

Reconciling after Transitional Justice: When Prosecutions are not Enough, the Case of Bosnia and Herzegovina

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Key words:

justice; reconciliation; transitional justice; Bosnia and Herzegovina; trials; retributive justice; International Criminal Court for the Former Yugoslavia.

Abstract

The concept and study of transitional justice has grown exponentially over the last decades. Since the Nuremberg and Tokyo trials after the end of the Second World War, there have been a number of attempts made across the globe to achieve justice for human rights violations (International Peace Institute 2013: 10). How these attempts at achieving justice impact whether or not societies reconcile, continues to be one of the key discussions taking place in a transitional justice discourse. One particular context where this debate continues to rage on is in Bosnia and Herzegovina, many scholars argue that the transitional justice process and mechanism employed in Bosnia and Herzegovina have not fostered inter-group reconciliation, but in fact caused more divisions. To this end, this article explores the context of transitional justice in Bosnia and Herzegovina from a unique perspective that focuses on the need for reconciliation and healing after transitional justice processes like war crime prosecutions. This article explores why the prosecuting of war criminals has not fostered reconciliation in Bosnia and Herzegovina and how the processes have divided Bosnian society further. Additionally, this article presents the idea of state-sponsored dialog sessions as a way of dealing with the past and moving beyond the divisions of retributive justice.

Introduction

Societies emerging from a period of conflict have the arduous tasks of rebuilding damaged infrastructure, maintaining security, developing new institutions, and figuring how to deal with past atrocities. Dealing with the past is not only a legal question, but it is also a philosophical one as well. One of the mechanisms that have been used, in both international and domestic contexts to deal with past human rights abuses and atrocities, has been prosecutions. Some positive aspects of prosecutions are that they punish perpetrators, vindicate victims, extract the forensic truth, and help to establish the rule of law and respect for human rights in transitioning societies.

However, one major negative aspect of prosecutions is that they can also cause further divides in societies where there was violence along ethnic cleavages. Who to prosecute and for what becomes political, especially when there is competing narratives about how the atrocities began and why. This has been the case surrounding prosecutions following the 1992-1995 Bosnian War by the International Criminal Tribunal for the Former Yugoslavia (ICTY) and domestic prosecutions in Bosnia and Herzegovina. For many in Bosnia and Herzegovina the path to justice and reconciliation has been a long and overwhelmingly exhaustive process. Regardless of the prosecutions in The Hague or the country's war crimes chamber many Bosnians feel disillusioned, angry, and cheated by the outcome. Now that the ICTY has officially closed, prosecuting war crimes did not bring healing or reconciliation to the Bosnian society and it actually had a negative impact on fostering better inter-ethnic relations. Prosecutions have left some Bosnians (Serbs in particular) feeling that their ethnic group has been treated unfairly or that crimes committed against their ethnic group did not receive equal justice compared to cases from other ethnic groups. On the other hand, some feel that the sentences handed down in The Hague or in the domestic courts were not long enough in relation to the crimes committed and not everyone who participated in the wartime atrocities has been brought to justice.

Needless to say, the current process of prosecuting former war criminals alone has not been enough to move Bosnia and Herzegovina forward from its daunting past and accomplish

inter-group reconciliation. There must be additional non-judicial processes used. I argue that state sponsored dialogue sessions are a mechanism that would be an effective way to deal with the past and help foster a new post-war narrative that is representative of all Bosnians and their wartime experiences. To explicate this topic further, this article first explores the notion of post-conflict societal reconciliation, then the nexus between reconciliation and retributive justices. After which, I then discuss the two primary processes that have been used to prosecute war crimes, the ICTY and the War Crimes Chamber of the Prosecutors Office of Bosnia and Herzegovina, and why they particularly have not fostered senses of reconciliation in Bosnian society. Finally, I will discuss and ruminate on the concept of state-sponsored dialogue sessions and they can best serve as an instrument to move Bosnia and Herzegovina forward.

