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## **On the Capacity of the ICTY to Shape Public Perception of the Bosnian War: Narratives of Genocide inside and Outside of the Courtroom**

Situated within a vibrant scholarly debate on the question of wider (extra-legal) social impacts expected from the ICTY in the region of former Yugoslavia, this paper tackles the issue of relations between facts established at the court and acknowledgement of those facts in the public domain of the post-war Bosnia and Herzegovina (BiH). Imbued by the tradition of transitional justice, many authors (and practitioners) invested in belief that the Tribunal will create an authoritative narrative of the war which will fortify future peace among the nations. However, recent studies have demonstrated that the ICTY judgements have not led to outright change in the public perceptions of the war on the ground (e.g. Stover and Weinstein 2004; Subotić 2009; Nettelfield 2010; Orentlicher 2010; Gordy 2013). In the particular case of post-Dayton Bosnia and Herzegovina, three ethnically defined and mutually contesting interpretations of the war dominate the public forum.

In order to examine how exactly this problem unfolds, the research project behind this paper followed the development of the public memory about the war over the time, intersecting it with the relevant ICTY jurisprudence. The aim was to detect whether relevant ICTY judgements led to a change in the dominant narratives on the ground. For that this paper focuses on the most burning dispute between leading Bosniak and Serbian historical narratives: whether genocide was the overall aim of the Serbian side in the war. Taking commemorations and public holidays as stages for reproduction of dominant narratives about the last war, the paper reconstructs their evolution over time, precisely in the period before and after the relating ICTY decisions and judgements, including the recent judgement to Radovan Karadžić. The primary source materials for the analysis are newspaper articles on commemorative events and ICTY proceedings, to which media frame analysis was applied.

### **How it came to be expected that the ICTY would shape public memory?**

The institution of the ICTY was established against the backdrop of two prominent, and mutually interconnected, approaches to thinking about the social role of war crimes trials. The first originates from the vigorous debate on the question of whether the courts should 'write history'. While some argued that court should only render justice (Arendt 1965; Todorov 2003), others have demonstrated that 'history' cannot be expelled from courtrooms that deal with wars (Douglas 2001; Wilson 2011). It seems that the founders of the ICTY embraced a third stream of argument which regards war crimes trials as inherently historical events: under the limelight of public attention, the courts create an authoritative historical account that shapes collective memory about the events being adjudicated (Osiel 2000; Teitel 2002). This position of 'judicial romanticism' (McMahon and Forsythe 2008)

presupposes that the creation of an authoritative account of the war would refute attempts to deny the criminal events – a position also recently named as ‘authoritative narrative theory’ (Waters 2013). This position gained prominence in the context of deep divisions among post-Yugoslav political elites, who shared common tendency to deny responsibility for committed crimes and reluctance to acknowledge victims' suffering (Cassese 1998; Akhavan 2001; Goldstone 2010).

The other approach to thinking about war crimes trials stems from expanded notion of justice developed within transitional justice (TJ) discipline.<sup>1</sup> It goes beyond mere retribution and seeks to achieve *social justice* after deep strife. The founders of the ICTY embraced this understanding by attributing the court with several functions outside the legal scope of trying individuals for their criminal responsibility (e.g. "bringing the sense of justice to the victims"). The most prominent (and most debated) extra-legal role is the expectation that the ICTY “would contribute to the maintenance of the peace” (UN Security Council 1993, preamble 6). Precisely in the spirit of transitional justice discipline, this "restoration and maintenance of the peace" has been understood as a reconciliation on a general social level.

However, the problem of post-conflict reconciliation deals with issues that go well beyond the conduct of a court, which has been the main point of criticism of the reconciliatory expectations professionals and laymen have invested in the ICTY (Fletcher and Weinstein 2002; Clark 2009; Puhalo et al. 2010); thus I decided to leave the issue of reconciliation to social psychologists and anthropologists. Nevertheless, the presupposition that the findings of the Tribunal will lead to reconciliation rests on the assumptions that firstly, a court is able to create an authoritative account which will refute attempts to deny the criminal events and secondly, that denial is obstructing reconciliation.

Therefore, the romantic belief in the court's ability to influence on society by creating objective historical account, as well as the trust of TJ paradigm in transformative effect of truth-telling, both rests on the underlying assumption that once the ‘truth’ is publicly presented, it becomes a part of public memory. This paper exactly challenges this expectation by examining whether the war crime trials before the ICTY have changed narratives about the 1992-95 war that dominate public life in Bosnia and Herzegovina (BiH).

## Specific Setting of Post-Dayton Bosnia and Herzegovina

In order to understand the pattern of mnemonic practices, one needs to understand the structural conditions that shape it. The majority of the literature on collective memory, memorialisation, politics of memory and history textbooks, situates itself within the framework of nation-states. This is natural, since the state is the usual bearer of supreme political and social power and controller of its symbolic resources. However, in the case of Bosnia and Herzegovina, the political and social system that emerged on the foundations of the Dayton Peace Agreement, invested the greatest political power in the representatives of the ethnic communities, rather than the central state, making the ethnic representatives the main entrepreneurs in public memory-making.

