundations, and local civil society actors. The study looks at the guiding concepts, goals and strategies of all these actors, at cooperation and learning experiences in order to identify synergies, as well as examining incompatibilities of goals and dilemmas that might arise from their interaction. Finally, the study analyses how TJ initiatives are assessed by representatives of political parties, as some of these are very powerful in the public discourse.

We seek to learn how different actors evaluate the existing transitional justice mechanisms, which achievements and deficits, positive or negative effects they identify so far, and which they would support or reject. Furthermore, we intend to find out what different actors expect from additional mechanisms (such as the idea of a regional truth commission), and whether they have further proposals for approaching the legacies of the past. We also put a focus on the guiding concepts. We want to know how different actors understand terms like *truth* and *justice* and *reconciliation*, how these relate to each other and whether they use these terms in their fields of practice. Another question is what they regard as obstacles and what they see as necessary preconditions for reconciliation and long-term peacebuilding. Moreover, the study asks which strategies are applied by TJ protagonists, with whom they cooperate, for which reasons and which learning experiences stem from this cooperation, and what kind of initiatives they recommend for the future.

The study makes a contribution to assessing the *acceptance and legitimacy* of TJ mechanisms and it also identifies commonalities or differences with respect to the situation in each of the three countries. We hope that the findings will contribute to critical reflection on the potential and limits of TJ policies in the context of peacebuilding in war-torn societies, and inspire discussions among TJ institutions, civil society organisations and political actors in the region of former Yugoslavia and beyond.

## Methods

Local partners and peace and human rights activists contributed to discussions of the research design, and researchers from Belgrade, Tuzla and Zagreb were involved in the empirical field research. A feedback loop was established through discussions of interim results with our partners from CSOs and with colleagues from academic institutions.<sup>44</sup> The study is based on a qualitative content analysis of 150 focused and semi-structured interviews that were conducted in 28 cities of Bosnia-Herzegovina, Croatia and Serbia in 2010 and 2011. Interviews were conducted with (1) Representatives of the ICTY field offices, of the war crimes chambers at domestic courts and prosecution offices, and of state commissions for missing persons; (2) Peace groups and human rights organisations (including women's and youth organisations), journalists, victims' organisations (including family associations and organisations of camp inmates) and veterans' associations. The sample includes a broad range of views not only from the capitals but also from rural or less urbanised areas; (3) Representatives of delegations of the UN, EU, and OSCE in the three countries, as well as foreign embassies, and international NGOs, foundations and private donors; (4) Representatives of the governing parties in Bosnia-Herzegovina, Serbia and Croatia, and of relevant opposition parties.<sup>45</sup> The interviews have been partly saved as full transcripts and partly as selective protocols. The study is based on a content analysis of interviews based on predefined categories: (1) Relevance and dynamics of dealing with the past; (2) Potential, legitimacy and acceptance of TJ mechanisms; (3) Guiding norms and concepts; (4) Achievements and learning processes (5) Forms of networking and cooperation.

Most of the field research was coordinated by Ljubinka Petrović-Ziemer. She conducted 52 interviews and worked on the analysis of 104 interviews (with legal institutions, commissions for missing persons, and CSOs). 21 interviews were conducted by Martina Fischer who provided an analysis of the international actors. 80 interviews were conducted by researchers from the region, Ismet Sejfija (Sarajevo), Katarina Milićević (Belgrade), Srđan Dvornik (Zagreb), and Vesna Nikolić-Ristanović and her team at the Victimology Society of Serbia (Belgrade). Ismet Sejfija, Katarina Milićević and Srđan Dvornik also provided an analysis of interviews with representatives of political parties (23 talks).

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44 In November 2011, Ljubinka Petrović-Ziemer drafted a report on the preliminary results and organised a workshop in Belgrade where the findings were discussed with our partners.

45 For a detailed overview on the interviewed organisations and institutions see Fischer and Petrović-Ziemer 2013 (Annex).

*Box 1: Working hypothesis<sup>46</sup>*

- (1) We assume that human rights organisations see war crimes prosecution and judicial evidence as a precondition for peacebuilding and reconciliation and thus attribute a priority to the work of the ICTY and domestic courts. We also assume that peacebuilding actors are more sceptical towards the potential of retributive justice and promote alternative approaches.
- (2) It is likely that political actors have ambiguous assessments of war crimes prosecution by the Hague Tribunal, with a strong tendency to perceive it as imposed from outside. It is likely that politicians attribute more legitimacy to the war crimes chambers at the domestic courts
- (3) As the ICTY's trials have contributed to polarising discourses in the countries of former Yugoslavia, it is likely that promoters of a regional truth commission want to open space for dialogical and societal truth.
- (4) It has been criticised that legal prosecution addresses primarily the perpetrator, rather than the victim. We assume that the promoters of a regional truth commission aim to address the needs of the victims and, along with this, also to offer space for gender-specific perspectives.
- (5) It is our assumption that the representatives of criminal courts are sceptical with regard to the establishment of a regional truth commission as they perceive this as a competitive mechanism that challenges the courts' efficiency and legitimacy.
- (6) We assume that the understanding of truth and justice differs among TJ protagonists, as some are influenced by the human rights discourse, others by the peacebuilding debate. This leads to controversial expectations and assessments.
- (7) We assume that different actors' groups present different priorities and proposals for sequencing initiatives for justice, truth recovery and reconciliation.
- (8) We assume that in general, TJ protagonists regard processes of facing the past as a contribution to reconciliation. However, we assume that there is no consensus on the necessary preconditions for paving the way to reconciliation.
- (9) We assume that war veterans' and victims' organisation attribute great importance to justice and truth-finding, but are sceptical towards the concept of reconciliation, suspecting that it will be used as an excuse and legitimisation for impunity.

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<sup>46</sup> Working hypothesis agreed by Martina Fischer, Ljubinka Petrović-Ziemer and Bodo Weber after consultation with our partners, May 2010. For a detailed outline of the project design and research questions see Berghof Report 18 (Fischer and Petrović-Ziemer 2013).

### 3. Summary Analysis<sup>47</sup> and Policy Recommendations (by M. Fischer)

#### 3.1. Coherence and compatibility of concepts and approaches

The interviews with protagonists of transitional justice (representatives of legal and fact-finding institutions, local CSOs, and international actors) reveal that more than 15 years after the Dayton Peace Accords, the signatory countries in the Balkans are still facing a variety of war legacies, although to varying degrees, given that they were involved in different ways in war operations. However, in all countries people continue searching for missing relatives, struggle for recognition as victims of war-related crimes, for redress, or for durable solutions after displacement. Others have to cope with painful memories, insecurity and mistrust, particularly if they are facing parallel societies or divided communities, as reported from Bosnia-Herzegovina or war-torn areas in Croatia.

TJ protagonists have observed some progress towards political reconciliation between *Croatia* and *Serbia*, due to public gestures of remembrance and recognition such as the visit by the then President of Serbia, Boris Tadić, and the President of Croatia, Ivo Josipović, to Vukovar.<sup>48</sup> Tadić's participation at the commemoration in Srebrenica in 2010 and the Srebrenica Declaration adopted by the Parliament of Serbia are seen as positive developments, although critical CSO activists and international representatives also point to the ambivalence of official gestures. One particular point of criticism is that high-ranking Serbian politicians tend to avoid explicit acknowledgment of existing borders (regarding Kosovo and the Republika Srpska in BiH). However, international actors conclude that ethno-nationalist arguments apparently no longer attract a broader audience in Serbia.

By contrast, in Bosnia the picture is less encouraging. A positive move, from the international actors' perspective, is that a strategy for transitional justice has been developed by UNDP and state ministries in consultation with civil society actors in BiH. Representatives from the UN, OSCE and EU express high expectations that this step will help to further advance the process of dealing with the past in this country. Local civil society experts are less optimistic (see Petrović-Ziemer 2013b). They see many obstacles to the implementation of such a strategy, due to the fragmentation of institutions and dominance of ethno-politics. The findings of the field research in this country reflect the phenomena described for social reality after ethno-political war: a lack of identification with the political structures, inter-generational transmission of trauma, negative interdependence and polarisation (Bloomfield et. al 2003). Tensions in divided communities, selective forms of commemorations, and manipulation of victims, refugees or IDPs for political polarisation are important expressions of the "presence" of the past in this society. Some of these problems are also reported from war-torn regions in Croatia. Questions of return and durable solutions for settlement and property restitution for refugees and IDPs (mostly in Bosnia and Serbia) are still pending and depend on the involvement of authorities in all three countries.

Although TJ protagonists see some progress in the dynamic of dealing with the past in the region, they observe that cultures of denial are still powerful in some sections of politics

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47 This Chapter compiles findings of the empiric analyses conducted by Ljubinka Petrović-Ziemer, Martina Fischer, Srđan Dvornik, Ismet Seifija and Katarina Milićević published in Berghof Report 18 (ed. by M. Fischer and Lj. Petrović-Ziemer 2013).

48 In November 2010, Tadić and Josipović laid wreaths to honour Croat victims at a memorial in Ovčara, near Vukovar. The two leaders also visited a memorial for Serb civilians killed in the town of Paulin Dvor. Both towns were the scene of executions of prisoners and civilians during the war in 1991. See <[http://www.b92.net/eng/news/politics-article.php?yyyy=2010&mm=11&dd=04&nav\\_id=70684](http://www.b92.net/eng/news/politics-article.php?yyyy=2010&mm=11&dd=04&nav_id=70684)>.

and society, and that they are often combined with the tendency to point to the victims of one's own side in order to avoid recognising those of the others. Apparently, this pattern is most dominant in Bosnia, but also exists in the other countries.

It is noteworthy that many local CSOs perceive the dynamic of dealing with the past in the region as too slow. Most of them are convinced that policy-makers and governments in the region still show a very low degree of willingness to face the past (see Petrović-Ziemer 2013b), whereas international actors express a different view on this. Most of the latter, while agreeing that more could be done, are convinced that the countries in the region of former Yugoslavia are already rather advanced in this field, compared to developments in other post-war situations (see Fischer 2013a). This view is particularly emphasised by organisations from Germany (which compare the dynamic in the Balkans to the stages of memorialisation of the Holocaust and World War II in German society). International actors also point to the achievements of the ICTY and the domestic war crimes chambers in accountability and documentation, which have substantially contributed to advancing the dynamic, together with CSO activities in this field. In particular, international interviewees believe that EU conditionality has also significantly contributed to a positive dynamic. In contrast, CSOs have a more critical view of the EU conditionality policy (see Petrović-Ziemer 2013b, 51): in their opinion, this concept has contributed to politicising the role of the ICTY.

### **3.1.1. TJ protagonists' assessments of TJ mechanisms, concepts and approaches**

#### **Accountability: ICTY and domestic war crimes chambers**

Among the protagonists of transitional justice, all interviewed actors (representatives of legal and fact-finding institutions, local CSOs, and international actors) regard war crimes prosecution as indispensable, and all of these largely acknowledge the contribution of the ICTY. The Commissions for Missing Persons point to the ICTY's assistance in disclosing information on sites where atrocities were committed. Domestic legal institutions mention, on the one hand, the Tribunal's role in setting norms and reforming judicial proceedings. On the other hand, they state that some of its practices (in particular elements of common law, and the practice of plea bargaining) have proved to be problematic (see Petrović-Ziemer 2013a, 31). Among CSOs, divergent opinions are expressed. Most of them are convinced that the International Tribunal has established evidence and important archives, despite some serious criticisms of its legal practices, effectiveness, and information policy. In contrast, representatives of war veterans' and victims' associations express more negative assessments, suspecting that the Tribunal operates with an ethnic bias and treats criminals from the "other side" more leniently than those of "their own" constituency.

Assessments of the performance and potential of the domestic courts are diverse as well. CSOs – although they acknowledge improvements in the practice of the domestic courts, and see progress on sentencing in important cases (i.e. Ovčara, Scorpions, Glavaš, Norac/Ademi) – express less confidence in these institutions (see Petrović-Ziemer 2013b, 52), by comparison with international representatives and representatives of TJ institutions, who place more trust in them and assess them more positively (see Petrović-Ziemer 2013a, 33-35, Fischer 2013a, 74-76). Ethnopolitical bias and politicisation of the domestic judiciary, as well as slowness and a lack of witness protection are the deficiencies that are most frequently mentioned by CSOs in all countries. International actors, in contrast, are convinced that the legal institutions have overcome at least some of these problems,

pointing in particular to the revision of *in absentia* trials, to increasing numbers of indictments and sentencing in cases where crimes were committed by members of the “own” constituency, and to more advanced cooperation among courts in the region.

The field research reveals that CSOs, TJ institutions and international actors all see a need and have a strong preference for legal accountability. Thus the *first hypothesis* (assuming that peace organisations are more sceptical towards retributive justice) has not been proved. Representatives of the judiciary, Commissions for Missing Persons, local peace practitioners, human rights activists, representatives of victims’ associations, and international organisations are all convinced that impunity cannot be tolerated, in view of the gross human rights violations committed in the 1990s. In this respect, there is a clear consensus and no incompatibility of goals can be observed. However, all TJ protagonists also clearly recognise the limits of legal prosecution and propose additional approaches to complement the work of the courts.

### **Fact-finding and truth recovery: The potential of REKOM**

The REKOM initiative appears to offer potential for additional approaches and also for engaging a variety of different actors: peace practitioners and human rights activists (including women’s and youth groups), journalists and intellectuals, and also veterans’ and victims’ groups (although only a small number of the latter are involved). Most of the interviewed CSOs and international actors welcome the regional approach. Those who promote the initiative all agree on one common denominator: that a regional commission should complement or even support the courts’ work and that it should mainly focus on *fact-finding*.

However, a number of human rights activists and victims’ representatives are convinced that REKOM should also give a *voice to the victims* of war-related crimes. But the hearings that have been held during the campaign have aroused controversy and are criticised by some of these actors (see Petrović-Ziemer 2013b). In particular, the question of how to provide psychological support and protection for those who tell their stories in a public setting remains unresolved. The same applies to the question of how their testimonies can be verified and transformed into “facts” that cannot be denied, so that they receive official acknowledgment.

Among peace practitioners and human rights activists there is another strand of debate, based on the expectation that a regional commission would also enhance societal debate and dialogue on the past and help to establish an inclusive culture of remembrance. International promoters of the REKOM campaign also share this expectation. Options expressed by the international promoters of a regional commission range from (a) establishing a shared view on the past, to (b) providing a climate that enables people to

accept that different views exist, to c) developing empathy for opposing narratives, and (d) providing a forum for alternative learning and debating of history.

To sum up, TJ protagonists in all three countries see a need to establish a set of undeniable facts relating to the recent war events, as a point of reference for a “shared truth” and as a means to counteract denial of war-related crimes. Others argue that the societies in the region should also critically reflect on the misguided policies of the former Yugoslav regime which paved the ground for a selective politics of remembrance, by honouring partisans as heroes, silencing discussion of crimes committed in the Second World War and its aftermath, and largely ignoring the victims. Many interviewees suggest that earlier periods of history (World War II, and even before) have to be considered.

Among those interviewees who advocate for a regional truth commission, different opinions are expressed as regards its tasks, mandate and composition. But against the assumption made in our *third hypothesis*, the promoters of REKOM do not consider the purpose of establishing dialogical and societal truth to be the first priority on the agenda of a regional commission. Instead, documenting the missing persons and gathering facts about the events of the war are clearly seen as preconditions for dialogue and societal debate on the past, and are therefore considered to be the most crucial task by all promoters of REKOM. Most of the interviewed peace practitioners and human rights activists regard a regional fact-finding commission as a useful mechanism to be established in addition to the war crimes chambers, in order to complement and support the efforts of the courts. The same applies to the international actors. This shows again that there is no major controversy on the priorities of justice vs. truth among these groups. Nevertheless, the interviews reveal that so far, no detailed concepts have developed for the form that cooperation among legal and fact-finding institutions should take.

The majority of the interviewed international actors in all countries support REKOM. Some actively fund the campaign while others do not provide financial assistance but support the aims and idea of establishing a cross-border commission. Only a minority doubts the sense or practicability of such a mechanism. Nevertheless, international representatives are most reluctant to express precise expectations or models for a regional commission. They emphasise that the process is as important as the goal, that REKOM is a “home-grown” initiative, and that the local organisations should own both the process and the final decision on the scope of the commission. The principle of “local ownership” is highlighted as a must for advancing the field of dealing with the past by almost all of the interviewed donors.

