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„Perception Matters: The Criminal Tribunal for the
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‘Balkan Diaspora’ in Vienna”

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Adriana Todorovic, BA

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Mag. Dr. Beatriz de Abreu Fialho Gomes

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LIST OF ABBREVIATIONS

EU	European Union
ICTY	Internationa Criminal Tribunal for the former Yugoslavia
NATO	North Atlantic Treaty Organization
UN	United Nations

1 INTRODUCTION

1.1 HISTORICAL REFLECTIONS – LOOKING BACK TO MOVE FORWARD

In the 1990s, the Socialist Federal Republic of Yugoslavia was a non-aligned federation including six republics, namely Bosnia and Herzegovina, Croatia, Macedonia, Montenegro, Serbia and Slovenia. Known for its diversity and well developed state, it represented a multitude of ethnic groups and religions along with Orthodox Christianity, Catholicism and Islam taking up the main constituent part.

In the midst of the smashing of the Yugoslav communism, intense political failures and economic detriments have summoned resurgent nationalism and fueled fear, eventually polarizing with two different perspectives: the aspiration for independence of the single republics on the one hand, and the centralization of powers on the other.¹ After the collapse of Yugoslavia in 1991, the fate of its breakdown was ultimately sealed in the same year when Slovenia² and Croatia³ (see Constitutions) effectively declared their independence.⁴

Exactly half a century after World War II, between 1992 and 1995 the world has witnessed war and aggression in Europe based on the ideology of “nationalism and racial and religious hatred fired by the obsession of nationalistic politicians, military leaders and paramilitary forces to create ‘ethnically pure’ states”⁵ in the former Yugoslavia, as Manfred Nowak accordingly holds. At that time, the worst atrocities, such as the Genocide of Srebrenica, have occurred in Europe after World War II, as is being routinely described.⁶

The violent destruction of the Yugoslav society of 23 million people faced the consequences of a failed socialist Yugoslavia.⁷ Catherine Baker, an international relations specialist, recalls how the Yugoslav wars unleashed the most severe security crisis in Europe after the Cold War, engendering “the first international war crimes tribunal since the Nuremberg and Tokyo trials”⁸, the International Criminal Tribunal for the former Yugoslavia (ICTY). “Between 1991 and 1999, the wars in Slovenia, Croatia,

¹ ICTY – International Criminal Tribunal for the former Yugoslavia (n.d.a): The Conflicts, <http://www.icty.org/en/about/what-former-yugoslavia/conflicts>, 22.02.2017.

² Constitution of the Republic of Slovenia (1991), official translation 2001, <http://unpan1.un.org/intradoc/groups/public/documents/UNTC/UNPAN014895.pdf>, 16.12.2017.

³ Constitution of the Republic of Croatia (1990), consolidated text 2010, www.sabor.hr/fgs.axd?id=17074, 16.12.2017.

⁴ See ICTY, n.d.a.

⁵ Nowak, Manfred (1997): Lessons for the International Human Rights Regime from the Yugoslav Experience. In: Academy of European Law (ed.): Collected Courses of the Academy of European Law, Volume VIII, Book 2: The Protection of Human Rights in Europe. The Hague/London/Boston: Kluwer Law International, 141-208, p. 147.

⁶ Nowak, 1997, p. 147.

⁷ Baker, Catherine (2015): The Yugoslav Wars of the 1990s. London: Palgrave, p. 1.

⁸ Baker, 2015, p. 1.

Bosnia-Herzegovina and Kosovo caused the death of approximately 140,000 people, 100,000 in Bosnia-Herzegovina.⁹ She also concludes that the Macedonian conflict in 2001 has brought the Balkan crisis even into the 2000s.¹⁰

With its downfall, Yugoslavia, the so called melting pot of cultural and religious diversity and coexistence,¹¹ proved to be deceptive in the 1990s. Lessons from the Balkan reconciliation example have pushed researchers to evaluate again the reasons behind the big Yugoslav fall. Unlike Begić's and Delić's described radiant pre-war ethnic map, Michael Schmunk, a German diplomat and German Foreign special envoy, differently resumes: "Long hidden intra-state conflicts rose to the surface, many, if not most of them ethno-nationalistic, but also some which were religiously motivated."¹² Eventually, it turned out to be a painful example of community and nationhood and resulted in a disastrous dissolution¹³ and large-scale political violence.

It took almost four years, from 1991 until 1995, and the The General Framework Agreement for Peace in Bosnia and Herzegovina (Dayton Peace Agreement, also known as the Dayton Accords that stopped the war in Bosnia and Herzegovina in 1995)¹⁴ to cease the fire in Bosnia and Herzegovina and Croatia. In the meantime, in 1993, an ad-hoc measure, the Criminal Tribunal for the Former Yugoslavia (ICTY) was established to call for responsibility. It was designed to indict persons accused of mass crimes against humanity including genocide and provided a secure space for victims to voice the horrors they have endured. The Tribunal has finished its work and was closed by December 31st, 2017.¹⁵

This work is particularly concerned with the perception of the ICTY in regards of post-conflict reconciliation. Challenges and limits of the ICTY will be encountered by literature analysis, while perceptions of the ICTY within the Viennese Balkan Diaspora will be carried out by eight interviews which have been conducted in Vienna between December 2015 and February 2016.

⁹ Baker, 2015, p. 1.

¹⁰ Cf. Baker, 2015, p. 1; see ICTY, n.d.a, for more details and a succinct summary of all Yugoslav conflicts.

¹¹ See Begić, Zlatan; Delić, Zlatan (2013): Constituency of peoples in the constitutional system of Bosnia and Herzegovina: Chasing fair solutions. In: *International Journal of Constitutional Law*, Vol. 11, No. 2, 447-465, p. 448ff.

¹² Schmunk, Michael (2010): 15 Years of Peace-, State- and Nation-Building: Basic Lessons from the Balkan Lab. In: Felberbauer, Ernst M.; Jureković, Predrag (eds.): *15 Years of Peace-Building in the Western Balkans – Lessons Learnt and Current Challenges. Contributions from the 20th Workshop of the Study Group "Regional Stability in South East Europe"*. Vienna: Austrian National Defence Academy and Bureau for Security Policy at the Austrian Federal Ministry of Defence in co-operation with the PfP Consortium of Defence Academies and Security Studies Institutes, 17-39, p. 17.

¹³ Sofos, Spyros (1999): Culture, Media and the Politics of Disintegration and Ethnic Division in Former Yugoslavia. In: Allan, Tim; Seaton, Jean (eds.): *The Media of Conflict: War Reporting and Representations of Ethnic Violence*. London: Zed Books, 162-174, p. 162.

¹⁴ OSCE – Organization for Security and Co-operation in Europe (1995): *The General Framework Agreement for Peace in Bosnia and Herzegovina*, <http://www.osce.org/bih/126173?download=true>, 26.10.2017; U.S. Department of State (1995): *Dayton Accords. Concluding Statement*: <https://www.state.gov/p/eur/rls/or/dayton/52602.htm>, 26.10.2017.

¹⁵ ICTY – International Criminal Tribunal for the former Yugoslavia (n.d.b): *United Nations International Criminal Tribunal for the former Yugoslavia*, <http://www.icty.org/en>, 11.02.2018.

In order to tackle challenges in the so called European “*tinderbox*”¹⁶ of nations, emphasis will be put on the Bosnian war.

Understanding the present-day status in the Balkan region requires accurate historical reviews embedding socio-cultural retrospectives. Furthermore, a number of complex phenomena have intermingled to a dimension which is fairly multitudinous. The following approach to understanding the complexity of this subject is weaved in a treatise encompassing following chapters:

The introduction starts with a political backdrop and reflects on the former Yugoslavia and its constituent parts. In relation to the research questions, significant terms such as Racism, Ethnicity and Diaspora will be elaborated as well as the key motivators for bringing about a stable ground for reconciliation. Chapter 2 looks at the theoretical framework by explaining conflict, peace and reconciliation leading to the definition of Transitional Justice. Chapter 3 handles the core idea of Transitional Justice and concomitant instruments. It also covers the mandate of the ICTY and tackles the difficulties in dispensing justice. Chapter 4 examines challenges and constructions the Balkans are confronted with as well as it delivers short throwbacks to the beginnings of the formation of the Balkan nations. Focusing on the case of Bosnia and Herzegovina as being particularly illustrative in this regard depicts the severity and complexity of reconciliation in a vulnerable post-conflict society. Chapter 5 explores challenges and limits and sheds light on established criticism, while highlighting the importance of the willingness to “forgive” on a three-level basis: individual, collective, and national. It keeps a close eye to the limits the institution faced throughout the performance of its mandate. Chapter 6 brings to the fore one of the key elements of this work: Perceptions. The interviews which have been carried out in Vienna between December 2015 and February 2016 underscore the importance of “perceived realities”, trust and legitimacy. The final part covers the analysis of the Balkan Viennese Diaspora and its perceptions of the ICTY and explores whether or not it can, in fact, induce reconciliation by conducting criminal justice and why perception actually matters.

¹⁶ Motta, Giuseppe (2013): *Less than Nations: Central-Eastern Europe Minorities after WWI*, Volume 2. Newcastle upon Tyne: Cambridge Scholars Publishing, p. 162.

1.2 RESEARCH QUESTIONS

This work reflects upon the way the ICTY is perceived as an actor for post conflict reconciliation.¹⁷ The examination will partly be covered by literature analysis through various author's positions on the one hand, and connected with eight interviews conducted with people originating from ex-Yugoslavia who live in Vienna on the other. Furthermore, the question whether or not racist attitudes become visible will be addressed, too. Also, the extent to which individual perception of the ICTY varies and how it is manifested in terms of reconciliation will be considered.

Research Questions:

How do individuals originating from the ex-Yugoslav states Bosnia and Herzegovina, Croatia, Kosovo and Serbia living in the Viennese Diaspora perceive the performance of the ICTY?

Does a tendency of identities experiencing racism beyond (national) borders exist?

To which extent does reconciliation relate to the ICTY's work?

Hypothesis:

International reconciliation efforts by third parties, in particular the ICTY, starkly diverge within the perception of the affected societies and thus have an observable effect in terms of legitimacy of the Tribunal's work on expatriates originating from Bosnia and Herzegovina, Croatia, Kosovo and Serbia.

The lack of exhaustion of scientific research relating to the crisis regions in regard to its various perceptions, respectively, remained mostly unmet.¹⁸ In conjunction with the aspiration of the transdisciplinary studies of International Development to consistently claim critical reflection throughout research, it is pivotal to involve different perspectives. Especially portrayals which distance themselves from typically *Western* perceptions are scarce.¹⁹ In this regard, this approach shares the same incentive to provide a rather critical but balanced review on the issue of the Balkans now and then and its positions vis-à-vis the ICTY. The decisive fact for the focus on the Republic of Bosnia and Herzegovina, the Republic of Croatia and Serbia (Federal Republic of Yugoslavia including Kosovo) relies on the conjuncture that those are also the signatory states to the Dayton Peace Agreement (1995).²⁰

¹⁷ According to the ICTY's mandate, reconciliation was not a defined objective of the mandate, but rather part of the mission; see United Nations Security Council (1993): Resolution 827 (1993), Adopted by the Security Council at its 3217th meeting, on 25.05.1993, S/RES/827 (1993), http://www.icty.org/x/file/Legal%20Library/Statute/statute_827_1993_en.pdf, 05.11.2017.

¹⁸ Cf. Melčić, Dunja (1999): Vorwort. In: Melčić, Dunja (ed.): *Der Jugoslawien-Krieg: Handbuch zu Vorgeschichte, Verlauf und Konsequenzen*. Wiesbaden: Springer Fachmedien, 11-13, p. 12.

¹⁹ See Melčić, 1999, p. 12.

²⁰ OSCE, 1995.

The research was conducted in German language. Citations and footnotes are provided in both languages, German and English (*italics*).

1.3 CONCEPTUALIZATION OF SIGNIFICANT TERMS

1.3.1 RACISM

Racism requires sophisticated treatment. Given the many forms and appearances of racism, oversimplifications will not be feasible if it shall be understood properly. Yet, this will give only a short introduction on the relevant issue without fully exhausting the topic.²¹

In Part I, Article 1 of the UN International Convention on the Elimination of All Forms of Racial Discrimination in 1965, racism is being described as follows:

In this Convention, the term "racial discrimination" shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or *national* [emphasis added] or *ethnic* [emphasis added] origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.²²

Racism in the case of ex-Yugoslavia does not exclusively refer to skin color or race, but rather incorporates aspects of nation and ethnic origin, further "[...] it derives social inequality from natural differences; it emphasizes the visibility of otherness; it combines biological attributes with cultural abilities; it arranges differences hierarchically and classifies them with greater or lesser esteem."²³

In particular, in regard of ex-Yugoslavia, the phenomenon of racism is not only constituted through an aversive attitude towards the "other" but among other through the very exemplary nationalism²⁴ of languages on the ex-Yugoslav territories, namely Bosnian, Croatian and Serbian,²⁵ often perceived as a national renaissance. Fundamentally, racism is a cultural reflection of tensions within a society.

²¹ For detailed approaches see Hund, Wulf D. (2007): *Rassismus*. Bielefeld: transcript Verlag or Memmi, Albert (2000): *Racism*. Minneapolis: University of Minnesota Press.

²² United Nations (1965): International Convention on the Elimination of All Forms of Racial Discrimination, Adopted and opened for signature and ratification by General Assembly resolution 2106 (XX) of 21 December 1965, entry into force 4 January 1969, in accordance with Article 19, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CERD.aspx>, 04.03.2017.

²³ Hund, Wulf D. (2003): Inclusion and Exclusion: Dimensions of Racism. In: *wiener zeitschrift zur geschichte der neuzeit*, Vol. 3, No. 1, 6-19, p. 7.

²⁴ Cf. Borggräfe, Henning; Jansen, Christian (2007): *Nation – Nationalität – Nationalismus*. p. 169ff.

²⁵ „Die Frage, ob es sich beim Kroatischen und Serbischen um zwei verschiedene Sprachen oder Dialekte handelt, ist seit dem Zerfall Jugoslawiens hart umkämpft. Sie soll jedoch den Linguisten überlassen werden [...]“; „*The question whether*

1.3.2 ETHNICITY

Based on dissonance and countless uncertainties, the research design for the present work had to undergo a progressive revision. Terminology and concepts had to be defined accurately in order to perform a coherent research. That is why it took a long road to finalize the concept. Nevertheless, it was very instructive.

At the outset, the survey was geared towards a selectively predefined group of people, which would be differentiated by ethnic or religious denominators of collective cultural identities, respectively.

With the utilization of these terms, the same would unintentionally be reproduced, first and foremost because the term “ethnic” is already deemed to be another racial notion in disguise. Other than that, “culture” per se is intrinsically a further inflationary terminology. That is, the word is in frequent unspecific practice, concealing a pejorative association.

Unlike the denomination in academic research on issues of racism, “culture”, in an anthropological sense, is hereafter referred to as the identification of people through self-determination and autonomy and thus tolerated as such.²⁶

“Culture” is an attractive expression in many regards, as for instance due to its multi-operational characteristic. “Corporate culture”, “dining culture” or even “culture of conflict”, to mention only a few, primarily long for a certain perception of worthwhile order and standardization which is a plausible cause for its excessive use.²⁷

The pivotal task was to ensure that each predefined group would find at least one interviewee with the features (e.g. reference to the topic, origin, birth) or interests (political activities) qualifying for the interview. The candidates were asked to position themselves through self-determination. At the end, each group should have one representative in order to establish a categorical equilibrium for the research.

Croatian and Serbian are two different languages have been highly competitive since the dissolution of the former Yugoslavia. However, this discussion should be left to linguists. [...]“; Mijic, Ana (2014): Verletzte Identitäten. Der Kampf um den Opferstatus im bosnisch-herzegowinischen Nachkrieg. Frankfurt am Main: Campus Verlag, p. 122, footnote 167.

²⁶ W. A. Mühlmann konstatiert Ethnie als Einheit die kulturell, sprachlich, sozial, geschichtlich und auch genetisch miteinander verbunden ist. Nach Mühlmann ist die Ethnie die größte feststellbare souveräne Einheit, die den betreffenden Menschen selbst bewusst ist und von ihnen gewollt wird. Ethnie zeichnen sich oft durch ein ausgeprägtes Wir-Bewusstsein, starken solidarischen Zusammenhalt und *scharfe Abgrenzung gegenüber anderen Ethnien* aus. *W. A. Mühlmann considers ethnicity as a unit of cultural, linguistic, social and historical kin, which is held together through a genetic bond. He states that ethnicity is the biggest sovereign identifiable uniformity, inherently desired and consciously chosen by the people. It is often characterized through a distinctive awareness recognized as “WE-awareness”, strong solidarity and clear distinction over other ethnicities.*

W. A. Mühlmann qtd. in Litsche, Georg A. (2004): Theoretische Anthropologie. Grundzüge einer theoretischen Rekonstruktion der menschlichen Seinsweise. Berlin: Lehmanns Media (= International Cultural-historical Human Sciences, Vol. 10), p. 371.

²⁷ Barth, Dorothee (2008): Ethnie, Bildung oder Bedeutung? Zum Kulturbegriff in der interkulturell orientierten Musikpädagogik. Augsburg: Wißner-Verlag (= Augsburger Schriften, Forum Musikpädagogik, Vol. 78), p. 12ff.

1.3.3 DIASPORA

However different and challenging terms and definitions might appear, they are admittedly a prosperous contribution to our understanding of the specific geopolitical territory such as the Balkans. Rooting back to the ancient Greek meaning “dispersion” of a whole unit into tiny lost pieces, Diaspora nowadays is not necessarily perceived to be detrimental.²⁸ The volt-face happened when the term was used for Jews living abroad for the first time.

„[...] Diaspora situiert sich im Spannungsverhältnis zwischen kosmopolitischer Losgelöstheit und einem radikalen Nationalismus, der sich nicht länger territorial definiert.“ – „[...] *Diaspora is constituted by a charged relationship between cosmopolitan detachedness and a radical nationalism, which is no longer defined by territorial lines.*”²⁹

Nevertheless, the term initially portrayed the forced existence in foreign lands.³⁰

Albeit from an ancient religious perspective, odium is often brought on the respective term, it enjoys a bigger and a more positive popularity within the recent discourse on the formation of new, hybrid identities issuing from phenomena such as globalization, transnationalization and adapted socio-cultural approaches in this regard. Henceforth the talk of “Diaspora Studies” emerged.³¹

William Safran’s definition of Diaspora (1991)³² bears one big disadvantage which is expressed by the mechanism of exclusion towards all those, who do not perceive themselves as *diasporic* or are not being conceived as such. To put it differently, his determination is purposeful only for those who envision themselves as a Diaspora, not for people who do not consider themselves as a part of the aforementioned. Consequently, this approach risks the loss of a crucial part of people and is therefore not timely.³³ Contemporary definitions link to the African Diaspora entailing the situational contingent occurrence of hybrid identities and a specific construction of mimicry akin to the native home, as James Clifford, Stuart Hall or Homi Bhabha settled.³⁴

²⁸ Mayer beginnt in der Abhandlung des Begriffs „Diaspora“ mit einer geschichtlich-theologischen Retrospektive und geht dabei auf unterschiedliche Definitionen und Streitpunkte ein.

Mayer sees the discourse around the term “diaspora” through the lens of a historic-theological retrospective and touches upon different contentious issues.

Cf. Mayer, Ruth (2005): *Diaspora: Eine kritische Begriffsbestimmung*. Bielefeld: transcript Verlag, p. 7f.

²⁹ Mayer, 2005, p. 8.

³⁰ Cf. Mayer, 2005, p. 8f.

³¹ Mayer, 2005, p. 9.

³² Brubaker handelt in seinem Beitrag den von Safran 1991 eingeführten Begriff der Diapora sukzessive ab und versucht die durch neue globale Bedingungen erweiterten Dimensionen durch unterschiedliche Beispiele exzessiv nachvollziehbar zu Safrans nicht mehr zeitgemäßem Kategorienkatalog zu machen.

Brubaker draws attention to the necessity of addressing new global dimensions and incorporating them accordingly in existing definitions. Hence, he amplifies the outdated terms of Safran (1999) and expresses his examples comprehensibly.

Brubaker, Rogers (2005): The ‘diaspora’ diaspora. In: *Ethnic and Racial Studies*, Vol. 28, No. 1, 1-19, p.1ff.

³³ Cf. Mayer, 2005, p. 10.

³⁴ Cf. Mayer, 2005, p. 10.

With his excluding notion of the *Diasporic*, Safran relates solely to communities such as the Jewish, Armenian, Turkish, Palestinian, Cuban or Greek,³⁵ by simultaneously disregarding the aspect of the African Diaspora, because they are lacking the intention of returning back and the concept of “home” is vanishing.³⁶

On these grounds, Clifford underscores the importance of flexibility in regard with returns to one’s native home, because it can no longer be considered as a fixed component of the idea; in this form it is completely futile.

Scraped together by collectively shared history of uprooting and social dislocation, consecutive resistance and the desideratum of a special origin, those incentives modify together with global changes and progressing hybridity to a new dimension. What remains is the sharing of a deep-rooting discontinuity.³⁷

As a means to maintain connectivity through and with multiple places without being forced to participate in the circle of an absolutistic request of citizenship and nationhood of a country, but rather as a setting of plural-locality by choice, this is the most recent definition that Diaspora served as a basis for this research.

1.4 INSTITUTIONS AND TRUST

Institutions regulate and structure social interactions in order to maintain a balance within social realms. Summarized one can say institutions negotiate conflicting interests into an efficient collective choice.³⁸ Basil Nwankwo also assumes that the positive relationship between the factors “institutional arrangements”, “operational environment” and “democratic functionality” are key to a higher functionality of democracy within the given context. Democracy is deemed to be effective in case there exists a proper design of institutions. Therefore, they can also be referred to as guardians of the process of democracy per se.³⁹ Douglass North summarized the impact of institutions and institutional change with regard to economy, but incorporated relevant aspects considering political issues and argued as follows:

³⁵ Mayer, 2005, p. 10.

³⁶ Mayer, 2005, p. 10.

³⁷ Stuart Hall qtd. in Mayer (2005), p. 11.

³⁸ Nwankwo, Basil O. (2003): *Institutional Design and Functionality of African Democracies. A Comparative Analysis of Nigeria and Uganda*. Berlin: Tenea Verlag für Medien, p. 1f.

³⁹ Cf. Nwankwo, 2003, p. 7f.