Understanding the concept of reconciliation

In the aftermath of conflict or communal violence, societies often aim to address the wounds and issues of the past that led to conflict in the first place. This is what practitioners and peace scholars have come to term as reconciliation. Reconciliation is a complex term that has no one singular definition, it is pluralistic in meaning and varies from one society to the next. For instance, according to Clark (quoted in Bell: 2018) reconciliation largely involves the rebuilding of broken individual and communal relationships after conflict, that orients toward meaningful interaction and cooperation between former enemies. Reconciliation also means parties coming up with ways of how and what to remember from the past, and how these memories will impact the future of society. Similarly, Lederach (1997) explains that the process of reconciliation represents a place or a point of encounter where the concerns of both the past and the future meet. He further asserts that reconciliation, as an encounter, suggests that space for the acknowledgement of the past and envisioning the future is a necessary ingredient for reconfiguring the present. Some scholars argue that this process allows citizens with former hostilities to begin to trust each other again and commit to rebuilding relationships that foster positive interactions between them. However, some scholars see reconciliation as a means of former enemies living amongst each other without

hot conflict or violence. In this way Gibson (quoted in Chapman: 2009) offers a different sentimentality than the other authors earlier by asserting that reconciliation does not require that people accept and embrace one another, but only that they be willing to put up with whom they oppose. Put simply, members of society only need to co-exist with one another.

Bloomfield, Barnes and Huyseis (2003: 12) add to this discussion by explaining that it applies to everyone and not just a process for direct victims and perpetrators. The authors further assert that “the attitudes and beliefs that underpin violent conflict spread much more generally through a community and must be addressed at that broad level. So, while there is a crucial individual element to reconciliation, there is also a community-wide element that demands a questioning of the attitudes, prejudices and negative stereotypes that are developed about “the enemy during violent conflict”. (Bloomfield, Barnes and Huyseis 2003: 12).

Under the guise of the community element that is mentioned above, I will focus my analysis in this paper on inter-group dynamics of reconciliation. What does the notion of inter-group reconciliation grapple with exactly? According to Stover and Weinstein (2004), inter-group level reconciliation involves the reconfiguration of identity, the revisiting of prior social roles, the search for a common identity, agreement about unifying memories and not myths, and development of collaborative relationships that allow for differences. In order to create some sort of common identity, there must first be a discussion about which narratives make it into a post-conflict society’s national psyche. The stories of the once conflicting parties have to match and make sense collectively.

Along these lines, Auerbach (2009: 300) suggests that the process of reconciliation will only be completed if adversarial groups communicate their stories and publically form a common history. He further argues that the public narrative needs to consider positive and negative behaviors of both sides of the conflict and incorporate them into a common narrative for all (Auerbach 2009: 300). While processes at the ICTY and the Court of Bosnia and Herzegovina have yielded a plethora of facts and figures about the war, very few of them have made it into the common national narrative. This is quite evident in the rampant genocide denial that is often used by Bosnian Serb

politicians for political fodder. This rampant genocide denial continues to anger and vex Bosnian Muslims and Croats, which in turn fuels more distrust and anger.

Furthermore, to get a bit deeper, I would argue that for inter-group reconciliation to take place in Bosnia and Herzegovina there must be a process dedicated to socio-emotional reconciliation. Nadler and Nurit (2015: 98) maintain that this process focuses on the removal of threats posed to the conflict parties' identities due to their involvement in the conflict. The authors further posit that social psychological research on the role of emotions such as guilt, shame, hatred, humiliation, and vengeance in maintaining and escalating conflict and on the positive effects of defusing these feelings on ending conflicts members' sense of adequate identity can block or, if removed, facilitate reconciliation. In Bosnia at a national and collective level this has never happened; the processes dedicated to dealing with the past, have unfortunately only enforced feelings of guilt, hatred, shame, and resentment, fuelling competing narratives. According to Vukosavljević (2007), there is a strong need for deconstructing enemy images and overcoming "victimisation", which is a widespread (self-) perception in Bosnia and other Western Balkan countries where societies tend to label whole groups (nations) as either victims or perpetrators of violence. This is why I argue that a process like dialogue sessions can be helpful in understanding currently held images and identities, and how they can be shifted.

Connecting reconciliation and retributive justice: the pros and cons

Before moving forward to discuss the ICTY and Domestic Trials and their impacts on inter-group reconciliation in Bosnia and Herzegovina, I believe it is pertinent to have a general discussion on reconciliation and its links to retributive justice. When we consider the concept of reconciliation, we see it does not stand alone and often largely hinges upon notions of justice. Justice, like reconciliation, has different dimensions that happen in different time frames and developments across post-conflict societal contexts. Malek (2013) furthers these sentiments by arguing that reconciliation is a process that draws on truth, justice, and mercy to turn temporary peace into a lasting end to a conflict. These elements are representative as

to what transitional justice and their processes are designed for. Transitional justice is a field that has emerged within the last 35 years as a process and mechanism to help societies that were once in conflict establish a new social, political, and legal order that redresses the wrongs of the past and lays the foundation for the rule of law.