Representatives of the ICTY also welcome an additional, non-judicial mechanism for fact-finding on a regional level (see Petrović-Ziemer 2013a, 35). They are convinced that a regional commission can complement judicial proceedings and provide an open space for



debate on different interpretations of the past. Representatives of the domestic judiciary are much more reluctant or even critical towards the idea of establishing a regional commission. They point to the archives and facts that have been gathered already both by the ICTY and domestic courts, and they see a risk that establishing a REKOM might lead to a duplication of efforts. They recommend that instead of creating another mechanism, the right way forward is to start to systematise and analyse the existing material. Finally, they warn that the setting of public hearings that involve elements of story-telling might confuse and disappoint the victims. They see a risk that victims who speak out in this context might expect that legal prosecutions and compensation will result from this process (ibid.).

Thus we can conclude that the assumption expressed in the fifth hypothesis, namely that legal representatives would regard a regional fact-finding commission as a competing or disruptive mechanism, applies in the case of the domestic judiciary but not for the representatives of the International Tribunal. Instead, the most critical opinions towards REKOM are expressed by the Commissions for Missing Persons from all three countries (see Petrović-Ziemer 2013a, 42). They all share the view that efforts are duplicated. They are convinced that the establishing of a regional commission will question and undermine the efforts that the CMPs have undertaken together with the courts, police and victims' organisations. Furthermore, they see a risk that victims could be overloaded and involved in too many parallel activities that urge them to tell their painful stories again and again.

Although the REKOM initiative is very much supported by most of the TJ protagonists, they also express conflicting assessments of the *campaign* as such. Some criticism is voiced with regard to the performance of the lead agencies and representatives. The most critical voices can be found in the group of interviewed CSOs, both the members of the REKOM coalition and non-members. Many of these interviewees perceive the process as highly conflictive. International actors share this view. They observe that some of the leading personalities lacked the skills and sensitivity needed for dealing with conflicts among different stakeholders (i.e. controversial positions and tensions among competing faith communities). There is also criticism of the formats chosen for the NGO consultations, which did not meet the standards of inclusivity (see Petrović-Ziemer 2013b, 53-55). CSOs report that as a consequence of such deficits, several organisations that had co-initiated the campaign have meanwhile left the coalition. International supporters are aware that the coalition faces a great deal of fluctuation as some organisations are leaving while new groups join in. But they believe that such a fluid dynamic is normal for civil society engagement and will not harm the campaign or put its aims at risk. Furthermore, they regard it as a positive sign that leading politicians (i.e. the Presidents of Croatia and

Montenegro) have signed the REKOM statute, and therefore are fully confident that the campaign will maintain or even gain momentum. However, several international actors also make proposals for improvement. They suggest that the REKOM team should involve more experts from academia and also from other conflict regions, in order to better prepare decisions on the scope and mandate for a commission to be established in the Western Balkans (see Fischer 2013a, 76-78).

### **Guiding concepts and approaches**

Representatives of the Commissions for Missing Persons (CMPs) consider *forensic truth* to be the first priority, as outlined in Chapter 4. Representatives of the legal institutions emphasise that the verification of facts (“prove beyond reasonable doubt”) is an essential precondition for serving judicial justice in the context of war crimes prosecution. Accountability is therefore at the top of their agenda, but at the same time these actors point out that legal prosecution does not necessarily lead to acknowledgment and redress for the victims. Compensation is urgently needed and still lacking in the region. Representatives of the ICTY regard this as a prerequisite for reconciliation (in the sense of trust-building, shared values and common visions for a peaceful future). Representatives of the domestic courts explicitly state that reconciliation is not part of the legal institutions’ mandate, and, as several interviewees from this sample also outline, is far too ambitious a concept. They do not expect people in the region to reconcile but rather to tolerate each other and to cooperate. Representatives of the CMPs also avoid the term “reconciliation” and prefer the concept of trust-building, in addition to forensic and factual truth recovery.

CSO representatives in all countries agree on the priority of establishing a set of undeniable facts, and regard this as a prerequisite for serving both justice and trust-building, as analysed by Petrović-Ziemer (2013b, 55). Yet they are aware that a “shared truth” can hardly be established in the region of former Yugoslavia, where so many diverging perspectives and interpretations of the past exist. Furthermore, CSOs in all three countries agree that justice has certainly not been sufficiently served as there are still many war crimes not being prosecuted and prominent legal cases pending. Moreover, they emphasise that to date, state institutions have largely ignored the claims of the victims, as reparation programmes have not been developed. This issue is most strongly emphasised by victims’ organisations.

As reported by Ljubinka Petrović-Ziemer (2013b, 57) several human rights activists concede that they use the term “reconciliation” mainly in funding applications in order to fulfil the donors’ expectations, but avoid using the term explicitly in their daily work. They point to the specific understanding of the term in the Bosnian/Croatian/Serbian language, according to which reconciliation is linked to the interpersonal level, where individuals restore a relationship after a quarrel. Alternative concepts used by human rights activists are: *empathy, solidarity, normalisation, stability and peaceful co-existence, peacebuilding, or engagement for social change based on nonviolence and respect for human rights*. Representatives of victims’ organisations also doubt that the term “reconciliation” is appropriate in view of the mass atrocities which occurred.

It can be concluded that – in accordance with the *sixth hypothesis* – the guiding concepts and approaches among TJ protagonists vary, according to their different mandates. However, all of them accept that fact-finding and accountability are mutually interdependent and form an important basis for trust- and relationship- building in the societies of the former Yugoslavia. At the same time, it is noteworthy that local CSOs, in comparison to international actors, express much more reluctance to use terms like “truth” and “justice” in their grassroots activities in local communities or cross-border encounters. Many of these interviewees come to the conclusion that all of these concepts are contested (see Petrović-Ziemer 2013b, 55). Peace practitioners and human rights activists report that the terminology arouses controversy or misunderstandings among participants in their workshops or campaigns, and therefore they do not use it in their daily communication. The *concept of reconciliation* is also a controversial issue in the debate among CSOs.

Peace activists, in contrast, use the term “reconciliation”. In their view, it is important to facilitate a process in which persons can accept the view and narrative of the other, in order to provide the ground for reconciliation; at the same time they voice assurances that changes in the social and political power structures and governance mechanisms are a prerequisite as well, along with effective war crimes prosecution, fact-finding and acknowledgment of the victims on and from all sides. In particular, local peace practitioners and international actors in Bosnia and Croatia stress the urgent need for relationship-building and trust-building in divided communities.

International representatives see reconciliation as a consequence of factual, narrative and dialogical truth and re-establishment of human values, as a process of *bridge-building and restoring relationships, healing, and creating respect and empathy for different interpretations of the past* (see Fischer 2013a, 82). They see a need for reconciliation between people of different ethnic and religious constituencies within and across the countries. Some of them emphasise the relationship between minorities and majority groups in the region of former Yugoslavia, while others also stress the need for individuals’ reconciliation with themselves and their identity. In their view, compensation for victims of war crimes, durable solutions for refugees and displaced persons, and property restitution are necessary preconditions for reconciliation. Furthermore, they regard economic development as crucial in establishing a favourable climate for reconciliation. However, a couple of international actors also share the scepticism expressed by the critical CSOs, and suggest replacing “reconciliation” with less ambitious concepts like *dialogue, pacification, social trust, and regional cooperation*; international actors in Bosnia in particular observe a tendency for people to feel they “betray those who have lost their lives if they join the reconciliation discourse” (interview I-18). Others warn that in a context

where a substantial part of the population is Muslim, the concept must not be guided by a Christian notion. In particular, it should not be overloaded with a claim for “forgiveness”.

To sum up, the field research reveals different notions of truth, justice and reconciliation. Local actors – in particular human rights activists and victims’ groups, but also the representatives of legal institutions – are more reluctant to join the reconciliation discourse than international actors, and they propose using less ambitious terms. But despite these differences in the use of terminologies, no fundamental incompatibility of strategies – or proposals on how to approach the past – can be identified among the different protagonists of transitional justice. When it comes to the question of preconditions and obstacles for reconciliation/trust-building, or relationship-building, most of these actors come to very similar conclusions.

### **Learning processes and modification of strategies**

Peace practitioners and human rights activists in all countries have very positive assessments of their own achievements in the period during and after the wars of the early 1990s (Petrović-Ziemer 2013b, 59-60). They are convinced that their engagement helped to maintain space for dialogue between people from different sides. However, assessments of the following two decades are more ambivalent. Peace practitioners and human rights activists in *Croatia* are quite self-confident. They are convinced that they have substantially contributed to the reintegration of the Krajina area (a territory that was severely affected by war operations and crimes against Serb civilians), and to positive development in Eastern Slavonia and the former UNTAES region around Vukovar.

In contrast, CSOs in *Serbia* and *Bosnia* are not so satisfied with their achievements. Peace practitioners regret that trust-building has not significantly advanced in the region and no broader movement for peace has emerged. *In Serbia*, CSOs express frustration at the lack of willingness of both politicians and society to face up to their own active involvement in war operations in the 1990s and to take responsibility. Activists in *Bosnia* have the most pessimistic assessments (see Petrović-Ziemer 2013b, 46). In their view, not even the Strategy for Transitional Justice adopted by the BiH Council of Ministers in consultation with civil society actors can be considered a significant achievement, and serious doubts are expressed, that the state authorities are going to implement it.

Along with the critical self-reflection at the grassroots level, international actors also concede some failures from past activities in the field of peacebuilding and dealing with the past that require (or have already led to) a modification of strategies. This applies in particular to experiences in Bosnia regarding policies for the return of refugees and IDPs, and education. International organisations, together with Bosniak leaders right after the war, have strictly followed a strategy which aimed to return people to their pre-war place of

residence, in order to reverse ethnic cleansing (see Fischer 2013b, 83). It took many years for the international organisations to realise that this strategy ignores the needs and rights of many vulnerable groups (refugees and IDPs who do not want to re-migrate to their pre-war communities) and therefore had to be revised. However, it took even longer to convince the Bosniak political representatives, as they regard such a shift of strategy as an endorsement of ethnic cleansing.

International actors who work on educational issues in Bosnia also admit that they failed in their struggle for peace education to be extended to the school curricula, due to different regulations within the RS and FBiH. Furthermore, they report that the existence of three educational systems, each teaching different views and narratives on the past, is a serious obstacle to reconciliation. They stress that it was a wrong strategy for the international community to support a system that provides school education for children of different (Croat, Bosniak and Serb) communities in separate classes and separate shifts in one building (“two schools under one roof”). This system was introduced in 2003, in order to replace the previous practice of teaching children of different ethnic groups in separate establishments. It was particularly promoted by the OSCE and intended as a temporary measure, to allow families who returned after the war to educate their children in proper facilities. It also aimed to put students in the same building in order to pave the way for the creation of mixed classes. But this expectation was not fulfilled, as more than 50 schools in Bosnia remain divided today. Several international representatives therefore conclude that the concept that was initially promoted as a means of integration has ultimately further deepened the divide. They therefore see an urgent need for a revision of this approach. They also propose a critical analysis of this experience in order to learn more about the dynamics and peacebuilding potential of divided communities.

### **3.1.2. Political parties’ assessments of TJ mechanisms, concepts and approaches**

The interviewed politicians share the TJ protagonists’ view that impunity cannot be accepted with regard to the war-related crimes committed in the 1990s. They also acknowledge the Hague Tribunal’s contribution to establishing evidence and facts, although some very critical stances can be found, in particular among politicians from the Republika Srpska (BiH). In general, politicians who express the most critical views of the ICTY also regard the domestic courts as problematic, outsider-driven, politicised or biased (see Milićević 2013 and Dvornik 2013). Thus the *second hypothesis* (assuming that the domestic legal institutions have more legitimacy than international courts) could not be proved with regard to the interviewed political representatives. In Bosnia, the politicians’ lack of trust of TJ institutions correlates with the lack of acceptance of state structures. Given that the state-level institutions are not seen as legitimate, especially in the RS, it is not surprising that the Court of BiH which has overall responsibility for war crimes prosecution is also viewed critically by all interviewed politicians from this entity.

Unlike the CSO activists interviewed, the politicians do not express reservations towards the terminology of truth, justice and reconciliation. Having said this, it must be reiterated that political parties which follow an explicit nationalist agenda were not included in the sample of interviews in Serbia and that the influential Croatian Democratic Union (HDZ) was not included in Croatia. They largely subscribe to the view that justice has to be based on truth, and that both justice and truth need to be served in order to pave the way for reconciliation. However, they express diverging opinions regarding the preconditions and framework for reconciliation.

In *Bosnia*, different views are expressed by politicians in both entities, as analysed by Ismet Sejfića (see Sejfića 2013). Politicians from the FBiH argue that truth and justice have to be served right now and simultaneously, while the reconciliation process will follow on much more slowly and can only unfold in the long run, in the framework of the integration of all countries of the region into the EU, and together with strategies for fostering economic development. While politicians in the FBiH insist on establishing facts and serving judicial justice, their colleagues in the RS put much more emphasis on tolerating three different views on the past. The interviewed politicians in the RS point to the variety of truths and political interpretations of the past that exist both in the region and in Bosnia. One proposal is to establish a "common minimum of truth", a set of undisputed facts, but at the same time make sure that the different "specific truths" (DP) of the distinct constituencies are acknowledged. While representatives from the FBiH insist on facing the past in public discourse, RS politicians suggest that dialogue on the past should be left to professionals from academia and the judiciary. The latter also explicitly state that all sides have to take responsibility for what happened in the past, and that individuals – not nations – should be held accountable for crimes. Furthermore, they emphasise that economic development and social policies need to be advanced.

Finally, politicians from both entities strongly advocate for reparations for victims of war-related crimes and their families. Politicians in the FBiH in particular focus on implementation of policies that secure the return of refugees and IDPs to their places of pre-war residence. Furthermore, they push for property restitution for those who were forcibly displaced, in addition to prosecution and public acknowledgment of war-related crimes.

In *Croatia*, the field research reveals that three different approaches to dealing with the past can be found among the liberal spectrum of political parties (see Dvornik 2013). The *first* approach regards prosecution of war-related crimes as the key priority and suggests that measures for economic development are a prerequisite for a normalisation of relations, institution-building, and dialogue. The *second* approach emphasises that it has to be acknowledged that crimes were committed and that members of the Croat majority should demonstrate in a public gesture that they condemn crimes committed in their names against the Serb minority. The *third* approach advocates for robust analysis of the political and cultural patterns which fuelled the violent conflicts in the past decades.

Even the representatives of the Croatian Party of Rights (HSP) and the Croatian Democratic Alliance of Slavonia and Baranja (HDSSB) express the need to respect human rights and oppose ethnic discrimination (Dvornik 2013, 121). They also emphasise the significance of tolerance and co-existence in diversity. Furthermore, the HDSSB representative does not deny war-related crimes for which Branimir Glavaš (the president of this party) was convicted, although the official party position continues to assume that he is not guilty. This may be taken as an indicator of a shift of discourse, as Srđan Dvornik states, in the sense that relevant facts of the crimes and suffering of the victims have become established, and most political actors would neither deny nor justify those crimes.

But still many would reject any interpretation that holds the Croatian state responsible for them (Dvornik 2013, 129). But in this context, we should reiterate that this study cannot reveal the full picture as it was not possible to conduct an interview with the HDZ.

In *Serbia*, all the politicians interviewed insist that political and legal institutions and society have to deal with the recent past in close collaboration with the other countries. Most interviewees agree that the needs of victims in the region need to be much more seriously addressed, and empathy needs to be created towards the victims on all sides. All of the interviewed politicians distance themselves from discourses that state that Serbia had never been at war, or that it only “defended” itself. However, as Katarina Milićević (2013) uncovered, such a discourse is still powerful and expressed by some right-wing parties. They continue to justify war crimes committed during the 1990s as an inevitable side-effect of a “defensive war”, pointing to the suffering of the Serbian people in the Second World War. Unfortunately, these voices are not included in the sample.

### **Politicians’ assessments of REKOM**

The interviewed politicians, in general, appreciate the idea of a regional fact-finding mechanism. The interviewees in Croatia largely endorse the REKOM initiative (although most of them have only a rough idea of its purpose, see Dvornik 2013). Representatives from left- and right-wing parties, and followers of both liberal and collectivist approaches share the opinion that a regional commission could make a useful contribution by gathering information on missing persons and testimonies on war-related crimes. They suggest that a regional commission should complement the domestic legal institutions, provide incentives and push them to take up investigations and prosecutions. However, critical voices warn that such a commission should not be composed of NGOs alone, as facts established by NGOs might be too subjective and need to be verified by legal institutions.