Institutions are the rules of the game in a society or, more formally, are the humanly devised constraints that shape human interaction. In consequence, they structure incentives in human exchange, whether political, social, or economic. Institutional change shapes the way societies evolve through time and hence is the key to understanding historical change.⁴⁰

Ceva and Rossi, on the other hand, exhaust the two terms of *justice* and *legitimacy* by analyzing the lack of consensus regarding the distinction of the two factors and the statement that the social order embodies both elements.⁴¹

Some draw a connection between them by explicitly presenting legitimacy as a criterion of minimal justice⁴² or in fact by considering justice as what specifies the standards of legitimacy, in the sense that the only authoritative orders a state may issue are just ones.⁴³ Other theorists have disentangled justice and legitimacy altogether by construing both concepts as separate components of the answer to a wider question concerning the overall justification of the social order of political authority, e.g. by arguing that a liberal-democratic political order calls for a specific kind of interaction between justice and legitimacy, where neither is a by-product of the other.⁴⁴

Summarized it can be assumed that if an institution lacks legitimacy, there will most likely not be the necessary scope for the anticipated impact within a society, at least not within a short period of time. It's the individual's choice which is willing to make a change that triggers an impact. Prior to that, the individual level must be amenable.

Reaching agreement is seeking a vast extent of tolerance and receptiveness, not only from governments and representatives, but most importantly from the society, from bottom up, especially when it comes to complex political situations or international peacekeeping endeavors like the one for the former Yugoslav territory. Yet an important finding is, that truth commissions may not be the vehicle they are hoped to be.⁴⁵

1.5 YOUTH INVOLVEMENT

The anticipation with present work is also to add a dimension to the importance of youth involvement. According to the United Nations, a key performance indicator for a successful communication between nations on a bottom-up level is the involvement of young people on a solid ground of peaceful

⁴⁰ North, Douglass C. (1990): *Institutions, Institutional Change and Economic Performance*. Cambridge: University Press, p. 3-10.

⁴¹ Thomas Nagel (1991) and David M. Estlund (2007) qtd. in Ceva, Emanuela; Rossi, Enzo (2013): *Introduction: Justice, Legitimacy and Diversity*. In: Ceva, Emanuela; Rossi, Enzo (eds.): *Justice, Legitimacy and Diversity. Political Authority Between Realism and Moralism*. Abindon/New York: Routledge, 1-8, p. 1.

⁴² Jean E. Hampton (1998) and Allen Buchanan (2002) qtd. in Ceva; Rossi, 2013, p. 1.

⁴³ John Rawls (1971) qtd. in Ceva; Rossi, 2013, p. 1.

⁴⁴ John Simmons (1999) qtd. in Ceva; Rossi, 2013, p. 1.

⁴⁵ Cf. Quinn, Joanna R. (2010): *The Politics of Acknowledgement: Truth Commissions in Uganda and Haiti*. Vancouver/Toronto: UBC Press, p. 11.

exchange. For this purpose, in 2015, the UN has adopted a historic resolution⁴⁶ on “youth, peace and security” to signalize the importance of “youth as agents of change” and emphasize on the importance to increase the number of young representatives at all decision-making levels.⁴⁷ Young people act as positive stimulus for the promotion and maintenance of peace and security.⁴⁸

For the above-mentioned reasons, perception prominently features in the quest for future peace along with general responsiveness linked with trust both in domestic as well as foreign institutions and authorities.

1.6 APPLIED EMPIRICAL METHOD

The importance of acknowledgement in regards with institutions such as the ICTY in particular will be derived from a secondary source literature analysis covering important aspects of conflict, peace and Transitional Justice issuing into the role of reconciliation, trust and legitimacy.

The qualitative in-depth analysis aims to examine varieties of perceptions of the ICTY within the Viennese Balkan⁴⁹ Diaspora. The essential element of this research refers to the so called “Austrians with a migration background”. In this case, the identity is constituted by the individual itself. The characteristic “ethnic or cultural affiliation” – which mainly depends on the religious confession in this area and thus transpires to be less affected by the respective national citizenship – will not be expressed within the research.

In order to be capable to generate reasonable answers to underlying questions, this work was conducted with methods of empirical social research. In contrast to quantitative approaches where individual steps of action are predefined in every detail, the circular technique allows for revision and repeating of each research step while the result always depends on the previous outcome.⁵⁰

Guided in-depth interviews using open questions and a semi-standardized questionnaire have been performed. It was of crucial importance to execute interviews where respondents have unlimited opportunity to get talkative and argument freely on grounds of their own narratives. The semi-

⁴⁶ United Nations Security Council (2005): Resolution 2250 (2015), Adopted by the Security Council at its 7573rd meeting, on 09.12.2015, S/RES/2250 (2015), [http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2250\(2015\)&referer=/english/&Lang=E](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2250(2015)&referer=/english/&Lang=E), 26.10.2017.

⁴⁷ United Nations Division for Social Policy and Development, Youth (2015): Resources on Youth, Peace and Security. United Nations Security Council Resolution 2250, <https://www.un.org/development/desa/youth/international-youth-day-2017/resources-on-youth-peace-and-security.html>, 26.10.2017.

⁴⁸ Youth4Peace Global Knowledge Portal (2015): UNSCR 2250 – Introduction, <https://www.youth4peace.info/UNSCR2250/Introduction>, 26.10.2017.

⁴⁹ This research only covers Bosnia and Herzegovina, Croatia, Kosovo and Serbia and is hence referred to as the “Balkans”.

⁵⁰ Witt, Harald (2001): Forschungsstrategien bei quantitative und qualitative Sozialforschung. In: FQS – Forum: Qualitative Sozialforschung, Vol. 2, No. 1, <http://www.qualitative-research.net/index.php/fqs/article/download/969/2115>, 06.04.2016, p. 1-6.

standardization refers to the single questioning units inducing different topics, because it was important to cover specific areas of the issue. Hence, the depth of it was ceded to the interviewees.

The analysis obeyed the principles of the Grounded Theory to develop a categorical framework for a particular phenomenon.⁵¹ Corbin and Strauss (1998) argue how important and enriching the flexible interaction between the researcher and the data material is.⁵² Moreover the ability to remain flexible exemplifies professional dealing with the open-endedness of this research method and sustains ambiguities, thus generating several plausible interpretations.⁵³

Eight in-depth interviews were realized from December 2015 until February 2016 in Vienna with people who have a connection of some kind or have origins from one of the underlying countries, Bosnia and Herzegovina, Croatia, Kosovo or Serbia, but are living in Vienna or were born there. The interview partners were derived from social media, through friends who knew potential candidates for the research. None of them was acquainted or kindred with the author. Each category was represented by two candidates after allowing self-positioning in terms of nation.

It was an absolute priority to encourage the respondents to an extensive description of their opinion and mindset and give them a flow of speech. This is why this work was resigned from further steering elements. Moreover, the surveyed candidates were invited to decide by themselves what has exceptional relevance for them and why. They were also not required to have extensive knowledge of that issue. The main interest was to figure out what their perceptions are and learn if, when and why they vary.

Due to the openness of the research method, the question guide was constantly revised until its final implementation. Through the first introductory block of questions the interviewed persons had the opportunity to position themselves in terms of identity/belonging/reference to the respective topic. The following question was indispensable and helped structure the survey objectively: What kind of reference do you have to the introduced subject? With the answers to this question, all interview partners positioned themselves in terms of (national) belonging. Prior to that, they received a succinct introduction on the issue.

Apart from that, a neutral, calm ambient was chosen to create a convenient atmosphere and assure no interruption by outside influences. Potential audiences have been avoided. As is a customary quality attribute, all interviewed individuals were granted absolute anonymity and data privacy, whereby each signed the consent to be reached out to in case further interviews should be required, too.

⁵¹ Corbin, Juliet; Strauss, Anselm (1998): Basics of qualitative Research. Techniques and Procedures for Developing Grounded Theory. London: Sage Publications, p. 4.

⁵² Corbin; Strauss, 1998, p. 4f.

⁵³ Cf. Corbin; Strauss, 1998, p. 5.

1.7 ANALYSIS

The first step of the evaluation process was the transcription of the interviews. Direct translation was chosen for optimal control.⁵⁴ Speech break, catchwords and other types of intonations were retained for the thought content to remain unchanged. Different dialects, grammar and cases of bad syntax have not been semantically smoothed out, but rather consciously maintained.⁵⁵

Long breaks in phrases and deliberation are intercut with asterisks “*”. Three punctuation dots refer to the extension of single lexical units or elliptical constructions. Notes were taken during the interview in order to reconstruct the situational context as accurate as possible. Semantic emphasis is fully capitalized throughout all interviews. German hesitation vowels such as „äh” or „ahm“ are also completely transcribed.

The procedure of the so called „open coding“ required the material to be read a several times and subsequently in-depth examined. Peculiarities were noted apart. The progressive interpretation of the individual interview material happened by means of grouping of similar cases and differentiation of deviating characteristics. Memos were continuously updated; in the beginning the first comments on the data merely served as a basis for a first impression and sustainably gained relevance with every step of the research.

During the conceptualization, the material was dismantled into its single parts and exhaustively analyzed. In connection with the previous step, constituent codes were developed, which then were assigned to each text passage and phenomenon.⁵⁶ Extra attention was given to the answers of the first question, which is obviously in great contrast to the rest.

Depending if the phenomena had a mutual connection – be it tentative in the first approach – an inspection on the codes was performed and a decision ruled whether they should receive a new designation or not.

Throughout the collection of invariably dense memos, the analysis gained even more precise details, although it often stopped the analyzing process in order to take those notes. Notwithstanding, these interruptions inevitably contributed to the increase in reasonably applicable data material and hence produced a high-quality research bedrock. In the next step, trenchant attributes were assigned to the data in order to start analytical refining.

⁵⁴ Cf. Mayring, Philipp (2002): Einführung in die qualitative Sozialforschung. Weinheim: Beltz Verlag, p. 89f.

⁵⁵ Mayring, 2002, 91.

⁵⁶ Cf. Corbin; Strauss, 1998, p. 4ff.

2 THEORETICAL APPROACH

2.1 POST-CONFLICT RECONCILIATION

Before considering the mandate of the ICTY, it will be useful to insert a scholarly debate on the terms being used to introduce a theoretical framework.

Conflict resolution has not only gained another level of magnitude in world history, it has encountered elaborate approaches to what aims to be the “world’s new order”⁵⁷, as Miall, Ramsbotham and Woodhouse hold. Increasingly intricate socio-economic circumstances as well as political embroilments, severely shaken economies and a terrifying apogee of international terrorism make conflict resolution policies urgent and very difficult at the same time. After entangling conflict resolution from the global war on terrorism, it reasserted itself as a significant component of modern day history.

In order to understand the normative orientation of conflict resolution, it can’t hurt to look back at one of the early conflict theorists such as Morton Deutsch, who alluded other aspects as well, then classified a conflict either into destructive or constructive, “[...] suggesting that the former was to be avoided but the latter was a necessary and valuable aspect of human creativity.”⁵⁸ Conflict, though, refers to a variety of definitions.

Conflicts can be consensual or dissensual (Aubert 1963) if disputants either want or do not want the same thing⁵⁹. Others (Burton 1990) would rather call it disputes while reserving the term “conflict” for serious struggles over unsatisfied human needs which need resolution.⁶⁰ Without going much in detail, conflict resolution and conflict transformation still provoke controversial notions, such as the former to be content-centered, basically aiming at immediate agreements and thus being suitable for de-escalation only, without including long-term processes and constructive change (Lederach 2003). But what Burton (1990) once defined as *conflict resolution* is now often being used for the term *conflict transformation*. Basically, the authors believe “[...] that conflict resolvers and conflict transformers are essentially engaged in the same enterprise.”⁶¹

Regardless of which term will ultimately be used – be it *conflict regulation*, *conflict engagement*, *conflict management* as well as *conflict resolution* and *conflict transformation* – as long as the essence of it is to

⁵⁷ Miall, Hugh; Ramsbotham, Oliver; Woodhouse, Tom (2011): Contemporary Conflict Resolution. The prevention, management and transformation of deadly conflicts. Third Edition. Cambridge/Malden: Polity Press, p. 3.

⁵⁸ Morton Deutsch (1949, 1973) qtd. in Miall; Ramsbotham; Woodhouse, 2011, p. 8.

⁵⁹ Vilhelm Aubert (1963) qtd. in Miall; Ramsbotham; Woodhouse, 2011, p. 9.

⁶⁰ Cf. Miall; Ramsbotham; Woodhouse, 2011, p. 9f.

⁶¹ Miall; Ramsbotham; Woodhouse, 2011, p. 9.

be coherent enough to meet the requirements for advocacy in each particular case needed, it is all good.⁶²

Also, it seems to be rational to use the more popular term that has qualified itself even among practitioners in the recent time as well as it was the first one to start the new field with, which is *conflict resolution*.

2.1.1 CONFLICT STUDIES

In order to define peace, it is required to understand conflict and determine violence first. Conflict Studies have come a long way. Depending on what is considered to have constituted the beginnings of peace research, there is no exact date except the outset of the peace research *movement*, as Herbert Kelman states.⁶³ Back in the time it was the organization of resources of different disciplines trying to understand the state of peace and destruction. Since similar ideas frequently arise simultaneously in different contexts worldwide, it is also tough to stipulate the very advent of this movement. Lest be forgotten, the beginnings ought to be backtracked at least to the work of notable pioneers, who have intellectually contributed to the start of peace research activities, such as Quincy Wright, Lewis Richardson, Pitirim Sorokin⁶⁴ or Ted Lentz.⁶⁵

Nevertheless, as a field of study one can say that conflict resolution started somewhere in the 1950s amid the Cold War, when human survival hung in the balance and stakes were high. The attempt of studying this phenomenon brought a handful of vanguards closer together, who saw potential in applying their knowledge and soon started to develop more concrete approaches in order to understand the roots of international conflicts.⁶⁶

By the 1980s conceptions of conflict resolution had an increasing impact on real conflicts. Miall, Ramsbotham and Woodhouse cite examples with impressive results such as the implementation of approaches in the confrontation with the apartheid in South Africa, problem-solving workshops in the Middle East as well as community initiatives in Northern Ireland with a subsequent acceptance on the side of the local government to include conflict resolution as an integral part of their activities.⁶⁷ Throughout the complexity of its nature, contemporary conflict resolution gained cosmopolitan values in

⁶² See Miall; Ramsbotham; Woodhouse, 2011, p. 9f.

⁶³ Cf. Kelman, Herbert C. (1981): Reflections on the History and Status of Peace Research. In: Conflict Management and Peace Science, Vol. 5, No. 2, 95-110.

⁶⁴ Miall; Ramsbotham; Woodhouse, 2011, p. 38.

⁶⁵ Kelman, 1981, p. 23.

⁶⁶ Cf. Miall; Ramsbotham; Woodhouse, 2011, p. 9ff.

⁶⁷ Cf. Miall; Ramsbotham; Woodhouse, 2011, p. 3f.

the second decade of the century which keep it very intricate per se, but are compulsory at the same time.⁶⁸

As Professor of Conflict Resolution and International Relation, Dennis J. D. Sandole is another eminent contributor in this scope who was fortunate to join John W. Burton's Centre for the analysis of Conflict at the University College London. His personal review on what Burton contributed to conflict resolution in theory and practice to institutionalize the field of conflict resolution reveals where it all began: "[...] in the application of knowledge relevant to understanding and dealing with deep-rooted conflicts across the wide spectrum of human relationships."⁶⁹ Burton's "Violence Explained" (1997) "makes explicit what had always been implicit in his systems approach to conflict and conflict resolution at all levels: that to deal with deep-rooted, intractable conflicts at any level, one requires a comprehensive, holistic framework to capture the complexity of conflict"⁷⁰:

The breaking down of knowledge in the name of science is probably a significant reason for humanity's persistent failure to control its destiny ... [People] tend to perceive situations in a limited context, to seek limited remedies for problems and generally to reduce seemingly complex variables to simple proposition ... Diagnosis has become a matter of chance, depending on the interest areas of those making it. A psychologist makes one, a sociologist another, politicians yet others according to their specific knowledge and interests. Limited ideologies and belief systems influence all. This lack of a holistic view obviously leads to superficial, false and often damaging policy decisions.⁷¹

In terms of "conflict", emphasis will be put on one of the founders and main figures in conflict and peace research, the Norwegian sociologist Johan Galtung's (1969) proposed model of violent conflicts:

Conflict is much more than what meets the naked eye as 'trouble', direct violence. There is also the violence frozen into structures, and the culture that legitimizes violence. To transform a conflict between some parties, more than a new architecture for their relationship is needed. The parties have to be transformed so that the conflict is not reproduced forever. There are intra-party aspects to most inter-party conflicts.⁷²

⁶⁸ Cf. Miall; Ramsbotham; Woodhouse, 2011, p. 3.

⁶⁹ Sandole, Dennis J. D. (2001): John Burton's Contribution to Conflict Resolution Theory and Practice: A Personal View. In: The International Journal of Peace Studies, Vol. 6, No. 1, http://www.gmu.edu/programs/icar/ijps/vol6_1/Sandole.htm, 08.01.2017, n.p.

⁷⁰ Sandole, 2001, n.p.

⁷¹ John W. Burton, (1997) qtd. in Sandole, 2001, n.p.

⁷² Galtung, Johan (1996): Peace by Peaceful Means. Peace and Conflict, Development and Civilization. London/Thousand Oaks/New Dehli: Sage Publications, p. 2.

At the outset Galtung's model of conflict involves both, symmetric and asymmetric conflicts. "He suggested that conflict could be viewed as a triangle, with contradiction (C), attitude (A) and behaviour (B) as its vertices"⁷³, as shown below in figure 1.

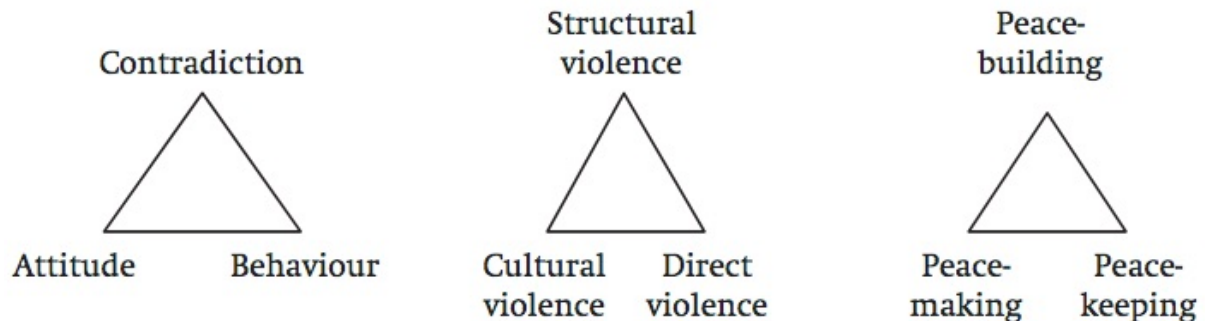


Figure 1: Galtung's models of conflict, violence and peace⁷⁴

A symmetric conflict is characterized by internal contradiction and clashing interests between them. It considers conflicts within similar parties, for example such with more or less equal resources. But conflicts often arise between dissimilar groups, which is defined by colliding interests inherent in the relationship⁷⁵ and/or hierarchy of the parties, e.g. between a majority and minority or between a government and rebel groups or an employer and his/her employees. "Here the root of the conflict lies not in particular issues or interest that may divide the parties, but in the very structure of who they are and the relationship between them. It may be that this structure of roles and relationships cannot be changed without conflict."⁷⁶ The parties' perceptions are inclined to developing misperceptions of one another fueling the conflict by emotions such as "fear, anger, bitterness and hatred."⁷⁷

Consisting of three main elements, attitude incorporates feelings, beliefs and desires while contradiction refers to "the underlying conflict situation, which includes the actual or perceived 'incompatibility of goals' between the conflict parties".⁷⁸ The third component, namely behavior, can portray either cooperation or coercion. Violent conflict behavior encompasses threats, coercion and destructive attacks. According to Galtung, a full conflict is achieved as soon as all three elements, the tripartite, are present together at the same time. The triangular conceptualization can therefore be abstracted to:

⁷³ Miall; Ramsbotham; Woodhouse, 2011, p. 10.

⁷⁴ Reproduced unchanged from Miall; Ramsbotham; Woodhouse, 2011, p. 10.

⁷⁵ Cf. Miall; Ramsbotham; Woodhouse, 2011, p. 10.

⁷⁶ Netuni.nl (2017): Power: Symmetric and asymmetric conflicts, http://www.netuni.nl/courses/conflict1/week1/1.9_week, 31.01.2017.

⁷⁷ Miall; Ramsbotham; Woodhouse, 2011, p. 10.

⁷⁸ Miall; Ramsbotham; Woodhouse, 2011, p. 10.

Conflict = A+B+C. Otherwise it is a latent (or structural) one.⁷⁹ The dynamics of attitude or behavior is constantly changing causing it to be influenced mutually among each other. In other words, this vigor appears to manifest the conflict, “[...] parties’ interests clash or the relationship they are in becomes oppressive” – throughout pursuing their goals, the parties “[...] develop hostile attitudes and conflictual behavior.” Hereby the conflict seethes until it steps up to its peak available for wider spreading, involving other parties and possibly generating secondary conflicts, which makes it difficult to canvass the core problem. “Eventually, however, resolving the conflict must involve a set of dynamic changes that mean de-escalation of conflict behavior, a change in attitudes, and a transformation of the relationships or clashing interests that are at the core of the conflict structure.”⁸⁰

Extensive peacekeeping, -building and -making efforts include the distinction between direct, structural and cultural violence. Direct violence – someone being murdered – seeks for a change in conflict behavior in general while structural violence – somebody dies through poverty – can be ended “[...] by removing structural contradictions and injustices [...]”.⁸¹ And cultural violence – whatever tries to justify violent behavior – can be terminated by shifting attitudes.

2.1.2 UNDERSTANDING HUMAN NEEDS

One of Sandole’s first major works included his conclusion which featured something he labeled “The Four-World’s Model of the Perceptual-Behavioural Process” (1987). Therewith he discussed that every sensitive actor reacts to stimuli he or she obtains from two external worlds, the natural (World 1) and the human-made world (World 3). At the time those stimuli initiate “discharge potentials”, they receive information which becomes progressively encoded and further processed into one of the internal worlds, the biological/physiological (World 4) and to the finally decoding mental world (World 2) with a kind of perception-generating mechanism.⁸²

In order to address a conflict properly, its driving aspirations have to be ascertained in the first place. One possibility is to evaluate basic needs, human needs. A number of scholars have been seeking to determine a suitable foundation of what is a generic impetus for triggering conflicts. Burton and Sandole’s attempt to encompass conflict resolution with the human needs theory appear to provide a necessary basis to start with. To understand what expectations are truly driven by, Burton suggests distinguishing between *needs* and *wants*. “Needs cannot be compromised. Means must be found in a

⁷⁹ See Miall; Ramsbotham; Woodhouse, 2011, p. 11.