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<sup>1</sup> The concept of transitional justice refers to a range of legal and political mechanisms applied in societies transforming from authoritarianism to democracy, and from violent conflict to post-conflict peace-building (Teitel 2002). This hybrid concept reflects the social, political and legal need to address violations of human rights and/or war crimes that occurred in the recent past, with the main goal of (re)establishing a just, democratic and reconciled society.

In the post-Dayton political and social system of BiH, ethnicity got 'institutionalised' (Malešević 2006) as the primary organising principle of political participation (legislature and executive), judiciary, public administration and education. The constitution of BiH, as Annex 4 to the General Framework Agreement for Peace in Bosnia and Herzegovina [hereinafter the Dayton Peace Agreement], devises a political system, which results both from the legacy of warfare and the principle of consociationalism driven to extremes. The constitutional arrangement reflects political pragmatism typical for a peace agreement, combining elements that would satisfy (and pacify) each of the sides. It recognised the Republika Srpska [literally meaning 'Serbian republic'], the nation-statelet that declared independence from BiH at the beginning of the war (with a political (and military) aim to unite with other 'Serbian lands'),<sup>2</sup> as one of the two entities of the State of BiH. On the other hand survival of Bosnia and Herzegovina as an internationally recognised state was most welcomed by Bosniak representatives and those who pledged allegiance to BiH as a civic state. Finally, the composition of the second entity – the Federation of BiH, which is also a relict of another peace agreement<sup>3</sup> – which divides it into 10 cantons with large autonomy, was a concession to demand of the Croat leaders to get a form of group representation.

Designed to guarantee group representation so none of the three main ethnic groups would feel outvoted, the constitution of the post-Dayton BiH devised a set up in which the group representation permeates all levels of parliament, government and public administration, creating a situation of *ethnopolitics* (Vlaisavljević 2006). Consequentially, dominant political elites are ethnically defined functioning almost completely independently in three parallel *ethnopoiesis* (Mujkić 2008).

## Narratives of Genocide Inside and Outside the Courtroom

The word 'genocide' is probably one of the most exploited words, from the prelude to war through to its aftermath. During Yugoslav dissolution, the imagery of genocide was overtly used by Serbian propaganda aimed at nationalistic mobilisation, spreading fear of a coming genocide against Serbs (MacDonald 2002). It was also used by the Croatian and Bosnian political representatives to characterise the overall conduct of the Serbian side in the conflicts (ibid).

Though the word 'genocide' was in vastly used (and manipulated) in the local political discourses, the *legal* meaning of the word is significantly more narrow. Relying on the United Nation's Convention on the Prevention and Punishment of the Crime of Genocide<sup>4</sup>, the Statute of the ICTY defined genocide as follows:

*Genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:*

<sup>2</sup> In the discourse of Serbian Democratic Party [Srpska Demokratska Stranka - SDS] 'Serbian lands were considered to be the Republika Srpska Krajina [Serbian Republic of Krajina] – insurgent proto-state formed by Serbian rebels within the Republic of Croatia from 1991 to 1995 – and the remnant Federal Republic of Yugoslavia, comprising Serbia and Montenegro.

<sup>3</sup> The Washington Agreement of 18 March 1994, ended the war-inside-the-war between Croatian Republic of Herceg-Bosna (ethnically exclusive statelet that was founded in the first year of the war and supported by Republic of Croatia, further details will be given in the chapter **Error! Reference source not found.**) and forces loyal to the only internationally recognised representatives of the Republic of BiH.

<sup>4</sup> <https://treaties.un.org/doc/Publication/UNTS/Volume%2078/volume-78-I-1021-English.pdf>

- (a) killing members of the group;*
- (b) causing serious bodily or mental harm to members of the group;*
- (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;*
- (d) imposing measures intended to prevent births within the group;*
- (e) forcibly transferring children of the group to another group (ICTY 2009, Article 4, §2)*

Therefore, while the *actus reus* [legal Latin: “guilty act”] of the crime of genocide is similar to the material elements of the ‘crimes against humanity’ – murder, extermination, enslavement, deportation, imprisonment, torture, rape, persecutions on political, racial and religious grounds, and other inhumane acts against civilian population (ibid, Article 5) – there is additional *mens rea* [legal Latin: “guilty mind”] in genocide perpetrators: the intention to destroy the group as such. Thus, genocidal intent must include both the intention to destroy the members of the group *and* the intention to destroy the group *as such*. ‘As such’ refers to the aim to annihilate group as a distinct community of people. As the ICTY Trial Chamber explained in a Decision:

*... the ultimate victim of genocide is the group ... [and] this is what differentiates genocide from the crime against humanity of persecution. Even though they both have discriminatory elements, some of which are common to both crimes, in the case of persecution, the perpetrator commits crimes against individuals, on political, racial or religious grounds. It is this factor that establishes a demarcation between genocide and most cases of ethnic cleansing” (ICTY 2001b, §89, emphasis added).*

So far, only the execution of Bosnian Muslims by the Serb forces in the region of Srebrenica in July of 1995, has met those requirements. Thus Srebrenica became known worldwide as a Bosnian synonym for genocide, the ultimate test of Serbian acknowledgement and denial, and a memorial battleground for local communities. Indisputably the ICTY created a detailed narrative about the genocide of Bosniaks in Srebrenica in July 1995. Though the killings targeted ‘only’ approximately 8,000 men, the combination of summarily indiscriminate execution of men and boys, deportation of rest of the civilians, and the strategic spot of Srebrenica near the Serbian border all pointed to the genocidal nature of the attack on Bosniaks.