Politicians in *Serbia* focus primarily on the need to trace and name the missing persons (see Katarina Milićević, 109; 113). They insist that REKOM should closely collaborate with the courts. They all support the idea of a regional commission, with the exception of one person who believes that setting up one commission for all countries would require too many compromises; this policy-maker suggests that instead, truth commissions should be installed in every country, and that intensive cross-border cooperation should start.

In *Bosnia*, opinions are more diverse (see Sejfića 2013), as politicians in the RS appreciate the regional concept of REKOM, but at the same time doubt that the persons and agencies that initiated the campaign are able to advance a process of dealing with the past. RS politicians want to see state institutions in the driving seat. Policy-makers from the Federation of BiH also welcome a regional mechanism (with the exception of one person who questions this approach given that not all countries have experienced war on their territory). They acknowledge the achievements of civil society actors but at the same time believe that NGOs alone cannot carry the process. Some interviewees suggest that scholars and legal experts should be the main drivers of the process, and preferably political independent personalities, in order to guarantee that it will not be dominated by a specific political agenda. Others also recommend that Members of Parliament and government officials should be included. Political representatives in both the FBiH and RS see REKOM’s function not only in the field of forensic and factual truth but also in advocating for *redress for the victims* of war-related crimes. Politicians from the RS in particular argue that in order to regulate compensation, state representatives have to be involved.

## 3.2. Interaction of different actors and linkages across levels

### 3.2.1. Cooperation among TJ protagonists

CSOs in all three countries point to some positive effects of their work on community-building and also to successful campaigning with other NGOs (see Petrović-Ziemer 2013b, 64-65). Networking on the community level is judged to be more effective than regional cooperation, although the latter is maintained for specific campaigns. But they are rather self-critical about their achievements with regard to alliances beyond the NGO sector. In all three countries, several CSO representatives believe that they were not able to communicate their agenda to a broader society. They also concede that they focused too much on collaboration with like-minded people, and on urban areas while neglecting rural regions. Human rights activists think that victims' associations were not sufficiently involved in community-building. Human rights activists and peace practitioners in all three countries suggest that there should be more systematic involvement of war veterans who can effectively support processes of dealing with the past as they are held in high esteem by society.

The field research reveals that while peace practitioners and human rights activists are eager to broaden the scope of cooperation, victims' groups and veterans' associations are more reluctant and network primarily among themselves. Victims' organisations from Croatia, Bosnia and Serbia have established stable cross-border cooperation on a regional level. Moreover, some veterans have engaged in cross-border/regional peace work, but in general, veterans' associations' regional networking activities cannot compare with those of victims' groups. Victims' organisations and veterans' unions alike still have difficulties in developing valuable partnerships with other CSOs, and vice versa. Cooperation between these associations and peace practitioners and human rights activists is the exception rather than the rule. Victims' organisations in all countries maintain close cooperation with international and domestic legal institutions and Commissions for Missing Persons.

Local CSOs have established diverse forms of cooperation with international actors, ranging from close partnerships that include exchange of expertise, up to more formalised collaboration that is largely limited to financial support (see Petrović-Ziemer 2013b, 67). CSO representatives from all three countries criticise the fact that international funding strategies often focus on short-term projects and do not sufficiently consider the non-linear and long-term dynamic of peacebuilding. CSOs complain that many donors apply efficiency criteria that aim to measure short-term success and do not enhance self-reflection, learning and adjustment of strategies. They suggest that local and international actors should hold more strategic discussions that reflect the dynamic of peacebuilding in a realistic manner, and ensure that programmes are shaped in line with social needs. Furthermore, CSOs recommend that international actors should carefully assess past experiences, in order to better coordinate future grant-making; in particular, they should learn from failures in Bosnia where, according to the interviewees, funds have been wasted, partners were not selected appropriately, and civil society organisations were overloaded with unrealistic expectations regarding their capacities (in a period when state institutions were considered obstructive and international agencies shifted the focus to CSO actors, seeing them as agents of change).

International actors in all three countries acknowledge the contributions of CSOs (see Fischer 2013a, 85). They are convinced that their work has substantially contributed to fact-finding, war crimes documentation, and court monitoring. In *Croatia* and *Serbia*, international actors maintain stable cooperation with CSOs that engage in monitoring of



war crimes trials and supporting victims/witnesses. International actors also positively acknowledge the contribution of CSOs to dealing with the past. But some interviewees in Serbia are ambivalent in their assessments of the cooperation among CSOs in the context of the REKOM campaign (Fischer 2013b, 133-135). They assert that some of the lead agencies lack transparency and diplomatic skills in their actions and therefore are not backed by wider society.

Several representatives of international NGOs report that their engagement focuses more on partnerships and joint activities rather than funding, which sometimes disappoints local CSOs who expect that each international agency will offer financial support. For the international actors, a particular challenge is to shape cooperation in such a way that it will enhance sustainability and not end up in long-term dependency. From *Bosnia* in particular, international actors report that the external funding has reduced CSOs' individual initiative and that many of these have adapted their agenda to donors' expectations and often stop working on these issues once the funding ends. International actors believe that this is a hindrance to effective networking and contributes to a credibility gap (i.e. the problem that CSOs lack acceptance in society). Furthermore, the international interviewees observe that strong competition for resources limits cooperation among civil society actors.

Although they voice a great many critical remarks, the international interviewees are convinced that CSOs need to be supported in the future too. They believe that initiatives on the grassroots level of society are needed as a counterweight to ethno-nationalism in all countries of the ex-Yugoslav region. However, international interviewees from Serbia recommend that support should not be limited to the professionalised NGO sector: they believe that there should be a stronger focus on academics and journalists, who are more critical towards the political mainstream and are open to debating alternatives, and therefore deserve much more support.

Furthermore, stable forms of cooperation have been established among the Commissions for Missing Persons and the legal institutions. Commissions for Missing Persons cooperate on a daily basis with legal institutions and victims' organisations (families of the disappeared) both on a local and regional level (Petrović-Ziemer 2013a, 42). ICTY officials assess the cooperation with the domestic courts as very effective (although marked by conflictive issues, one example being the practice of "in absentia" trials), and vice versa (although the latter are not entirely convinced of the need for the reform of their previous practices). The cooperation between the war crimes chambers in all three countries has significantly improved in the past few years (see Petrović-Ziemer 2013a; Fischer 2013a), and the prosecutor's offices in Croatia and Serbia even managed to base their collaboration on an official agreement that regulates the exchange of evidence on war-related crimes. In contrast, cooperation with and among the courts in Bosnia is seen as less effective. TJ protagonists report that the fragmentation of the judicial institutions reflects the political divide and hinders effective in-country and cross-border cooperation.

### **3.2.2. Linkages across levels**

In general, TJ protagonists from all actors' groups (legal and fact-finding institutions, international actors, and civil society organisations) agree that activities for dealing with the past are needed, both on the political level and on the interpersonal, small-group level. Indeed, some cooperation has developed across different levels and actors' groups. In all three countries under review, human rights activists and victims' associations maintain contact with the police and legal institutions (see Petrović-Ziemer 2013b, 66). The same applies to several peace groups that engage in war crimes monitoring and assist victims.

Interviewees from Bosnia very much appreciate the cooperation with the ICTY's outreach office. Although several of them express some disappointment with the work of the domestic courts in the region, CSOs are committed to supporting their work as well.

Close relations exist between victims' associations and the Commissions for Missing Persons which were established as state institutions in the 1990s. It is reported that this cooperation is based on regular regional meetings and is helping to establish an understanding that there are victims to be mourned in all constituencies involved in the war(s) (Petrović-Ziemer 2013a, 42). Victims' organisations also closely cooperate with the courts and prosecutors' offices in all three countries. The field research reveals that victims' groups and veterans' unions began to engage in close cooperation with state institutions right after the war, while peace practitioners and human rights activists have focused exclusively on international actors rather than cooperation with governments in the region (see Petrović-Ziemer 2013b, 64-66). As CSO activists further outline, the cooperation with governments, parliaments and local authorities has improved today, if compared to the situation right after the war. In all three countries, diverse forms of cooperation have been developed, and CSOs assess the cooperation with local authorities in smaller municipalities as very productive. But activists in all countries still believe that many civil society actors still have negative attitudes towards politicians and that they need to find a way to better cooperate with governments, parliaments, and state institutions, in order to advance policies for constructively dealing with the past.

While CSOs in *Croatia* and *Bosnia* report that their cooperation with authorities is slowly advancing, reports from Serbia show that the relations between civil society and state institutions remain distant in this country. CSOs consider the government led by the Democratic Party (DS) and the Socialist Party of Serbia (SPS) to be more trustworthy than former governments, but a high degree of distrust still marks their attitudes towards governmental institutions (see Petrović-Ziemer 2013b, 66-67). All interviewees from Serbia confirm that they cooperate very sporadically with state institutions as many government officials see NGOs merely as service agencies to carry out specific, predefined tasks. CSOs that engaged for refugee return to Croatia and Bosnia report, for instance, that this was obstructed by authorities in Serbia. Despite these negative experiences, they are fully aware that successful advocacy work for vulnerable persons and minorities very much depends on close cooperation with state institutions.

International actors also express ambivalent assessments of the cooperation with governments and authorities in the region. Cooperation with governments in all three countries on war crimes prosecution has significantly improved in the past five years, according to IGO representatives (see Fischer 2013a, 82). In terms of cooperation with the ICTY, the government of Bosnia-Herzegovina has an excellent record, and the performance of the Croatian and Serbian governments has also improved. This development is seen as a consequence of conditionality and pressure from the European Union. The cooperation with government institutions on domestic TJ programmes is also positively assessed. This applies in particular to the Action Plan for War Crimes Prosecution adopted by the government of Croatia, and the Strategy for Transitional Justice adopted by the BiH Council of Ministers, whose purpose is to address judicial reforms, reparations, support of victims and veterans and reintegration of vulnerable persons. At the same time, international actors emphasise that the ambitious elements of the Bosnian TJ strategy can only be implemented if constitutional reform is completed in this country; at present, different bodies of legislation exist in the two entities that would pose a serious obstacle to most of the proposals agreed upon during the consultations facilitated by UNDP.

In *Serbia*, international actors report on good experiences of cooperation in internationally driven education initiatives together with the Ministry of European Integration and the Ministry for Human Rights. Some progress has been made with regard to the use of new history books for primary schools. Their publication was supported by an international organisation and generally rejected by the Ministries of Education throughout the region, but recently accepted by authorities in Serbia and officially recommended by the Ministry of Education. However, the interviews with international actors reveal that the cooperation with authorities and governments is still facing a great many difficulties in all three countries, especially when it comes to issues related to history teaching. They are convinced that a more pro-active approach by authorities is needed to achieve more openness to different views on the past in the classrooms.

Furthermore, international actors point out that the cooperation with governments and local authorities on refugee return and solutions for IDPs faces many obstacles (see Fischer 2013a, 82). Improving life for refugees and returnees and for the specific group of IDPs who do not want to return and still live in uncertain conditions is seen as crucial. International interviewees report that it is difficult to convince authorities and governments in the region to cooperate and search for solutions besides return. This applies first of all to Bosnia, where authorities of the Federation, after a long period of pushing for return and refusing to assist people in their current places of residence, now need to shift their policy by closing the remaining collective accommodation and offering possibilities for the integration of IDPs and refugees in the respective communities. This applies also to Serbia, where refugees from Croatia and Kosovo face a similar dilemma. International actors see an urgent need to push all governments to cooperate on solutions in order to avoid increasing frustration among refugees and IDPs, which in their view forms a constant source of political radicalisation and destabilisation.

### **Political parties' willingness to cooperate with civil society**

In *Bosnia*, party representatives in the FBiH believe that civil society plays an important part in the process of reconciliation and that there is a need for cooperation with CSOs on issues of transitional justice (see Sejfija 2013). In contrast, politicians in the RS express more sceptical opinions, arguing that some of the NGOs that are drivers of current TJ initiatives lack credibility and damage the process. They insist that processes of dealing with the past need personalities of high moral credibility and political independence. Interestingly, most of the interviewed politicians in Bosnia believe that the main responsibility for initiatives on dealing with the past lies with the judiciary, scholars, and civil society. Very few express the view that parliaments and government officials have an obligation to deal with these issues. In fact, as the politicians report, no political party has explicitly mentioned issues of dealing with the past in their programmes, and they do not believe that these issues need special elaboration in their strategy documents.

In *Croatia* the interviewed politicians also recognise civil society organisations as important drivers of change (see Dvornik 2013). They emphasise that political actors and the judicial institutions alike need impetus from CSOs and that they should complement the work of the courts by documenting facts and monitoring trials. The interviewed politicians in *Serbia* emphasise that initiatives both by policy-makers and CSOs are needed (see Milićević 2013), but civil society actors should put pressure on the state to develop constructive policies for dealing with the past. They also stress that collaboration between CSOs, state institutions and parliaments is needed.

Even though all political representatives consider dealing with the past and peacebuilding to be crucial, their respective parties have not determined explicit policies for such purposes. Furthermore, several politicians from Serbia stress that progress in this field can only be achieved by the societies in the region themselves; nevertheless, international assistance is still seen as necessary in the future.

### **3.3. Further perspectives and challenges**

#### **Fostering institutions' capacities for accountability and the rule of law**

In the countries under review, many measures have been taken in the field of retributive justice, compared to other post-war societies. The Dayton Accords and the International Tribunal in The Hague paved the way for legal accountability. However, several thousand war crimes cases remain to be investigated by local courts in Bosnia, Serbia and Croatia, including cases related to killing of civilians during and after the military operation "Storm".<sup>49</sup> Fostering the capacities for war crimes prosecution, and thereby building on the achievements of the Commissions for Missing Persons, international and domestic courts, remains an important challenge in future too. First of all, there is a need for intensified efforts to resolve the pending cases of war-related disappearance. The question of how to design such solutions will very much depend on the political will of the governments in the region, but also on the willingness of international organisations to provide funding for this process. Secondly, there is a need to build the courts' capacities for prosecution and regional cooperation. Witness protection systems need to be developed and installed in cross-border cooperation. Victims and witnesses who have to testify at the courts in other countries need police protection before, during and after the trials, both in their home country and at the places where they testify (see Petrović-Ziemer 2013b). Effective witness protection is expensive and will require international support.

Strengthening the rule of law and setting up a functioning police are as important as providing the domestic war crimes chambers with the necessary staff, resources and equipment. It is not surprising that reports by the Commissioner for Human Rights of the Council of Europe (CoE) still insist that authorities must investigate and prosecute threats and intimidation against witnesses and ensure witness security in accordance with the recommendations of the Parliamentary Assembly of the Council of Europe (Resolution 1784/2011) that regards the protection of witnesses as a "cornerstone for justice and reconciliation" in the Balkans.<sup>50</sup> Effective and reliable police capacities are needed to guarantee that the courts' decisions can be implemented. Providing these state institutions with reliable staff and expertise is a prerequisite for effective accountability.

Finally, an ongoing challenge is to find appropriate forms of information and dissemination of the evidence established by the domestic courts and fact-finding mechanisms. As outlined by Dvornik (2013, 130), profound research on war events, causes and dynamics, and good media reporting on the courts' findings and decisions are preconditions for awareness-raising: "TJ institutions (...) need transparent and well-crafted information. Policies and editors should instruct journalists to investigate further, beyond what the prosecutions and defence present in the courtroom. At the same time, we have to be aware that provoking open public debates cannot be reduced to PR strategies and proper

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49 According to OSCE current estimates indicate that Bosnia alone has 1,300 cases involving some 8,000 suspects in its backlog of war crimes cases, see <<http://www.oscebih.org/Default.aspx?id=70&lang=EN>>. Around 1,500 open cases remain to be processed in Croatia, see <<http://www.osce.org/zagreb/57732>>.

50 See <<https://wcd.coe.int/ViewDoc.jsp?id=1904893>>.

media coverage. Efforts by historians, lawyers, educational authorities and teachers are needed as well to contribute to constructive processes of dealing with the past” (Dvornik 2013, 130).

Beyond strengthening the domestic capacities for prosecution of war-related crimes, more needs to be done in order to complement the punitive approaches with *measures for restorative justice* and *restorative forms of truth recovery*.