⁸⁰ Miall; Ramsbotham; Woodhouse, 2011, p. 11.

⁸¹ Miall; Ramsbotham; Woodhouse, 2011, p. 11.

⁸² Sandole defined his Four-Worlds Model referring to Popper’s Worlds 1-3, adding the fourth and modifying the third individually; see Sandole, 2001, n.p.

conflict resolution process to satisfy human *needs* in order to resolve (as opposed to temporarily settle) a conflict while *wants*, the theory furthermore holds, can be compromised.”⁸³

There is a countless exhaustion of possible human needs which every theorist refers to in a different manner. Paul Sites argues that control is a superordinate need that paves the way for eight other fundamental needs, always with at least one depending from human interaction.⁸⁴ In his line of argumentation, Potapchuk also mentions James C. Davies who classifies needs into either “instrumental” or “substantive”. “Instrumental needs cited by needs scholars include control, identity, recognition, power, and security. Substantive needs can be met in the absence of another human: for example, they would include physical sustenance and security from predators.”⁸⁵

Another option to make a distinction between the two types of needs is to look at their satisfiers. While the substantive need of physical supply can be satisfied through an appropriate amount of daily nourishment, “[...] instrumental need satisfiers are the net result of social interaction over time”⁸⁶ – a social interaction which is based on mutual criteria and thus generates recognition on both sides. Recognition as such constitutes a vital part within individual fulfillment since individuals seek a certain kind of acknowledgement and security in social interactions. The author brings out what all theorists agree upon, no matter how slight their individual differences are. It is believed every person has

“[...] a need (a) to be treated as well as others are treated no matter how they are linked to a particular identity group, (b) to have some level of surety in forecasting the result of interactions with others, and (c) to be safe or protected from others as each pursues his/her individual goals.”⁸⁷

These basic human needs, that have been evaluated for identity, recognition and security, in short BHNs, as Sandole continues to discuss, have the potential to exert influence on people’s beliefs and thus affect the magnitude of relevance as well as emotional boundedness one has chosen it to have. As a result, the ontological basis of BHNs resides in the aforementioned physiological/mental/human worlds and can take individuals to extreme measures⁸⁸:

⁸³ Potapchuk, William R. (1990): *Processes of Governance: Can Governments Truly Respond to Human Needs?* In: Burton, John (1990): *Conflict: Human Needs Theory*. London: Palgrave Macmillan, 265-282, p. 265.

⁸⁴ Paul Sites qtd. in Potapchuk, 1990, p. 265.

⁸⁵ Potapchuk, 1990, p. 265; see p. 281 for further references.

⁸⁶ Potapchuk, 1990, p. 266.

⁸⁷ Potapchuk, 1990, p. 266.

⁸⁸ Cf. Sandole, 2001, n.p.

The reason why past compliance systems led to alienation and anti-social behaviours is now emerging. It is becoming clear that there are human limits to capacities to conform to elite-sponsored institutions and norms: the person is not wholly malleable. On the contrary, the needs that are frustrated by institutions will be pursued in one way or another. These needs would seem to be even more fundamental than food and shelter. Individuals are prepared to go to extreme lengths to defy systems in order to pursue their deeply felt needs, even death by suicide bombing or by hunger strikes.⁸⁹

Understanding concepts of conflict by having a glimpse of the current state of research facilitates to realize where this phenomena roots from and how difficult it is in fact to bring about an appropriate solution.

Before deliberating on the term “Reconciliation”, which is essential for this work, a peek must be taken at peace theory and concepts.

2.2 PEACE STUDIES

Within peace research, conflict study is a related field, yet regarded as a separated domain. A peaceful world or one that is at least devoid of violence is the ubiquitous strive for global harmony. But a *world in peace* and a *world free of violence* are two differing notions.

As introduced in the previous chapter, Johan Galtung is deemed to be one of the founding fathers of conflict studies and peace research.⁹⁰ In this regard he was naturally driven to exhaust the phenomena of conflict and peace by observing, establishing criteria and trying to classify it while inexorably seeking for proper resolutions methods.

Indeed, another not less deceptive term entails Galtung’s efforts to define *positive* and *negative peace*.

What is Peace?

On an epistemological basis, one can argue that peace is a static term within a highly dynamic reality. Along these lines as a result it is debated that the definition of peace is a “permanent item on [the] agendas”⁹¹ of conferences discussing it.

The division of peace stems from the narrow concentration on direct violence in the 1950s, which was utterly adopted by the North American research section. In the meantime, the Peace Research Institute in Oslo made an impact by delivering innovative perspectives into the research field. A mere decade

⁸⁹ John Burton (1997) qtd. in Sandole, 2001, n.p.

⁹⁰ See Grewal, Baljit Singh (2003): Johan Galtung: Positive and Negative Peace, http://www.activeforpeace.org/no/fred/Positive_Negative_Peace.pdf, 14.01.2017; Miall; Ramsbotham; Woodhouse, 2011, p. 10; Sandole, Dennis J. D.; Byrne, Sean; Sandole-Staroste, Ingrid; Senehi, Jessica (2009): Handbook of Conflict Analysis and Resolution. Abingdon/New York: Routledge, p. 267

⁹¹ Galtung, 1996, p. 15.

later, Galtung followed up and broadened the concepts of peace and violence by including indirect or structural violence.⁹²

One example is his *Triangle of Violence*, exemplifying visible and less visible violence patterns. He argues that the phenomenon has very much in common with the structure of an ice berg, since a small top is always visible, while the hidden part is huge in size and magnitude.

Direct violence is often thought to be the worst sort of violence because of its obviousness but this is exactly what makes it easy to fight for the simple reason that it is swimming on the surface. Essentially, it does not affect as many people as cultural and structural violence do.



Figure 2: Galtung's Triangle of Violence⁹³

Indirect or structural violence is not only important due to its invisibleness, but because it is nebulously in the ascendant. To recall the first dimension, direct violence is any form of physical force causing harm to another person; thus it can be extortion, *ethnic cleansing*, genocide, *homicide*, *rape*, *war*⁹⁴, *extermination*⁹⁵. Cultural violence is expressed in manifold ways: It might be covered in *religion*, packaged with an *ideology*, interlined in *language*⁹⁶ and *science*, camouflaged in *art* and *education* or instrumentalized by the *media*.

It can serve for amplified examples as fear, hatred, negative connotations, and negative perception, ad infinitum. Structural violence is characterized by manipulation of societal structures to suppress others such as unequal opportunities and access to services, *human rights*, *discrimination*, *gender/age* issues, poverty, *institutionalization*, etc.⁹⁷

Galtung alluded how this correlation implies that conflicts orbit in a *vicious triangle*⁹⁸ by combining direct, structural and cultural violence. Even though the conflict-required tripartite – remember: Conflict =

⁹² Cf. Grewal, 2003.

⁹³ Reproduced unchanged from Galtung, Johan (2004): Violence, War, and Their Impact On Visible and Invisible Effects of Violence. In: polylog – Forum for Intercultural Philosophy 5, <https://them.polylog.org/5/fgj-en.htm>, 12.09.2015, n.p.

⁹⁴ Lee, SungYong; Özerdem, Alpaslan (2016): International Peacebuilding. An introduction. New York: Routledge, p. 19.

⁹⁵ Added by author.

⁹⁶ Galtung, 1996, p. 40f.

⁹⁷ Lee; Özerdem, 2016, p. 19.

⁹⁸ Galtung, 1996, p. 40f.

A+B+C – can happen to be unmet, the significance of a so called *latent conflict* is not to be undervalued at all just because previous studies failed to identify the capability of repercussion. For this cause, Lee and Özerdem cite one of Galtung's important notices on including

[...] this form of violence in an analytical framework because as the level of potential violence increases, so social tension and instability intensify. In fact, the inclusion of latent violence in the equation significantly expands the scope of peacebuilding operations to include efforts to address the 'invisible' dimensions of war-affected societies.⁹⁹

Going back to the elaboration of peace, a suitable point of departure according to Galtung are the two definitions to start with:

Peace can be viewed from two different perspectives. "Peace is the absence/reduction of violence of all kinds" and "peace is nonviolent and creative conflict transformation." He also depicts what both definitions hold: "Peace work is work to reduce violence by peaceful means" and "Peace studies" is the study of the conditions of peace work".¹⁰⁰

Hence, having a condition without violence, threat, exploitation or deprivation is what he refers to as *negative peace*. A state where there is no space for inequity, where the main ideas are legitimacy and justice¹⁰¹ is the overall desired objective within peace research, the second dimension of peace, namely *positive peace*. However, this terminology refers to a number of operating levels, e.g. economic, social, political, where injustice has to be removed prior to be able to reach the stage of positive peace. This also encompasses relations between class, gender, race, sex and ad nauseam.

"At an intrapersonal level positive peace goes beyond absence of anxiety and embraces the ideas of deep inner peace through integrity (wholeness) of being, physical, emotional, and spiritual. Some believe that 'inner' peace of this kind is the ultimate underpinning of lasting world peace."¹⁰²

World peace, however, is something tirelessly open to dispute. The reason is simple: As Galtung argues in his book "Peace by Peaceful Means: Peace and Conflict, Development and Civilization" (1996), he shows his reactions to questions such as "Will there ultimately be peace in the world?"¹⁰³, or "[...] will there be health by the Year 2000?"¹⁰⁴. It is redundant to say that none of these things can ever be ultimately achieved in total, neither peace, nor health. He states very clearly that conflict reducing efforts and peacemaking attempts may reach a better balance with less violence and more peace. Among

⁹⁹ Galtung (1969) qtd. in Lee; Özerdem, 2016, p. 19.

¹⁰⁰ See Galtung, 1996, p. 9.

¹⁰¹ Miall; Ramsbotham; Woodhouse, 2011, p. 12.

¹⁰² Miall; Ramsbotham; Woodhouse, 2011, p. 12.

¹⁰³ Galtung, 1996, p. 17.

¹⁰⁴ See Galtung, 1996, p. 17.

other things, he communicates effectively to demarcate the abilities and limits of research and practice: “The task of peace studies is the same as that of health studies: not unrealistic total triumphs of good over evil, but better deals, with less suffering, from violence as from disease.”¹⁰⁵

Theoretical challenges induced the extension of the idea of peace and violence through the shift from actor-oriented explanations to structure-oriented causes. Therefore, structural violence leads to individuals being influenced negatively and inflated with bad potential, so the author continues to summarize Galtung’s thoughts. He adds: “Structural violence stems from violence in the structure of society, rather than the actor-generated personal and direct violence.”¹⁰⁶

Examples for appropriate measures to start negative peace are, e.g. complete disarmament, peace policies, arms control, the balance of power and international conventions (Geneva Convention of Human Rights) whereas positive peace is reached by structural integration, (peace) education and communication in order to achieve the overall improvement of human understanding in this regard; international cooperation, dispute resolution, arbitration and conflict management – in short, peace by peaceful means.¹⁰⁷

2.3 RECONCILIATION

On the basis of Johan Galtung’s (2005)¹⁰⁸ and Karen Brounéus’ (2008)¹⁰⁹ interpretations of “reconciliation” the term refers to the process of ending hostile acts while acknowledging the destructive hostile past and working towards a positive behavior and constructive relationships that allow for a harmonious coexistence. The definition refers to a number of social reconstruction efforts with the aim to achieve positive peace. Before achieving the stage of positive peace or, as Kenneth Boulding (1991) countered, “stable peace”¹¹⁰, there are a few other stages within a de-escalation process that are consecutively passing. Hugh Miall, Oliver Ramsbotham and Tom Woodhouse (2011) have delivered a model for a better visualization:

¹⁰⁵ See Galtung, 1996, p. 17. This is a relevant focal point which I am adhering to in order to introduce another important factor in the debate surrounding criminal tribunals such as the ICTY: the communication of limits and possibilities to the (affected) public and what to expect from a criminal tribunal in general.

¹⁰⁶ See Grewal, 2003, p. 2.

¹⁰⁷ See Galtung, 1996; Grewal, 2003.

¹⁰⁸ Galtung, Johan (2005): Twelve creative ways to foster reconciliation after violence. In: *Intervention*, Vol. 3, No. 3, 222-234.

¹⁰⁹ Brounéus, Karen (2008): Analyzing Reconciliation: A Structured Method for Measuring National Reconciliation Initiatives. In: *Peace and Conflict – Journal of Peace Psychology*, Vol. 14, No. 3, 291-313.

¹¹⁰ One of the main criticisms Galtung had to accept concerning his theory on the two dimensions of peace is Boulding’s objection towards the labeling of “negative peace” and the implementation of structural violence which he believed would downgrade international peace in general. With “stable peace” Boulding tried to melt those two concepts by drawing attention to the positive aspects of both terms, one by “borrowing the notion of the absence” of war and the other from the positive peace idea. Furthermore, it is important to mention that Boulding focuses on present peace situations while Galtung puts emphasis to find out where conflict is prevailing and how positive peace can be achieved. Kenneth Boulding (1991) qtd. in Grewal, 2003, p. 5.

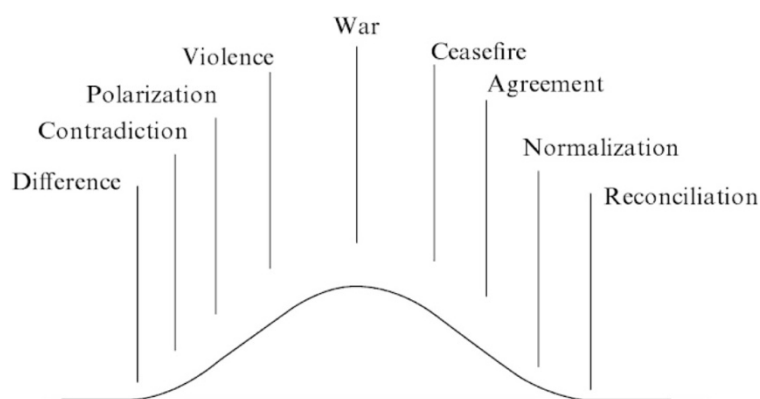


Figure 3: Model of conflict escalation and de-escalation¹¹¹

This model illustrates particular stages and the dynamics of a pre- and post-conflict situation, with war expressing the apex of a conflict. In this particular case, the tiers “ceasefire”, “agreement” and “normalization” are compulsory to be accomplished before daring to identify suitable reconciliation methods and the long-term establishment of positive peace. What is still very inaccurate is the distinction between “normalization” and “reconciliation”. Just as Nena Tromp accurately recognized, “[...] there is no efficient prescription for how a society should deal with a past legacy of mass atrocities and political violence.”¹¹² Other than that, determination is also necessary on how reconciliation is supposed to take place on an individual emotion-psychological level and how this is extendable to state-to-state-reconciliation.

2.3.1 TRANSITIONAL JUSTICE

From the 1990s onwards, driven by numerous armed conflicts, the idea of Transitional Justice gained a completely new relevance¹¹³. The detection of crimes and confrontation with its massive consequences were enabled through a court. The focus was to obtain justice for all victims and survivors on the one hand, and to restore the dignity of the victims on the other. Nevertheless, one of the main goals was the encouragement of the peaceful coexistence and regional stability as well as the prevention of future crimes.

¹¹¹ Reproduced unchanged from Miall; Ramsbotham; Woodhouse, 2011, p. 13.

¹¹² Tromp, Nena (2013): A Troubled Relationship: The ICTY and Post-Conflict Reconciliation. In: Felberbauer, Ernst M.; Jureković, Predrag (eds.): Regional Co-operation and Reconciliation in the Aftermath of the ICTY Verdicts: Continuation or Stalemate? Contributions from the 26th Workshop of the PfP Consortium Study Group “Regional Stability in South East Europe”. Vienna: Republic of Austria/Federal Ministry of Defence and Sports, 47-65, p. 50f.

¹¹³ Buckley-Zistel, Susanne (2007): Handreichung Transitional Justice, <http://www.konfliktbearbeitung.net/downloads/file889.pdf>, 28.09.2015.

Yet, different forms of Transitional Justice are essential to the understanding of: “[...] the international community’s efforts to enhance human rights, protect persons from fear and want, address property disputes, encourage economic development, promote accountable governance and peacefully resolve conflict.”¹¹⁴

However, in advancing the rule of law, it can be helpful to be guided by the UN-adopted definition as follows:

The notion of “transitional justice” [...] comprises the full range of processes and mechanisms associated with a society’s attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation. These may include both judicial and non-judicial mechanism, with differing levels of international involvement (or none at all) and individual prosecutions, reparations, truth-seeking, institutional reform, vetting and dismissal, or a combination thereof.¹¹⁵

The paramount impetus of the mandate is incorporated in establishing resolutions and giving assistance where it obviously lacks thereof by complying with international human rights and applicable standards adopted under UN auspices.¹¹⁶

In order to deal with given challenges and ensure that victims receive their due, Transitional Justice as a special form of law comprises a number of justice concepts such as, e.g. criminal, retributive, restorative, historical, reparatory, administrative and constitutional justice. Although it is not easy to keep an overview and develop a sense of intuition for telling highly entangled concepts apart – which are basically making use of the same mechanisms applied at individual, collective and state levels – a valuable approach to distinguish between Reconciliation and Transitional Justice might be to dissect the former into “four constitutive elements, namely: Peace, Justice, Truth and Mercy.”¹¹⁷

Due to the absence of security and trust in a post-conflict area, John Paul Lederach, an American sociologist and founding director for the Center of Justice and Peacebuilding, stresses the fact that for Peace “[...] structural mechanisms [are] required to prevent recurrence of violence”; Tromp continues to convey and adds examples for such measures, for instance “[...] demobilization of military forces, disarmament and demilitarization, which should contribute to mutual trust and positive perceptions of each other, and to a general sense of security.”¹¹⁸

¹¹⁴ United Nations Security Council (2004): The rule of law and transitional justice in conflict and post-conflict societies.

Report of the Secretary-General, S/2004/616, <https://www.un.org/ruleoflaw/files/2004%20report.pdf>, 23.08.2004, p. 4.

¹¹⁵ United Nations Security Council, 2004, p. 4.

¹¹⁶ Cf. United Nations Security Council, 2004, p. 5.

¹¹⁷ Tromp, 2013, p. 51.

¹¹⁸ Tromp, 2013, p. 52.

Heading towards the implementation of one of the main assuring factors of stable peace, *the rule of law*, the suggestion includes the mention of democratization in the same breath. As a precondition for human and political rights per se, the economic situation is considered to be another significant coefficient in the struggle for freedom and peace. Tromp underlines the positive linkage between democracy and economic growth: "There is also an expectation that with economic prosperity, past discrimination and inequalities will disappear."¹¹⁹ In another research, Yi Feng (2003) deliberately captured the fundamental importance of the political embeddedness of an economy. "Any economy functions within some sort of political framework, and consequently it is impossible for an economic agent to be impervious to the political structure surrounding the economy."¹²⁰ Apart from that, investors will rather be attracted to a politically stable country than vice versa.

2.3.2 RECONCILIATION AS A PREREQUISITE FOR STABLE PEACE

As Lederach determined, creating stable peace in a post-conflict society is the top priority for the risk of relapse into a conflict remains very present in the aftermath.¹²¹ In further consequence, reconciliation is doubtlessly a vital factor of the peace building process.¹²² Albeit the challenge lies not only in the approach, it turns out to be daedal since post-conflict societies mostly end up having two or more truths about a (*violent*) *conflict*. These are circumstances that exacerbate an onerous conciliatory undertaking as it is, largely working against reconciliation.¹²³ Kriesberg justly conveys that in many of those societies, where multiple narratives about the truth prevail "[...] find their way into collective memory and possibly in the history books."¹²⁴

In a powerful statement on behalf of the ICTY referring to the promise they make to the affected people, justice is described as an absolute prerequisite for peace:

¹¹⁹ Tromp, 2013, p. 53.

¹²⁰ Feng, Yi (2003): *Democracy, Governance, and Economic Performance. Theory and Evidence*. London: MIT Press, p. 17.

¹²¹ Lederach, Paul (1997): *Building Peace: Sustainable Reconciliation in Divided Societies*. Washington, D.C.: United States Institute of Peace Press, p. 28.

¹²² Brounéus, 2008.

¹²³ Kriesberg, Louis (2004): *Comparing Reconciliation Actions within and between Countries*. In: Bar-Siman-Tov, Yaacov (ed.): *From Conflict Resolution to Reconciliation*. Oxford: Oxford University Press, 81-110, 82f.

¹²⁴ Kriesberg, 2004, 82f.

Justice is an indispensable ingredient of the process of national reconciliation. It is essential to the restoration of peaceful and normal relations between people who have had to live under a reign of terror. It breaks the cycle of violence, hatred and extra-judicial retribution. Thus Peace and Justice go hand-in-hand. This Agreement promises that those who have committed crimes which threaten international peace and security - genocide, crimes against humanity and war crimes - will be brought to justice.¹²⁵

As Tromp rigorously concludes, this is the very reason for establishing truth commissions.¹²⁶

Establishing peace on an individual level also means to attain the ability to cope with potential perpetrators face-to-face on a daily basis, just as the Bosnian case shows. Thus, justice and truth-telling are part of the process.

¹²⁵ ICTY – International Criminal Tribunal for the former Yugoslavia (1995): The Tribunal welcomes the parties' commitment to justice. Joint statement by the President and the Prosecutor. Press release CC/PIO/027-E, 24.11.1995, <http://www.icty.org/en/press/tribunal-welcomes-parties-commitment-justice-joint-statement-president-and-prosecutor>, 18.01.2017.

¹²⁶ Tromp, 2013, p. 53.