### **Adjudication of Genocide in Srebrenica**

The first judgment in ICTY jurisprudence that convicted someone for genocide was the one against General Radislav Krstić, commander of the Drina Corps, the military unit of the Army of the Republika Srpska (VRS) which participated in the operation of takeover of Srebrenica and subsequent executions of Bosniak men (ICTY 2001a). This and later judgements established that the executions were directed by the VRS Main Staff, headed by General Ratko Mladić, who is now facing a trial before the ICTY.

The Krstić Judgement narrates events in and around Srebrenica could be summarised in following main points: Since April 1993 Srebrenica was proclaimed by the UN Security Council as a ‘safe area’ for Bosniak population within the larger territory controlled by the Army of Republika Srpska. From

the beginning, both sides violated the 'safe area' agreement. On the one hand, Bosnian Serbs deliberately limited access of international humanitarian aid convoys into the enclave, on the other hand, the Army of Bosnian and Herzegovina (ARBiH), loyal to the Government in Sarajevo admittedly failed to hand over all weapons. In March 1995, "reacting to pressure from the international community to end the war and on-going efforts to negotiate a peace agreement" the president of the Republika Srpska, Radovan Karadžić, issued a directive which ordered creation of "unbearable situation of total insecurity with no hope of further survival or life for the inhabitants of Srebrenica" (ibid, §28). The VRS offensive started at the beginning of July 1995 with Serb forces 'cleansing' the houses on their way to the town. By the time General Mladić "took a triumphant walk through the empty streets of Srebrenica town" in the evening of the 11<sup>th</sup> of July (ibid, §36), all Bosnian Muslims had fled. Approximately 20,000 to 25,000 civilians, women, children, elderly and up to 1,000 men, gathered in and outside the UN compound in a former factory in Potočari, a village nearby Srebrenica. As the "word [had] spread though Bosnian Muslim community that the able-bodied men should take to the woods" (ibid, §60), a column of 10,000 to 15,000 men was formed, a third of whom were members of the ARBiH, though "not all of the soldiers were armed" (ibid, §61). In what one of the survivors described as a "man hunt," the Bosniaks were chased and captured by the Serbian forces, which carried out random summary executions, or detained them at various locations in the Bratunac area. In the days to follow the captured prisoners were executed "almost to [the last] man" (ibid, §67). The Trial Chamber concluded that, at some point, a decision was made at the highest level of the RS to kill all Bosnian Muslim able-bodied men, irrespective of their military or civilian status. Precisely this intention is what the Trial Chamber found as genocidal *mens rea*, since able-bodied men represented a substantial<sup>5</sup> part of the Srebrenica population, and they were targeted just because they were Bosniaks, therefore the group was targeted as such.

The narrative of events presented in this judgment was confirmed by subsequent judgments before the ICTY (and the War Crimes Chamber of the BiH Court) relating to the events in Srebrenica in July 1995, including the largest ever trial heard by the Tribunal – *Popović et al.* – in which the high-ranking military and police officials of Republika Srpska have been convicted for genocide (ICTY 2010). This narratives was also repeated in the Judgement of Radovan Karadžić, the war time president of Republika Srpska (ICTY 2016).

The *Krstić* Trial Judgement of 2001 gained surprisingly little attention, bearing in mind that this was the first conviction of genocide by the ICTY. Though the Serbian media reported about the Judgement, they marginalised the word 'genocide' in the reporting. The Judgement gained in importance only subsequently as a pretext for ordering the Government of the Republika Srpska to investigate the fate of the missing Bosniaks. In the months following the *Krstić* Trial Judgment, the families of those who disappeared in July 1995 from the region of Srebrenica, filed an applications to the Human Rights Chamber for BiH<sup>6</sup> in order to find out the fate of their missing ones. The Human

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<sup>5</sup> The Trial Judgment interpreted the expression "in whole or in part" from the *chapeau* [introductory sentence] of the Article 4(2) of the ICTY Statute "to mean a 'substantial' part in quantitative or qualitative terms" (ICTY 2001a, §582). Here the Judgment bore in mind the qualitative dimension, understanding as 'substantial part' some distinct entity within the community which must be eliminated as such, as opposed to an accumulation of isolated instances against various individuals belonging to the group (ibid, §590). In this case this 'substantial part' is the sub-group of able-bodied men.