### **Establishing restorative forms of justice**

In his address before the UN General Assembly on 9 October 2009, ICTY President Robinson concluded “that the international community has forgotten [the victims]. Currently, there is no effective mechanism by which victims can seek compensation for their injuries, despite the fact that their right to such compensation is firmly rooted in international law”.<sup>51</sup> He emphasised that compensating victims of crimes in the former Yugoslavia should complement the Tribunal’s efforts, as “justice is not only about punishing perpetrators but also about restoring dignity to victims by ensuring that they have concrete means to rebuild their lives” (ibid.). He called upon the General Assembly to support the establishment of a claims commission.

Compensation and finding solutions for refugees and internally displaced persons forms another challenge. Regional cooperation on these issues has been strengthened through various declarations by governments in the region and facilitated by international actors.<sup>52</sup> In this context, it is noteworthy that at the time of finishing this report, international donors met at a conference in Sarajevo organised by the governments of BiH, Croatia, Serbia and Montenegro and pledged 300 million euros to help refugees in the Balkans to find durable solutions. The money supports a programme to provide homes for 74,000 displaced people and proper housing and assistance to the tens of thousands who are still living in poverty and dire conditions.<sup>53</sup>

The field research revealed that more than 15 years after the Dayton Accords that ended the war in Bosnia, not much has been done in terms of compensation of victims of war-related crimes, either by international or by local institutions. National TJ strategies so far have not strongly focused on this issue. If mentioned at all, the issue of reparations remained mostly on the level of announcements. It is therefore not surprising that many of our interviewees insisted that it is time to proceed and take practical initiatives to provide redress for the civilian victims of war crimes. A challenge is to convince policy-makers that this needs to include all victims, regardless of their sex and “ethnicity”, and that this requires social policies and opportunities for psychosocial rehabilitation for war invalids, refugees and displaced people, and families of missing persons.

51 See <<http://www.icty.org/sid/10244>>.

52 The Sarajevo Declaration of 31 January 2005, the Belgrade Joint Communiqué of the Governments of Serbia and Croatia of 25 March 2010, and the Belgrade Declaration of 7 November 2011.

53 See <<http://www.unhcr.se/en/print/media/news-articles/artikel/faeb953eff2462123f18bc55d8fad581/donors-pledge-more-than-300-million.html>>.

## Dealing with gender-specific violence and serving gender justice

Gender issues are on the agenda of local and international actors, as our field research revealed. International actors and local CSOs alike very much appreciate the fact that the ICTY has classified rape as a war crime, and that it established new standards and reformed court procedures with regard to sexual violence and gender-specific war crimes. It is reported that these norms have also informed the practice of the domestic war crimes chambers (see Petrović-Ziemer 2013a, 31). But international observers are convinced that the courts in the region still need to be much more sensitive to the special experiences of victims and witnesses of such crimes (see Fischer 2013a, 75). CSOs emphasise that women's groups in all three countries – together with international women's activists – were successful in pushing for rape to be classified as a crime against humanity (Petrović-Ziemer 2013b, 50). International representatives in Bosnia report that the film "Grbavica"<sup>54</sup> (by Jasmila Žbanić) together with NGO campaigns has addressed some of the taboos and helped to ensure that some compensation for raped women has been fixed in legal regulations (see Fischer 2013a, 86). However, compensation is still outstanding in many cases. Expectations were raised when the EU Delegation in Bosnia together with the UN and the Ministry of Justice and the Ministry of Human Rights announced that they would develop a strategy to support women in claiming reparations. But there are no indicators that the situation improved during the reporting period for this study.

In view of the lack of compensation for victims who have experienced sexual violence, and in particular in view of the poor living conditions for women who were raped during the war, both CSOs and international representatives point to major deficits with regard to gender justice. In this context, it is surprising that gender issues are not mentioned more explicitly by the interviewees in the context of REKOM. Thus, the *fourth hypothesis* – assuming that the supporters of REKOM expect a REKOM to cover this issue area – is not proven. Instead, after finishing the field research of this study, it became obvious that several women's groups in the region intend to address these issues via an additional initiative, proposing the establishment of a "women's court" for the countries of former Yugoslavia that should serve accountability not in a judicial but in a moral sense, following the example of the international Russell Tribunal. Using street arts and performance, women's groups from Croatia, Bosnia and Serbia have started a public campaign for such a symbolic truth commission that would deal with the violation of women's rights during and after the recent wars.<sup>55</sup>

CSOs also stress that addressing war-related gender-specific violence still faces a great many taboos. Women's groups in all three countries concede that they themselves had to

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54 The film awarded a Golden Bear at the 2006 Berlin Film Festival. It tackles the relationship between a Bosniak woman who was raped during the war and her teenage daughter. The film outlines the individual trauma as well as the existing taboos in society. Campaigns by the Association of Women of Srebrenica and Medica Mondiale could achieve that the Bosnian Parliament formally acknowledged raped women as "war invalids" and decided that they should receive compensation, similar to that payable to the men who fought in the war.

55 See <<http://kvinnatilkvinna.se/en/print/3795>>.

learn that the scope of assistance should be broadened: Although rape was committed more systematically against women, men (soldiers and civilians) also became targets of sexual violence in the wars of the 1990s (see Petrović-Ziemer 2013b, 61), and the impact of these various forms of violence on societies needs further analysis. We can therefore conclude that gender justice will remain a particular challenge for the implementation of TJ strategies on both a regional and a national level. In order to advance policies in this field, it is also necessary to overcome policies of unequal treatment of civilian and military war victims.

### **Support for trust- and relationship-building**

Initiatives for trust-building and relationship-building need to encompass *cross-border activities*, as well as bridge-building efforts *within the countries* in the region, and they need to put a particular focus on divided communities and on youth. As has been shown by the field research, improving relations between young people in the diverse countries of the former Yugoslavia is a particular concern. While those who experienced the war as adults still remember the cultural bonds (or even Yugoslav identities) from pre-war times, post-war generations have grown up with separate group identities and regard themselves as members of different societies. Therefore, initiatives that facilitate cross-border encounters and interaction between young people can help to create new relationships and question stereotypes. Many interviewees in this study have suggested that the “two-schools-under-one-roof system”, established after the war in Bosnia, should be reformed. This proposal sounds very reasonable but at the same time one has to take into account that lack of trust and persisting fears, as well as prejudices against the “others”, form important motivations for people to support and maintain this system. Just changing the system will not transform these perceptions.

However, the task of trust- and relationship-building in divided local communities and contested political structures requires specific approaches. Given that different constituencies construct separate identities, lacking knowledge of and cultivating many stereotypes about each other, learning about the “others” is definitely important. But finally, as the field research revealed, interviewees from all samples have stressed that a lack of security and economic perspectives also forms an important obstacle to reconciliation. Therefore, setting up legitimate and functioning state institutions *and* advancing economic development must form the basis for restoring trust and relationships in divided communities.

- **Learning in view of diverging memories: questioning exclusive forms of remembrance**

Given that memories have a strong influence on relationships and form an important part of a socially constructed understanding of reality, shaped by culture and learning, discourse and belief (Miall 2004), it is quite obvious that the attitudes of people and narratives of different constituencies in the region will not change over the short term, even if an excellent database on past events and effective fact-finding mechanisms are established.

However, memory is open to learning in the long run if the institutional and political framework is favourable and supportive of such a process. Learning processes that aim to promote acceptance or even empathy for different interpretations of the past can be enhanced either by cultural initiatives, or media productions, or formal and informal education.

International actors can support this with initiatives in the field of culture and peace education. A particular challenge is to provide spaces where different historical narratives and war experiences can be reflected on and discussed. Such debate might help to break down victim identities and support the search for more inclusive and alternative cultures of remembrance. Another challenge is to further develop and integrate elements of peace education in order to increase skills in nonviolent conflict transformation in formal and informal education for young people and adults. Such education needs to offer alternative forms of communication and interaction and, at the same time, to address identity formation: Offering alternative forms of identification beyond being victimised, beyond ethnic or religious belonging, and also beyond militarised masculinity.

- **Balancing resources of CSOs in TJ: War crimes monitoring vs. fact-finding**

International and local TJ protagonists are convinced that state institutions that are in charge of war crimes prosecution need to be carefully observed and monitored now and in future. CSOs and also several politicians suggest that international actors should continue to ensure at least a minimum of monitoring of legal proceedings and justice reforms in the respective countries. In contrast, international representatives suggest and express hope that civil society actors will take on this role (see Fischer 2013a, 78), emphasising their watchdog functions. Some international interviewees are concerned that the monitoring of war crimes trials might cease altogether or become a lower priority on the agenda of human rights activists, as these have started to focus much of their energies on additional TJ mechanisms, such as the campaign for REKOM. This campaign has illustrated that CSOs in the region are able to develop a variety of activities for dealing with the past and to set up effective networking activities across countries and diverse actor groups (peace groups, human rights organisations, including women's and youth groups, victims' associations and veterans' unions). However, the core group that drives the campaign consists of a small number of organisations and activists. A challenge is to further balance limited financial and human resources and expertise in the long run in a way which allows CSOs to stay involved in both the field of justice, providing monitoring of war crimes trials, and truth recovery, advancing fact-finding or story-telling activities in the scope of a REKOM. To avoid gaps, it will be necessary to forge effective alliances with independent



media and journalists, and thus establish a division of labour which allows both fields to be covered. During the REKOM campaign, the CSOs involved have already proved that they can set up such cooperation and have thus created a solid basis that can be extended in future. Trial monitoring will remain an important task for CSOs in particular in settings where international oversight has ceased, i.e. in Croatia, where OSCE ended its mandate by December 2011, and 677 murders of civilians in the context of the “Storm” operation have to be investigated and prosecuted by local institutions.

- **Developing civil society as a realm for top-down and bottom-up initiatives**

The field research revealed that there is continuous interaction among the courts in the region and that the cooperation of judicial institutions across countries has improved. The same applies to the work of the Commissions for Missing Persons (CMPs) that have also institutionalised regional collaboration. There is also close interaction and cooperation among victims’ associations and human rights activists, and all these groups also cooperate with the courts and the CMPs. Some interaction and cooperation have been observed between peace practitioners and human rights organisations (and in a very few cases, organisations combine both agendas), although this is the exception rather than the rule. There is also some ongoing cooperation among peace groups and veterans, and between peace groups and victims’ organisations. In this context, it is noteworthy that the campaign for REKOM has encouraged networking among CSOs across very diverse agendas and many countries in the region. This campaign therefore offers a great many opportunities for debate among different actors and within wider society. The question is whether it will maintain or even gain additional momentum and finally materialise as an institutionalised mechanism for documentation and dialogue on war events that is endorsed by the governments.

Initiated by local CSOs, the initiative for REKOM can be called a bottom-up initiative as it is intended to put pressure on policy-makers to establish a joint mechanism. It has received support from policy-makers in different countries, including presidents and prime ministers. In this context, grassroots initiatives have shown a remarkable potential to dovetail with initiatives at the top level. But REKOM – although enjoying broad support in the region – has yet to be operationalised and implemented. The news that on 8 May 2012, Croatia’s President Josipović received a delegation from the REKOM coalition and announced that he will urge presidents of other countries in the region to delegate legal experts to form a joint regional team to examine each country’s constitutional and legal options for the establishment of a REKOM sounds more than encouraging.<sup>56</sup> At the same time the course that was announced by Serbia’s new Prime Minister Ivica Dacić seems far more ambivalent.<sup>57</sup> It remains to be seen how neighbourly relations and prospects for political reconciliation will develop under this government. It is also an open question whether the impetus and incentives that stem from the process launched by the promoters of a REKOM will link up to a joint initiative and long-term cooperation between political and civil society actors which advances dealing with the past processes and enhances political as well as cultural reconciliation in the region.

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56 RECOM Initiative !Voice, 7/2012, 1.

57 Presenting his government programme on 27 July 2012, he said: "If they say the word Balkans means blood and honey, there has been enough blood. It's time that we tasted honey. Serbia is extending the hand of reconciliation to all. Let's not dwell on the past, let's think of the future. We want good relationships, with mutual respect of the independence and territorial integrity of all states".  
<[www.aljazeera.com/news/europe/2012/07/2012726204732785480.html](http://www.aljazeera.com/news/europe/2012/07/2012726204732785480.html)>.

It can be concluded that initiatives at the political level and at the grassroots level still do not dovetail in a way that creates strong synergies, and thus it is questionable whether these activities can actually be captured with the terminology of “bottom-up” and “top-down” approaches, or are just undertaken as parallel endeavours. There are only occasional points of contact between them, mainly facilitated by international funding activities.

Furthermore, it can be concluded that apart from internationally facilitated ad hoc consultations (i.e. in the development of a national TJ strategy in Bosnia), there is not much institutionalised cooperation among CSOs and political actors. In all three countries under review, CSOs still have reservations about collaboration with government institutions and local authorities, although many of them express a belief that such interaction is necessary in order to advance dealing with the past and peacebuilding. At the same time, many politicians, although acknowledging the need for grassroots activities, do not become actively involved in cooperation and partnerships with CSOs. While CSOs actively strive for new alliances, politicians do not see themselves as having an obligation to take an active role in this field. It is noteworthy (and contradictory) that, although representatives of the political parties in all countries see a need for dealing with the past (and many of them even claim a leading role for state institutions in a REKOM), none of the parties has outlined explicit measures, aims or policies in their programmes, according to the analyses presented by Katarina Milićević, Ismet Sejfića and Srđan Dvornik.

For civil society to form a realm for top-down and bottom-up initiatives (White 1996, 186; White 2004), it is important that CSO activists acknowledge that networking across levels and establishing close working relations with alliance partners in parliaments, governments and local authorities are as important as horizontal networking on the grassroots level. At the same time, policy-makers need to learn that efforts for trust-building in the region cannot simply be delegated to civil society initiatives but that they need to take measures that link up with these efforts and provide the framework for advancing peacebuilding and reconciliation at the grassroots level. The field research reveals that most of the interviewed politicians acknowledge that there is a need for reconciliation between nations and societies in the region. At the same time, they continue to see trust-building and relationship-building mainly as a challenge for civil society actors rather than a task for themselves. It is therefore important to raise awareness that restoring trust and relationships must be an explicit item on their own agenda and programmes. It is important to sensitise politicians to the fact that reconciliation needs both cultural and political approaches and cooperation across levels. Although it is not very likely that ethno-nationalists can be won over to such an endeavour, there are moderate and open-minded actors in many political parties who offer the potential for cooperation. Both civil society actors and politicians operating in governments, parliaments and local authorities need to create opportunities for exchange in order to overcome mutual mistrust and advance joint learning.

- **Continuing but re-focusing international support**

As earlier policy evaluations have outlined, in many areas where progress has been achieved, this was only as a result of international pressure, and such pressure will be necessary in order to transform the country into a self-sustaining state: “It goes without saying that the political elites of the three constituent peoples in that country would be even less willing to accept Bosnia and Herzegovina as their common state if there was no prospect of EU membership” (Calic 2005, 12).

In order to advance Bosnia with regard to the establishment of the rule of law, the European Commission established a “Structured Dialogue on Justice” in June 2011 within the framework of the Stabilisation and Association Agreement (SAA) with BiH, aiming at a participatory process to enhance reforms of the justice sector and develop and consolidate an “independent, credible, effective, efficient, impartial and accountable judiciary”.<sup>58</sup> With regard to the National War Crimes Strategy, the Commission expresses “concern about the lack of proper implementation of most strategic objectives”, recommends that sufficient funds and human resources be allocated to the Prosecutor’s Office of BiH to properly perform its task related to exhumations, and urges the Court of BiH and Prosecutor to address problems related to delays of proceedings.

Finally, assisting the antagonistic political actors to establish a process that enables them to find a way for modifications of the constitutional framework remains a crucial challenge for international actors in Bosnia-Herzegovina. International support is needed to facilitate a process that enables the Dayton constitution to be brought into line with the standards required by the Council of Europe in a way that can be accepted by all constituencies. Such dialogue must include all relevant political parties and as many actors from society as possible (i.e. peace practitioners and human rights activists, women’s groups, victims’ organisations, veterans’ associations, labour unions, media organisations and faith communities). Such a process should aim to increase the efficiency of state institutions in serving the needs of the citizens, no matter of their “ethnic”, or cultural, or religious affiliation. Movement in this sector is crucial for a constructive process of dealing with the past in this country. As the field research revealed, setting up legitimate and functioning state institutions that guarantee the rule of law *and* advancing economic development is a must and forms the basis for restoring trust and relationships, given that interviewees from all samples have stressed that a lack of security and economic perspectives forms an important obstacle to reconciliation.