3 THE TRIBUNAL

3.1 THE INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA (ICTY)

Given the fact that a bloody break-up of the former Yugoslavia did not have the capacities during and even after the conflict to eliminate instruments of repression, restore national governments and state sovereignty as well as judicial systems and societies and ensure proper law standards, the international community had to deliver a diplomatic decision, one of which was anticipated to start a recovering process of the people by convicting perpetrators of harrowing atrocities at first hand.¹²⁷ As a reaction, the ICTY has eventually rendered an important milestone for international criminal and humanitarian law. Dating back to the UN Security Council Resolution 1966, established as a temporary and geographically determined court “[...] for the specific purpose of investigating crimes committed during the wars in the former Yugoslavia and prosecuting those responsible, this was done at a time when the domestic judicial systems in the former Yugoslavia were not able or willing to do so themselves.”¹²⁸ Post-conflict conditions have to conquer the burden of a fallen government, an inexistent framework for appropriate conflict de-escalation and missing capacities to restore fundamental law standards. A straight to the point explanation is available at paragraph no. 27 of the Security Council Report:

In post-conflict settings, legislative framework often show the accumulated signs of neglect and political distortion, contain discriminatory elements and rarely reflect the requirements of international human rights and criminal law standards. Emergency laws and executive decrees are often the order of the day. Where adequate laws are on the books, they may be unknown to the general public and official actors may have neither the capacity nor the tools to implement them. **National judicial, police and corrections systems have typically been stripped of the human, financial and material resources necessary for their proper functioning.** [emphasis added] They also often lack legitimacy, having been transformed by conflict and abuse into **instruments of repression.** [emphasis added] Such situations are invariably marked by an abundance of arms, rampant gender and sexually based violence, the exploitation of children, the persecution of minorities and vulnerable groups, [...] and other criminal activities. **In such situations, organized criminal groups are often better resourced than local government and better armed than local law enforcement.** [emphasis added] Restoring the capacity and legitimacy of national institutions is a long-term undertaking. However, urgent action to restore human security, human rights and the rule of law cannot be deferred. **Thus, United Nations peace operations are often called upon to help fill this rule of law vacuum** [emphasis added].¹²⁹

¹²⁷ See United Nations Security Council, 2004, p. 10.

¹²⁸ ICTY – International Criminal Tribunal for the former Yugoslavia (n.d.c): Completion Strategy, <http://www.icty.org/en/about/tribunal/completion-strategy>, 18.02.2017.

¹²⁹ United Nations Security Council, 2004, p. 10.

Furthermore, given that even in the years after the Dayton Agreement, “[...] the domestic judiciary was clearly not able to conduct impartial and effective investigations and prosecutions,”¹³⁰ the ICTY intervened with good reason, although its timing still remains open to dispute. Having observed that national courts failed to recover information as a fundamental resource and had difficulty in prosecuting war criminals accordingly, domestic courts were not considered to be in the position of being a credible partner for the ICTY. Therefore the “[...] Tribunal shall have primacy over national courts.”¹³¹

But can reconciliation be induced by a court dealing with past atrocities on a post-conflict territory? Do the applied strategies adhere to European law? Does third party conflict management differ across nations? Questions which tackle the demand for complete clarification also energize invisible strifes both, culturally and structurally.

International criminal tribunals differ in nature and scope. Kristin Xueqin Wu compares the ICTY to the image of justice it shapes. She concludes as follows:

International criminal trials are different from domestic trials in various aspects. One of the most notable differences is the symbolic role of international criminal trials, which is deemed essential for the peace process in a post-conflict society; in other words, there can be no peace without justice. However, this can only be achieved when the legitimacy of these trials is endorsed by the very communities involved, and the messages of the trials are embraced by the hearts and souls of these communities. Therefore, if the courts are expected to benefit the reconciliation efforts in the wounded communities, they need to communicate their work to the local populations concerned. Unfortunately, although much progress has been made in the past decade, reaching out to the local populations still remains a significant challenge for the ad-hoc tribunals and the International Criminal Court (ICC).¹³²

Apart from the Tribunal's dependency on local cooperation and a number of obstacles they were confronted with, given that the concerned local populations as well as probably the Diaspora, too, lack adequate information on the ICTY's mandate and its limits¹³³ there is a high probability that various perceptions of its mandate and judgments have generated various outputs of *perceived realities*. However, different grounds are responsible for these associations.

On a territory where a feverish separation among nations is, in fact, manifested in continually growing differences in languages since WWII, such as the emphasis on the remains of the Ottoman Empire in

¹³⁰ Kirs, Eszter (2011): Limits of the Impact of the International Criminal Tribunal for the Former Yugoslavia on the Domestic Legal System of Bosnia and Herzegovina. In: GoJIL – Goettingen Journal of International Law, Vol. 3, No. 1, 397-416, p. 398.

¹³¹ Kirs, 2011, p. 399.

¹³² Xueqin Wu, Kristin (2012): Shaping the Image of International Criminal Justice: A Comparative Examination of the ICTY and SCSL in Managing the Experience of Justice [Research Project]. Utrecht: Utrecht University, p. 60.

¹³³ See Xueqin Wu, 2012, p. 60.

Bosnian or the dissociation of the Croatian language from the Serbian¹³⁴, or the evident display of ethnic symbolism and motifs that have taken on a key function¹³⁵, it is condemned to be the so called "European powder keg". With that said, it is hardly surprising that impressions of the war and the ICTY might diverge to a varying extent, and thus lead to a problematic interaction between the various ethnic groups among themselves.¹³⁶ V. P. Gagnon, Jr., a Professor of Politics, trenchantly encapsulates the set of problems which started with the Yugoslav fall:

In the former Yugoslavia, war conducted in the name of ethnic solidarity has destroyed the Yugoslav state, leveled entire cities, and resulted in hundreds of thousands of casualties and millions of refugees. It has also brought NATO's first out-of-area actions, the largest United Nations peacekeeping operation in history, and the very real possibility of war spreading to other parts of the Balkans.¹³⁷

From a silent coexistence of all ethnic groups in the former Yugoslavia and under Tito regime, since the 1990, in fact, ethnic nationalism proved to be the most potent separator in the Balkans. With regards to the multiethnic Yugoslav phenomenon Burkhard Wehner, a German economist and political scientist, aptly holds, that multiethnic societies function much better under monarchy or autocratic governance, since the status of being a subject to the monarchy per se constitutes a liaison, thus making heterogeneous communities collectively beholden. Moreover, he ensures that for these types of communities it is easier to be governed and controlled from above than to reign conjointly. Therefore, democracy is difficult to be accomplished in such states.¹³⁸

After the Yugoslav wars between 1991 and 1995 and the NATO shelling on Serbia and Kosovo in 1999,¹³⁹ facing history is difficult for the people in the Balkans. The war is a permanent mental companion taking along consequences far beyond geographical boundaries. Competing narratives and memories are major constraints on reconciliation.¹⁴⁰ Dennis J. D. Sandole, expert for ethnic conflict and

¹³⁴ Cf. Xueqin Wu, 2012, p. 198ff.; see also Gerhards, Jürgen (2010): Mehrsprachigkeit im vereinten Europa. Transnationales sprachliches Kapital als Ressource in einer globalisierten Welt. Wiesbaden: VS Verlag für Sozialwissenschaften, p. 26; Bellamy, Alex J. (2003): The formation of Croatian national identity. A centuries-old dream? Manchester/New York: Manchester University Press, p. 137-146.

¹³⁵ Pauker, Iva (2012): War Through Other Means: Examining the Role of Symbols in Bosnia and Herzegovina. In: Simić, Olivera; Volčić, Zala; Philpot, Catherine R. (eds.): Peace Psychology in the Balkans. Dealing with a Violent Past while Building Peace. New York/Dordrecht/Heidelberg/London: Springer, 109-128, p. 116.

¹³⁶ Cf. Braun, Christian (2013): Der schwierige Umgang mit der Geschichte – Transitional Justice in Kroatien. In: APuZ – Aus Politik und Zeitgeschichte, Beilage zur Wochenzeitung Das Parlament, Vol. 63, No. 17, 35-41.

¹³⁷ Gagnon, Jr., V. P. (2002): Ethnic Nationalism and International Conflict: The Case of Serbia. In: International Security, Vol. 19, No. 3, 130-166, p.133f.

¹³⁸ Wehner, Burkhard (1999): Prämierung des Friedens: Alternativen zum „humanitären“ Krieg. Opladen: Westdeutscher Verlag, p. 32f.

¹³⁹ ICTY, n.d.a.

¹⁴⁰ Sandole, Dennis J. D. (2013): The Complex Relationship between Transitional Justice and Regional Peacebuilding: The ICTY's Challenge for Reconciliation and Conflict Transformation in the Post-Yugoslav Balkans. In: Felberbauer, Ernst M.;

third party roles in conflict resolution, expounds the difficulty of reconciliation between former conflicted parties, where they have killed and destroyed each other and their identity symbols. He argues that in some cases reconciliation can be unattainable.¹⁴¹ “How, for example, can we convince a man whose mother and father have been killed to reconcile with the person who killed them? This is complexity of very high order!”¹⁴² Jelena Subotić, Professor for Transitional Justice and Human Rights, outlined that relationships in the former Yugoslav region were hard to rebut, since “the memories of war – the understanding what caused it, who was to blame, who committed atrocities and against whom – remain deeply contested.”¹⁴³

The elasticity of *perceived realities* appears to have a great tendency of powerful (mis)conception.

3.2 THE MANDATE – A DISENTANGLING TASK

Driven to foster capacities for war crime prosecution and thereby provide a sound perspective for the future, the UN has made an important contribution to initiate so called *Transitional Justice*.¹⁴⁴ One the respective states were not capable to bring about independently while oscillating in a post-conflict situation, namely the prosecution of serious violations of international humanitarian law, e.g. war crimes and crimes against humanity on the territory of the former Yugoslavia since 1991.¹⁴⁵

It is a Criminal Tribunal responsible for the prosecution and assignment of culpability of senior leaders and worst perpetrators of crimes against humanity. Achievements also include justice to the victims, the establishment of facts, the development of international law and the strengthening of the rule of law.¹⁴⁶ The ICTY has contributed to ending impunity and paved the way for the establishment of a unique historical record in recent history. It has also demonstrated that no one stands above the law as well as it has shrunk the space for denials.¹⁴⁷

Jureković, Predrag (eds.): Regional Co-operation and Reconciliation in the Aftermath of the ICTY Verdicts: Continuation or Stalemate? Contributions from the 26th Workshop of the PFP Consortium Study Group “Regional Stability in South East Europe”. Vienna: Republic of Austria/Federal Ministry of Defence and Sports, 69-95, p. 69.

¹⁴¹ See Sandole, 2013, p. 77f.

¹⁴² Sandole, 2013, p. 77.

¹⁴³ Jelena Subotić (2009) qtd. in Sandole, 2013, p. 82.

¹⁴⁴ United Nations (2010): Guidance Note of the Secretary-General. United Nations Approach to Transitional Justice, https://www.un.org/ruleoflaw/files/TJ_Guidance_Note_March_2010FINAL.pdf, 10.01.2018.

¹⁴⁵ Fischer, Martina; Petrović-Ziemer, Ljubinka (2013): Dealing with the Past in the Western Balkans. Initiatives for Peacebuilding and Transitional Justice in Bosnia-Herzegovina, Serbia and Croatia. Berghof Report No. 18, <http://www.berghof-foundation.org/fileadmin/redaktion/Publications/Papers/Reports/br18e.pdf>, 12.09.2015, p. 151.

¹⁴⁶ ICTY – International Criminal Tribunal for the former Yugoslavia (n.d.d): Achievements, <http://www.icty.org/en/about/tribunal/achievements>, 18.02.2017.

¹⁴⁷ ICTY, n.d.b.

The Tribunal's contribution may be the first step towards peace and reconciliation, yet the Tribunal is not responsible for the reconciliation process per se (see UN Security Council Resolution 827).¹⁴⁸ However, it is a precondition for permanent peace.¹⁴⁹ Martina Fischer and Ljubinka Petrović-Ziemer elucidate that retributive forms of justice have been taken on behalf of international politics, but urgently need local courts to follow up on this groundwork:

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 have provided a basis for this, and in view of a situation where no independent domestic institutions were available to serve justice, the existence of the International Hague Tribunal has paved the way for legal accountability, establishing individual responsibility for mass crimes committed during the wars of the 1990s. In particular, international strategies have put a very strong focus on legal prosecution and retributive forms of justice. However, several thousands of war crimes cases remain to be investigated by local courts in Bosnia, Serbia and Croatia, including killings of civilians during and after the military operation "Storm".¹⁵⁰

It became crucial that the United States and Western Europe often referred to as the "*international society*" or simply "*the West*", create a fundament to install the rule of law and thereby provide access to legal accountability in the Balkans. Yet, building sustainable mechanisms for Transitional Justice and intensified efforts to continue the ICTY's legacy on a regional level will remain an important challenge for the future, Schmunk portends. The ICTY has proved to be an integral component of Transitional Justice, but its work needs to be complemented by other forms of Transition Justice, too. Other than that, top-down efforts alone will not improve the process as long as bottom-up measures lack to consider the society extensively "especially with regard to addressing the deep wounds of war and of traumatic loss that still remain."¹⁵¹

Transitional Justice, however, might arouse controversial impressions in terms of third party conflict resolution, though. Although stabilization and peace building are a top priority for *Western* security policies, fixing failed states expediently, however, demonstrated revolution and despair at the same time. Again, Schmunk concludes that "when it comes to external conflict management, conflict resolution and post-conflict assistance, the world has really changed fundamentally. We will see, however, that this is not yet necessarily synonymous with success."¹⁵² Hence, third party conflict resolution can be ambivalent.

¹⁴⁸ United Nations Security Council, 1993.

¹⁴⁹ Barria, Lilian A.; Roper, Steven D. (2005): How Effective are International Criminal Tribunals? An Analysis of the ICTY and the ICTR. In: The International Journal of Human Rights, Vol. 9, No. 3, 349-368, p. 362.

¹⁵⁰ Fischer; Petrovic-Ziemer, 2013, p. 151.

¹⁵¹ Sandole, 2013, p. 90.

¹⁵² Schmunk, 2010, p. 18f.

For different reasons, mostly acquittals of alleged war criminals¹⁵³ and cheering homeland communities¹⁵⁴, respectively, frustrated victims on the other end, probably contributing to further divide the affected people – the Tribunal’s most important audience. Given this pertinence, Olivia Swaak-Goldman, former International Criminal Court (ICC) consultant, gave an interesting remark: “Implicit is the recognition that it might be worse for the rule of law to have an international criminal tribunal that is ignored than not to have one at all.”¹⁵⁵ As a result, the ICTY stood at twilight.¹⁵⁶ Therefore it is fairly commended to scrutinize its capability, without hammering the concept itself, but revealing its actual deficiencies¹⁵⁷ in order to bring about condign amendments.

Looking back at the Balkan post-war history, it slightly conveys the impression of a conglomeration of similar nations not only trying to defeat themselves among one another, but divergently rejecting or condemning external conflict resolution.¹⁵⁸ Despite the fact that the realization of criminal tribunals won’t shift these countries from a completely destroyed to a pristine condition, it was crucial to start implementing instruments for peace and reconciliation.

In many respects the jurisdiction of the ICTY has achieved significant developments but still various vox populi susurrate divergent opinions every now and then (see Jelena Subotić; Janine N. Clark; Dennis J.D. Sandole, for example).¹⁵⁹ The question is: Why?

As discussed above, justice may be achieved through a spectrum of instruments. The definition per se subsumes available means with which Transitional Justice is being realized. It includes jurisdiction through international, hybrid and national war tribunals, the detection of the extent of atrocities through national and international truth commissions, reparations for victims of human rights violations encompassing compensation, rehabilitation and symbolic redemption. Institutional reforms on all levels

¹⁵³ BBC News (2012): Hague war court acquits Croat Generals Gotovina and Markac, <http://www.bbc.com/news/world-europe-20352187>, 09.01.2018; BBC News (2015): Bosnia and Serbia tussle over war crimes suspect Oric, <http://www.bbc.com/news/world-europe-33227519>, 09.01.2018.

¹⁵⁴ BBC News (2011): Serbia: Nationalists protest over Ratko Mladic arrest, <http://www.bbc.com/news/world-europe-13589771>, 09.01.2018.

¹⁵⁵ Swaak-Goldman, Olivia Q. (1997): The ICTY and the Right to a Fair Trial: A Critique of the Critics. In: *Leiden Journal of International Law*, Vol. 10, No. 2, 215-221, p. 216.

¹⁵⁶ See Orentlicher, Diane F. (2010): That Someone Guilty Be Punished. The Impact of the ICTY in Bosnia. New York: Open Society Justice Initiative/International Center for Transitional Justice; Wald, Patricia M. (2001): The International Criminal Tribunal for the Former Yugoslavia Comes of Age: Some Observations on Day-To-Day Dilemmas of an International Court. In: *Journal of Law & Policy*, Vol. 5, No. 1, 87-118.

¹⁵⁷ With reference to efforts in regards of Transitional Justice in the former Yugoslavia and Rwanda. For more information on the Ex-Yugoslav case see (German) Ernst, Andreas (2013): Das Haager Jugoslawien-Tribunal schreibt keine Geschichte. Warum die gesellschaftliche Wirkung von Kriegsverbrecher-Prozessen überschätzt wird. In: *Südosteuropa Mitteilungen*, Vol. 53, No. 2, 39-45; for English information see Brethfeld, Julie; Vadakaria, Nino (2012): Leaving the past behind. The perceptions of youth in Bosnia and Herzegovina. Sarajevo/London: Nansen Dialogue Centre Sarajevo/Saferworld, https://www.saferworld.org.uk/downloads/pubdocs/Leaving%20the%20past%20behind_perceptions%20of%20youth%20in%20Bosnia%20and%20Herzegovina.pdf, 05.02.2017.

¹⁵⁸ Cf. Schmunk, 2010, p. 19f.

¹⁵⁹ See Clark, Janine Natalya (2012): The ICTY and the Challenges of Reconciliation in the Former Yugoslavia, <http://www.e-ir.info/2012/01/23/the-icty-and-the-challenges-of-reconciliation-in-the-former-yugoslavia/>, 28.09.2015; see also Sandole, 2013, p. 69.

such as police, military and judiciary as well as the dismissal of corrupt and criminal personnel and the construction of memorial sites and museums in order to be reminiscent of past crimes and atrocities are to be realized.¹⁶⁰

An ICTY Press release presents President Claude Jorda's speech made on 12 May 2001 in Sarajevo, which covers the ICTY's mandate and its responsibilities for societal developments:

Security Council resolution 827 confers on the International Tribunal the power to punish serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991 so that it may contribute to restoring and maintaining the peace. Stated otherwise, **its mission is to promote reconciliation through the prosecution, trial and punishment of those who perpetrated war crimes, crimes against humanity and genocide [emphasis added].** **By ensuring that people are held individually [emphasis added] responsible for the crimes they committed,** the International Tribunal must prevent entire groups – be they national, ethnic or religious – from being stigmatised and must ensure that others do not resort to acts of revenge in their search for justice. It must *neutralise* [emphasis added] the major war criminals and preclude them from sustaining a climate of hatred and virulent nationalism which will inevitably lead to future wars. By hearing the voices of the victims in a solemn but public forum, it must assuage their suffering and help them to reintegrate into a society which has been reconciled. Finally, by *establishing the legal truth* [emphasis added] on whose basis society can take shape, the International Tribunal must prevent all historical revisionism.¹⁶¹

Truth is which Kristine Johansen added as well, a vital part of a successful reconciliation process. Not at least because it enables to launch a common narrative which accordingly impedes historical revisionism, as stated in the citation above.

"Representatives of the ICTY state that one of the Tribunal's main contributions [...] is to be part of the creation of a public record of the Bosnian War. They proudly state that they have over two million pages of publically available document that will be part of the Tribunal's legacy."¹⁶² Although a common narrative is targeted, "[...] they acknowledge their limitation in creating a common narrative of war, as they only help establish the truth through the lens of a criminal justice."¹⁶³

The ICTY officially closed on December 31st, 2017, looking back at a historic legacy and 161 indicted persons for serious violations of international humanitarian law.¹⁶⁴

¹⁶⁰ Buckley-Zistel, 2007.

¹⁶¹ ICTY – International Criminal Tribunal for the former Yugoslavia (2001): The ICTY and the Truth and Reconciliation Commission in Bosnia and Herzegovina. Press release JL/P.I.S./591-e, 17.05.2001, <http://www.icty.org/en/press/icty-and-truth-and-reconciliation-commission-bosnia-and-herzegovina>, 18.02.2017.

¹⁶² Johansen, Kristine (2011): The Actual Impact of the International Criminal Tribunal of the Former Yugoslavia on the Reconciliation Process in Bosnia-Herzegovina. Master Thesis, University of Oslo, https://www.duo.uio.no/bitstream/handle/10852/13182/Johansen_Kristine.pdf?sequence=1, 30.10.2017, p. 41f.

¹⁶³ Johansen, 2011, p. 42.

¹⁶⁴ ICTY – International Criminal Tribunal for the former Yugoslavia (n.d.e): Key Figures of the Cases, <http://www.icty.org/en/cases/key-figures-cases>, 18.12.2017.

4 THE BALKANS: CONSTRUCTIONS, CHALLENGES, PERCEPTIONS. CIVIC OR ETHNIC NATIONHOOD?

“National identity means a great deal to some people,
and precious little to others.”

Kathryn A. Manzo¹⁶⁵

The nation in social practice in the former Yugoslavia – “The Socialist Federal Republic of Yugoslavia” (SFRY) from 1945 to 1992 – experienced a number of difficulties while trying to enforce a unification of South Slavic people. It is important to hold, that for the dissolution of the Socialist Federal Republic of Yugoslavia, not only cultural differences and national sentiments such as the struggle for independence on all hands played an essential role, but economic deterioration, political trajectories, the role of specific political leaders, most notably the president of the Republic of Serbia, Slobodan Milošević (1991-1997), Croatian first democratically elected state president Franjo Tuđman (1990-1999) and first Bosnian president of the Republic of Bosnia and Herzegovina Alija Izetbegović (1990-1995) and the problem of nationalism since the 1920s enormously contributed to the ceasing of Yugoslavia.¹⁶⁶ The dissolutive transformation of former Yugoslav members into sovereign states and the rise into national consciousness required a new regulatory disposition of citizenry, the ideology of inclusion/exclusion and the meaning of rights and duties within a state.¹⁶⁷ In fact, Yugoslavia breached into its erstwhile component units.¹⁶⁸

Bosnians, Croatians, Serbians. Debates about (modern) citizenship have become debates about nationhood. Assuming that nations are a sign of modernity would suggest that they have never existed prior to a “historically discrete period.”¹⁶⁹ Varieties of emotional belonging attachments and cultural affiliation probably have existed long time ago. Yet it is by no means obvious and highly controversial whether or not and at what point in time such pre-modern constellations of groups connecting over

¹⁶⁵ Manzo, Kathryn A. (1996): *Creating Boundaries. The Politics of Race and Nation*. London/Boulder: Lynne Rienner Publishers, p. viii.

¹⁶⁶ Ramet, Sabrina P. (2005): *Thinking about Yugoslavia. Scholarly Debates about the Yugoslav Breakup and the Wars in Bosnia and Kosovo*. Cambridge: Cambridge University Press, p. 70f.