Transitional justice processes also serve as a means of aiding reconciliation processes by helping to establish the truth, assure justice, and help victims gain closure from the wrongs committed against them through state-sanctioned or communal violence. Seils (2017) adds to this discussion by noting that despite the complexity of reconciliation, transitional justice processes are capable of contributing to reconciliation through the outcomes and processes of discourse and participation. Additionally, Kriesberg (2007: 3) states that in post-conflict situations those who have suffered oppression and atrocities in the course of an intense struggle seek redress for the injustices they endured. He further maintains that justice like reconciliation is not a simple matter, since justice itself is multifaceted. Justice means different things to different people and often times societies have a difficult time trying to establish a means and method of justice agreed by everyone.

Another particular question that has arisen in transitional discourse also closely related to reconciliation is whether, or not, societies should seek peace or justice. The peace versus justice paradigm maintains that often times in post-conflict settings justice processes can be controversial and undermine peace. Proponents of the peace side of the debate claim that pursuing justice and accountability in an already tense environment may exacerbate inter-group conflict and undermine peace, while their opponents on the side for justice and accountability argue that long term peace is not sustainable without justice and accountability. Rigby (2001) notes that the peace versus justice debate comes down to a matter of “forgive and forget” past crimes or “persecute and punish” the perpetrators who committed the crimes.

One of the key debates that follow the peace versus justice debate is what type of mechanism and method of justice is appropriate to redress massive human rights crimes. One of the key methods that has been utilized across the world has been retributive justice. The paradigm of retributive justice

maintains that those who have committed crimes or who have again unfair advantages through their behavior should be punished. Maise (2004: para.4) similarly argues that retributive justice is backward-looking and that punishment is warranted as a response to a past event of injustice or wrongdoing. The author also maintains that it acts to reinforce rules that have been broken and balance the scales of justice (Maise 2004: para.4). Two of the key mechanisms of retributive justice used in transitional settings are trials and tribunals. "Trials and/or tribunals can take place on a domestic level or at an international level, they are designed to prosecute and punish perpetrators for their crimes" (Bell 2015: 4).

Some scholars support trials and tribunals as the primary way for post-conflict societies to move beyond that the dark shadows of conflict. It is often believed that one major pro concerning retributive justice and reconciliation is that punishing individuals helps in not blaming an entire group for committing atrocities. For instance, Kriesberg (2007: 4) maintains that for advancing reconciliation, punishing individuals for past violations of human rights is a way of identifying individual responsibility and avoiding attributing collective guilt, which may create new injustices and be a source of new resentments. This can be a major factor in helping to improve inter-group relations, when one group no longer sees another group as entirely responsible for their loss and suffering.

Another major benefit often attributed to retributive justice is that it allows for post-conflict societies to face the past, punish those involved, and lay the foundations for societies to move on with no "unfinished" business. Along these lines, Moghalu (as cited in Clark 2008: 332) maintains that "when justice is done, and seen to be done, it provides a catharsis for those physically or psychologically scarred by violations of international humanitarian law. In this regard, retributive justice can foster better inter-group relations, as deep-seated resentments – which are often key obstacles to reconciliation – are removed and people on different sides of the divide can feel that a clean slate has been provided for. Another major pro ascribed to retributive methods such as tribunals and trials is that they provided victims' families and communities an opportunity to feel in control and regain a sense of power that may have been lost as victims of war crimes and other atrocities

(McMorran 2003: para.6). McMorran (2003: para.6) argues that it is empowering for victims to stand up in a court of law and identify those who wronged them. The author further notes that a war crimes tribunal can also reveal forgotten or hidden atrocities to be retold by survivors, as well as a key way to hold war criminals to account for their crimes (McMorran 2003: para.6).