However, apart from this, Bosnia’s crucial problem remains that relevant parts of the population and policy-makers who define themselves as Croat and Serb do not – or do not fully – identify with Bosnia-Herzegovina as a nation-state. It has to be taken into account that people continue to insist on separated political or educational institutions due to deep rooted fears related to the war and memories of violent events. Nevertheless, some normalisation and cooperation or even gestures of rapprochement take place on a daily life level in local communities, and there is a chance for building on such steps in order to bridge the existing borderlines. The task of trust- and relationship-building in divided local communities and contested political structures requires specific approaches. Given that different constituencies construct separate identities, lacking knowledge of and cultivating many stereotypes about each other, learning about the “others” is definitely important. However, in order to foster this kind of learning, opportunities for cooperation in normal life situations (school, workplaces and cultural events) are needed, rather than additional dialogue projects that aim to facilitate personal encounters between individuals from

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58 See Report from the Second Meeting on 10-11 November 2011 and Recommendations from the European Commission at <[http://www.delbih.ec.europa.eu/documents/delegacijaEU\\_2012022712224213eng.pdf](http://www.delbih.ec.europa.eu/documents/delegacijaEU_2012022712224213eng.pdf)>.

different “ethnic” or “religious” constituencies in seminars. However, training sessions on conflict transformation and dealing with the past can make an important contribution to sensitising multipliers to appropriate ways of addressing different views on the past and war experiences, and help them to actively counter ethno-nationalist stereotypes and exclusive policies of remembrance in educational institutions and media.

Civil society is still very fragile in the region (see Dvornik 2010; Stubbs 2007; Belloni and Hemmer 2010). It is apparently more developed in Croatia and Serbia, and remains quite fragmented in Bosnia, where a huge number of NGOs emerged as a consequence of international funding, but very few sustainable civil initiatives and structures have developed (see Sejfija 2008; Fischer 2010). Nevertheless, numerous efforts for cultural reconciliation are driven by local civil society actors, mostly with the support of international actors, both on a local community level and on a regional level. Support for civil society will remain an important challenge. Pressure from the grassroots level will be needed to push state institutions and local authorities to take measures in the field of TJ, inclusive forms of memorialisation and gestures of apology. Furthermore, civil society initiatives are needed to monitor accountability mechanisms. However, it is essential that international actors particularly support initiatives that aim to promote networking and dialogue across levels, in order to increase the likelihood that bottom-up and top-down approaches will meet. Moreover, programmes have to be balanced in a way that supports both *regional initiatives* for documentation, awareness-raising, peace education and dialogue on the past, and *activities in local communities*.

At the same time, international support programmes need to be guided by realistic assumptions about the potential of grassroots peacebuilding. Considering CSOs as drivers of change in a setting where state institutions and political structures are contested, or where the top level lacks any will for reconciliation, means overloading CSOs with unrealistic expectations. CSOs can neither make up for failed international strategies of state-building nor compensate for a lack of commitment by state institutions and policy-makers. But CSOs have an enormous potential to support processes of trust- and relationship-building from the bottom-up, and thus foster steps for political reconciliation that are taken on the political level (and vice versa). However, where a political will for such steps does not exist, CSO activities are still most important as they at least open niches and maintain spaces for alternative discourses. Experiences from other post-war societies show that processes of political reconciliation and societal dialogue on the past are mostly a consequence of initiatives undertaken by civil society actors, critical historians and social scientists, and often also by individuals who take courage and commit themselves to challenge the mainstream cultures of silencing and denial.<sup>59</sup> These initiatives often unfold a strong symbolic power and such actors deserve support in order to ensure that their activities are sustainable.

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59 „Er hat die Ritualisierung der Erinnerung durchbrochen“. [“He has broken through the ritualisation of remembrance”.] Peter Steinbach comments on Saul Friedländer, online at <<http://www.dradio.de/dkultur/sendungen/thema/1889935/>> (accessed 16 October 2012).

### 3.4. Policy Recommendations

#### 3.4.1. Recommendations for civil society organisations in the region

In general, it is important that CSOs balance their resources and determine the proportion of their capacities which can be spent on the different aspects of dealing with the past.

In particular, they should

- avoid a situation in which spending on fact-finding leads to a decline of war-crimes monitoring activities
- search for effective divisions of labour with independent journalists in order to cover “watchdog” functions in both fields
- be aware that besides regional activities, initiatives for inclusive remembrance on the local level are needed, given that numerous atrocity sites are still waiting to be marked (this applies particularly to Bosnia)
- take into account that establishing inclusive cultures of remembrance needs to be based on participatory long-term processes that involve victims, authorities and neighbours in local communities, as well as experts from the arts and academia.

Members and supporters of the REKOM coalition should insist that a regional mechanism for fact-finding is established in a setting that secures the full commitment of all institutions that are relevant for TJ in the countries of the former Yugoslavia.

In particular, they should

- insist that a REKOM gets full access to the archives of the courts and police in the member countries

- push for a regional commission that will not only focus on forensic, factual, dialogical and social truth, but also includes elements of justice: pushing for redress – compensation for victims of war crimes in the former Yugoslavia
- extend the scope of their discussion by involving experts from regions that have gone through experiences with truth commissions, in order to arrive at realistic expectations and pragmatic assessments of the potential and limits of these mechanisms.

Beyond this, peace practitioners and human rights activists should extend their scope of collaboration.

In particular, they should

- pay specific attention to the potential of young people in dealing with the past and peacebuilding, search for more systematic forms of addressing issues of the past in peace education and facilitate cross-border encounters in order to advance trust-building and questioning of stereotypes
- intensify cooperation with war veterans' associations and assess the potential of involving victims' organisations for inclusive memorialisation
- intensify collaboration with academics (i.e. in the fields of history, law, sociology, psychology and political science) to explore how historical facts and different views on the past can be balanced in formal and non-formal education
- foster cooperation with artists, film-makers, education experts and journalists, in order to advance creative and inclusive forms of remembrance
- search more systematically for alliance partners in parliaments and political parties who share their aims and serve as multipliers of their agenda.

#### **3.4.2. Recommendations for international actors**

International actors should continue to assist the governments in order to help establish a record of war-related deaths and disappearances and close individual case files.

In particular, they should

- urge state institutions and local authorities in all countries to resolve the pending cases of war-related disappearance, in accordance with the Geneva Conventions, the International Convention for the Protection of All Persons from Enforced Disappearance, and the European Convention on Human Rights
- provide the funds and expertise, and monitor the process, in order to accelerate the search for grave sites, exhumations and identification of human remains
- push for more intensive regional cooperation and information exchange on these issues.

International actors should assist the governments in implementing transitional justice mechanisms at the national level and support cooperation on a regional level.

In this context, they should

- ensure that the legal institutions in all countries are provided with the necessary means to work effectively and continue to monitor national and regional strategies for transitional justice
- ensure that the war crimes chambers in the region are equipped with the necessary expertise, staff and resources for investigation, prosecution and victims' protection
- support efforts by domestic courts to establish cross-border systems for regional cooperation in all the above-mentioned areas
- secure a minimum of international monitoring and control of TJ institutions via the OSCE (in BiH and Serbia) and EU institutions (in Croatia)
- continue to push for reforms that strengthen the rule of law and reliability of police institutions in monitoring the implementation of the law
- take measures to increase security for minorities
- support domestic TJ institutions in developing convincing information policies and cooperation with media and investigative journalists
- continue to support independent journalists and media in order to provide unbiased reporting on war crimes proceedings
- assist domestic governments, legal institutions and CSOs in advancing judicial and non-judicial TJ strategies
- continue to support CSOs that monitor war crimes proceedings and implementation of TJ strategies.

Furthermore, international actors should take action to support restorative forms of justice and improve the situation of those whose life perspectives were most severely affected by the war.

In particular they need to

- urge the authorities in all three countries to provide redress for the victims of war crimes and crimes against humanity; measures need to be taken to ensure reparations for victims of war-related crimes and their families in line with the principles established by international law, to provide social protection and to overcome unequal treatment of civilian and military war victims
- assist the governments to establish the legal conditions for compensation of victims of war-related crimes, with a specific focus on gender justice: women who have been raped and all victims of gender-specific and sexual violence. Furthermore, they should assist legal institutions to develop psychological treatment programmes for convicted war criminals in order to facilitate their reintegration into society after release
- continue their pressure on governments and authorities in the region to respect the rights of refugees and displaced persons, to conclude pending cases of property restitution and find durable solutions for refugees and IDPs besides return for those who need assistance at their current place of residence
- help to provide the funds for programmes aimed at integration and rehabilitation of the above-mentioned vulnerable groups
- ensure that once the criteria for EU accession and the human rights standards demanded by the Council of Europe are fulfilled, the accession process for the three countries is accelerated and accompanied by strategies that promote economic development and offer prospects for young people in particular in all countries of the region, in order to create opportunities for regional integration.

International actors should redefine their agenda and explicitly include steps for social and dialogical truth, trust- and relationship-building in their programmes.

In particular, they should

- support a REKOM if it comes into being; although decisions on the mandate and design of such a mechanism is a matter for local actors, international actors



should monitor the process and push for a pluralist composition that involves legal and judicial experts, historians, journalists, experts from state institutions, parliaments and civil society organisations

- help to foster initiatives that aim to promote inclusive cultures of remembrance, also at the local level (such as oral history projects, acts of remembrance in municipalities and marking of atrocity sites)
- assist critical intellectuals and academics in their efforts to investigate the war events of the 1990s and previous periods. International actors should provide resources for independent “think tanks” and discussion forums where experts from universities and private research institutions can debate and further develop research on these issues
- continue to support cultural and arts initiatives (i.e. films, theatre, music and literature) in the field of dealing with the past
- take into account that complex discourses on victimhood and victim identities exist in the region that are used for diverse political purposes
- see themselves as facilitators and provide forums for debate where different views on the past can be exchanged, and where discourses that build on collective victimhood and collective blames or relativisation of crimes can be deconstructed
- continue to support initiatives to develop alternative school textbooks in the region, as well as training for teachers in using such material
- assist initiatives that transfer knowledge on the potential of non-violent engagement and resistance in order to establish alternative forms of remembrance of recent history and national identity.

Furthermore, international actors need to modify policies in Bosnia-Herzegovina.

In particular, they need to

- facilitate a process that enables the constitution to be brought into line with the standards required by the Council of Europe. Such a process needs to involve all relevant political parties and as many civil society actors as possible (peace practitioners and human rights activists, women’s groups, victims’ organisations, veterans’ associations, labour unions, media organisations and faith communities), in order to ensure that the outcome can be accepted by all relevant stakeholders and different constituencies
- support reforms of the education sector in Bosnia, push for a revision of the “two schools under one roof” system, and facilitate a transformation towards inclusive, pluralist and participatory forms of teaching to counteract ethnic segregation.

In their engagement in the Balkans, international actors should pursue inclusive strategies.

In particular, they should

- avoid a discourse that attributes collective blame for war events; interpretations that hold entire nations “guilty” (or “more guilty” than others) do not match the complex dynamics of the 1990s and undermines dealing with the past processes in the region by fostering stereotypes
- highlight that in all three countries of the region, people engaged in peace movements during the 1990s, and take initiatives to make such actions more visible.

International actors should critically evaluate their own engagement for peacebuilding in the Balkans during the past decades to identify successes and learn from mistakes.

In particular, they should critically

- reflect on the consequences and unintended side-effects (so-called collateral damage or spill-over effects) of military interventions
- acknowledge the limits and contradictions of political power-sharing institutions in multicultural societies
- assess policies in the field of refugee return and compensation
- analyse the effects of separated systems of education.

## 4. Sample chapter:<sup>60</sup> Analysis of Interviews with TJ Institutions: ICTY, Domestic Judiciary and Commissions for Missing Persons (by Lj. Petrović-Ziemer)

A total of 20 interviews were conducted with representatives of the ICTY's regional outreach offices, the domestic courts and prosecutor's offices, and the Commissions for Missing Persons (CMPs) in Bosnia, Serbia and Croatia during the period October 2010 to March 2011. The ICTY regional outreach offices, which are located in Sarajevo, Zagreb and Belgrade, aim to serve as a liaison mechanism that enhances cooperation between the Hague Tribunal, state institutions and societies in the region. Another goal is to increase awareness of the work and achievements of the ICTY in the region. Representatives of domestic legal institutions state that providing fair trials in war crimes prosecution and concluding as many cases as possible in the near future is a central goal for them, as this will also help to restore the social trust in justice, delegitimise and prevent revenge, and prepare the ground for inter-ethnic dialogue and understanding. In accordance with their official mandates, the Commissions for Missing Persons aim to search for and register missing persons in cooperation with the legal institutions and police, and by exchanging information with the commissions in other countries. They are actively involved in exhumations of individual and mass graves and are responsible for the identification and storage of human remains.

### 4.1. Relevance and dynamics of dealing with the past

Asked why they think that societies in the region should deal with the past right now, representatives of the Hague Tribunal, domestic courts and prosecution offices agree that impunity cannot be tolerated, given the gross human rights violations and atrocities committed in the war(s) of the 1990s. They insist that those who are responsible for such crimes have to be punished and prevented from holding high-ranking political positions. It is emphasised that uncovering individual responsibility avoids debates on collective guilt and can thus ease the painful task of facing the past. Representatives of the domestic legal institutions see war crimes prosecution also as a prerequisite for re-establishing a moral value system in the region of the former Yugoslavia.

Regarding the dynamics of dealing with the past in the region, the interviewees outline some positive developments. They are convinced that right after the end of the war(s) in the 1990s, citizens as well as governments and parliaments did not show much willingness for war crimes prosecution. Meanwhile, significant political changes towards democracy have taken place and at present societies show increasing willingness to face the past, as representatives of the domestic courts and prosecution offices in all three countries emphasise. At the same time, ICTY representatives point out that a large part of the population is not yet willing to accept judgments that prove the guilt of individuals belonging to their respective national community.

The representatives of the Commissions for Missing Persons (CMPs) point out that, as a legacy of the wars, in all three countries persons are missing whose fate has yet to be determined. As long as this remains an unsolved matter, they see a risk that this

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60 This section presents a reprint of Petrović-Ziemer 2013a.

uncertainty will contribute to increasing conflicts or social tensions. Therefore gathering information on the circumstances of disappearances, detecting mass graves, and the exhumation and identification of human remains are an ongoing challenge. Collecting data on these issues also provides the courts with evidence. Furthermore, the interviewees are convinced that this form of truth recovery assists the societies involved in the violent conflicts of the 1990s in coming to terms with their past in a broader sense. The representatives of the Commissions also agree that accountability is important as well, and that punishment of the perpetrators is a central component of justice.

## **4.2 Potential, legitimacy and acceptance of TJ mechanisms**

### **4.2.1. Assessments of the work of the ICTY**

#### **Contributions and achievements**

All interviewees agree that the establishment of the ICTY in 1993 made an important contribution to dealing with the past in the Western Balkans. Representatives of the Commissions for Missing Persons in all three countries underline that the ICTY has taken over the responsibility for war crimes prosecution at times when the domestic courts have not been prepared to perform this task. Apart from establishing accountability, the Hague Tribunal's trials have disclosed valuable information on the types and sites of crimes. The data gained through investigations and testimonies and the material presented in evidence at the trials were also supportive of the work of the commissions. The representative of the State Commission for Missing Persons in Serbia explains that in particular, the trials related to the crimes that were committed around Vukovar, in detention camps in Serbia, in Srebrenica and Kosovo helped to find a significant number of missing persons. However, the search process is still far from completed. Further progress will largely depend on the efforts that will be undertaken in the future by domestic courts and prosecutors in the course of investigations for pending war crimes cases.

Interviewees from legal institutions (ICTY and domestic judiciary) emphasise that the Hague Tribunal has successfully investigated massive violations of international humanitarian law and crimes committed by all sides involved in the wars of the early 1990s. Many high-ranking military commanders and politicians have been arrested and indicted. Besides, interviewees explain that the ICTY helped to further develop international humanitarian law. The Tribunal classified the mass murder in Srebrenica as genocide<sup>61</sup> and found that in the former Yugoslavia not only war crimes but also crimes against humanity were committed. All interviewees consider these findings to be the ICTY's most significant contributions.