¹⁶⁷ Vasiljević, Jelena (2011): *Citizenship and belonging in Serbia: In the crossfire of changing nationhood narratives*. The Europeanisation of Citizenship in the Successor States of the Former Yugoslavia (CITSEE) Working Paper 2011/17, https://papers.ssrn.com/sol3/Delivery.cfm/SSRN_ID2388694_code1689479.pdf?abstractid=1914428&mirid=1, 18.12.2017, p. 2.

¹⁶⁸ Author's central thesis in Ramet, Sabrina P. (1999): *Balkan Babel: The Disintegration of Yugoslavia from the Death of Tito to the War for Kosovo*. Second Edition. Boulder: Westview Press.

¹⁶⁹ Ramet, 1999, p. 8.

ethnicity and nationhood existed in the beginning of the genesis of (Slavic) people.¹⁷⁰ But this is an issue abundantly covered by primordialist's and modernist's thoughts and will not be further discussed at this point. Nevertheless, with reference to nation-state, "citizenship can indeed be seen as a tool of a modern (nation) state – suitable for helping to implement different national projects: from integration to ethnic engineering."¹⁷¹ William Rogers Brubaker, Professor of Sociology at the UCLA, California, unfolds what this model of membership requires to belong to a nation-state.¹⁷² "According to this model, membership of nation-state should be egalitarian, sacred, national, democratic, unique and socially consequential."¹⁷³ As he conclusively argues, post-war immigration generated new dimensions of nation-state affiliation. The most relevant two deviations for following chapter are the "declining value of citizenship"¹⁷⁴ and the "increasing demands for, and instances of, full membership of the state without membership of the cultural nation."¹⁷⁵

The ethnic mixture of the three constituting population majorities in Bosnia and Herzegovina is a knotty affair literally. Understanding differences calls for exploring commonalities in first place.

4.1 A SOUTHERN SLAV RELATIONSHIP

Beside religion, language is considered to have ever since played an essential role in the creation of cultural heritage. A further distinguishing identity-building part of nationhood is the standardized state language. Eugene Hammel, Professor Emeritus of Social Anthropology at the University of California, Berkeley, argues that the primary sources for nationality in the Balkans are linguistic and religious identification.¹⁷⁶ Hence, religion as the main key element constitutes the people's identity and determines nation-building on the territories of the former Yugoslavia. Yet, it is challenging to understand the construction of the Balkan "ID" knowing the overlapping history and the very *similar* legacy of cultures. Nevertheless, it is useful to shed light on different types of citizenship and nationhood. Social scientists and international law experts tried to summarize the characteristics of nationhood accordingly. Spencer and Wollman (2002) give a critical introduction into the practice of "*ius soli*" and "*ius sanguinis*".

¹⁷⁰ See Manzo, 1996; Bellamy, 2003, p. 5.

¹⁷¹ Vasiljević, 2011, p. 2.

¹⁷² Brubaker, William Rogers (1990): Immigration, Citizenship, and the Nation-State in France and Germany: A Comparative Historical Analysis. In: International Sociology, Vol. 5, No. 4, 379-407, p. 380.

¹⁷³ Brubaker explains membership requirements in detail at Brubaker, 1990, p. 380.

¹⁷⁴ Peter H. Schuck (1989) qtd. in Brubaker, 1990, p. 382.

¹⁷⁵ Brubaker, 1990, p. 382, based on Juliette Minces (1985); Centre de Relations Internationales (1948), and Alain Griotteray (1984).

¹⁷⁶ Eugene Hammel (1992) qtd. in Bellamy, 2003, p. 137.

Under *ius sanguinis*, citizenship may be ascribed to all persons residing within a given set of borders. Under *ius sanguinis*, citizenship can only be ascribed to children of citizens. It is, however, difficult to find clear, unambiguous and consistent applications of the principle of *ius soli* in many Western civic nations. Not France, Britain, not the United States had held consistently and confidently to the principle of *ius soli* for complex reason that in many ways go to the heart of the problem of the dualistic approach.¹⁷⁷

The civic nationhood approach is, as argued by the authors, more open and inclusive, while ethnic affiliation is complex because it is defined in terms of birth and thus is only relevant for those “born into the ethnos and closed to those who are not”.¹⁷⁸ On this account the Balkan region tempts to be considered the epitome of ethnic affiliation par excellence. More importantly it has to be pointed out which countries follow which traditions. According to that, the *ius sanguinis* is also used by civic nations:

[...] “*ius sanguinis*” is a rule in most places in the world; children of American parents, for instance, are citizen of the United States even if born abroad. *Ius soli* and, of course, naturalization, are additional ways of conferring citizenship. Thus, as Brubaker notes, although based to some degree on the principle of *ius sanguinis*, citizenship law in France has supplemented this with significant elements of *ius soli*. He concludes nevertheless that France and Germany represent polar cases. French citizenship law includes a substantial territorial component; German citizenship law none at all. Most other Western European *ius sanguinis* countries include some complementary elements of *ius soli*, without going as far as France.¹⁷⁹

As the authors clarified at the end of the paragraph, these rules were neither permanent, nor applied for the same reasons. The rule and idea of citizenship in France and Germany, for instance, evolved in contradictive ways: These rules were “expansive in France and restrictive in Germany”, both regulating the law of citizenship.¹⁸⁰ According to this, German citizenship law was solely grounded on descent in the 1990s.¹⁸¹ However, this aspect finally reveals something about the difficulties in terms of a contested nationhood in the Balkans and the imperative resistance to integration and a shared nation.¹⁸² Citizenship, nationhood and territorial belonging function independently of one another, because, as Brubaker accurately understood, “most minority groups in Eastern Europe find themselves mismatched

¹⁷⁷ Spencer, Philip; Wollman, Howard (2002): Nationalism. A Critical Introduction. London/New Delhi/Thousand Oaks: Sage Publications, p. 105.

¹⁷⁸ Spencer; Wollman, 2002, p. 105.

¹⁷⁹ Spencer; Wollman, 2002, p. 105.

¹⁸⁰ Brubaker, 1990, p. 394.

¹⁸¹ Since 2000, however, German citizenships law allows both approaches: *ius sanguinis* and as well as *ius soli*; see Die Bundesausländerbeauftragte der deutschen Bundesregierung – Amt für Migration, Flüchtlinge und Integration (n.d.): Einbürgerung in Deutschland, <http://www.bundesauslaenderbeauftragte.de/einbuengerung.html>, 11.02.2018; see also Bundesamt für Migration und Flüchtlinge (2015): Einbürgerung in Deutschland, <http://www.bamf.de/DE/Willkommen/Einbuengerung/InDeutschland/indeutschland-node.html>, 12.02.2018; as well as Die Beauftragte der [deutschen] Bundesregierung für Migration, Flüchtlinge und Integration – Amt für Migration, Flüchtlinge und Integration (2018): Deutsche/Deutscher durch Geburt, <https://www.integrationsbeauftragte.de/Webs/IB/DE/Service/FAQ/Einbuengerung/FAQGesamt.html>, 12.02.2018.

¹⁸² Hromadžić, Azra (2015): Citizens of an Empty Nation. Youth and State-Making in Postwar Bosnia-Herzegovina. Philadelphia: University of Pennsylvania Press, p. 39.

by being attached by formal citizenship to one state, yet by ethno-national affinity to another.”¹⁸³ Nationhood in terms of the Croat population in Bosnia and Herzegovina, for example, “[...] is shaped by the triad of relations between the emerging Bosnia-Herzegovina state, the Croat national minority, and its external homeland, Croatia” (Croatian “*domovina*”).¹⁸⁴ Territorial identification in this sense, however, signifies a distinct nation corresponding to *domovina*, not Bosnia and Herzegovina in this particular case.¹⁸⁵

Those *transborder national sentiments* emerged after the fall of communist Yugoslavia, when each successor state enacted as the *true* homeland. “In other words, Croatia is experienced as *domovina* or a true homeland by the majority of Croats in the region and beyond, *regardless of which state they were born in, live in, and officially belong to.*”¹⁸⁶

“It is generally assumed that in the Balkans, religion including Islam rather than language plays a decisive role in the process of nation-building.”¹⁸⁷ However, in this regard religion is closely followed by language, acting as a focal point of root connection.¹⁸⁸ Simone Weil, a French philosopher and political activist, connected human roots by the example of France with the significance of a strong compulsion for the past and a lineage of thought for the national imaginary and particular expectations for the future – not only in the Balkans.¹⁸⁹ Falling apart into these different communities on the basis of religion identifies the Balkan nations as they are known today.

4.2 THE ROLE OF RELIGION AND NATIONHOOD

Religion and nationhood ostensibly merge in the Balkans – and fragment people. According to David Campbell, “it is the Serbs, who have most vigorously connected religion and nationalism.”¹⁹⁰ However, Alex Bellamy holds that Croatian people strongly linked their national belonging sentiments with Roman Catholic Christianity, too, although opinions on the connection of Church and nation diverged within the population.¹⁹¹

¹⁸³ William Rogers Brubaker (1996) qtd. in Hromadžić, 2015, p. 40.

¹⁸⁴ Hromadžić, 2015, p. 40.

¹⁸⁵ Cf. Hromadžić, 2015, p. 40.

¹⁸⁶ Hromadžić, 2015, p. 40.

¹⁸⁷ Detrez, Raymond (2000): Religion and Nationshood in the Balkans. In: International Institute for the Study of Islam in the Modern World (ISIM) Newsletter 5/00, 26, https://openaccess.leidenuniv.nl/bitstream/handle/1887/11961/news1_5.pdf?sequence=1, 29.10.2017.

¹⁸⁸ Detrez, 2000, 26.

¹⁸⁹ Weil, Simone (2002 [1952]): The Need for Roots. Prelude to a declaration of duties towards mankind. London/New York: Routledge, p. 43.

¹⁹⁰ Campbell, David (1998): National Destruction: Violence, Identity, and Justice in Bosnia. Minneapolis: University of Minnesota Press, p. 45.

¹⁹¹ See Bellamy, 2003, p. 5.

According to Franjo Tuđman, the Croatian Catholic Church was the only institution to consistently resist the communist authorities. Tuđman insisted that by doing so, the Church was responsible for nurturing Croatian national identity during the dark period of communist rule.¹⁹²

Big efforts have been made to separate Croats from communism and remove all traces from Yugoslavism. Tuđman's conviction that Catholicism constitutes an inevitable part of Croatian identity was also asserted through a reformed education system, one that redressed former Yugoslav communist formation.¹⁹³ Similarly, by dint of the newly endorsed education approach, atheistic tendencies of Yugoslav communism were aimed to be eliminated thus.¹⁹⁴ By these means it was feasible to demonstrate the independent Croatian identity. "The result of this rigidly enforced curriculum, [...]", is, as Alex Bellamy summarizes Previšić's argument, that "today there is almost nothing that would reflect socialism or Yugoslavism in our textbooks."

Another example of super-Croatian could be found in the subtle change of the Croatian word for sport. Prior to the 1990s, the Serbian, Croatian and Serbo-Croatian word for sport was *sport*. Croatian linguists agree that *sport* is a Croatian word and that there is no 'old Croatian' word that has been defiled by *sport*. However, for reasons that we can only speculate about, towards the end of the 1990s Croatian television broadcasts began referring to *sport* as *šport* [...]. As such, many Croats began to use the word *šport* rather than *sport*, while the Langenscheidt English-Croatian dictionary insisted that *sport* was the Croatian word for sport in all its manifestations. The only explanation was that the new *šport* sounds similar to the German for 'sport' and makes the Croatian sound distinct from the Serbian word.¹⁹⁵

The disconnection of the Croatian language from the Serbian or Serb-Croatian was manifested through countless examples such as the one given above. Another prominent standardized Serb-Croatian word, for instance, is airport, *aerodrom*. Being probably easily recognizable internationally, *aerodrom* was replaced by "the 'Croatian' word for airport, *zračna luka*." The problem here is, as Bellamy argues, that "while this is technically correct, given that *zrač* means 'air' and *luka* is the Croatian word for a port or harbor, it seems bizarre that linguists should 'discover' an old Croatian word for airport probably predating the arrival of air transport in Croatia."¹⁹⁶

¹⁹² Bellamy, 2003, p. 156.

¹⁹³ Cf. Bellamy, 2003, p. 148-155.

¹⁹⁴ Cf. Bellamy, 2003, p. 155.

¹⁹⁵ Bellamy, 2003, p. 144.

¹⁹⁶ Bellamy, 2003, p. 144.

4.2.1 THE CROATS

The idea of Croatian nationhood is derived from different notions. Bellamy continues to discuss that Croatian national identity is – based on widespread agreement – mainly manifested by history and the “centuries-old dream”¹⁹⁷ to have an own common state. Embedded in daily routines, *being Croatian* has undergone a number of changes and was reinterpreted over and over again. Clearly, different narratives were articulated by intellectuals and dissident politicians over time.¹⁹⁸ Ivo Banac, a Croatian historian, challenged historiography regarding *Franjoism*¹⁹⁹ by highlighting the prevalence of history in the wake of the Croatian identity-building process. Croatian identity, in his terms, cannot be divorced from its historic context. Albeit he was exposed to massive criticism for his articulated attempt to examine Croatian national thinking, he contends that legal arguments probably accounted more for statehood in front of the Habsburg and Magyar courts, than linguistic or cultural foundations.

On the other hand, exclusivist traditions have paralleled Banac’s theory, such as Milan Šufflay, who deemed that “[...] to be a Yugoslavist was to be an enemy to Croatdom because the Yugoslav idea distorted the relationship between past and present, threatening nationhood from within.”²⁰⁰

However, Croatia ultimately gained its independence from Yugoslavia in 1991.²⁰¹

4.2.2 THE SERBS

The Serbian cultural *modus vivendi* is considered to be maintained with utmost care by the Serbian Orthodox Church. Here “[...] religion in its pure [...] form is essential to the creation of the socio-political cosmos, in which a culture of Serbian nationalism finds significance”, Christos Mylonas exemplifies.²⁰² Serbian identity is highly attributed to past hardships, grievances and potential enemies. Ultimately, their closest neighbors are simultaneously presented and perceived as serious threats:

The conviction [of the church to be the national guardian] is reinforced through the presence of perceived or actual threats, often equated with the close “physical”-geographical- and cultural proximity to Serbianhood, of Catholic Croats and Albanians in Kosovo, against whom the national culture and ethos should be protected.²⁰³

¹⁹⁷ Bellamy, 2003, p. 5.

¹⁹⁸ Cf. Bellamy, 2003, p. 5. To give an essential insight into the cultural composition needed to understand the complexity of national sentiments in the Balkan region, only substantial evolvments in terms of this subject will be presented.

¹⁹⁹ Franjoism refers to Franjo Tuđman, first democratically elected Croatian president and party chairman of the HDZ (Croatian Democratic Union), following Croatia’s independence and the centuries-old tradition of political thought.

²⁰⁰ Bellamy, 2003, p. 87.

²⁰¹ Constitution of the Republic of Croatia, 1990.

²⁰² Mylonas, Christos (2003): *Serbian Orthodox Fundamentals. The Quest for an Eternal Identity*. Budapest/New York: Central European University Press, p. 9.

²⁰³ Mylonas, 2003, p. 49.

The hereditary awareness of legendary myths and historic events, at the same time represents the recurrence of Serbian identity and an ardent Serbianhood.²⁰⁴ As Sigmund Freud once assessed – and will be seized in chapter “The Viennese Diaspora: Interview Analysis” in particular –, “[...] the smaller the real difference between two people, the bigger and more threatening it will appear to their notion.”²⁰⁵

4.2.3 THE BOSNIANS

The term "Bosnian" refers to the nationality of an individual, not to the person's religion.²⁰⁶ Hence, the majority of the Bosnian population consists of Croats, Serbs and the Muslim part of the population. The term "Bosniak" is often used synonymously for a Bosnian Muslim. Evidently, the Balkans have developed a remarkable tradition on nationhood, combining the national as well as ethnic element to delineate ethnic affiliation with such specific terms.²⁰⁷

Vasiljević expounds the fact that Kosovo is portrayed as the historic Serbian cradle and mirrors its importance to the country's history by being mentioned in the preamble of the Serbian constitution.²⁰⁸ However, in terms belonging, Kosovo experienced competing citizenship regimes, especially with Serbia, Vasiljević extends.²⁰⁹ But to understand the usage of national terms, it is vital to consider religion in this regard, too. The term "Kosovar" refers to the national belonging, where a considerable part of the population of Kosovo Albanians constitutes its identity through religion, namely Islam, and the distinctively lower percentage of Serbian inhabitants intensely tie with Christian Orthodoxy.²¹⁰ Kosovo's inhabitants are referred to either as *Kosovar Albanians* or *Kosovo Serbs*.²¹¹

²⁰⁴ See Mylonas, 2003, p. 49f.

²⁰⁵ Freud, Sigmund (1930): *Das Unbehagen in der Kultur*. Wien: Internationaler Psychoanalytischer Verlag, https://ia802608.us.archive.org/3/items/DasUnbehagenInDerKultur/Freud_1930_Unbehagen_in_der_Kultur.pdf, 10.04.2016, p. 85.

²⁰⁶ Cf. Donia, Robert J.; Fine, Jr., John V. A. (1994): *Bosnia and Herzegovina: A Tradition Betrayed*. London: C. Hurst & Co. Publishers, p.100ff.

²⁰⁷ Cf. Detrez, 2000, 26. By acknowledging the Bosnian nationhood in 1969, however, Croatian and Serbian national consciousness probably revived one time again. Nevertheless, it is fallacious to assert the Bosnian nation was an artificial idea. “The Bosnians constituted already then a very distinct national community, defining itself through Islam, just as Croats and Serbs defined themselves through Catholicism and Orthodoxy respectively. In fact, the very insistence of Croats and Serbs on religious affiliation as a basic component of national identity had largely contributed to preventing the Bosniaks from considering themselves Muslim Serbs or Croats, as both Serbs and Croats indefatigably attempted to make the Bosnians believe. How could a Muslim be a Serb, if being Orthodox is fundamental to being Serb? Besides, just as Croats think of their nation as a part of West European civilization and Serbs have the sense of belonging to Slavic Orthodox Eastern Europe, the Bosnians consider their nation a full member of the large family of Islamic peoples with their own age-old and rich cultural traditions, which are an integral part of the Bosnian national identity.”

²⁰⁸ Vasiljević, 2011, p. 25.

²⁰⁹ Cf. Vasiljević, 2011, p. 25.

²¹⁰ Džihic, Vedran; Kramer, Helmut (2005): *Die Kosovo-Bilanz. Scheitert die internationale Gemeinschaft?* Wien: LIT Verlag, p. 11f.; see also Auswärtiges Amt [Deutschland] (n.d.): Kosovo, <http://www.auswaertiges-amt.de/DE/Aussenpolitik/Laender/Laenderinfos/01-Laender/Kosovo.html>, 05.02.2016.

²¹¹ See Džihic; Kramer, 2005, p. 11f.

However, notions of nation and nationalism vary. John Breuilly, Professor of nationalism and ethnicity at the London School of Economics, suggested that the nationalism and the nationalist discourse are a kind of political movement to attain state power. He discussed how political necessity has driven people to the dissociation of the monarchy, the more it started to incise in the population's social lives. Eventually, the feudal system had to be replaced by an early form of nation-states. Therefore "[...] the nation and the political ideology of nationalism were constructed to fulfill the needs of political communities who opposed the expanding role of the monarchy."²¹²

Furthermore, primordialism occupies a unique position in the Balkan strife for national exclusivity. It is closely attached to the conviction that "nations are based on a well-rooted subjective belief of a shared history and common destiny."²¹³ Breuilly, however, explained that national identity excludes from overlapping identities, as was the case in pastime group identities and in the Holy Roman Empire, where "it was possible to be Catholic, German and Austrian without any conflict of identity."²¹⁴ Moreover, this is contradictive to the primordial theory of one single identity.

4.3 THE BOSNIAN WAR

"The years 1992 and 1993 will be remembered as the years in which a European country was destroyed. It was a land with a political and cultural history unlike that of any other in Europe. The great religions and great powers of European history had overlapped and combined there: the empires of Rome, Charlemagne, the Ottomans and the Austro-Hungarians, and the faiths of Western Christianity, Eastern Christianity, Judaism, and Islam."

Noel Malcolm²¹⁵

Before the wars have torn Yugoslavia apart, the current territory of Bosnia and Herzegovina in particular, "[...] ethnic groups did not live *next* [emphasis added] to each other. Bosnians, Serbs, and Croats, and other ethnicities, have lived so intermingled **with one another** [emphasis added] that the pre-war ethnic map was vividly called a 'leopard's fur'.²¹⁶

²¹² John Breuilly qtd. in Bellamy, 2003, p. 12.

²¹³ Bellamy, 2003, p. 10.

²¹⁴ Bellamy, 2003 p. 10.

²¹⁵ Malcolm, Noel (2002): Bosnia: A Short History. London: Pan Books, p. xix.

²¹⁶ Begić; Delić, 2013, p. 448.

The first democratic elections in the former republics of the Yugoslav federation in 1991 triggered a political avalanche within Yugoslavia. Varying anticipations in relation to the country's future have led the ethnic Bosnian parties to reject the aims of the Yugoslav Federation (Great Serbia and Croatian Autonomy).²¹⁷ After that stroke, Serbian plans for "Great Serbia" and Croatian autonomy endeavors were just to be expected, as the authors Begić and Delić (2013) concisely outline:

Thus, the Serb Democratic Party (SDS) openly promoted the idea of the creation of Great Serbia, which would be comprised of Serbia and parts of the Bosnian and Croatian territory. The Croatian Democratic Union (HDZ) promoted Croatian autonomy and, finally, the dissolution of BH, whereas the Party of Democratic Action (SDA) advocated the preservation of BH as it was.²¹⁸

The complexity of the war in the Balkan region seized the attention of numerous authors to delve more precisely into the subject. One of them was V. P. Gagnon, Jr., who elaborated on the linkage between ethnic nationalism and international conflict. He also denies the common explanation that the Yugoslav war has burst out along ethnic lines by facing alleged ancient ethnic hatreds that began to surface. Too unsupported by evidence, as he continuously states and delivers examples of the reverse:

[...] in fact, Yugoslavia never saw the kind of religious wars seen in Western and Central Europe, and Serbs and Croats never fought before this century; intermarriage rate were quite high in those ethnically-mixed regions that saw the worst violence; and sociological polling as late as 1989-90 showed high levels of tolerance, especially in these mixed regions. Although some tensions existed between nationalities and republics, and the forcible repression of overt national sentiment added to the perception on all sides [...] the evidence indicated that, notwithstanding claims to the contrary by nationalist politicians and historians in Serbia and Croatia, 'ethnic hatreds' are not the essential, primary cause of the Yugoslav conflict.²¹⁹

The author argues that he believes violent conflicts are not being produced solely by nationalist sentiments or by any chance of external security concerns. Rather the elites instrumentalize their power by provoking conflicts along ethnic lines in order to maintain ethnicity as the only politically relevant identity.²²⁰

The Bosnian war took more than three years, from 1992 to 1995, with the ICTY being established in the middle of it in 1993.²²¹ Beside the financial regard, it was a war – as usually is - of a great social price, tearing the society thoroughly apart and facing ethnic cleansings, making it difficult for survivors to

²¹⁷ See Begić; Delić, 2013, p. 447.