Now that the pros have been discussed concerning retributive justice what are some of the cons? One key weakness of retributive justice processes is that there is no guarantee that trials and tribunals will actually foster reconciliation. As noted above, it is hoped that these methods of retributive justice may help societies come to grips with the past, but nothing can be assured. Just because the truth has been established forensically, it does not mean that it will defeat competing narratives of a conflict. For instance, currently the Bosnian Serbs, as a group, will not recognize the murdering of 8,000 men and boys in Srebrenica as an act of genocide committed by the Bosnian Serb forces. On the other hand, Bosnian Muslims do recognise it and seek to memorialize these murders as such. As will be discussed later, there is also continuous debate about what ethnic group played what role during the war, as to who was the aggressor and who was the defendant. To reiterate what I said earlier, facts do not always translate into a shared or common history, especially amongst groups with competing tales of victimization.

Another major con is that it is impossible for trials and tribunals, whether held domestically or internationally, to prosecute all those who participated in major human rights violations. Today in Bosnia and Herzegovina, many victims live beside those who committed atrocities during the war and have never been prosecuted. The notion that a trial or tribunal can address all post-conflict justice issues is a misguided one, because they simply cannot. Any such notion, sold by domestic or international tribunal officials may lead to victims feeling unsatisfied with the processes of justice and leave them feeling cheated. Mobekk (2005: 271) explains that reconciliation cannot be obtained by one transitional mechanism alone; and the process takes more time and effort than any time-restricted trial can achieve.

Another major con (arguably the key one) attributed to war crimes trials and tribunals is that they do not alleviate the

root causes of the conflict (McMorran 2003). The seemingly just punish the perpetrators for their crimes, but this does not always transform societies. McMorran (2003) argues that tribunals can fuel conflict, especially in multi-ethnic societies. Especially, cases of genocide, where those accused of war crimes are usually all from one particular ethnic group. To this specific group, a war crimes tribunal can appear to be an indictment on their whole ethnicity, not just those responsible (McMorran 2003). It is common to hear discussions from some in Bosnia and Herzegovina where blanket accusations about wartime atrocities were placed upon a whole group and not the individuals who have committed them.

Moreover, within the same vein Skaar (2013: 16) maintains that some scholars suggest that prosecuting perpetrators of human rights after periods of conflict may undermine peace and lead to renewed violence or an increase in repression. The author further maintains that many scholars also argue that “digging up the past in post conflict settings can trigger new tensions by provoking a backlash on the part of those to be prosecuted — and hence limit the possibilities for reconciliation” (Skaar 2013: 16). In addition, trials and tribunals there may not actually impact both individuals and groups the same way. Stover and Weinstein (2004: 18) argue that reconciliation must take place at the group level as well as at the individual level. The outcome of trials and tribunals may not translate into reconciliation on for an entire group, and definitely not between groups. Some individuals across groups may be gratified or feel vindicated, but that does not mean that a whole ethnic, political, or social group may feel the same.

Another key question that arises in transitional justice discourse, as it relates to trials and tribunals, is whether tribunals held outside of the particular context in which the crimes were committed can actually be effective in promoting reconciliation. Some scholars point to the cases of Bosnia and Herzegovina and the ICTY and argue that international justice has its limitations within domestic contexts. Clark (2008: 333) suggests that when mass crimes are committed, they impact whole societies. She also argues that it is whole societies who therefore must be involved as much as possible in the reconciliation process (Clark 2008: 333). Staub (As cited in Clark 2008: 33) maintains that “effective reconciliation requires engaging with and changes in a whole range of actors in a

society, from members of the population whose psychological orientation is the core to reconciliation, to national leaders who can shape policies, practices and institutions". Another major aspect to consider is that for transitional justice processes to be effective in fostering healing and reconciliation, there must be a sense of local ownership among the local population. Haider (2016: 9) maintains that for transitional justice initiatives to be effective local ownership of the processes are essential. For the reasons mentioned above, international trials and tribunals do not exactly afford local populations a sense of ownership over the processes. Haider (2016: 9) also argues that while considering universal standards for justice is important, local perceptions of just must also be considered. She further notes that while legal trials may honour the victims of gross human rights violations in neo-liberal/Western terms, it may not appropriate for all settings and cultures. I would argue that there is an important connection to what Haider says immediately above and that of what Nadler and Nurit (2015) mention concerning the socio-emotional aspects of different groups after a conflict, trials may stand as a way to hold perpetrators accountable, but they do not necessarily deal with the socio-emotional remnants of conflict in a way that helps different groups confront their negative images of one another. Trials can reinforce the shame, hurt, and bitterness. Additionally, after conflict, many groups that have been impacted by gross human rights violations or communal violence carry collective traumas and memories that trials or tribunals simply may not be able to address.