The interviewees also appreciate that the ICTY has set new norms and reformed some judicial procedures with regard to sexual violence and gender-specific war crimes. Due to normative changes, rape is classified as a war crime. Investigations by the ICTY have

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61 In its proceedings in the Krstić, Erdemović and Obrenović cases, the ICTY found beyond reasonable doubt that Bosnian Serbs and other forces killed between 7,000 and 8,000 Bosnian Muslim men and boys between approximately 11 and 19 July 1995, that the vast majority were not killed in combat, but were victims of executions, and that the killings were the product of a well-planned and coordinated operation. Hence the Tribunal found that the killing of 7,000 to 8,000 Bosnian Muslim prisoners was genocide. See <[http://www.icty.org/x/file/Outreach/view\\_from\\_hague/jit\\_srebrenica\\_en.pdf](http://www.icty.org/x/file/Outreach/view_from_hague/jit_srebrenica_en.pdf)>.

revealed that sexual violence has been committed against men and women. However, the interviewees confirm that in cases of gender-based violence, the percentage of women witnesses is higher than the percentage of men. Furthermore, the evidence established by the ICTY shows that rape of women in BiH was organised as a mass criminal act and more systematically compared to gender-based violence against men. The ICTY established a legal practice that allows victims/witnesses of rape to testify in closed sessions. The procedure for cross-examination is strictly regulated. For instance, as a consequence of the ICTY's reforms of legal procedures it is not permitted to ask victims/witnesses about their pre-war intimate life. It is reported that these innovations have also been adopted by the domestic courts in the region.

Furthermore, the representatives of legal institutions highlight that the ICTY established an important archive that can be used for in-depth research. Additionally, it is acknowledged that the ICTY has paved the way for the establishment of war crimes chambers in the region. With regard to the achievements of the ICTY, assessments by representatives of international and domestic legal institutions overlap to a great extent. With respect to the deficits, however, the answers vary.

## Deficits

Several representatives of domestic legal institutions come to the conclusion that the components of Anglo-Saxon (common) law practised by the ICTY have proved inappropriate for cases of gross human rights violations committed during the wars in the former Yugoslavia. The most critical assessment refers to the practice of plea bargaining that was deployed in order to shorten legal proceedings in cases that would otherwise have required complex and costly investigations. If the defendant agrees to plead guilty to a particular charge, the prosecutor might in return drop some of the other charges and reduce the sentence. Part of this agreement may also be that the defendant cooperates with the prosecutor in respect to other crimes/cases by testifying or providing relevant evidence. However, there are no mechanisms that would oblige the defendant to cooperate. The most prominent example mentioned by the interviewees is the case of Biljana Plavšić<sup>62</sup> who signed a plea agreement but refused to testify in the case of Momčilo Krajišnik, contrary to the ICTY's expectations.<sup>63</sup> As already noted, through plea agreements, sentences can be reduced. In particular, representatives of legal institutions in Bosnia criticise this practice. They argue that the pre-term release of convicted persons leads to distrust and endangers community rebuilding since it puts the victims in a position where, after the return of the ex-prisoners, they have to live next to perpetrators in their respective communities.

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62 Biljana Plavšić was a leading Bosnian Serb politician from 1990 until the end of the war. She was the Serb representative to the collective Presidency of Bosnia and Herzegovina, and a member of the collective and expanded Presidencies of the Bosnian Serb Republic (later Republika Srpska). She had de facto control and authority over members of the Bosnian Serb armed forces. She was indicted for genocide and/or complicity to commit genocide, extermination, persecutions on political, racial and religious grounds, deportation and inhumane acts (crimes against humanity), and murder (violations of the laws or customs of war during the armed conflict). As a consequence of plea bargaining, her sentence was reduced and seven out of eight counts of the indictment were dropped. She was sentenced to 11 years' imprisonment by the ICTY after being found guilty of persecutions on political, racial and religious grounds (crimes against humanity) in 2003. She served two-thirds of her sentence in Sweden and was granted early release in 2009. See <<http://www.icty.org/x/cases/plavsic/tjug/en/pla-tj030227e.pdf>>.

63 Momčilo Krajišnik was a member of the Bosnian Serb (later Republika Srpska) leadership during the war. He was on the Main Board of the Serbian Democratic Party of Bosnia and Herzegovina (SDS) and was President of the Bosnian Serb Assembly. He was convicted of persecutions, deportation and forced transfer (crimes against humanity). He was indicted for genocide and/or complicity to commit genocide, extermination, persecutions on political, racial and religious grounds, deportation and inhumane acts (crimes against humanity), and murder (violations of the laws or customs of war during the armed conflict). He was acquitted of charges of murder as war crime, genocide and complicity in genocide and was convicted of persecutions, deportation and forced transfer. He is serving his 20-year sentence in the United Kingdom. See <[http://www.icty.org/x/cases/krajisnik/cis/en/cis\\_krajisnik\\_en.pdf](http://www.icty.org/x/cases/krajisnik/cis/en/cis_krajisnik_en.pdf)>.

A further point of criticism is that the trial of the former President of Serbia, Slobodan Milošević<sup>64</sup>, could not be concluded. Vast material has been collected that will help to broaden the knowledge on the wars in the 1990s but due to Milošević's death in 2006 the ICTY was not able to prove or disprove his criminal responsibility. Furthermore, the interviewees express harsh criticism with regard to the case of the former officer of the Kosovo Liberation Army (KLA), Ramush Haradinaj.<sup>65</sup> In particular, the interviewees criticise the pre-trial proceedings, since the Trial Chamber permitted Haradinaj to be actively involved in politics while he was on provisional release between October 2005 and February 2007, although he was charged with crimes against humanity and violations of the laws or customs of war. The interviewees cannot understand how an indicted war crimes suspect can be given permission to engage in political activities. This is described by representatives of legal institutions in Serbia as a grave mistake.

ICTY representatives also concede that there are deficits in the Tribunal's work. Their self-critical assessments are not focused so much on the legal practice but more on the outreach and communication strategy. They regret that due to the geographical distance, there was no direct exchange of information between the ICTY and the population in the countries of the former Yugoslavia. This has also contributed to the negative image of the ICTY in the region. The setup of outreach offices is considered to have been undertaken far too late. Both international and local interviewees agree that the reputation of the ICTY is rather tarnished in some areas, and that the highest degree of mistrust can be observed within the Serb communities in Serbia and Bosnia. Representatives of legal institutions from Serbia and members of the ICTY outreach office in Belgrade confirm this impression: the image created by the media in this country is that the ICTY is an anti-Serb tribunal, and therefore its impartiality is also seriously questioned by relevant parts of the population.

#### **4.2.2. Assessments of the work of the domestic courts and prosecutors**

##### **Contributions and deficits**

Representatives of the domestic courts and prosecutor's offices emphasise that in all three countries, legal frameworks have undergone reforms which helped to improve the conditions for war crimes prosecution. All representatives of domestic legal institutions are optimistic about the future development of these institutions and think that they are well prepared to cope with the pending war crimes cases. The interviewees are convinced that the legal institutions that are in charge of war crime prosecution are staffed with highly

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64 Slobodan Milošević was President of Serbia from 26 December 1990 and President of the Federal Republic of Yugoslavia (FRY) from 1997 until 2000; as FRY President, he was also the President of the Supreme Defence Council of the FRY and the Supreme Commander of the Yugoslav Army. He was indicted in 1999 and accused of 66 counts of crimes against humanity, genocide and war crimes in Croatia, Bosnia and Kosovo for the period from 1991 to 1999. He died in custody in 2006. See <[http://www.icty.org/x/cases/slobodan\\_milosevic/cis/en/cis\\_milosevic\\_slobodan\\_en.pdf](http://www.icty.org/x/cases/slobodan_milosevic/cis/en/cis_milosevic_slobodan_en.pdf)>.

65 Ramush Haradinaj was Commander of the Kosovo Liberation Army (KLA) in the Dukagjin operational zone, located to the west of Priština/Prishtine, in 1998, and became Prime Minister of Kosovo in 2004. In 2005, he was accused by the ICTY of persecutions: harassment, torture, deportation or forcible transfer of civilians, murder, rape, torture and cruel treatment of Kosovar Serb and Roma civilians as well as Kosovar Albanians who were alleged to have collaborated with Serbian forces during the Kosovo war in 1998. He surrendered to the ICTY on 9 March 2005, but on 6 June 2005 he was granted provisional release. In response to a request from Haradinaj, on 12 October 2005 the Trial Chamber decided that he was allowed to appear in public and engage in political activities in Kosovo, subject to specific conditions. Haradinaj had to return to the UN Detention Unit on 26 February 2007 for the start of the trial. Haradinaj was found not guilty in 2008, due to lack of evidence, and released. In 2010 the Appeals Chamber ordered a partial re-trial. Haradinaj was arrested and transferred to The Hague again. See <[www.icty.org/x/cases/haradinaj/tdec/en/051012.htm](http://www.icty.org/x/cases/haradinaj/tdec/en/051012.htm)>; <[www.icty.org/x/cases/haradinaj/cis/en/cis\\_haradinaj\\_al\\_en.pdf](http://www.icty.org/x/cases/haradinaj/cis/en/cis_haradinaj_al_en.pdf)>. [The re-trial ended in acquittal; see <<http://www.bbc.co.uk/news/world-europe-20536318?print=true>>, accessed on December 3, 2012, M.F.]

qualified experts who are willing to professionalise their work by regularly attending further training. The representatives of the Commissions for Missing Persons in all three countries agree with this view. They also express entirely positive assessments of the domestic judiciary's efforts for war crimes prosecution and willingness for cooperation.

Assessing the specific context in the three countries, the interviewees outline significant differences.

## **Bosnia**

Interviewees in Bosnia state that the judiciary in both Bosnian entities (the Federation of BiH and the RS) has gained experience in war crimes prosecution since 1995. However, due to support and pressure from the international community, judicial reforms were implemented and the Court of BiH was established as a hybrid tribunal, combining local expertise with the knowledge and engagement of international experts. All this has contributed to a situation where the quality of investigations and proceedings has significantly increased. The peak for the work of the legal institutions was in March 2005 when the War Crimes Chamber at the Court of Bosnia and Herzegovina was inaugurated. There were high hopes that the domestic judiciary had reached the state of maturity needed to deal with war crime prosecution on its own.

Despite many achievements, as explained by the interviewees, the Bosnian judiciary also had to face some problems and setbacks. Legal institutions still face difficulties with regard to the protection of witnesses, and often the police fail to offer the appropriate support. Deficits are also revealed with regard to the outreach of the domestic courts. The interviewed representative of the Chief Prosecutor's Office in Republika Srpska complains that war crime prosecution efforts in the RS are under-reported by the media in the Federation of BiH. As a result, a highly negative image is created of the judiciary in the RS. This interviewee also reports that Bosniak victims regularly accuse the judiciary in this entity of intentionally obstructing war crimes prosecution (L-BiH-4). Finally, the representatives of the judiciary in Bosnia highlight the fact that this country experienced the largest number of war crimes and gross human rights violations compared with the other successor states of the former Yugoslavia. One interviewee pointed out that at the time of the interview, in Bosnia "the courts employ 18 prosecutors and are mandated to try approximately 20,000 war crime cases" (L-BiH-3).<sup>66</sup>

## **Croatia**

The representatives of legal institutions from Croatia explain that the Croatian judiciary went through two phases:

The first phase (during the 1990s) was characterised by a non-selective approach in compiling the lawsuits concerning war crimes. This means that quite often, all members of an ethnic group in a local community were accused of a crime that was assumed to have been committed by one of them. The same principle was applied to army units in cases where soldiers were suspected of having committed a crime. It is assumed that these collective indictments were formulated due to lack of evidence, which was difficult to obtain at times of war. Others assume that this approach was in some cases a manifestation of insufficient experience on the part of the legal institutions. And it is believed that in some

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<sup>66</sup> All interview quotations in this chapter have been translated from Bosnian, Croatian and Serbian into English by the author. [As many interviewees asked for confidentiality we present quotes in an anonymised form; short-cuts relate to our internal database, M.F.]

cases, the judiciary was simply biased. As international actors criticised this approach, the domestic courts started to apply the amnesty law, a practice that was again opposed by human rights NGOs and journalists. Apart from issuing collective indictments in the 1990s, trials in absentia were also conducted, only to be reviewed later due to pressure from the international community when it became aware of irregularities related to such trials from reports on domestic war crime prosecution issued by local human rights activists.

In the second phase (since 2000), legal institutions in Croatia aimed to identify and avoid the above-mentioned failures and have been prosecuting war crimes that were committed by members of the Croatian Army. Specialised war crimes chambers were established at four county courts in 2003, and this is considered to be a significant step forward.

According to the interviewees, complex cases could thus be concluded in a more professional manner, such as the trials of the commanders Branimir Glavaš,<sup>67</sup> Mirko Norac and Rahim Ademi<sup>68</sup> and the “Lora” case.<sup>69</sup> In all of these cases, the criminal responsibility of members of the Croatian forces was determined. For the interviewees, this indicates that the domestic judiciary is willing to prosecute all war crimes, regardless of the ethnic background of the accused.

## Serbia

The interviewees from Serbia state that the judiciary in this country is also sufficiently prepared and equipped to conduct war crime prosecution. In 2003, the Parliament of Serbia passed a Law on the Organisation and Jurisdiction of government Authorities in Proceedings against Perpetrators of War Crimes that defines the organisation and responsibilities for war crimes prosecution in respect to crimes committed in the 1990s on the territory of the former Yugoslavia. By virtue of this law, the War Crimes Chamber at Belgrade District Court and the Office of the Prosecutor for War Crimes were established. Investigation services within the Ministry of Internal Affairs and a special detention unit were also set up. According to the interviewees, this law has created a legal framework with clearly defined competences and responsibilities with the purpose of investigating, prosecuting and issuing binding judgments on war crimes perpetrated during the wars in the 1990s. Furthermore, the interviewees are convinced that the legal institutions in charge of war crime prosecution are now equipped with experienced professional staff, guaranteeing that trials are conducted in an unbiased manner and meet international standards.

It can be concluded that representatives of the domestic judiciary are convinced that in general – although to different degrees - the courts in Bosnia, Serbia and Croatia are well-prepared for war crimes prosecution. The ICTY representatives are reluctant to give detailed assessments of the state of preparedness of the domestic institutions. However,

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67 Branimir Glavaš was the commander responsible for the defence of Osijek and Slavonia during the war in East Slavonia. In May 2009 the County Court of Zagreb found him guilty of torture and murder of Serb civilians in Osijek. He was sentenced to eight years of imprisonment; <[www.centar-za-mir.hr/index.php?page=article\\_sudjenja&trialId=50&article\\_id=48&lang=hr](http://www.centar-za-mir.hr/index.php?page=article_sudjenja&trialId=50&article_id=48&lang=hr)>.

68 The Mirko Norac/Rahim Ademi case refers to war crimes committed against Serb civilians in south Croatia in 1993. The former general of the Croatian Army Mirko Norac and the former commander of the Gospić military district Rahim Ademi were both indicted by the ICTY with crimes against humanity and violations of the laws and customs of war committed in the operation “Medak pocket” and tried in 2004. See <<http://www.icty.org/x/cases/ademi/ind/en/ade-ci040730e.htm>>. In 2005, the ICTY transferred the case to the County Court in Zagreb. The trial at this court resulted in an acquittal for Ademi and a seven-year term of imprisonment for Norac. See <[http://www.centar-za-mir.hr/uploads/PRESUDA\\_Ademi\\_i\\_Norac.pdf](http://www.centar-za-mir.hr/uploads/PRESUDA_Ademi_i_Norac.pdf)>.

69 The military investigation prison “Lora” served as a prison camp in Split and was active from 1992 until 1997. The majority of the detainees were Serb residents of Split and prisoners of war. Detainees were tortured, beaten and killed. Eight Croatian military officers were tried in 2002 at the County Court in Split and acquitted. In 2005 they were re-tried at the same court and found guilty of war crimes. See <[http://www.centar-za-mir.hr/uploads/2A12d\\_2.pdf\\_\\_1.\\_dio.pdf](http://www.centar-za-mir.hr/uploads/2A12d_2.pdf__1._dio.pdf)>; <[http://www.centar-za-mir.hr/uploads/2A12d\\_2.pdf\\_\\_2.\\_dio.pdf](http://www.centar-za-mir.hr/uploads/2A12d_2.pdf__2._dio.pdf)>.



they express two concerns. One relates to the slowness of the domestic war crimes proceedings. The other concern stems from the observation that a great deal of the activities in this field have been undertaken as a consequence of international pressure and the policy of conditionality, and the interviewees see a danger that as soon as the successor states to the former Yugoslavia gain EU membership, war crimes prosecution will be reduced to a minimum.