<sup>6</sup> This was a specialised independent court, established by the Dayton Agreement (Annex 6), in charge of implementing the European Convention on Human Rights. As of 2004, its mandate falls under Constitutional Court of BiH.

Rights Chamber established that the Government of Republika Srpska is obliged to “to conduct a full, meaningful, thorough, and detailed investigation into the events” making publicly known “the Republika Srpska’s role in the facts surrounding the massacre at Srebrenica in July 1995, its subsequent efforts to cover up those facts” (Human Rights Chamber for BiH 2003, §212). After almost two years of evasion and evident refusal, the Office of the High Representative in BiH forced Government of Republika Srpska to create a special commission to investigate into the matter.

The RS Government’s Srebrenica Commission, which concluded its work in June 2004, revealed several previously unknown mass graves, but had nothing to add to the narrative about genocide created by the ICTY. The true purpose of this transitional justice mechanism was not truth-finding, but truth-acknowledgement. Though the President and Government of the RS formally apologised for the crime, they avoided calling it genocide. The media reporting on the Srebrenica Commissions reveals that both Bosniak and Serbian media framed it as resulting from international pressure, hence the acknowledgement effect that this TJ mechanism could have had was absent.

### Memorialisation of Genocide in Srebrenica

In its judgement of 2003, Human Rights Chamber ordered the Republika Srpska's Government to make compensation to Bosniak victim community by allocating funds to the Foundation of the Srebrenica-Potočari Memorial and Cemetery [*Fondacija Srebrenica-Potočari spomen obilježje i mezarje*] to the sum of 4 million KM (approximately 2 million euro). Until that point, in the years immediately after the war, the annual commemorations relating to Srebrenica were held in Tuzla, the city where the majority of Srebrenica survivors lived as refugees. In those first years, the town of Srebrenica, being within the territory of the Republika Srpska, was a hostile territory for the Bosniak victims. Police of the RS was reluctant to provide them security, so they could only pay a short visit to the site of the DutchBat compound (the former battery factory) accompanied by the international security forces. The women would lay white roses on the fence and pray. On these visits there were several incidents (such as stoning of a bus) which sent the victims’ families the clear message that they were not welcome to visit the area.

The gravity of the crime which took place in Srebrenica, and moral responsibility of the UN forces for not preventing it, probably influenced the Office of the High Representative (OHR) to give particular attention to this site of commemoration. Therefore the OHR used its power to force the Serb-dominated municipality to allocate a patch of land across the road from the former DutchBat compound in Potočari village to the future cemetery. Furthermore, the OHR established the Foundation of the Srebrenica-Potočari Memorial and Cemetery [*Fondacija Srebrenica-Potočari spomen obilježje i mezarje*], to which foreign governments gave donations. The OHR took the creation of the memorial as its own project, balancing between the victims’ wishes, their own internal politics, the antagonistic Serb surroundings and the considerations of Bosniak representatives in Sarajevo. During the consultations, the victims’ families often felt marginalised in the process. The foundations of the memorial have been in place since 2002 and in 2003 the first burial of exhumed remains took place, attended by former US President Bill Clinton. Over the years, the commemoration gained in prominence. It was attended by the highest Bosniak politicians, the religious commemorative service was held by the chief of the Islamic community in Bosnia [Bos. *reisu-l-ulema*], and international delegations were regularly present, including ICTY officials. Over the years the profile of these delegations grew to the point of the heads of state, while paying respects at the Potočari Memorial became a regular part of official diplomatic visits.

The commemoration gained a very formalistic pattern: the event would start with a chorus of a song specially composed for this occasion (the Srebrenica Inferno), political representatives would give speeches, followed by one of *reisu-l-ulema* who would then lead a lengthy collective prayer, after which hundreds of *tabuts* (Muslim coffins) would be taken to individual graves [*mezar*] and buried by the families, while the names of those buried would be read aloud over the speakers. The commemorations are broadcasted live on the public television of the Federation of BiH. In addition, a range of events, such as public lectures, exhibitions about genocide and theatre performances, are organised in connection with Srebrenica, mostly in cities with a Bosniak majority. In the days before the annual commemoration activists organise a Peace March [*Marš mira*] which retraces the path Bosniaks took through the woods when fleeing from Srebrenica, while citizens of Sarajevo await the trucks (loaded with *tabuts*), passing by from the morgue towards Srebrenica, and lay white roses on the road. The commemoration in Potočari is unquestionably the news of the day for the Bosniak media (see Figure 1). In the days before, they extensively report about the preparations for the commemoration, about which high political officials will be present, they publish feuilletons which narrate the events of July 1995 and present interviews with survivors and opinion-makers about the topic. All these details are to illustrate the importance that the public ascribes to this commemoration, in half of the country.