²¹⁸ Begić; Delić, 2013, p. 447.

²¹⁹ Gagnon, 2002, p.133f.

²²⁰ Gagnon, 2002, p. 132.

²²¹ See ICTY, n.d.b for detailed information.

return back home. Being often portrayed as “a human mosaic”²²² on the strength of the multi-ethnicity throughout history, this virtue became their fatal downfall during and after the war.

Essentially, it was the same pretence to conceal subliminally provoked political motives, justified as ethnic issues, which, at that time, were blatantly capable of pulling Yugoslavia apart and thus resulted in a complete dissolution of the Republic. To be mentioned again, the often cited allegation of “age-old ethnic hatreds” is to be considered with caution. Historically, there has been little fighting among South Slavs, including Slavic Muslims, who all belonged to the same ethnic group. However, national awakenings did not emerge until modern times and sharpened awareness of the respective ethnic groups by the time intellectuals started shaping poetry and language.²²³

In spite of it all, the wars resulted in utter destruction and unstoppable bloodshed, concentration camps and ethnic cleansing committed by all sides.²²⁴

4.4 MULTI-ETHNICITY OR FORCED ETHNIC DIVERSITY?

Unlike other ethnic divisions which often occurred based on geographic or historical claims, the dissociation of Bosnia and Herzegovina’s population into respective ethnic groups has been legitimized by the Dayton Peace Agreement.

The three main constituent groups in Bosnia and Herzegovina are the Bosnian Croats, the Bosnian Muslims and the Bosnian Serbs. Treaties such as the Dayton Agreement are not designed to address the roots of a conflict or to propose long-term solutions for achieving regional stability, though.²²⁵ Even after political agreements truly have the capability to declare and stop a war, the affected people still face the fact that this will not make it easier for them to live side by side with the enemy in a scary coexistence.

Jon Elster (2010) affiliates with the mindsets of his peers, e.g. Galtung (2005) and Brounéus (2008), and sticks to the explanation that the establishment of peace needs a few steps in order to advance it to a durable stage.²²⁶ The first step, the cessation of the armed conflict, has indeed successfully been enforced by the Dayton Agreement in 1995. Elster likewise mentions a cessation of violent repressions of the populations by the government, which can be referred to as the final acknowledgement of war

²²² Slack, Andrew J.; Doyon, Roy R. (2001): Population Dynamics and Susceptibility for Ethnic Conflict: The Case of Bosnia and Herzegovina. In: *Journal of Peace Research*, Vol. 38, No. 2, 139-161.

²²³ Rogel, Carole (2004): *The Breakup of Yugoslavia and its Aftermath*. Second Edition. London: Greenwood Press, p. 44ff.

²²⁴ Lucarelli, Sonia (2000): *Europe and the Breakup of Yugoslavia. A Political Failure in Search of a Scholarly Explanation*. The Hague/Boston: Kluwer Law International, p. 33.

²²⁵ Johansen, 2011, p. 39.

²²⁶ Elster, Jon (2012): Justice, Truth, Peace. In: *NOMOS – yearbook of the American Society for Political and Legal Philosophy*, Vol. 51 (Transitional Justice), 78-97.

termination and elimination of incentives to resume fighting. The significant third constituent is “civic/social peace”, an approach to the psychological healing of war consequences including a low level of criminal violence. Hence, a supportive disposition acknowledgement of the post-conflict regime is a vital moiety of it among other indicators such as a peaceful society. Conversely regarded, it states that “[...] factors undermining civic peace include high rates of crimes against persons, strong emotions of hatred and resentment, and sabotage of the new regime by agents and collaborators of the former regime.”²²⁷

Given these facts, the current state in Bosnia and Herzegovina, the stage of “civic peace” is neither achieved, nor is it conceivable to do so in the near future. Devoid of cooperation and mutual understanding for the most part, Bosnian leaders seem to be incapable to promote stable peace in Galtung’s terms. The Bosnian youth has witnessed fundamental changes and faces a deeply divided environment, one that is still coping with the legacy of war, a political leadership that is beyond the ability to lead, an economic catastrophe and *alarmingly high unemployment rates* which altogether merge an uncertain future for all affected (young) people.²²⁸

Additionally, considering the economic influence on politics, just as Kriesberg (2004) observed, minor offences note an increasing number while the economic status quo continuously aggravates. Correspondingly it generates common dissatisfaction which is prone to breeding aggressive behavior among young people and thus displays a growing concern locally.²²⁹

In an extended statement, Johansen (2011) depicts interlacing aspects by telling how ambiguous the current state of the national reconciliation process is while outlining that individual cooperation along the ethnic groups appears to work out quite well on a daily basis. Also, conspicuous denominators suggest subjacent roots of conflict still exist, posing an overall threat for peace efforts. Different perceptions of the wars prevail and the level of personal psychological healing is, as she concludes, debatable.²³⁰ Nevertheless, Reconciliation remains an erroneous term though.

Societies developing from a conflict are taken for granted to deal with it. In the turbulent quest of appropriate means and peace-promoting mechanisms to overcome historical grievance, tackling the ability to turn destructive behavior into constructive relationships and re-establish a regime together with a peaceful society, a lot of effort has been undertaken. Brounéus engaged abundantly in this matter so as to find feasible answers and solutions in this particular regard. Reconciliation means a change in

²²⁷ Elster, 2012, p. 6.

²²⁸ Brethfeld; Vadakaria, 2012, p. 9, 1f.

²²⁹ Brethfeld; Vadakaria, 2012, p. 2.

²³⁰ Cf. Johansen, 2011, p. 39ff.

emotion, attitude and behavior. It is a societal process – in which relationships are rebuilt that demand positive changes within former enemies – not a *remote goal*.²³¹

Not without reason perhaps it is advisable to pose the question whether one can expect such a readiness for an ad-hoc reorientation in such a short period of time. Are the affected people mentally prepared to forgive and forget in order to start a reconciliation process?

²³¹ Brounéus, 2008, p. 294.

5 CRITICISM, CHALLENGES AND LIMITS

Reconciliation initiatives became an integral part of post-conflict peace-building efforts. Through criminal procedures and truth commissions, official apologies, memorials, and so forth – the process has recently gained much attention. One possible explanation for the vast upward movement in terms of the peace-building practice might be the increase in intrastate conflicts, the most common type on conflict today, e.g. in the Democratic Republic of the Congo, Rwanda, Liberia, Afghanistan, Syria, Bosnia and Herzegovina, Sri Lanka²³² among others, as the Uppsala Conflict Data Program (UCDP) recorded in 2005.²³³ However, Brounéus warns that Reconciliation might be a difficult task to undertake in a fragile post-conflict society:

After peace, former enemies, perpetrators, and victims must continue living side-by-side just as before the atrocities were committed. However, attitudes and behaviors do not change from genocidal to collegial at the moment of a declaration of peace. Because coexistence is necessary, the need to reconciliation is profound.²³⁴

The ICTY spokesperson Nerma Jelačić as well as the Balkan-expert Svein Mønnesland (2011) also express their concern on the term *Reconciliation* per se, with the former even calling it “overused”. Mønnesland indicates to its ambiguity for it is frequently applied in the case of the Balkans, but very scarcely popular when dealing with one’s own past. Johansen has obviously dealt with the same question, thus summarized the latter’s standpoint: “For instance, in dealing with the atrocities of the Second World War, nobody demanded the Holocaust victims to reconcile with their Nazi perpetrators. Yet at the same time, we demand that people from the former Yugoslavia adapt to our expectations.”²³⁵ William J. Long and Peter Brecke (2003) conducted a study on “reconciliation events” and their respective impact on the durability of peace of inter- and intrastate conflicts at national level. Prior to the research, they defined what they mean by the term “reconciliation events”. To gain particular relevance, the term refers to a composition of direct contact within opposed parties – their senior representatives – which is believed to have an impact as well as public ceremonies being widely broadcasted by national media and a symbolic behavior indicating peaceful relationships between former enemies. Eleven out of 430 cases of intrastate conflicts have been found to have “[...] included a reconciliation event according

²³² Newman, Edward (2014): *Understanding Civil Wars: Continuity and change in intrastate conflict*. London: Routledge.

²³³ Brounéus, 2008, p. 292.

²³⁴ Brounéus, 2008, p. 292.

²³⁵ Nerma Jelačić and Svein Mønnesland (2011) qtd. in Johansen, 2011, p. 40f.

to their definition, of which 7 (64%) did not return to violent conflict thereafter.”²³⁶ Conversely, those who did not engage in reconciliation events returned to the same conflict in the same time period, accounting for 91%.²³⁷ The authors discovered a restoring impact, given that reconciliation events correlate to ending a conflict and returning to social order. Moreover, reconciliation is an emotionally-driven behavior, which enormously depends on personal forgiveness.²³⁸

5.1 FROM FORGIVENESS TO RECONCILIATION: INDIVIDUAL – COLLECTIVE – NATIONAL

Joanna R. Quinn aptly summarizes the scope of war: Atrocity is devastating in two dimensions, physically and socially, and leaves lasting scars on a society. In order to provide an understanding, of what war looks like in reality and not only on paper, Quinn has put it straight:

The destruction of the physical infrastructure becomes apparent in crumbling hospitals, bullet-riddled buildings, and collapsed roads and bridges. Just as important, however, and often overlooked, is the social infrastructure, which includes the reestablishment of the rule of law, civil society, and participation in the political system, to name only a few. In most cases, the finite financial resources of the society enable it to tackle either the physical or the social. The trade-off in selecting one over the other can have obvious consequences. Yet, engaging in the repair of the social infrastructure can have many and significant benefits.²³⁹

However, rebuilding a society and implementing Transitional Justice becomes an intricate task. But what it aims to implement beside social regeneration is recognizing and acknowledging multidimensional damages and reporting on the common truth accordingly. Just as Quinn continues defining the single steps of the rebuilding-process, it is of paramount importance to incorporate *acknowledgement, the act of forgiveness, the development of social trust and civic engagement*, as well as *social capital* and *social cohesion* lest it sinks into obscurity.²⁴⁰ Her hypothesis states that, acknowledgement – although not being in the position to bring about real change by itself alone – is one stage of the recovery trip, but it is not the destination as is reconciliation. Ultimately, she argues that acknowledgement is a vital part of the liaison of social capital and social trust.²⁴¹

²³⁶ Brounéus, 2008, p. 294f.

²³⁷ Brounéus, 2008, p. 295.

²³⁸ Brounéus, 2008, p. 294f.

²³⁹ Quinn, 2010, p. 3.

²⁴⁰ Cf. Quinn, 2010, p. 3.

²⁴¹ Cf. Quinn, 2010, p. 15.

Above that, it is inevitable to tackle people's engagement first by "publicly admitting to and accepting knowledge of the events that have taken place. In many communities, past crimes are simply never discussed."²⁴² But as Quinn further affirms, it is inconceivable to start a restoring process and evaluating truth commissions without having engaged privately as well as publicly within a society and signifying responsibility for what has happened.

This assumes that the process of whatsoever has to start individually by confronting oneself with the past and forgiving.

5.2 EXPECTATIONS FROM THE ICTY IN A DISUNITED REGION

"On the other side of the coin, having the technique and skill does not necessarily provide the vision."

Paul Lederach²⁴³

With reference to Lederach's statement, having a set of techniques for peace undertakings does not necessarily provide a vision or *guarantee* for its success. However, in a surrounding where there is hardly any regime, let alone the rule of law, where only a weak post-conflict ground exists which is confronted with numerous challenges as discussed thus far, the idea of implementing external help is basically very constructive. Yet at the same time it is a big task with a myriad of weaknesses and difficulties. Notwithstanding the significance of war crime tribunals, one pending question is still nonplussing: if the ICTY's paces are justified and whether or not an *international* criminal court can hold the responsibility of *national* reconciliation throughout criminal justice?

Howbeit, expectations from the ICTY have been huge and enormously unrealistic, Subotić even argues that it is "arguably even damaging for the future of the transitional justice project in the region".²⁴⁴

²⁴² Quinn, 2010, p 3f.

²⁴³ Lederach, John Paul (1995): *Preparing for Peace: Conflict Transformation Across Cultures*. New York: Syracuse University Press, p. 11.

²⁴⁴ Subotić, Jelena (2013): *Perspectives for Transitional Justice and Reconciliation*. In: Felberbauer, Ernst M.; Jureković, Predrag (eds.): *Regional Co-operation and Reconciliation in the Aftermath of the ICTY Verdicts: Continuation or Stalemate? Contributions from the 26th Workshop of the PfP Consortium Study Group "Regional Stability in South East Europe"*. Vienna: Republic of Austria/Federal Ministry of Defence and Sports, 19-35, p. 35.

[...] Heavy expectations were placed on the Tribunal in these early stages of its existence to indict suspected perpetrators, but the institution was not then able to build up credible evidence to indict the leaders who masterminded the criminal campaigns. As a result, many of the early indictments were issued against relatively low and intermediate level alleged perpetrators whom eyewitness survivors and victims had identified as committing crimes in camps and similar locations. However, this so-called 'pyramid' approach, where low-ranking military and other officials are held to account for their actions, would over time enable investigators to build up cases against their superiors and ultimately the main architects of the crimes.²⁴⁵

Starting with small gains and low level alleged perpetrators from the beginning made the prosecution of top leaders more likely to be attained, eventually. International or third party conflict resolution, however, needs to be regarded within a realistic frame. The ICTY has indeed experienced difficulties it was not able to foresee from the very beginning, owing a considerable amount to limited outreach and media communication to explain the exact purpose of the Tribunal²⁴⁶ to the most important audience: the affected people. According to research, it mostly remained a poorly-understood institution.²⁴⁷ Other than that, the ICTY faced serious legitimacy-crises which have led the institution through a difficult path to achieve collaboration of respective member states.²⁴⁸

Jelena Subotić has embedded an interesting perspective in an incisive contribution to the "Study Group Information Journal" of the Austrian National Defence Academy to the debate regarding the ICTY's efficacy: „[...] everything the court does is outreach [...] all constitute the court's communication with the outside world and, presumably, with victims of these horrific crimes.“ She states that the absence of a transparent and comprehensible national transmission of relevant facts to the people often makes the population feel left in the lurch. Subotić continues with: "[...] it made no sustained effort to explain, in detail, to victims on the ground, how certain decisions were made, why sentences were lowered, why certain people were acquitted."²⁴⁹ People had massive expectations towards the ICTY which, in fact, promoted the impression that the institution did actually underperform. However, it is important to bear in mind the various challenges and limitations the Tribunal was exposed to. Nevertheless, the views on the Tribunal have been as partitioned as the countries and the views on the war themselves.

²⁴⁵ ICTY – International Criminal Tribunal for the former Yugoslavia (n.d.f): History, <http://www.icty.org/en/about/office-of-the-prosecutor/history>, 14.10.2017.

²⁴⁶ See Tromp, 2013, p. 58.

²⁴⁷ Cf. Banjeglav, Tamara (2016): The Micro Legacy of the ICTY in Croatia – A Case Study of Vukovar. In: Fischer, Martina; Simić, Olivera (eds.): Transitional Justice and Reconciliation. Lessons from the Balkans. Abingdon/New York: Routledge, 81-10, p. 94ff.

²⁴⁸ Brozus, Lars (2010): Statebuilding in der Legitimitätskrise: Alternativen sind gefragt. In: SWP-Aktuell 2010/A 52 [Policy-Papiere der Stiftung Wissenschaft und Politik des Deutschen Instituts für Internationale Politik und Sicherheit], https://www.swp-berlin.org/fileadmin/contents/products/aktuell/2010A52_bzs_ks.pdf, 20.10.2017.

²⁴⁹ Subotić, 2013, p. 30f.

5.2.1 MANDATE AND MISSION

The accusation that the ICTY would allegedly perform their acts in a politically biased or unproportional way has loudly voiced throughout international spheres.²⁵⁰ These issues weaken and discredit the stance of the Tribunal and confuse people whether to place their trust into these institutions or not.²⁵¹ Apart from the Security Council Resolution 827, Article 29 (1993), which explicitly demands cooperation and assistance from all former conflict states²⁵², a gauging problem the ICTY has faced from early stages is the encountered resistance in apprehending and extraditing indictees by respective states, which seriously hampered the Tribunal's progress.²⁵³

However, one needs to zoom out of the picture to allow multiple perspectives. For this purpose, Kristine Johansen has conducted a research for her Master's thesis on the topic "The Actual Impact of the International Criminal Tribunal for the former Yugoslavia on the Reconciliation Process in Bosnia-Herzegovina", in which she incorporated important interviews with different considerable delegates she has held throughout her work. Among others, her interview partners included judicial representatives, former journalists and psychologists, and Bosnian organizations in the field. Two ICTY staff members whom Johansen has interviewed in 2011, Nerma Jelačić and Ernesa Ademagić "express the concern that the reasons for Bosnias' disappointment in the Tribunal stem from unreasonable expectations as to what the ICTY may provide for the people of former Yugoslavia."²⁵⁴ This is probably a focal point in respect thereof. Although the ICTY adheres to exact wording and keeps a cautious phrasing in terms of its mandate, as Johansen extends her argument, it buries a certain magnitude of misconception between the terms *mandate* and *mission*, with the latter being more of an expression of a wish for the future; "[...] the difference between mission and mandate can easily be lost on someone who is not too familiar with the judicial terms."²⁵⁵ Aside from the fact that the ICTY's mandate is connected with reconciliation, the final responsibility, however, lies within regional governments.²⁵⁶

²⁵⁰ Cf. Hayden, Robert M. (1999): Biased "Justice:" Humanrightsism and the International Criminal Tribunal for the Former Yugoslavia. In: Cleveland State Law Review, Vol. 47, No. 4, 549-573; Bruning, Evan; Scallon, Mara; Rudy, Jane; Whal, Jeremia (2016): Partial Impartiality: A Review of Alleged Bias in the International Criminal Tribunal for the Former Yugoslavia. In: Northeastern University Political Review, 25.04.2016, <http://www.nupoliticalreview.com/2016/04/25/partial-impartiality-a-review-of-alleged-bias-in-the-international-criminal-tribunal-for-the-former-yugoslavia/>, 22.02.2017.

²⁵¹ Vermeersch, Peter; Touquet, Helen (2016): Chaning Frames of Reconciliation: The Politics of Peace-Building in the Former Yugoslavia. In: East European Politics and Societies and Cultures, Vol. 30, No. 1, 55-73, p. 60.

²⁵² See United Nations Security Council, 1993.

²⁵³ Barria; Roper, 2005, p. 359.

²⁵⁴ Johansen, 2011, p. 22f.

²⁵⁵ Johansen, 2011, p. 23.

²⁵⁶ Cf. Johansen, 2011, p. 22f., see also United Nations Security Council, 1993.

Furthermore, access to records and documents had been given in English and French languages, but failed to communicate the same files in the Slavic language, in layman terms respectively, which has left most of the people not even understanding the intention of the Tribunal.²⁵⁷

5.2.2 RESOURCE MANAGEMENT

Apart from institutional weaknesses, the Tribunal also faced severe difficulties with regards to resource management. Needless to say that media and outreach services presumably carry the most significant weight in the struggle for justice, communication field offices in Zagreb, Sarajevo, Priština and Belgrade were understaffed due to deficient funding,²⁵⁸ whereas the Tribunal “proved to be an extremely expensive project; its annual budget exceeding \$ 200 million after year 2002, and mounting to \$ 301,895,900 in 2010 (see ICTY records).²⁵⁹

Other administrative deficiencies entail the very core of the ICTY’s structure. Lilian Barria and Steven Roper (2005) argue that limited resources have held the Tribunal back from proper early effects and that “the international community was extremely short-sighted in creating tribunals with such a small number of judges and chambers.”²⁶⁰ Given that exceeding funds from year to year contributed to a more effective outcome (the initial budget for 1993 was \$ 276,000 until after 1998 it increased to over \$ 50 million)²⁶¹ they conclude that by simply providing more money in time, the Tribunal would have had the possibility for advanced staff with more investigators, judges and chambers.²⁶²

The ICTY is doubtlessly a leading actor in resolving and fostering conflict and justice, but at the same time it is highly debatable whether or not *national* reconciliation could be called into existence by an *international* institution, the authors conclude.²⁶³

Summarizing the impact of the enforced rule of law, however, the ICTY successfully executed its *mandate* – although being a pioneer project – which contained the “jurisdiction over individual persons and not organizations, political parties, army units, administrative entities or other legal subjects”²⁶⁴ and looks back to a significant legacy it has created to crime prosecution and international security using the example of the Balkans and therewith extending the effect of justice worldwide.

²⁵⁷ Cf. Johansen, 2011. p. 25.

²⁵⁸ Cf. Xueqin Wu, 2012, p. 66.

²⁵⁹ Johansen, 2011, p. 20.

²⁶⁰ Barria; Roper, 2005, p. 346.

²⁶¹ Barria; Roper, 2005, p. 346.

²⁶² Barria; Roper, 2005, p. 346.

²⁶³ See Barria; Roper, 2005, p. 346.

²⁶⁴ ICTY – International Criminal Tribunal for the former Yugoslavia (n.d.g): Mandate and Crimes under ICTY Jurisdiction, <http://www.icty.org/en/about/tribunal/mandate-and-crimes-under-icty-jurisdiction>, 20.10.2017.