#### **4.2.3. Assessments of the potential of truth commissions and the campaign for REKOM**

Representatives of the domestic legal institutions are convinced that non-judicial mechanisms for fact-finding can support the courts' investigations, provided that the facts are legally valid and the cooperation between the courts and such a commission is clearly defined. Nevertheless, some interviewees also express a concern that truth commissions could undermine the work of the legal institutions, if they understand their work as an alternative approach and not as complementary to the work of the judiciary. It is stated that fact-finding commissions could help to counter manipulation of numbers, figures and events. Furthermore, if their work is based on inclusiveness, they can open a space for multiple perspectives on the past. The interviews reveal that the representatives of the ICTY show more confidence in the potential of truth commissions than domestic legal experts.

#### **The campaign for a regional fact-finding commission (REKOM)**

Representatives of the ICTY assess the REKOM initiative as highly beneficial and worth being extensively supported. They express surprise that it took such a long period for the idea of a regional commission to emerge. In contrast to this, in their assessments, representatives of domestic legal institutions focus more on the ambivalence of a regional commission. Some interviewees state that they would support such a commission and that they regard the REKOM initiative as well prepared and professionally organised. Others believe that the idea for this commission has emerged far too late. Now that the ICTY and the domestic courts have gathered a vast amount of material, this commission seems dispensable. They claim that instead of establishing an additional mechanism, systematising and analysing the existing material should be a priority. All the representatives of legal institutions agree that a regional fact-finding commission would be useful only if it were able to secure additional data that have been undiscovered so far. The interviewees also doubt that such a commission would be able to supply the courts with valid facts. They insist that, in order to be supportive of legal institutions, the facts need to be validated by official institutions like the police and the prosecutors' offices. Furthermore, several interviewees express strong reservations about the format of a commission as suggested by the REKOM campaign. They are particularly concerned about the public hearings that are already being organised by the REKOM team in order to give space to the victims' narratives. The legal experts emphasise that the testimonies made in such a setting cannot be used for legal war crimes prosecution unless they are forwarded to the police, courts or prosecutors. The interviewees are concerned that victims who speak out at the public hearings are not informed about this by the organisers of REKOM and might have the expectation that legal prosecution and the regulation of reparation programmes will result from their testimony.

The representatives of the Commissions for Missing Persons are even more critical about the idea of a truth commission. Interviewees in all three countries express irritation, above

all, at the REKOM campaign. They are concerned that the Coalition for REKOM questions their own fact-finding efforts and the achievements of the courts, police, and victims' organisations in the region, and makes the public believe that evidence on missing and killed persons is not available or has been manipulated. A further point of criticism is that the activities undertaken by the REKOM campaign may lead to a duplication of efforts that is counterproductive.

The representative of the Commission for Missing Persons in Croatia explains that in the past, victims were asked to share their testimonies on war crimes with the police and legal institutions. Later on, NGO activists appeared and asked the same questions again. According to this interviewee, many victims complained about this practice. This interviewee is convinced that such uncoordinated and arbitrary actions put an additional burden on those who are still suffering from the consequences of the war. Such actions, furthermore, suggest that the official institutions in charge of war crimes investigation are unreliable or incompetent, which damages trust-building processes.

### **4.3. Guiding concepts**

#### **4.3.1. Truth**

The representatives of the Commissions for Missing Persons in all three countries state that truth recovery is the highest priority for them, and that above all, this means forensic truth. They underscore that finding and identifying human remains is also the precondition for judicial truth and criminal justice. "There is not a crime [like a murder, author's note] that is committed without a human body, and there is no accountability and justice unless the mortal remains are found and identified" (CMP-SER-1). All representatives of the legal institutions (ICTY and domestic judiciary) who were interviewed emphasise that judicial truth is exclusively based on verified facts that help to establish evidence of the events and circumstances related to war crimes and the responsibility of the accused individuals. They believe that the facts established by the courts can reduce scope for speculation about what actually happened during the war and serve as a starting point for truth recovery on a societal level.

#### **4.3.2. Justice**

All representatives of legal institutions interviewed agree that establishing justice is the primary goal of legal institutions and proceedings. As representatives of the domestic judiciary state, a verdict may establish justice only if it is based on verified facts that are proven beyond reasonable doubt. In the view of most of the interlocutors, by confirming the guilt of a perpetrator and handing down a binding sentence, the court serves the cause of justice. It is argued that justice is served by punishing the perpetrator. At the same time, interviewees concede that judicial justice in the form of war crimes prosecution will not automatically lead to acknowledgment of the suffering of the victims. In order to achieve this, compensation is needed. This could be established by a reparation programme for all victims regardless of their ethnic background. But so far, such programmes are not in sight.

### **4.3.3. Reconciliation**

The representatives of the domestic judiciary in all three countries are convinced that truth and justice can be served without reconciliation. They agree that political and societal reconciliation is beyond the mandate of legal institutions. Politicians are deemed to be responsible for inducing and managing such processes. Several interviewees also state that they find the concept too ambitious and avoid using the term. One interviewee from Bosnia illustrates this view: “We do not have to reconcile with each other, we have to tolerate each other and engage in cooperation” (L-BiH-5).

In contrast, for some representatives of the ICTY the concept of “reconciliation” is uncontested since it mirrors the efforts of individuals and societies for trust-building, shared values, and visions for a peaceful future.

According to the local and international representatives of legal institutions, it is an important obstacle for reconciliation that the wars of the 1990s themselves are not questioned by relevant parts of the societies and political decision-makers in the region. In addition to this, concern is expressed that the young generations are exposed to one-sided and biased narratives. It is also stressed that the notion of victimhood forms a barrier to reconciliation. The urge to present one's own experience as the most tragic one correlates with the need to be recognised as a victim by society. The refusal to acknowledge the suffering of others reflects the deep-rooted fear that an unconditioned recognition of the sufferings of others would cause the loss of one's own victim status.

As the representatives of legal institutions also point out, a prerequisite for reconciliation would be an unconditioned acknowledgment of the crimes committed by members of one's own ethnic constituency. Yet all of them are convinced that this level of political responsibility has not been reached so far. Furthermore, it is stated that a well-functioning judiciary, fair trials and judgments are important, as well as the identification of missing persons. Political apologies and visits by government representatives to sites of recent crimes are also considered important incentives for the societies to continue their trust-building efforts. Furthermore, education, employment, economic prosperity and cross-border cooperation initiatives are seen as crucial in paving the way for such a process.

The representatives of the Commissions for Missing Persons say that they avoid the term “reconciliation”, preferring the notion of trust and trust-building instead. They are convinced that the peoples of the former Yugoslavia have lost their trust in each other, which now needs to be carefully re-established. Trust-building and shedding light on the fate of the missing persons are considered to be the key prerequisites for rebuilding relationships in the region.

## **4.4. Learning processes and suggestions**

### **Learning processes and suggestions from the perspective of legal institutions**

All interviewees agree that war crime proceedings require a large body of evidence which is time-consuming and challenging to compile. Due to the complexity of such trials, and in order to avoid misunderstandings, it is important to explain the legal proceedings thoroughly to all actors involved. Furthermore, several interviewees highlight that it is difficult to find an appropriate way to present the courts' findings and judgments to the public. In general, the judgments would need to be presented in a language that is comprehensible for non-experts.

Representatives of legal institutions from all three countries concede that various civil society actors and relevant parts of the public are chronically dissatisfied with the work of the courts. The negative assessments of the work of the courts prevail, whilst the achievements and the positive changes within the judiciary are rarely mentioned in the reports of human rights activists, peace practitioners and journalists. Victims in particular are highly dissatisfied when the sentences are too low. Low sentences are often either interpreted as reflecting the courts' incompetence or as a way of protecting the perpetrators. A further problem is that many people misunderstand the role of the judges and expect them to protect the interests of the victims from their own ethnic constituency. Furthermore, one of the learning processes stressed by the domestic judiciary is that in a society that lacks the political will for war crimes prosecution, the judgments handed down by the courts will remain contested. However, these legal experts believe that, in the long run, war crimes prosecution makes a crucial contribution to peaceful co-existence, mutual understanding and trust-building. In their understanding, only when criminal justice is being served are the victims prepared to hear about the suffering of victims on the other side. Therefore the interviewees suggest that the judiciary should anticipate criticism or political and social resistance and respond constructively to this dynamic.

Interviewees also point out that war crimes investigations still face a variety of problems. In the experience of representatives of legal institutions from all countries, gathering evidence is difficult because relevant documents have frequently been destroyed or access is obstructed by state institutions. Often the testimony of witnesses is the main source of information. Interviewees from all countries also stress that protection of witnesses who testify in the courtrooms has to be improved. The interlocutors see a need for state institutions to take measures to optimise the protection of the physical integrity and property of witnesses and victims. The interviewees suggest that regional cooperation needs to be intensified in this field, as witnesses also have to testify in courts in the other countries of the former Yugoslavia and need police protection both in their home country and at the places where they testify. If necessary, a change of residence should be organised for the victims. However, the interviewees also point out that such measures are costly and cannot be implemented without substantial support from international partners.

Apart from the general problems that are mentioned by representatives of legal institutions in all countries, some country-specific challenges and dilemmas are highlighted.

In Bosnia, where a large number of war crimes cases are still pending, the interviewees explain that it is a huge challenge for the judiciary to cope with so many cases in an adequate time frame. They point out that investigations of war crimes that were committed many years ago face many problems: After such a long time, there is a risk that witnesses' memories will have faded, and that testimonies are not precise enough and additional time-consuming investigations are required. The interviewees explain that war crimes trials are very complex procedures as many witnesses need to be interviewed. "In very complicated cases approximately 100 witnesses are invited to give their testimonies. Realistically, during a day of a trial only two or three witnesses can testify" (L-BiH-3). But it is difficult to explain these circumstances to a public that is already criticising the fact that war crime proceedings move too slowly. In the interviewees' opinion, it is therefore important to raise awareness of the work of the courts and explain these circumstances to the public.

In Croatia, one representative of the legal institutions concedes that in the 1990s, former members of the Croatian army who were accused of war crimes were tried under mitigating circumstances. The judiciary argued that the Croatian army was merely defending its homeland, which in most cases resulted in lenient sentencing and acquittals.

This legal practice was abolished later on, but as this interviewee reports, it was – and still is – an enormous challenge for the courts to explain this change to the public. They encounter a great deal of criticism when they hold army commanders accountable. Ex-combatants in particular perceive such trials to be a retroactive degradation of their commitment to defend their country by risking their own lives. Furthermore, representatives of legal institutions from Croatia place too much emphasis on explaining the benefits of trials in absentia. Although the application of this legal instrument has been significantly reduced under pressure from the international organisations, representatives of the Croatian judiciary are still very much convinced of the merits of this practice, and argue against the suspension of such trials. They argue as follows: As the charges are in most cases issued for a group of war crimes suspects, suspending these trials would mean that those who have already been arrested and placed in custody would have to wait for their trial until the rest of the group is arrested, which is difficult if the suspects do not reside in Croatia and could take some years. It must also be assumed that in some cases, the innocence of some of the accused might be proved. For these detainees, the suspension of trials in absentia is reportedly unbearable. It is also mentioned that as a consequence of the suspensions of such trials, more space in detention facilities is required.

In Serbia, interviewees from domestic legal institutions concede that courts that try war criminals from Serbia still face a great deal of resistance, in particular from a strong right-wing movement. They also have to cope with a general lack of acceptance. According to the interviewees, witness protection needs to be improved, but there is still not much awareness of this problem. It is also stated that legal institutions in Serbia still show a lack of empathy with war victims beyond the Serb constituency and a lack of respect towards civil society actors who support these witnesses. One interviewee observes: “Even though not openly spoken, discrimination towards minorities and human rights activists who support minorities and war victims who do not belong to the major national group is also noticeable in legal institutions. Human rights activists in Serbia are treated as traitors even by representatives of domestic legal institutions” (L-SER-3).

### **Learning processes and suggestions from the perspective of the Commissions for Missing Persons**

As the interviewees report, the unsolved fate of missing persons frequently causes tensions among the members of different ethnic groups in local communities. Relatives have to cope with uncertainty over a long period of time, and they believe that members of the other ethnic groups conceal information on mass graves and thus obstruct the search for missing persons. This suspicion creates deep mistrust within ethnically divided communities. Due to the strong wish to determine the fate of missing persons, exhumation processes are accompanied by high expectations in local communities. Consequently, exhumation sites are regularly visited by people from nearby communities. At the same time, interviewees report that as soon as the process of identifying human remains is finished, tensions in the community decline, and the processes of dialogue and trust-building can then take place under more conducive conditions.

The greatest challenge for the Commissions for Missing Persons is to obtain access to information about the sites of atrocities and mass or individual graves. Obtaining access to state archives is often quite complicated and obstructed by the authorities. Most of the evidence was provided by families of the missing. In addition to this, the commissions face other difficulties. Detecting undiscovered mass graves largely depends on the cooperation and observations of people in local communities. This cooperation, however, cannot be

imposed. Community members need time to establish trust towards the exhumation teams, before sharing useful information. Besides, the identification of human remains is often very time-consuming. The existence of tertiary mass graves that have been detected in Bosnia is slowing down the process once more, as in this case the remains are even more difficult to access. Furthermore, family members and relatives are crucial for the identification process, but in many cases they are difficult to trace due to frequent residence changes, migration or even death. Despite these problems, it is also mentioned that based on their experience, the Commissions for Missing Persons in Bosnia have set new standards in this field that are now being applied in the wider international context.

Furthermore, the representatives of the Commissions stress that terminological clarification is needed, as key terms related to the war such as “genocide”, “aggression” and “civil war” are defined in very different ways by the members of the CMPs in the three countries. The same applies to terms like “concentration camp”, “detention camp”, “detention centre”, and “collection centre”.

#### **4.5. Partners and forms of cooperation**

##### **4.5.1. Cooperation: the legal institutions’ experience**

Representatives of the domestic courts and prosecutors’ offices in all three countries draw attention to the fact that, in order to be effective, the judiciary needs good cooperation with various institutions like the police, the state agencies for security, exhumation teams, victims’ and veterans’ associations, human rights NGOs, the EU, the OSCE, and UN organisations. So far, cooperation was rather spontaneously organised and, as a consequence, not always very well-coordinated.

##### **Cooperation between the ICTY, international organisations and the domestic judiciary**

ICTY representatives consider the cooperation with the domestic legal institutions to be very good. In general, representatives of the domestic judiciary in all three countries also express very positive assessments of the collaboration with the ICTY. This has focused on improving the technical equipment of the domestic courts, including the transfer of relevant data for trials, on staff training, and on improving the security situation for judges and witnesses. The cooperation is assessed as frequent, direct, highly professional, and constructive.

At the same time, the interviews reveal that the cooperation between domestic judiciary and the ICTY / international organisations was also marked by conflicting opinions on legal proceedings. Interviewees from Croatia mention opposing views on trials in absentia. Domestic courts in Croatia applied the practice of lawsuits in absentia quite frequently in cases when the indicted persons lived outside the country and thus could not be arrested or transferred to the courts. Trials in absentia allow the courts to speed up the conclusion of war crimes cases. International organisations urged the courts to abandon this practice as it prevents the accused from defending himself in court and cannot guarantee that trials are conducted under fair conditions. Interviewees from Croatia express discontent with regard to this international intervention and suggest verifying, in each case, which benefits and disadvantages a trial in absentia would actually bring for a particular case. Furthermore, they complain that the war crimes chambers in Croatia have asked the ICTY

to take over cases where they felt that they could not conduct these trials in an appropriate way. But these requests were refused by the ICTY (L-CRO-5).

Cooperation between the legal institutions across the countries has significantly improved, as the interviews reveal. The cooperation among the prosecutor's offices in Croatia and Serbia is now based on an official agreement on exchange of evidence on war crimes, which is regarded as very positive by the representatives of legal institutions in these countries. In contrast, the interviewees from Bosnia are rather dissatisfied with the cooperation among the various legal institutions in their country. They also express discontent with the cooperation on a regional level. They explain that the difficult state structure and political divide impede both effective collaboration between legal institutions in the country and regional cooperation.

### **Cooperation with human rights NGOs, victims' and veterans' organisations**

The interviewees from the ICTY regional offices in all three countries stress that the cooperation with NGOs is indispensable. In particular, the public relations activities of the outreach offices could not have been conducted without the assistance of NGOs. Both the domestic judiciary and the ICTY regional offices emphasise that in particular, the cooperation with the Helsinki Committees for Human Rights in all three countries is very helpful. Specifically, the work with the Helsinki Committee for Human Rights in Bijeljina in the Serb entity of BiH has proved to be most beneficial and welcome. Activities include joint visits to local communities in order to present the findings of courts and prosecution. According to the interviews, these encounters have illustrated that even in divided communities with a high degree of inter-ethnic animosity, community members are willing to give up the practice of protecting and hiding war criminals.