Figure 1: The Bosniak media reporting about commemoration in Potočari



(Source: Left: *Dnevni avaz*: "Srebrenica awakens the conscience." Right: *Oslobođenje*: "Prayer for 10,000 killed Bosniaks." Date: 12 July 2002)

Since the war, the memorialisation of Srebrenica became the most prominent *lieu de mémoire* (Nora 1989) in Bosniak collective memory. Unquestionably being the greatest single crime of the war, it seems that in Bosniak public imagination, as far as it is represented by the media, Srebrenica became the symbol of the overall suffering of the Bosniaks during the war. Though the genocidal event took place in the last year of the war, the narrative represented in the media frames Srebrenica as key to understanding the war as a whole, especially the genocidal plan of the Serbian leaders. After issuing

of the *Krstić* Trial Judgment, the Bosniak media referenced it as a proof that genocide did take place in Srebrenica. On the other hand, the part of the Judgment that narrates how the operation of the Army of the Republika Srpska (VRS) initially started as campaign of ethnic cleansing, during which the VRS headquarters changed agenda into genocidal plan, is absent from the Bosniak narrative. While in the early years after the war the estimations of the number of those killed in Srebrenica in July 1995 ranged to “over 10,000” (*Dnevni avaz* 1996), after the *Krstić* Judgment and Srebrenica Commission’s Report, the narrative stuck to estimations around 7,000 and 8,000. However, the Bosniak media continued representing the narrative in which Serbian leaders envisioned genocide against Bosniaks as their primary war aim, exemplified by Srebrenica in July 1995.

Due to the extrapolation of the notion of genocide from Srebrenica to the overall character of the Bosnian war, and due to the great publicity under which the commemoration takes place, it has gradually become a stage for Bosnian state- and Bosniak nation-building.

In contrast to the Bosniak media, the Serbian media attach far less importance to the Potočari commemoration. In the first years after the war, both main Serbian daily newspapers – *Glas srpski* and *Nezavisne novine* – completely ignored the Bosniak victims. The trend changed around 2000: while *Nezavisne* reported about the commemoration as a significant event (see Figure2, left), *Glas* treated it as ‘non-event’ (e.g. the front page presents as the ‘hottest news’ an article about hot weather, see Figure, right), informing only in cases of a violent excess.

**Figure 2: The Serbian media reporting about commemoration in Potočari**



(Source: Left: *Nezavisne novine*: “RS Government ignored gathering in Potočari” (page 3). Right: *Glas srpski*: no information about commemoration in Srebrenica. Date: 12 July 2002)

The representatives of the RS Government were regularly present at the official Potočari commemoration, though these were usually ‘lower echelon’ politicians. I noted only one occasion that the RS Prime Minister was present – in 2003 at the time of the working of the RS Government

Srebrenica Commission. However, the RS officials never made a public statement at or on the occasion of the commemoration creating the impression that they were ignoring the event, and there was no impression that any kind of acknowledgement took place in the Republika Srpska.

### Public Discourses about Genocide and their Political Ramifications

In the years after the war, the 12<sup>th</sup> of July was celebrated as the “liberation of Srebrenica and return of the Serbs to the municipality” (*Glas srpski* 1999) and the event had a festive rather than commemorative flare. However, as soon as Bosniak commemorations on the site of Potočari became regular, the festivity turned into a ‘contra-commemoration’. Namely, since that year (2002), regular commemorations are being held at the Military cemetery in the neighbouring city of Bratunac. That date was allegedly chosen since on the 12<sup>th</sup> of July 1992 the members of the ARBiH killed 70 Serbs in the neighbouring villages Biljača, Sase and Zalazje (*Glas srpski* 2000), however one cannot avoid noticing that the date is conveniently one day after the Potočari commemoration.

The Serbian narrative, which framed the events of July 1995 as a ‘revenge’ for previous Bosniak atrocities in the region of Srebrenica, was salient since the end of the war. However, in the light of the international support for Bosniak commemorations in Potočari, the Serbian narrative shifted from celebrating “liberation of Srebrenica” to commemorating Serbian victims from 1992 and 1993. As the Bosniak commemorations gained prominence and international spotlight, the Serbian commemorations in Bratunac took on the role of amassing all Serbian grievances and constructing a continuum of Serbian victimisation from the Second World War to the conflict of the 1990s. Even when the Serbian media gradually started reporting on the Potočari commemorations, they were largely framed as competition between Bosniak and Serbian victimhood. The controversial ‘competitive’ character of the Bratunac commemoration not only led to Bosniak media (and officials) ignoring them, but also enabled complete lack of recognition of any Serbian victims (from the Podrinje region) by the Bosniak public.

On the other hand, the Bosniak narrative, in light of continual Serbian denial and due to strong international support, increasingly framed Srebrenica as symbol of overall Bosniak victimisation during the war. Though the Srebrenica genocide was in many ways an exceptional event of the war, the Bosniak officials (as well as many international stakeholders) used the Srebrenica commemoration as a stage for claiming that the genocidal plan was an overall motivation of the Serbian side in the conflict. As some other researchers noted “focus on genocide profoundly shaped the [Bosniak] narrative about the past” (Subotić 2009, 154), and led Bosniak victims from other regions to claim and demand to be regarded as victims of genocide as well (even in the absence of an adequate ICTY judgement (Nielsen 2013)). Eventually, such ‘macro’ interpretation of genocide (as opposed to ‘micro’ genocide in Srebrenica) was employed by Bosniak officials in order to claim that the Republika Srpska is a ‘genocidal creation’, and hence illegitimate, prompting calls for its annulment.