In spite of improvements on the ground, negative peace is in place (Lederach's definition of the absence of violence), but national reconciliation is still absent. As a result, the confidence the ICTY has gained over the years is justified in terms of empowering the rule of law and diminishing impunity and denial. However, throughout its work it has not only contributed to fulfill its mandate, but it also unleashed doubtful sentiments within the respective communities and left the precarious Balkan region far away from reconciliation, Brounéus (2008), Orentlicher (2010) and Subotić (2013) agree.²⁶⁵

5.2.3 OUTREACH

In the wake of misconceptions people of the former Yugoslavia not only began to doubt the Tribunal's legitimacy, but began to vilify the institution. Restricted, state-controlled media made it easy for politicians such as Serbian president, Slobodan Milošević, to entirely demonize the ICTY, which he referred to as an "illegitimate construction by the international community for the Bosnian Muslims, and especially targeted toward the Serbs".²⁶⁶ To release the ICTY from the labels it has been given it is *indeed* necessary to involve the perceived unfairness:

Since the ICTY began trying alleged war criminals, the majority of those convicted have been of Serbian descent, leading to claims that the ICTY is inherently biased against Serbs. These accusations, made by officials from both the Russian Federation and Serbia itself, have been aimed at discrediting what has been hailed by many as a groundbreaking institution in the realm of international law. The claims target both the individual judges and the institution as a whole, but have been dismissed by those who argue that the discrepancy in the ethnic balance of convictions is merely indicative of the fact that Serbs committed most of the war crimes. These dismissals have bred resentment and are demonstrative of the global community's failure to view the Balkan conflict, and conflict overall, in a nuanced manner. This undermines the development of international criminal justice, as well as reconciliation efforts in the region, making it necessary to *explore any perceived unfairness [emphasis added]*.²⁶⁷

To address the gap between the ICTY and the locals, an outreach program, the first of its kind, was brought into being in 1999.²⁶⁸ It is, as the ICTY describes, "at the heart of the institution's relationship with the region of the former Yugoslavia."²⁶⁹ However, it was only financed through external donations and thus "remained a small office and a huge mandate to fulfill".²⁷⁰

²⁶⁵ See Brounéus, 2008, p. 34; Orentlicher, 2010; Subotić, 2013.

²⁶⁶ Johansen, 2011, p. 25.

²⁶⁷ Bruning; Scallon; Rudy; Whal, 2016.

²⁶⁸ Cf. Johansen, 2011, p. 25.

²⁶⁹ ICTY – International Criminal Tribunal for the former Yugoslavia (n.d.h): Outreach Programme, <http://www.icty.org/en/outreach/outreach-programme>, 30.10.2017.

²⁷⁰ See Tromp, 2013, p. 58.

Appertaining the Tribunal's work, it not only established a "Court Records Database" from the very first proceeding in 1994, as John Hocking, ICTY registrar since 2009 confirms,²⁷¹ but also assumed the burden of the language barrier by translating documents and transcripts into local languages, making sure that the information is widely accessible to the public and has given workshops and seminars to The Hague as well as to the states of the former Yugoslavia.²⁷²

Nevertheless, the dissemination of this vital information through the Outreach program started six years after the Tribunal took up its work when perceptions of the ICTY have already been established or even deteriorated by 1999 and "resulted in permanent scars in the Tribunal's relationship with local people",²⁷³ Xueqin Wu explains. Facing innate barriers as the first ad-hoc international criminal tribunal and failing to provide the expected effect, Outreach was initially limited in scope due to "making available the trial information in BCS (Bosnian, Croatian and Serbian) at the field offices."²⁷⁴

In 2010, Outreach strategies were reconsidered and put into four pillars: providing information, producing informational material, organizing conferences in the former Yugoslavia and networking with regional Non-Governmental Organizations. Among others, those proactive strategies include intensified media outreach and the encouragement of study visits from judicial branches, providing free of charge documentaries and publications, maintaining good relationships with journalists as well as press strategies and joint activities with regional organizations. Although the Media Unit "aims to be present as possible, to be as instant as possible, to provide as much information as possible, and to use clear language as possible"²⁷⁵ it cannot control local media and public opinions which are being shaped upon the released information. Nevertheless, it is reasonable to think that decisions of the announced content are being made by the judges and prosecutors in first place, leading to a moreover controlled share of information.²⁷⁶

However, despite acknowledging the limits the Outreach Program was exposed to, the real pitfall indeed is "how to reach those who are out of reach".²⁷⁷

5.2.4 HISTORICAL RECORD AND INDIVIDUALIZED GUILT

By bringing about reconciliation through the establishment of historical narratives, Subotić questions the positioning of the ICTY as a kind of historian.²⁷⁸ Establishing truth employing facts is perhaps the most

²⁷¹ John Hocking (2009) qtd. in Johansen, 2011, p. 26.

²⁷² Cf. Johansen, 2011, p. 25.

²⁷³ Xueqin Wu, 2012, p. 63.

²⁷⁴ See Xueqin Wu, 2012, p. 63f.

²⁷⁵ Xueqin Wu, 2012, p. 65.

²⁷⁶ Xueqin Wu, 2012, p. 65.

²⁷⁷ Saša Madacki qtd. in Orentlicher, 2010, p. 105.

²⁷⁸ Subotić, 2013, p. 31.

powerful achievement of the Tribunal. Orentlicher adds that it gives a *realistic reflection* to the appalling nightmares people have suffered.²⁷⁹ Per contra, declaring the Tribunal as the leading historian in terms of preserving facts about realities has conceptual weaknesses in terms of evidence. Subotić warns that an important fact has been lost in the “hysterical reaction in the region”, namely that evidence used by courts in general is applied in order to find “accountability of a specific *individual* [emphasis added], accused of a specific crime.”²⁸⁰ Ante Gotovina and Ramush Haradinaj were acquitted because the ICTY “found they were not responsible for specific crimes, not that no crimes had ever occurred;” this confusion about certain ICTY verdicts fueled disdain because it delivered *wrong history* in spite of lacking outreach.²⁸¹

Moreover, the differentiation between individual and collective guilt is absolutely essential. Janine N. Clark emphasizes that individuals must be judged for what they *did*, and not where they belong to culturally.²⁸² Regardless of the valuable contribution the Tribunal has managed, Nerma Jelačić and Svein Mønnesland state there were not only high expectations from the affected regions, but the other end was obviously agog with expectations, too:

For instance, in dealing with the atrocities of the Second World War, nobody demanded the Holocaust victims to reconcile with their Nazi perpetrators. Yet at the same time, we demand that people from the former Yugoslavia adapt to our expectations.²⁸³

5.2.5 “HUMANRIGHTSISM”

Robert M. Hayden, anthropologist of law and politics at the University of Pittsburgh, fiercely criticizes the concept of human rights in terms of biased justice at the ICTY by drawing a comparison between similar questionable cases. He could not help but start his speech (1999) as follows:

Many American lawyers, commentators and politicians view the International Criminal Tribunal for the Former Yugoslavia [...] as a manifestation of the triumph of law and justice in international affairs, since those who violate international humanitarian law and the laws of war are not shielded by state sovereignty.²⁸⁴

Hayden is convinced the ICTY delivers biased justice stemming from a personal and/or national sentiment instead of being predicted on evidence. He extends the debate by giving examples such as

²⁷⁹ Orentlicher, 2010, p. 99.

²⁸⁰ Subotić, 2013, p. 31.

²⁸¹ Subotić, 2013, p. 31.

²⁸² See Clark, 2012.

²⁸³ Nerma Jelačić and Svein Mønnesland (2011) qtd. in Johansen, 2011, p. 40f.

²⁸⁴ Hayden, Robert M. (2011 [1999]): Biased Justice: “Humanrightsism” and the International Criminal Tribunal for the Former Yugoslavia. Speech at the EES Noon Discussion in December 1999, <https://www.wilsoncenter.org/publication/191-biased-justice-humanrightsism-and-the-international-criminal-tribunal-for-the-former>, 20.03.2017; for more details see Hayden, 1999.

the notorious NATO infringement on Serbian and Kosovo territories back in 1999. Notwithstanding this incident was dubious, the politically driven prosecution of war criminals still exacerbated fair trials: “This bias is seen in the failure to prosecute NATO personnel for acts that are comparable to those of people already indicted, and in the failure to prosecute NATO personnel for prima facie war crimes.”²⁸⁵

²⁸⁵ Hayden, 2011 [1999].

6 THE VIENNESE DIASPORA: INTERVIEW ANALYSIS

What Sigmund Freud once denoted as the “narcissism of small differences”²⁸⁶ took shape on the territories of the former Yugoslavia. Different faith communities have to be taken into account, because ethnicity obviously prevails as a dimension of social inequality. During social interactions those ethnic categories always accompany a demarcation to the “others”.²⁸⁷

Diese Annahme, der zufolge soziale Einheiten aus Praktiken reziproker Grenzziehung resultieren, wurde in der Soziologie verschiedentlich aufgegriffen und für die Analyse anderer Kategorien, wie etwa Rasse und Nation aber auch Milieu und Geschlecht, adaptiert.²⁸⁸

Due to this assumption that social units come along through the practice of the mutual line-drawing, sociology adapted the analysis to various categories such as race, nation, milieu and sex.

As author Ana Mijic (2014) accurately holds in her chapter “Construction and Boundaries”, “categorical differentiation” typically takes place with embellishing connotations of the own ethnic in-group while the “other” ethnic out-group is always being simultaneously devalued and disdained.²⁸⁹ Mijic continues to summarize socio-psychological researches and concludes that a strong tendency toward in-group behavior is verifiable, namely the in-group bias. Beyond this she states that the urge to classify oneself and the „others“ stems from the persistent human ideal to continuously present a positive self-perception of oneself to the society. Depending on the evaluation of the social categories an individual is a part of, positively contrasting off from the out-group serves as empowerment and strengthening for the own social identity.²⁹⁰

Freud hat einmal gesagt, je kleiner der wirkliche Unterschied zwischen zwei Völkern sei, desto größer und bedrohlicher werde er sich in ihrer Vorstellung ausnehmen [...] daraus folgt, daß [sic!] Feinde einander brauchen, um sich daran zu erinnern, wer sie eigentlich sind. Demnach ist ein Kroatje jemand, der kein Serbe ist. Ein Serbe ist jemand, der kein Kroatje ist. Ohne gegenseitigen Haß [sic!] gäbe es kein klar definiertes nationales Ich, das man verstehen und anbeten könnte.²⁹¹

Freud once said, the smaller the real difference between two people, the bigger and more threatening it will appear to their notion [...] from this it follows that enemies need each other to be reminded of who they actually are. According to that a Croat is somebody who is not a Serb. A Serb is somebody who is not a Croat. Without mutual loathing there would be no well-defined national self, which could be understood and idolized.

²⁸⁶ Freud, 1930, p. 85.

²⁸⁷ Cf. Mijic, 2014, p. 113.

²⁸⁸ Mijic, 2014, p. 113.

²⁸⁹ Cf. Mijic, 2014, p. 113f.

²⁹⁰ Cf. Mijic, 2014, p. 114.

²⁹¹ Michael Ignatieff (1996) qtd. in Mijic, 2014, p. 123, footnote 168.

Ultimately, Freud's statement is still relevant more than ever. People with minimal cultural or religious differences appear to develop a certain desideratum for out-groups whereby they define themselves fastidiously according to their in-group mechanisms. Perhaps, this is one of the best psychological approaches revolving around ethnic and national demarcations, which make the phenomenon admittedly comprehensible, but concomitantly leads to a more or less "circulus vitiosus", especially in the Balkans.

So, how does the Viennese Diaspora of people originating from Bosnia and Herzegovina, Croatia, Kosovo and Serbia – the so called "Austrians with migration background" – perceive the International Criminal Tribunal for the Former Yugoslavia (ICTY)? Do they perceive racist tendencies of the Tribunal in a post-conflict context? To which extent did the ICTY contribute to political changes? Have the ICTY's ambitions been realized (from the perspectives of the interviewed persons)? What would the situation look like if there was no ICTY?

Given the analysis of the interviews (conducted between December 2015 and February 2016), it can be said that the ICTY is on the quick uptake. The interviewed persons recognized the term right away and had an idea of what it is and what it stands for.

First associations at the outset have shed light on a striking diverse survey as to implication and information density. Depending on the individual point and origin of reference, the mental linking was manifested in a surprisingly dissonant manner.

While the first interviewed person immediately associated the ICTY with "Srebrenica" and henceforth referred to this example throughout the entire conversation in order to prove that his or her own sense of justice was met with gross injustice, three out of eight interviewees had no significant association in regard to the first question concerning the institution ICTY.

It is of particular note that the disparity about a deficient reciprocity within the ICTY does not only dominate the Serbian vox populi,²⁹² but does also exist within the Viennese Diaspora in general.

²⁹² Pavičević, Đorđe (2003): Zločini i odgovornost. In: Golubović, Zagorka; Spasić, Ivana, Pavičević, Đorđe (eds.): Politika i Svakodnevni Život: Srbija 1999-2002. Beograd: Institut za filozofiju i društvenu teoriju, 141-158, p. 152ff.

Der Autor führt Pro und Kontra von Befragten zum Thema ICTY an. Die Interviewten sind sich einig: Kriegsverbrecher sollen zu einer angemessenen Strafe verurteilt werden, wenngleich eine gerechte Strafe in diesem Sinne gar nicht existiert. Sie betonen weiterhin, dass Verbrechen zunächst bewiesen werden müssen um weiter zu verfahren. Genau an diesem Punkt beginnt die Skepsis bei vielen Menschen innerhalb der serbischen Bevölkerung in Serbien und artet manchmal in schweren Vorwürfen aus: „Haški sud je napravljen za Srbe“ – „Das Haager Tribunal wurde für Serben gegründet.“; „Ja, Haški sud lično ne priznajem, jer to je sud veštacki, to je sud napravljen zbog Amerike, da bi Amerika oprala svoje zločine koje je napravila u Jugoslaviji.“ – „Ich persönlich erkenne das Haager Gericht nicht an, weil das ein oberflächliches Gericht ist, dieses Gericht ist wegen Amerika gemacht worden, damit sich Amerika von den Verbrechen, die sie in Jugoslawien begangen hat, reinwaschen kann.“

The author points out pros and contras of the interviewed persons on the topic of the ICTY. The interviewees agree that war criminals shall be sentenced appropriately; although they also go along that a just punishment does not exist in such a case. Further they underscore that felonies have to be brought to evidence in order to act further. This seems to be the focal point for the majority of the Serbian population in Serbia and thus ends up in serious allegations against the ICTY

Five out of eight surveyed people state that Serbian people are being badly reflected which causes a generally negative impression and disseminates a commonly disturbing association:

„[...] es geht immer nur ‚Serben haben ermordet‘, ‚S e r b e n m o r d e n ‘ [Hervorhebung des Verfassers] [...]“²⁹³

“[...] it is always and only about ‘Serbs murdered’, ‘S e r b s m u r d e r’ [emphasis added] [...]”

„[...] interessant [das Thema] [...] weil ich einfach immer den Eindruck habe, dass da Schwarz-Weiß gemalt wird [...] ich habe NACH WIE VOR [Hervorhebung im Original] den Eindruck, dass zum Beispiel d a s g a n z e s e r b i s c h e V o l k , q u a s i , v e r t e u f e l t [Hervorhebung des Verfassers] wird [...]“²⁹⁴

“[...] interesting [the topic] [...] because I simply always have the impression there is a black-and-white picture [...] I STILL [emphasis in original] have the impression that, for instance, the e n t i r e S e r b i a n n a t i o n , i s q u a s i b e i n g b e d e v i l e d [emphasis added] [...]”

Partly, the negative connotation is being expressed through a very insecure way of speaking and confused enunciation:

„[...] Ich find' es wird immer ein sehr negatives Licht auf Serben *** geworfen [...] ich find' halt die großen Prozesse oder das was man mitbekommt ist meistens irgendwie Anti-Serbien und ich find' auch dieser ganze, dieses, dieses ganze... Also, ich finde das is'... Also ich find' halt irgendwie persönlich das ist sehr, ahm, *** MIR kommt's so vor als ob ein Großteil des Ganzen irgendwie an Serbien *** wie soll ich sagen... so, dass, dass die als Buhmann, also a l s B u h m a n n [Hervorhebung des Verfassers] werden die Serben so was das Thema angeht, für mich irgendwie, dargestellt dadurch...“²⁹⁵

*„[...] It seems to me that it always sheds a negative light on the Serbs *** [...] I just think the big processes or what one gets to catch is mostly somehow anti-Serbia and I also think the whole, the, the whole... Well, I find this is... Well I personally find this is very, ahm, *** it seems to ME this is somehow largely directed to Serbia *** how shall I put it... in a way that, that they be put as the bogeyman, well as the b o g e y m a n [emphasis added] they are being portrayed when it comes to this issue, for me...”*

The understanding of racism per se and its scope varies individually widely, as shown in the following example:

„** Ich, ich würd' das nicht, also ich würd' das nicht einen Rassismus nennen [...] was mir schon aufgefallen ist, ist dass es, glaub' ich, keinen einzigen verurteilten kroatischen General gibt [...] es wurden hauptsächlich die Serbischen verurteilt [...] Ich sag' mal so, ich erkenne keinen [Rassismus], ich weiß von keinem, aber ich kann mir gut vorstellen, dass es sich nach ** nach etlichen Durchgängen [...] doch ein bissl' einschleicht [...] sozusagen eine Abneigung, nennen wir mal so eine A b n e i g u n g g e g e n ü b e r e i n e r g e w i s s e n G r u p p e [...] b e s o n d e r s g e g e n ü b e r d e n S e r b e n [Hervorhebung des Verfassers].“²⁹⁶

and in rather a reluctance than acceptance: „Haški sud je napravljen za Srbe“ – „The ICTY was established to prosecute Serbian people.“; „Ja, Haški sud lično ne priznajem, jer to je sud veštacki, to je sud napravljen zbog Amerike, da bi Amerika oprala svoje zločine koje je napravila u Jugoslaviji.“ – „I, personally do not acknowledge the ICTY, because it is a artificial court that originates from America in order for America to white-wash the crimes they committed in Yugoslavia.“

²⁹³ Interview No. 1, 20.12.2015, reference: parent's origin, Bosnia and Herzegovina; 24 years, female.

²⁹⁴ Interview No. 2, 22.12.2015, reference: origin, Serbia; 30 years, male.

²⁹⁵ Interview No. 3, 12.01.2016, reference through birth, Bosnia and Herzegovina; 26 years, male.

²⁹⁶ Interview No. 4, 04.02.2016, reference through birth: Croatia; 24 years, male.

*„** I, I would not, well I would not call this racism [...] but what I noticed was, I think, that there is no single convicted Croatian general [...] mainly the Serbian were convicted [...]. Let's put it like this, I do not recognize any [racism], I am not aware about any, but I can well imagine, that it ** creeps in a little bit after a while [...] quasi an aversion, let's call it an aversion towards a particular group [...] especially towards the Serbs [emphasis added].”*

Evidence suggests that the interviewed persons are unsecure about the existence of racism, since each candidate has his or her own understanding of this phenomenon. Although not all interviewed persons share the same definition of racism per se, six out of eight people indeed gave clear indication that they associate a latent form of racism in connection with the ICTY.

A further rationale applies to the human prejudice that thinking in terms of race is unfortunately automated and therefore human: „[...] ich finde, dass das menschlich ist [Rassismus]“,²⁹⁷ “[...] I think that it is human [racism]“, or underlie an adverse cooperation:

*„Ich glaube... nicht Rassismus, aber *** jetzt zum Beispiel, das was ich mich auskenne, eben, Ante Gotovina, [Hervorhebung des Verfassers] er wurde freigesprochen, aber ich glaub' das ist mehr weil er zugegeben hat was er getan hat und Reue zeigt [Hervorhebung des Verfassers] hat. Und im andren Fall, Seseelj, [Hervorhebung des Verfassers] macht ja, verarscht [Hervorhebung des Verfassers] ja nur, also... ähm... macht sich lächerlich. Und das sieht man eben nicht gerne und er zeigt auch keine Reue [Hervorhebung des Verfassers] und... verständlich, dass man sich nicht so verhalten kann in so einem... internationalen Gerichtshof.“²⁹⁸*

*„I believe... not racism, but *** for example, regarding to what I am informed about, Ante Gotovina [emphasis added], he was acquitted, but I think that is more because he admitted and showed remorse [emphasis added]. In the other case, Seseelj, [emphasis added] he makes, he only disses [emphasis added], well,... ähm... he makes a fool of himself. And this is commonly not well-received and he also does not show any remorse [emphasis added] and...understandable that one cannot behave in this way in an... international court.”*

As to the status of international institutions, one respondent has a highly confident perception of these, because this person convincingly assumes these courts exist to call a halt to wrongdoings:

„Ich nehm' an wenn das ein europäisches Gerichts, ein europäischer Gerichtshof ist, dass es von mehreren Seiten beobachtet wird und hoffe, dass es eben NICHT zu solchen Rassismen kommt ... überhaupt... sondern, dass es; das versucht wird irgendwie fair zu urteilen.“²⁹⁹

„I assume that if this involves a European court, a European courthouse that it is observed by various sides and I hope, that it does NOT happen for racism to occur... in general, that it is attempted to somehow generate a fair play considering the ruling.”

It can be assumed that the idea of establishing tribunals is considered meaningful in general. Especially for ushering in reconciliation it is regarded a necessity. Yet, the views towards the real contribution to reconciliation processes in the regions diverge immensely among interviewees.

²⁹⁷ Interview No. 5, 08.02.2016, reference through origin: Serbia/Croatia; 25 years, male.

²⁹⁸ Interview No. 6, 15.02.2016, reference through origin: Croatia; 28 years, male.

²⁹⁹ Interview No. 7, 17.02.2016, reference through origin: Kosovo; 26 years, female.

The findings suggest that a slight tendency of racist perceptions on the part of the interviewees can be identified. As a cross-border phenomenon the ICTY might not be spared from bias and racist tendencies, yet the dimension at which it is supposed to exist is undefined. This insight promotes a rather precarious conclusion in terms of reconciliation success along the interviewed group.

Other than that, the scope of lawsuits and perceived lenience of verdicts in particular cases as well as the respectively defined objectives and its restricted mandate were severely criticized. Paramount importance was attached to the problems resulting from a deficient structure of the institution, namely the restricted mandate and limits of the ICTY per se such as consequential political difficulties. The associated impartiality of the ad-hoc Tribunal is perceived as an imperative quality criterion and a clever gambit on behalf of international politics, but tends to lose its recognition at least partially as such the more attention is paid to its actual achievements.

The informants, who are living in Vienna in second or third generation and were either born or partially grew up or had regular vacations in the respective countries while being mainly fluent in their respective language, and whose parents have their origin from the regions of the former Yugoslavia,³⁰⁰ indicated that the perception of the International Criminal Tribunal for the Former Yugoslavia is admittedly being transferred from the family elders within.

Only one out of eight persons stated that the information regarding politics of the countries of origin did consciously not circulate within the family, which was perceived as a great incentive to engage in an intense research by her/himself.