According to the interviews, some CSOs have managed to establish themselves as competent partners for approaching victims and veterans, for instance by accompanying them as witnesses in court proceedings. The representatives of the Chief Prosecutor's Offices in all three countries appreciate that NGOs are very helpful mediators in establishing contacts between victims' groups and veterans' organisations with the prosecutors.

The collaboration with victims' organisations is seen as essential since they help trace (victim) witnesses who are willing to testify. The cooperation with war veterans' organisations is also considered beneficial for tracing potential witnesses. Furthermore, veterans are considered to be important sources of information on specific war operations, military structures, and chains of command. The interviewees highlight that when communicating with victims and veterans, it is of paramount importance that the judiciary is sensitised to the specific problems and needs of these social groups. Remembering the details and describing them accurately during questioning is very painful for the witnesses/victims and the courts must ensure that these persons do not experience retraumatisation or amnesia during the trials due to psychological pressure. In this respect, the interviewees suggest that the legal staff should receive special training in order to be sensitised to the need for empathetic treatment of traumatised witnesses. At the same time, the interlocutors recommend that the judiciary should resist unrealistic expectations expressed by victims' groups and veterans' associations. It is reported that victims often express a strong wish for very high penalties for the perpetrators. Veterans' groups often expect the court to prove the innocence of their members. If such expectations are not met, the competence and impartiality of legal institutions are questioned. Additionally, these representatives note that social status is regulated in a more satisfactory way for

veterans than for victims. For example, the status of disabled war veterans is already regulated by law, whereas for civil victims of torture it is still in progress.

However, representatives of the domestic judiciary in all three countries also express critical attitudes towards NGOs. One point of criticism is that some NGO activists feel compelled to make assessments in areas they are not qualified for. Even though the critical feedback from human rights activists is highly appreciated, a few interviewees mentioned that some monitoring reports on war crime trials issued by NGOs were based on very limited expertise. The interviewees suggest that civil society actors should realistically assess their own capacities and areas of responsibility in order to avoid misunderstandings, mutual frustration, and duplication of work.

Nevertheless, the interviewees agree that it is important to have an audience consisting of diverse actors, including civil society organisations, in the courtrooms. The presence of journalists, human rights activists and peace practitioners, veterans' unions, victims' groups, and relatives (of the accused, witnesses or victims) is an element of monitoring and control and also a motivating factor: it contributes to sharpening the "conscience of the judges and supports their determination to abide by the principles of fairness and impartiality" (L-CRO-5).

### **Cooperation with governments and state institutions**

In Serbia and Croatia, interviewees report that legal institutions receive full support from the state presidents, the governments and the ministries of justice and finance in the matter of war crimes prosecution. In arresting and punishing war criminals, legal institutions very much depend on the collaboration with the police and military, the foreign ministries, the offices for European integration, security agencies, the state commissions for missing persons, the National Council for Cooperation with the ICTY (in Serbia), and the prisons. The cooperation with these institutions is described as very good.

Assessments in BiH are different: The fact that the President of Republika Srpska Milorad Dodik questions the legality of the Court of BiH is an expression of a deep divide and polarisation within the country that burdens the work of the legal institutions and hinders efforts for war crimes prosecution. The interviews reveal that the cooperation between legal institutions, police and the Commissions for Missing Persons is crucially important. Each has its specific role in the process of investigation and prosecution of war crimes. For example, exhumations are in some cases the first step in collecting evidence.

#### **4.5.2. Cooperation: experience of the Commissions for Missing Persons**

##### **Collaboration with legal institutions, local authorities and victims' organisations**

The interviews reveal that the Commissions for Missing Persons in all three countries collaborate with legal representatives on a very practical basis. They are obliged to share relevant information with legal institutions. As exhumations are a first step in collecting evidence for war crime prosecutions, the process has to be monitored by an investigative judge and a prosecutor. The cooperation with the domestic legal institutions is assessed as excellent and highly professional by all CMP representatives interviewed. The same applies to the collaboration with the ICTY. On the one hand, the material presented as evidence by the courts helps the CMPs in their search for the missing. On the other hand, the CMPs' findings also complement the information available to the courts. It is reported



that the CMPs also engage in regular exchange of information with the police and local authorities in communities where war crimes were committed. They need to build trust with these actors in order to obtain relevant information.

The CMPs are also involved in joint activities with victims' organisations, both on a local and a regional level. According to the interviewees, the relationship is based on mutual respect and trust. It is reported that as a consequence of regular and frequent regional meetings, victims' groups from the entire region of the former Yugoslavia have established contacts and developed cooperation. It is believed that the benefit of such encounters is that victims realise that there are victims in all national groups, and that they all have similar problems. The CMPs in all three countries also work closely with the International Commission on Missing Persons (ICMP) and the International Committee of the Red Cross (ICRC), which extensively support the regional activities and also the meetings with victims' organisations. The collaboration with these international agencies is also assessed as highly valuable and professional.

### **Cooperation among the Commissions of Missing Persons across countries**

Representatives of the CMPs in all countries emphasise that consolidated lists of missing persons are very important as they significantly speed up the search and reduce opportunities for manipulation. Consolidation can only be achieved through regional cooperation. The Commissions from BiH, Serbia and Croatia meet regularly in order to evaluate achievements, reflect on unsolved questions, and plan further activities. The cooperation is regarded as very effective and as having a firm basis. Between Croatia and Serbia, much of the information on missing persons and inmates of detention camps in both countries was consolidated. This is seen as a significant step forward.

In Bosnia, the assessments hint at the ambivalence of cooperation. The representative of the Missing Persons Institute of Bosnia-Herzegovina (MPI) says that he is satisfied with the achievements of his agency, as well as with the findings of the previous commissions established after the war (in this earlier period three commissions were in operation, reflecting the ethnopolitical divide: the Commission of the Federation of BiH, the Commission of the former Herceg-Bosna, and the Team for Missing Persons in the RS, which is still active). In contrast, the representative of the Team for Missing Persons in the Republika Srpska argues that the search for missing persons was more efficient before the MPI was founded as a joint mechanism at the state level in 2008. The interviewee argues that more missing persons from the Serb community were found before, that the creation of the MPI was unnecessary, and that it is impeding rather than speeding up the process of determining the fate of the missing.

Finally, the interviews reveal that misunderstandings and tensions have arisen among members of the CMPs in the three countries due to divergent understandings of key terms related to the war. Concepts like "genocide", "aggression", and "civil war" are defined in very different ways. Terms like "concentration camp", "detention camp", "detention centre", and "collection centre" also need clarification. Disputes over these terms show that conflicting interpretations of war events exist. The interviewees therefore suggest that terminological clarification is needed to pave the way for better cooperation and understanding.

#### 4.6. Further perspectives and challenges

Given the negative reputation and lack of trust in legal institutions, all interviewees agree that it is essential to improve the public relations activities of the courts and prosecutors. It is seen as very important to explain the courts' decisions to the public in a more comprehensive manner, to highlight the diverse achievements in reforming the judiciary, and in particular to illustrate that impartiality is a guiding principle for the work of legal institutions. Above all, they emphasise that judicial proceedings need to be presented in a way that non-experts are able to comprehend.

Improving witness protection, according to the interviewees, also requires special attention. Representatives of legal institutions from all three countries explain that the protection measures applied by the domestic courts and the police are so far very limited. Many witnesses are in serious danger after the trial. A witness who testifies abroad is protected in the country where the trial takes place but left unprotected as soon as they leave that country. According to the interviewees, state institutions should set up specialised services for witness protection after the trials. For this purpose, it should also cooperate with NGOs that have experience in witness support and understand victims' needs. Furthermore, the authorities in the communities to which the witness returns after the trial should be encouraged to take measures to guarantee their safety. An alternative network of witness protection needs to be established. As the interviews reveal, improvement of witness protection can only be achieved by better regional cooperation among governments and by cross-border communication of local authorities.

Representatives of the Commissions for Missing Persons in all countries emphasise that the most important challenge still remaining is to gather additional data on undiscovered mass graves. They also point out that exhumation, storing and identification of human remains will require further funding. The interviewees from Bosnia and Serbia say that international support in this area of dealing with the past is still very much welcome and needed. In contrast, the representative of the CMP in Croatia is convinced that institutions in this country are capable of closing this chapter without external assistance. This view is shared by the ICMP, which has now closed its office in Croatia, on the grounds that the Croatian Office for Missing Persons has proved to be capable of conducting the search for missing persons without international assistance.

Representatives of the domestic legal institutions in all three countries are also convinced that international assistance will be needed in the future in order to improve mechanisms of transitional justice. In Bosnia, they state that external actors are welcome in the capacity of facilitators to support processes of state-building, and they should also continue to monitor the implementation of institutional reforms. Furthermore, they are needed as mediators in a polarised society. In Croatia, the expiry of some international organisations' mandates (OSCE left the country in 2011) is appreciated by the legal experts and seen as a consequence of the international organisations' assessment that governmental and non-governmental organisations are well prepared to solve their problems by themselves. However, the representatives of legal institutions in this country say that international support is still desired, and should take the form of an exchange of know-how and education on topics related to transitional justice. They also think that external assistance is needed to maintain the databases and archives related to war crimes cases. In Serbia, the interviewees also see an ongoing need for international assistance, especially in the field of institutional reforms. At the same time, they insist that any kind of international support should aim to support capacity-building, thus enabling the society concerned to solve its problems on its own.

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All web-links mentioned in this study have been accessed on 31 August 2012 (unless other dates are indicated).

## Acronyms

BiH – Bosnia and Herzegovina  
CMP – Commission for Missing Persons  
CNA – Centre for Nonviolent Action  
CoE – Council of Europe  
CSO – Civil society organisation

EU – European Union  
EUFOR – European Union Force in Bosnia-Herzegovina  
EUPM – European Union Police Mission

FBiH – Federation of Bosnia and Herzegovina (political entity in BiH)  
FRY – Federal Republic of Yugoslavia  
HDSSB – Croatian Democratic Alliance of Slavonia and Baranja (Croatia)  
HDZ – Croat Democratic Union (Croatia)  
HDZ BiH – Croat Democratic Union of BiH  
HDZ 1990 – Croat Democratic Union 1990 (BiH)  
HNS – Croatian People's Party – Liberal Democrats (Croatia)  
HR – High Representative  
HSP – Croat Party of Rights (Croatia)  
HV – Croatian Army

ICG – International Crisis Group  
ICMP – International Commission on Missing Persons  
ICRC – International Committee of the Red Cross  
ICTJ – International Center for Transitional Justice  
ICTY – International Criminal Tribunal for the former Yugoslavia  
IDC – Research and Documentation Centre (Sarajevo)  
IDPs – Internally displaced persons  
IGO – International organisation  
INGO – International non-governmental organisation

JNA – Yugoslav People's Army

KLA – Kosovo Liberation Army

MPI – Missing Persons Institute (BiH)

NATO – North Atlantic Treaty Organization  
NGO – Non-governmental organisation

OHR – Office of the High Representative in Bosnia-Herzegovina  
OSCE – Organization for Security and Co-operation in Europe

PIC – Peace Implementation Council  
PR – Public relations  
PTSD – Post-traumatic stress disorder syndrome

REKOM – Regional Commission for Truth-seeking and Truth-telling about War Crimes  
in the Former Yugoslavia

RS – Republika Srpska (political entity in BiH)

SAA – Stabilisation and Association Agreement

SAO – Serbian Autonomous Oblast

SAO SBWS – Serbian Autonomous Oblast of Eastern Slavonia, Baranja and Western Sylvania, self-declared autonomous district on the territory of Croatia (1991)

SDA – Party of Democratic Action in BiH

SDP – Social Democratic Party (BiH)

SDP – BiH – Social Democratic Party of BiH

SDS – Serb Democratic Party in BiH

SFRJ/SFRY – Socialist Federal Republic of Yugoslavia

SNS – Serbian Progressive Party (Serbia)

SNSD – Alliance of Independent Social Democrats (BiH)

SPS – Socialist Party of Serbia

TJ – Transitional justice

UK – United Kingdom

UN – United Nations

UNDP – United Nations Development Programme

UNHCR United Nations High Commissioner for Refugees

UNTAES – United Nations Transitional Authority in Eastern Slavonia, Baranja and Western Sylvania

US/USA – United States of America

## About the authors

**Martina Fischer** is Programme Director at the Berghof Foundation and a co-editor of the Berghof Handbook for Conflict Transformation. She has worked as a Senior Researcher, Deputy and Acting Director of the Berghof Foundations Research Center since 1998. Currently she has responsibility for the Foundations' Southeast Europe Programme. She has conducted practice-oriented research on peacebuilding in post-war societies and published extensively on the role of civil society in conflict transformation. She is a member of the board of the German Protestant Kirchentag, the advisory council of the Centre for International Peace Operations (ZIF), the scientific council of the German Foundation for Peace Research (DSF), and the Working Group for Peace and Conflict Research at the German Federal Foreign Office. She holds a PhD from the Political Science Faculty at the Free University, Berlin (Germany), and has authored, edited and co-edited 12 books and more than 200 articles.

**Ljubinka Petrović-Ziemer** worked at the Berghof Center from 2008-2012. Her peace engagement began in 1992 at the Peace Center in Osijek (Croatia). She was co-founder and Director of the Association for Interreligious Peace Work "Abraham", which was established in Sarajevo in 1998. Before moving to Germany in 2005, she was a senior assistant lecturer in German Literature and Cultural Studies at the German Department of the Philosophical Faculty in Sarajevo. Since 2007, she teaches at the Studienforum Berlin e.V. on peace and conflict-related issues. Her research and teaching focuses on peacebuilding, conflict transformation, gender topics, post-colonial criticism, modern philosophy, modern literature and cultural theory. Ljubinka Petrović-Ziemer holds a PhD from the University of Trier where she submitted her doctoral thesis in contemporary German literature. She also holds a graduate diploma in English and German Studies from the Pedagogical Faculty in Osijek and a post-graduate diploma in Comparative Literature Studies from the University in Sarajevo.

Dr Martina Fischer served as project director of the project "Dealing with the Past and Peacebuilding in the Western Balkans, with a special focus on analysis of interviews with international actors and summary analysis. Dr Ljubinka Petrović-Ziemer has conducted a major part of the empiric research and contributes an analysis of civil society organisations and legal institutions.

### **Further contributions:**

For the interviews with members of political parties the research project could build on support by experts based in the region of former Yugoslavia:

*Srđan Dvornik* contributed an analysis from Croatia, *Katarina Milićević* conducted talks in Serbia, and *Dr Ismet Sejfija* focused on political parties in Bosnia-Herzegovina.

**Srđan Dvornik** is an independent consultant, researcher and translator, living in Zagreb (Croatia). He graduated in philosophy and sociology, and holds an MA in Political Science from the University of Zagreb. His expertise covers human rights, civil society, and democratic transformation. He produced a study on human rights protection for UNDP and the Croatian Ombudsman, and reports for the Croatian Law Centre (the National Focal Point for the EU Agency for Fundamental Rights). Furthermore, he facilitated the development of a national strategy for inclusion of Roma in Croatia. He was a co-founder and activist in several civic organisations dedicated to the promotion of human rights and freedom of speech. He has published various books and articles on social and political topics, and translated a dozen books from English into Croatian.

**Katarina Milićević** is a journalist with two decades of experience in TV stations. She lives and works in Belgrade and Kragujevac. Since 2011 she works with the Centre for Nonviolent Action (CNA), a civil society organisation (CSO) engaged in cross-border peace work, and since she dedicates her work to peace activities on a permanent basis. She had supported the team before as a collaborator on the set of documentaries, as a workshop-trainer, and as a panel moderator for public forums in Bosnia-Herzegovina and Serbia, where war veterans who fought on different sides in the 1990s wars in the region of former Yugoslavia discussed their experiences.

**Dr Ismet Sejfija** is a Professor at the Faculty of Political Science and Dean of the Faculty of Administrative Science at the University of Sarajevo (Bosnia-Herzegovina). He holds a PhD in Political Science. He has published several books and numerous articles on the theory of civil society and social transformation in the Balkans. His work focuses on CSOs in war-to-peace transition and transformation countries, and particularly on the interaction between CSOs and state institutions. He closely collaborates with local CSOs and investigative media in the region, international research programmes, and international organisations (Friedrich Ebert Foundation, Council of Europe, European Union).

**Folgende Publikationen (Auswahl) sind über die DSF zu beziehen:**

**Forschung DSF:**

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