The Serbian narrative’s framing of Srebrenica in terms of local Bosniak-Serbian fighting facilitated not only the avoidance of calling the massacre of July 1995 genocide, but also enabled the Serbian narrative to negate the genocidal nature of its overall war-time conduct. The link that the Bosniak narrative created between the genocide in Srebrenica and the legitimacy of the Republika Srpska pushed the RS officials even further from prospect of acknowledging the crime.

## Evaluating the Impact of the ICTY on the Public Perceptions of Genocide

Generally speaking, the Bosniak narrative deems the judgments' findings truthful, while Serbian completely rejects it. If we take judgments as the most accurate factual description of the events, each narrative to some extent obliterates the unwanted facts emplotting events in a manner that presents one's own side as the innocent victim of the other.

Contrary to the great expectations the transitional justice literature invests into the mechanism of truth commissions, the particular case of the RS Government Srebrenica Commission obviously failed to create the effect of Serbian acknowledgement of the crime committed in their name. The soap-opera-like course of the Commission's creation, testing the patience of the OHR and ridiculing the victims, left a stronger impression on the Bosniak and Serbian public than the formal statements of Serbian officials upon issuing the Report. After two years of exercising all shades of aversion, nobody could be tricked into believing that the Republika Srpska started 'dealing with the past'. It was clear from its inception that the importance of the Commission laid not so much in the evidence, since the crimes have already been well documented, but in expected public acknowledgement of the Republika Srpska's institutions. Though the RS President and Government declaratively apologised to the victims, their avoidance of calling the crime genocide and taking responsibility stemming from the continuity of the RS institutions, created a feeling among Bosniaks that the whole endeavour was dishonest and conducted only due to the pressure levelled by the OHR. Later statements of the Serb officials, which distanced themselves from or questioned legitimacy of the Commission's Report, only enhanced this feeling. For the same described reasons, the powerful call to 'face the past' by the RS President Čavić, and less impressive statement of the Government, did not create a 'cathartic' atmosphere in Serb public that sometimes political apologies are able to create (Barkan and Karn 2006). The Serbian media, with exception of *Nezavisne novine*, put the Srebrenica Commission in the same frame as the ICTY – as pressure from the international community which always had a negative attitude towards Serbs. One might conclude that probably the greatest success of the Srebrenica Commission is that it did not turn into a farce, which could be reasonably expected in the face of the overall conduct of the Republika Srpska's officials.

However, one could notice some result of the cumulative impact the ICTY judgments, the Srebrenica Commission and change in the attitude of the Republic of Serbia towards the issue. The official Serbian narrative did transform from outright denial that a crime took place (in Srebrenica in July 1995) to acceptance that it was a massacre conducted by Serbian forces. While the numbers of killed were initially vehemently diminished and played with, over time, the figure of 7,000 to 8,000 killed Bosniaks ceased to be disputed in the public sphere of Republika Srpska. Though the transitional justice mechanisms did not make the expected impact on Serbian public perception of the past, "it narrowed the range of permissible lies" (Michael Ignatieff in Hayner 2001, 25).

Nevertheless, the memorial effort of the Serbian officials turned to denying the event was genocide. Bearing in mind the emotional charge of the term, the potential acceptance of calling Srebrenica genocide became the Rubicon for the Serbian narrative – as if recognition of genocide would mean negation of all Serb victims, the (presumed) legitimacy of Serb war-effort and the very 'statehood' of Republika Srpska. This official Serbian position was further fortified by the developments in the Bosniak narrative, in which the 'genocidal nature' of Republika Srpska came to be the main theme.

The more Serbs denied Srebrenica was genocide, the more Bosniaks insisted on Republika Srpska being a 'genocidal creation'.

The Trial Judgement of the war-time President of Republika Srpska, Radovan Karadžić, which was delivered in March 2016, confirmed the narrative of Srebrenica events as previously adjudicated. The public reactions in its aftermath of the Judgement also confirmed that the popular memorial battle over historical interpretations will continue well after the closure of the Tribunal in the Hague.

## Conclusion

My research has revealed that local media reporting on the TJ processes are not of sufficiently poor quality to justify such a widespread lack of acknowledgement of the crimes committed in BiH. Though the quality of reporting about the ICTY trials improved over time, the media still 'speak' from predominantly ethnic perspectives by emphasising claims of innocence of their 'own defendants' and favouring the victims from the ethnic group that the media outlet targets. Nevertheless, the media do transmit the court's findings with considerable accuracy. Therefore, the adjudicated facts are available in the local public sphere(s) but are not shaping public memory. Instead of media reports from the courtroom, collective memory is created at memorial sites, on memorial dates, and is reproduced through history textbooks.