All eight interviewees recounted that they have informed themselves and keep updating through different perspectives and agreed upon how enormously important it is to consult various sources in order to understand the issues properly which will enable a solid impression of ambiguities and injustice. A positive aspect is the interest the respondents have developed throughout time to dwell upon the war independently, its causes and reasons as well as the sequence of events.

Forcing individual opinion through family elders or radical views has decreased since new communication technologies enabled unlimited access to information and education and thus emerged with the convenient effect of a more independent consideration of issues in general. Perhaps this circumstance helped the age-group to relieve factors that would promote rigid attitudes instead as it was the case right after the war.³⁰¹

All candidates clearly state, that they are extremely desirous of overcoming historical animosities in order to outreach a peaceful coexistence, where everyone can live and flourish in its own individuality without being abstracted to socio-cultural or religious characteristics.

³⁰⁰ This research does not refer to the entire ex-Yugoslav territory; here it involves Bosnia and Herzegovina, Croatia, Kosovo and Serbia only.

³⁰¹ From the retrospective of my parents who came back from Croatia to Vienna in 1992.

Given the results it is encouraging to hold that the Viennese Balkan-Diaspora harbors serious intentions to digest and recall the war along with all consequences and nationalist tendencies once and for all to make way for reconciliation capacities. Moreover, leveling socio-cultural and religious differences occupy the second priority.

The respondents literally beg to focus primarily on the people in this particular matter and center the issue towards an amicable realization of reconciliation for all nations instead of putting constructions of nationhood at the forefront.

Furthermore, the findings suggest that the linkage of international relations fortunately functions as a platform for young people who are motivated to learn about related issues and confront themselves with it on a detached, fair-minded basis so as to form an equitably own opinion in this regard. Respondents being born in an interfaith-marriage, *au contraire*, tend to avoid dealing with political topics and rather develop a certain distance instead.

It is of particular note that conflict-resolving attempts on behalf of international political actors are indeed being perceived widely different. Irrespective of the reconciliation idea *per se*, which is found to be reasonable, the interviewees achieved a consensus in terms of timing. Everyone agrees that the institution has tried to gain foothold on a ground which was very far from maturity at that time.

Cases as per particular given in the research above, namely the tendency of the phenomenon of racism hamper social learning and reconciliation processes and further bedevil improvements on the individual and collective level.

In addition, the public Calvary of particular peoples through media channels does not necessarily provide a stable grounding for positives outcomes, but rather promotes misleading perceptions and leaves a saliently irritating impression among all participants. Notably the Serbian population across the Balkans is then prone to continue believing in Western conspiracy *de novo*. The contradiction between the ICTY's jurisdiction and politics lingers on the surface and criticism that a court with an Anglo-Saxon legal setting for the ex-Yugoslav territory cannot be sufficient enough to deliver adequate judgments tends to persist beyond. Given that nowadays information is easily accessible, how credible is it for the young generation to acquiesce an attitude which creates suggestions? In what sense does education relate to the presented results here? And what impact does it have on minor educated individuals?

The fact that the ICTY's nimbus is dangerously tottering within ex-Yugoslav voices should be a lesson on how to restructure and improve reconciliation methods and secure outreach not only on international grounds, but foremost in the former conflict-states. Questions like these suggest that further research efforts would not only be of big importance but of great benefit for the respective communities in first place.

7 CONCLUSIO

“The key objective of the ICTY is to try those individuals most responsible for appalling acts such as murder, torture, rape, enslavement, destruction of property and other crimes listed in the Tribunal's Statute. By bringing perpetrators to trial, the ICTY aims to deter future crimes and render justice to thousands of victims and their families, thus contributing to a lasting peace in the former Yugoslavia”.³⁰²

With that said, the ICTY has indeed executed their mandate, namely criminal justice on perpetrators of the worst crimes on the Balkan territory in the 1990s and has also managed to promote justice to number of victims and their families. However, whether it will perform to facilitate lasting peace in the Balkans is still uncertain.

How individuals originating from the ex-Yugoslav states Bosnia and Herzegovina, Croatia, Kosovo and Serbia living in the Viennese Diaspora perceive the performance of the ICTY gives explanation about core problems of the conflict and outreach efforts of the institution. As John W. Burton (1997) explained “[...] to deal with deep-rooted, intractable conflicts at any level, one requires a comprehensive, holistic framework to capture the complexity of conflict”,³⁰³ representing the major task in terms of the role and perception of the ICTY in the Balkans. A myriad of challenges and cultural crossroads in the Balkans have considerably exacerbated third party reconciliation endeavors. Strongly linked constructions of identities and belonging are difficult to be put in the rear during the struggle for peace as long as the media and political elites instrumentalize it for own purposes to label the ICTY inaccurately and put these constructions in the foreground.³⁰⁴

From a theoretical perspective in Johan Galtung's terms (1996), peacekeeping and reconciliation efforts include the distinction between direct, structural and cultural violence. Considering that structural and cultural violence remain to be the toughest inequality to eliminate, it is important to look at it in a proper way. Since conflicts arise between dissimilar groups on different hierarchy-levels, the root of the conflict lies in the very structure of the people's position within a society.³⁰⁵ This leads to the assumption that certain structures might not be resolvable without conflict.

³⁰² ICTY – International Criminal Tribunal for the former Yugoslavia (n.d.i): About the ICTY, <http://www.icty.org/en/about>, 14.10.2017.

³⁰³ Burton (1997) qtd. in Sandole, 2001, n.p.

³⁰⁴ See Johansen, 2011, p. 25.

³⁰⁵ See Galtung, 1996, p. 2.

In regard to the question whether the affected communities are mentally prepared to forgive, Hugh Miall, Oliver Ramsbotham and Tom Woodhouse aptly hold that perceptions are inclined to developing misperceptions of one another fueling the conflict by emotions such as “fear, anger, bitterness and hatred.”³⁰⁶ Such circumstances make it additionally difficult to tackle the most important dimension in the quest for peace: the individual level of willingness, since reconciliation represents an emotionally-driven process which enormously depends on personal forgiveness and private engagement.³⁰⁷ Apart from that, Joanna Quinn further recalls that acknowledgement, which also begins at the individual level, is the first step on the recovery road to final reconciliation.³⁰⁸

Whether a tendency of racism exists is vague. Since the interviewed persons have different notions of racism, it cannot be said whether or not racism exists at the ICTY, but it certainly emerges throughout the interviews regarding the people’s perceptions. Hence, a latent form of perceived racism in connection to the ICTY appears.

While the ICTY’s legal accomplishments are of considerable significance, the reality of the *de facto perceived* implementation, however, turns out to be very ambivalent in this research. Nevertheless, some of the judgments, particularly acquittals,³⁰⁹ have unleashed a lot of criticism and resurrected irreconcilable images of history in the Balkan societies. Still, bottom-up outreach and the considerable cathartic effect lack empirical evidence up to the present day, as Andreas Ernst concludes.³¹⁰ The biggest paradox is the missing link between acknowledgements from the affected region towards the endeavors of justice (ICTY). Finally, the perception of the functionality of the ICTY does not improve the image of or the conception about the guidelines of its verdicts and impact, but still continues to take place along ethnic lines – some authors and interview partners believe.³¹¹ And this is the clogging problem.

Secondly, although the degree of discrepancy between theory and practice in the fields of reconciliation is very challenging, the ICTY has faced numerous allegations in recent years. There have been little attempts to communicate the mandate clearly in layman terms among the people of the affected post-conflict regions. Reconciliation was not part of the mandate, but indeed a mission for the future. Most notably, the ICTY lacked to articulate its challenges and limits at the time the Tribunal embarked on realizing its mandate. However, this is also subject to the experience it was only able to gather throughout performing their mandate. On the other hand, as Kristine Johansen discussed, the budget

³⁰⁶ Miall; Ramsbotham; Woodhouse, 2011, p. 10.

³⁰⁷ Cf. Brounéus, 2008, p. 294f.

³⁰⁸ Cf. Quinn, 2010, p. 3.

³⁰⁹ For example, the acquittals of Ante Gotovina or Naser Orić.

³¹⁰ Cf. Ernst, 2013, S. 40f.

³¹¹ Ernst, 2013, S. 40f.

for outreach activities has been vastly restricted.³¹² Furthermore, it should have been implemented from the outset, and not, regrettably six years later:

While Finci [ICTY Outreach Program Senior Information Assistant] believes that an outreach program could not have been established earlier due to the war, Jelačić [...] believes that at least such efforts could have been made, as it should have been evident from the start that the verdicts did not speak for themselves.³¹³

Nerma Jelačić, ICTY spokesperson and former journalist, additionally argues that early translations of the Tribunal's work could have limited the negative impact on the ICTY. Ernesa Ademagić, ICTY Outreach Program Information Assistant, added: "When the Outreach program was started you cannot say that it started something new because the perceptions of the Tribunal [w]as [sic!] already established."³¹⁴

Janine Natalya Clark, senior lecturer at Birmingham Law School for international criminal courts, Transitional Justice, genocide and ethnic conflict, debates that there is "little evidence of any positive nexus between ICTY trials and inter-ethnic reconciliation."³¹⁵ Although the mandate does not encompass reconciliation explicitly, it does declare that reconciliation is one of the three official objectives.

However, it was always going to be a tall order for a complex judicial body located outside of the former Yugoslavia to aid such a deeply personal and challenging process as reconciliation, and there are strong grounds for questioning whether it was even realistic to expect it to do so.³¹⁶

Yet, the institutional obligation requiring that the mandate and its impact be harmonized with the people's perceptions and active engagement with local people was only partially executed. Both, the literature analysis and the interviews reveal how intangibly knotty it is to implement instruments of Transitional Justice which are anticipated to induce reconciliation per se, but are not designed to do so. In summary, the perception of the ICTY in terms of reconciliation in a post-conflict context suggests a variety of attitudes. It can be assumed that the implementation of a criminal tribunal is considered meaningful in general. Especially for reconciliatory aspirations it is regarded a necessity. Yet, the views

³¹² See Johansen, 2011, p. 20.

³¹³ Interviews with Petar Finci and Nerma Jelačić (2011) qtd. in Johansen, 2011, p. 74.

³¹⁴ Interview with Ernesa Ademagić (2011) qtd. in Johansen, 2011, p. 74.

³¹⁵ Clark, 2012.

³¹⁶ Clark, 2012.

towards contribution to reconciliation processes in the regions per se and the point of time to induce justice vary. Partly because the ICTY's audience, the affected communities, might not have had, in fact, a clear introduction of the Tribunal's mandate, but mainly because expectations were too high. The ICTY Outreach program, which came into effect in 1999, also arrived too late.

The hypothesis, that international reconciliation efforts by third parties, in particular the ICTY, starkly diverge within perception of the affected societies and thus have an observable effect in terms of legitimacy of the Tribunal's work on expatriates originating from Bosnia and Herzegovina, Croatia, Kosovo and Serbia could be evidenced by the conducted interviews.

AFTERWORD

Repeating negative narratives will only conduce more to failure, and outreach as a part of the reconciliation process shall never stop to provide outreach events, since it contributes to back up diversified views enormously.

Aside from that, it is incredibly important to tackle the individual forgiveness level and to motivate people's perceptiveness for reprocessing history in order to pass through peace, truth and mercy all the way to achieve reconciliation for a peaceful coexistence. Acknowledgement among people (and institutions) is difficult to bring about and very intricate to maintain.

In some cases, such as the issue relating to Hashim Thaci, the first prime minister of the Republic of Kosovo since its independence, serious allegations of crime against humanity³¹⁷ still exist and are also documented by former UN chief prosecutor Carla Del Ponte in her controversial book of 2008.³¹⁸ In fact, this case is only capable of fuelling inter-ethnic mistrust. These experiences aggravate to target social learning and reconciliation processes.

Also, inter-ethnic relations have changed and truths compete for acknowledgement since each side starves for empathy and recognition of own suffering and grievances and adheres to own versions of truth. "If truth is to aid reconciliation, the relevant populations must accept it; but in the former Yugoslavia, people typically continue to cling to their own ethnic truths about the wars,"³¹⁹ Clark repeats. As long as people remain wedded to their own ethnic versions of truth and stay fixated on the suffering inflicted on – rather than by – their own ethnic group, this much-needed acknowledgement is unlikely to materialize,"³²⁰ Clark further assesses. A pivotal differentiation should also be conducted in terms of individualized guilt: "For example, although Serbs committed the largest number of atrocities, Serbs are not collectively guilty [...], and individual Serbs must be judged on the basis of what they *did* and not who they *are*."³²¹

Another fact delivers that the arisen criticism in terms of the Anglo-Saxon legal tradition is quite plausible, since it is not appropriate to be merged with European law systems and – even worse – it

³¹⁷ Rupp, Rainer (2010): Ein Mörder als Premier. Kosovos Ministerpräsident Thaci vom Europarat als Organhändler identifiziert. In: junge Welt, 16.12.2010, p. 6, <https://www.jungewelt.de/artikel/155980.ein-moerder-als-premier.html> [also available here: AG Friedensforschung (2010): Kosovo: Schwerer Verdacht gegen Hashim Thaci, 17.10.2010, <http://www.ag-friedensforschung.de/regionen/Serbien/thaci.html>], 15.09.2015.

³¹⁸ Del Ponte, Carla; Sudetic, Chuck (2009): Im Namen der Anklage. Meine Jagd auf Kriegsverbrecher und die Suche nach Gerechtigkeit. 2. Auflage. Frankfurt am Main: S. Fischer Verlag.

³¹⁹ Clark, 2012, p. 74.

³²⁰ Clark, 2012, p. 74.

³²¹ Clark, 2012, p. 74.

cannot be expected that it sufficiently be adopted in the Balkans and foremost not at the time given,³²² Swart, Zahar and Sluiter conclusively argue.

However, transformative power does not work on institutional levels only. Efficiency equally depends on the interaction of existing and new narratives as well as it needs to incorporate the population into the process of reconciliation in a bottom-up method.³²³ Foreign assistance is undoubtedly needed, but without trust and acknowledgement towards respective institutions, positive peace will remain fragile and a mere coexistence is most likely to be at long stagnation. However, the ICTY was not designed to handle the Balkan history all by itself. Ongoing outreach, small-scale local projects and grassroots movements, such as, for example, the Muslim Jewish Conference, where Jews and Muslims stand next to each other in order to talk *with* instead of *behind* each other are likely to support the effect of reconciliatory approaches on a bottom-up level.³²⁴

Whether lasting peace, as envisaged by the ICTY, will be the case on the territories of the former Yugoslavia is still open to dispute. The summarized aspects are the result of what divides the Balkan nations in terms of acknowledgement for peace endeavors from *outside* and *why perception actually matters*.

³²² See Swart, Bert; Zahar, Alexander; Sluiter, Göran (eds., 2011): The Legacy of the International Criminal Tribunal for the Former Yugoslavia. Oxford: Oxford University Press, p. 151f.

³²³ Cf. Vasiljević, 2011.

³²⁴ For more information see Muslim Jewish Conference (2017): About [the Muslim Jewish Conference], <http://www.mjconference.org/about/>, 17.11.2017.

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APPENDICES

APPENDIX I: CONSENT FORM AND SEMI-STRUCTURED INTERVIEW GUIDE

EINVERSTÄNDNISERKLÄRUNG

Zusicherung der Anonymität und Datenschutz

Forschungsprojekt: Perzeption des ICTY aus der Sicht der in Wien lebenden MigrantInnen aus dem heutigen Bosnien, Kosovo, Kroatien und Serbien.

Durchführende Forscherin: Adriana TODOROVIC

Interviewdatum: 17. Februar 2016

Ich erkläre mich damit einverstanden im Rahmen dieses Forschungsprojekts an einem Interview teilzunehmen. Über das Ziel und den Verlauf dieses Projekts wurde ich bereits informiert. Ich kann das Interview jederzeit abbrechen oder weitere Interviews ablehnen, ohne dass mir dadurch irgendwelche Nachteile entstehen. Ich bin damit einverstanden, dass das Interview mit einem Aufnahmegerät aufgezeichnet und transkribiert wird. In weiterer Folge erkläre ich mich damit einverstanden, dass etwaigen Betreuern im Zuge der Qualitätssicherung Einsicht in die Transkription gewährt wird.

* * *

Für die weitere wissenschaftliche Auswertung des Interviewtextes werden alle Angaben zur Person aus dem Text entfernt und formal anonymisiert. Weiters wird versichert, dass das Interview in wissenschaftlichen Veröffentlichungen nur in Ausschnitten zitiert wird, um sicherzustellen, dass die Person auch durch die in Interviews erzählte Reihenfolge von Ereignissen für Dritte nicht erkennbar wird.

Dieses Interview wird ausschließlich wissenschaftlichen Zwecken zur Verfügung gestellt.

LEITFADEN

1) Aufklärung über den Datenschutz der Wissenschaft

- Zusicherung der Anonymität
- Aufklärung über die Bedeutung von ehrlichen Antworten (es gibt kein „richtig“ oder „falsch“, sondern „ehrlich“.)

2) Demographischer Fragenblock

- Name
- Alter
- Wohnsitz
- Staatsbürgerschaft
- Bezug zum Thema (Geburtsort der Eltern z.B.)
- Höchste abgeschlossene Schulbildung

3) Einleitung zum Interview

Diese Befragung behandelt Konfliktmanagement rund um das Thema UN-Kriegsverbrechertribunal und seine Perzeption der in Wien lebenden Migrantinnen aus Bosnien, dem Kosovo, Kroatien und Serbien.

Als in den 1990er Jahren aus zahlreichen bewaffneten Konflikten die Idee der *Transitional Justice* hervorging, wurden durch entsprechende Instrumente und Bemühungen erstmals die Aufdeckung von und Konfrontation mit Verbrechen ermöglicht. Dabei lag der Fokus auf Erlangen von Gerechtigkeit für alle Opfer und Hinterbliebene einerseits, und auf Wiederherstellung der Würde der Opfer andererseits. Dennoch war eines der wichtigsten Ziele die Ermutigung zur friedlichen Koexistenz und die regionale Stabilität sowie die Prävention zukünftiger Straftaten.

Fragenblock 1

Welche Erfahrungen hast du mit diesem Thema bisher gemacht?

Wie gut bist du zu diesem Thema informiert?

Wie und/oder wodurch wurde das Thema für dich relevant?

Fragenblock 2

Welche Medien ziehst du dabei heran?

Verfolgst du dieses Thema regelmäßig?

Fragenblock 3

Inwiefern hat der ICTY deiner Meinung nach zu einer politischen Veränderung beigetragen?

Wurden die Ambitionen des ICTY realisiert?

Inwiefern wurde gerecht gehandelt?

Fragenblock 4

Bitte beschreibe deine Wahrnehmung der aus dem ICTY hervorgegangenen Urteile.

Sind Rassismen vorhanden?

Wenn ja, inwiefern?

Fragenblock 5

Kennst du dich mit dem geschichtlichen Background aus?

Woher kommt das Wissen? Weitergabe durch Familie?

Bemühung um intensivere Auseinandersetzung mit dem Thema aus einer anderen Perspektive?

Fragenblock 6

Wie sähe die Lage ohne den ICTY aus? Würden die betroffenen Länder aus Eigeninitiative eine Veränderung herbeiführen können/wollen?

APPENDIX II: ABSTRACT

Drawing on the idea that the International Criminal Tribunal for the former Yugoslavia (ICTY) mirrors varying perceptions of its performance as an actor for post-conflict reconciliation, this work aims to examine the perceptions and challenges of the Balkan region in regard to criminal justice conducted by the ICTY and its anticipated reconciliation efforts particularly within the “Balkan Diaspora” in Vienna. Literature on the former Yugoslavia suggests that reconciliation is inevitable for social learning and political transformation. By introducing this work, a retrospective offers the necessary historical context outlining the fall of ex-Yugoslavia in the 1990s and puts emphasis on significant terms for the conducted interviews with eight interview partners from the “Balkan Diaspora” in Vienna. The theoretical part deals with post-conflict reconciliation by discussing the terms “conflict” and “peace” and framing reconciliation as a prerequisite for stable peace. Transitional Justice and the mandate of the ICTY are highlighted throughout the work to underscore where (mis)conceptions regarding perceptions of the ICTY within affected communities might stem from. The role of cultural constructions in the Balkans shows further challenges. Finally, the last segment examines various challenges and limits the ICTY has been confronted with and provides insight into the interview results as well as it discusses the problems of varying perceptions and why it actually matters.

APPENDIX III: ZUSAMMENFASSUNG

Anknüpfend an die Idee, dass das Haager Kriegsverbrechertribunal „International Criminal Tribunal for the former Yugoslavia“ (ICTY) in seiner Rolle als Akteur für den „Reconciliation“-Prozess in der Balkanregion divergierende Perzeptionen generiert, dient die vorliegende Arbeit als Versuch, sowohl die unterschiedlichen Perzeptionen als auch Herausforderungen des Balkanraumes in Bezug auf Strafjustiz und der daraus erwarteten Versöhnungsprozesse zu untersuchen, und über die Ursachen der Kontroversen zu reflektieren. „Reconciliation“ versteht sich als ultimatives Ziel innerhalb des Konfliktmanagements und ist für die politische Konflikttransformation sowie den sozialen Zusammenhalt von enorm großer Bedeutung. Einleitend bietet die Arbeit einen historischen Umriss rund um den Zerfall ex-Jugoslawiens in den 1990er-Jahren an und definiert grundlegende Phänomene, die für die nachfolgenden acht Interviews mit jungen Erwachsenen der „Balkan-Diaspora in Wien“ relevant sind. Der theoretische Teil beschäftigt sich mit den wissenschaftlichen Anfängen des Konfliktmanagements und der Friedenssicherung, beleuchtet Kernelemente wie „Konflikt“ und „Frieden“, die für den „Reconciliation“-Prozess dringend erforderlich sind und leitet zur so genannten „Transitional Justice“ hin. Dabei wird das Mandat des ICTY fortlaufend in Abgrenzung zur Mission diskutiert, um darauf aufmerksam zu machen, woher etwaige Fehlannahmen in Hinblick auf die Perzeption des ICTY stammen könnten. Folglich wird ersichtlich, welche unterschiedlichen soziokulturellen Konstruktionen am Balkan die Zusammenarbeit zusätzlich erschweren und die Legitimität des Tribunals in Frage stellen. Letztlich werden jene Herausforderungen und Schwierigkeiten sichtbar gemacht, mit denen sich das ICTY während seines Mandates permanent konfrontiert sah. Die Interviewanalyse gibt Aufschluss darüber, inwiefern Perzeptionen divergieren und warum diese fundamental sind.