Generally, I found no significant changes in the public narrative about the war, at least not in the ways expected by the transitional justice literature. However, the TJ mechanisms do influence public narratives, though not in line with expectations of TJ literature. The findings of the judgements (and the investigative commission) impact upon public debates about the past in the sense that they set the parameters for these debates (disabling complete denial that certain criminal events took place) and define critical notions or concepts (such as meaning of internationality of the conflict, ethnic cleansing, genocide) around which the public debates evolve. However, the paper refutes the underlying assumption of transitional justice literature, which claims direct link between establishing and disclosing facts about crimes and their public acknowledgement.

This research offers the assertion that the perception of the past is rather a matter of attitude; not knowledge. For political representatives in particular, the reproduction of the past is guided not by what one knows, but by what one wants to perform in public. Therefore, the acting out of certain historical interpretations sends a particular political message or serves a certain social function.

Furthermore, collective memory is a constitutive element of a community, while for an individual, participation in public reproduction of memory is *being* part of a community (Zerubavel 2003). If the communities of memory are defined by ethnicity, so too will their narratives about the past. Commemorations organised by the officials seem to be focused more on building a certain political identity (ethnic identity and/or statehood project) rather than memorialising a particular event that is being commemorated.

In the deeply ethnified political, educational and media systems each ethno-national elite employs the hegemonic power within its reach to promote its own interpretation of the war and builds its legitimacy upon this. The three ethno-national political elites obtain a position of sufficient social hegemony to embark on nation-building. In such a situation, historical narratives function as ethnic markers – the promotion of a certain historical interpretation implies the ethnicity of the promoter. Or vice-versa, belonging to a certain ethnicity implies the adoption of a certain historical narrative.

An individual who rejects the narrative dominant within his/her own ethnic community may be considered by members of that community to be renouncing their ethnic identity. Historical narratives as ethnic markers intrinsically tie the perception of the past with the sense of national identity, while rendering rejection of the narrative equal to self-excommunication from the national group.

In addition, the Dayton Peace Agreement froze the divisions from the war-time situation by trying to forge a compromise between conflicting statehood projects: that of a unitary Bosnia and Herzegovina, that of the Republika Srpska as a proto-state, and the project of a BiH state that would have assigned territory to the Croatian community. Elements of these projects were incorporated into the post-war constitution, thus gaining legitimacy and continuing to flourish. The memory-making conducted by the ethno-political elites serves to fortify these conflicting statehood projects. Hence, the conflict continued in the field of *interpretation* of the war. The combat battleground was substituted by the memorial one.

It seems that as long as the interpretations of the war bear direct consequences in the field of everyday politics; dominant narratives will be kept under tight control of political stakeholders, regardless of the findings of transitional justice mechanisms. This doctoral thesis refutes the underlying assumption of the field of transitional justice that the disclosing of the truth about the troubling past directly leads to change of collective memory in the targeted societies which would prevent denial of the war crimes and human rights violations. My research in BiH demonstrates that the perception of the past is crafted by the memory-making endeavours of the dominant ethno-national elites, rather than by the transitional justice processes.

## Bibliography

- Akhavan, Payam. 2001. "Beyond Impunity: Can International Criminal Justice Prevent Future Atrocities?" *American Journal of International Law* 95 (1): 7–31.
- Arendt, Hannah. 1965. *Eichmann in Jerusalem: A Report on the Banality of Evil*. New York: The Viking Press.
- Barkan, Elazar, and Alexander Karn, eds. *Taking Wrongs Seriously: Apologies and Reconciliation*. Stanford: Stanford University Press, 2006.
- Cassese, Antonio. 1998. "On the Current Trends towards Criminal Prosecution and Punishment of Breaches of International Humanitarian Law." *European Journal of International Law* 9 (1): 2–17.
- Clark, Janine Natalya. 2009. "The Limits of Retributive Justice: Findings of an Empirical Study in Bosnia and Herzegovina." *Journal of International Criminal Justice* 7 (3): 463–87.
- Dnevni avaz*. 1996. "Srebrenica je srce bošnjačkog naroda", 1 (11 July).
- Douglas, Lawrence. 2001. *The Memory of Judgment: Making Law and History in the Trials of the Holocaust*. New Haven and London: Yale University Press.
- Fletcher, Laurel E., and Harvey M. Weinstein. 2002. "Violence and Social Repair: Rethinking the Contribution of Justice to Reconciliation." *Human Rights Quarterly* 24 (3): 573–639.
- Glas srpski*. 1999. Četiri godine slobode, 6 (13 July).
- . 2000. Parastos za 70 Srba, 2 (13 July).
- Goldstone, Richard J. "The Role of the International Criminal Court." In *Mass Atrocity Crimes: Preventing Future Outrages*, edited by Robert I. Rotberg, 55–68. Washington: Brookings Institution Press, 2010.
- Gordy, Eric. *Guilt, Responsibility, and Denial: The Past at Stake in Post-Milošević Serbia*. Philadelphia: University of Pennsylvania Press, 2013.

- Hayner, Priscilla B. 2001. *Unspeakable Truths: Confronting State Terror and Atrocity*. New York and London: Routledge.
- Human Rights Chamber for BiH. 2003. *The “Srebrenica Cases” v. RS: Decision on Admissibility and Merits (7 March 2003)*. Available at: <http://www.hrc.ba/database/decisions/CH01-8365%20Selimovic%20Admissibility%20and%20Merits%20E.pdf> (24 February 2014).
- ICTY. 2001a. *Prosecutor v. Radislav Krstić: Trial Judgement (2 August 2001)*. Available at: <http://www.icty.org/x/cases/krstic/tjug/en/krs-tj010802e.pdf> (24 February 2014).
- . 2001b. *Prosecutor v. Sikirica et al.: Judgement on Defence Motions to Acquit (3 September 2001)*. Available at: <http://www.icty.org/x/cases/sikirica/tjug/en/010903r98bis-e.pdf> (24 February 2014).
- . 2009. *Statute of the International Criminal Tribunal for the Former Yugoslavia (as of 7 July 2009)*. Available at: [http://www.icty.org/x/file/Legal%20Library/Statute/statute\\_sept09\\_en.pdf](http://www.icty.org/x/file/Legal%20Library/Statute/statute_sept09_en.pdf) (24 February 2014).
- . 2010. *Judgement Summary for Popović et al. (10 June 2010)*. Available at: <http://www.icty.org/x/cases/popovic/tjug/en/100610summary.pdf> (24 February 2014).
- . 2016. *Trial Judgement Summary for Radovan Karadžić (24 March 2016)*. Available at: [http://www.icty.org/x/cases/karadzic/tjug/en/160324\\_judgement\\_summary.pdf](http://www.icty.org/x/cases/karadzic/tjug/en/160324_judgement_summary.pdf) (10 June 2016).
- Malešević, Siniša. *Identity as Ideology: Understanding Ethnicity and Nationalism*. Houndmills and New York: Palgrave Macmillan, 2006.
- MacDonald, David Bruce. *Balkan Holocausts? Serbian and Croatian Victim Centered Propaganda and the War in Yugoslavia*. Manchester and New York: Manchester University Press, 2002.
- McMahon, Patrice C., and David P. Forsythe. 2008. “ICTY Impact on Serbia: Judicial Romanticism Meets Network Politics.” *Human Rights Quarterly* 30 (2): 412–35.
- Mujkić, Asim. *We, the Citizens of Ethnopolis*. Sarajevo: Centar za ljudska prava Univerziteta u Sarajevu, 2008.
- Nettelfield, Lara J. *Courting Democracy in Bosnia and Herzegovina: The Hague Tribunal’s Impact in a Postwar State*. Cambridge: Cambridge University Press, 2010.
- Nielsen, Christian Axboe. 2013. “Surmounting the Myopic Focus on Genocide: The Case of the War in Bosnia and Herzegovina.” *Journal of Genocide Research* 15 (1): 21–39.
- Nora, Pierre. 1989. Between Memory and History: *Les Lieux de Mémoire*. *Representations* 26: 7–24.
- Orentlicher, Diane F. *That Someone Guilty Be Punished: The Impact of the ICTY in Bosnia*. New York: Open Society Institute, 2010.
- Osiel, Mark. 2000. *Mass Atrocity, Collective Memory, and the Law*. New Jersey: Transaction Publishers.
- Puhalo, Srđan, Nebojša Petrović, and Neda Perišić, eds. 2010. *Spremnost na pomirenje u Bosni i Hercegovini*. Sarajevo: Friedrich Ebert Stiftung.
- Stover, Eric, and Harvey M. Weinstein, eds. *My Neighbor, My Enemy: Justice and Community in the Aftermath of Mass Atrocity*. Cambridge: Cambridge University Press, 2004.
- Subotić, Jelena. 2009. *Hijacked Justice: Dealing with the Past in the Balkans*. Ithaca and London: Cornell University Press.
- Teitel, Ruti G. 2002. *Transitional Justice*. New York: Oxford University Press.
- Todorov, Tzvetan. 2003. *Hope and Memory: Reflections on the Twentieth Century*. London: Atlantic Books.
- UN Security Council. 1993. *Resolution 827, S/RES/827 (25 May 1993)*.
- Vlaisavljević, Ugo. *Etnopolitika I Građanstvo*. Mostar: Dijalog, 2006.
- Waters, Timothy William. 2013. “Vital Signs: The Milošević Trial and Its Context - A Foundational Primer.” In *The Milošević Trial: An Autopsy*, edited by Timothy William Waters, 1–73. Oxford and New York: Oxford University Press.
- Wilson, Richard Ashby. 2011. *Writing History in International Criminal Trials*. Cambridge: Cambridge University Press.

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Zerubavel, Eviatar. 2003. *Time Maps: Collective Memory and the Social Shape of the Past*. Chicago and London: The University of Chicago Press.