Complicated justice: the ICTY and domestic war crimes trials in Bosnia and Herzegovina their impacts on reconciliation

The war from 1992 to 1995 in Bosnia and Herzegovina undoubtedly changed the lives of many Bosnians forever. Fellow citizens of all ethnicities, religions, and creeds who had lived as neighbours and friends for decades became enemies as nationalist rhetoric from within and outside the country sought to tear relations apart. It has been estimated that more than 100,000 people perished, while millions of others had to flee their homes during the Bosnian War between 1992 to 1995. It has also been estimated that 20,000 to 50,000 women were brutally and systematically raped across Bosnia and Herzegovina (Turton 2017), while concentration camps were established for civilians on all sides of the conflict where they

were mistreated, starved, and beaten. Additionally, one of the worst atrocities that Europe had seen since the Holocaust occurred in early July of 1995, when more than 8,000 Bosnian Muslim men and boys were murdered by Bosnian Serb forces in act of genocide designed to cleanse Eastern Bosnia of all Muslims. These heinous crimes and atrocities committed in the name of this nationalistic rhetoric has rendered Bosnia and Herzegovina and its people wounded physically and emotionally. Twenty-three years after the war has ended, despite the information that gathered through the ICTY, domestic war crime trials, and a variety of other *ad hoc* locally based initiatives; Bosnia and Herzegovina is still struggling to come to grips with what happen and to develop a narrative of the war that all Bosnians can live with.

The topic of transitional justice in Bosnia and Herzegovina has been discussed to a point of *ad nauseam* for many of its citizens. Bell (2018b: 3) maintains that “many Bosnians are disillusioned by talk of justice and reconciliation and have lost faith, especially in the government to foster any form of transitional justice”. The author further explains that in a country where many of the same political factions who jockeyed for war some 20 years ago are still relatively in power and where a plethora of development and economic issues exist, the possibility of any post-conflict justice and reconciliation seems improbable to most. As Bosnians continue to live with the past, while trying to move on with their lives, it is important to consider how the aforementioned processes of both international and domestic war crime trials have had on the process of inter group reconciliation. I would argue that the impact has been minimal and actually, as noted earlier has done more damage to ethnic relations than good. To this end, I will first discuss the international trials based at the ICTY in The Hague, Netherlands and then I will discuss the domestic trials prosecuted by the War Crimes Chamber of the Court of Bosnia and Herzegovina.

ICTY

The ICTY was a United Nations devised tribunal that was in operation from 1993-2017. The ICTY was the first international tribunal to be devised after World War II. The main goals of the ICTY were to try those individuals most responsible for heinous acts such as murder, torture, rape, enslavement, destruction

of property and other crimes listed in the Tribunal's Statute (United Nations International Criminal Tribunal for the Former Yugoslavia 2017a: para.15). By bringing perpetrators to trial, the Tribunal aimed to deter future crimes and yield justice to thousands of victims and their families, thereby contributing peace in Bosnia and Herzegovina and other Yugoslav States (UNICTY 2017a: para.15). Over its 24-year period the ICTY indicted 162 and sentenced 84 individuals, this process heard over 4,650 witness testimonies and yielded 2.5 million pages of transcript (UNICTY 2017b). I believe, as will be discussed further in this chapter, that while the ICTY's legacy is mixed, it can be said that there are clear achievements that should be celebrated. The main achievement is that justice was rendered justice on behalf of thousands of people, who without the process at the ICTY would have likely not had it. Along these lines, Zylber and Pernik "assert that the activity of the tribunal has contributed considerably to promoting and strengthening the rule of law and in ensuring individual accountability for mass atrocity crimes, both at the international level and domestically" (2016: 7).

However, despite these facts, the ICTY and its processes remain controversial for many Bosnians. Many Bosnians are unsure as to whether or not the processes rendered justice, let alone contributed towards reconciliation among amongst the three different ethnic groups. Stover and Weinstein (as cited in Bell 2018b) also offer some insight into the question of the justice and the legitimacy of the ICTY. The authors note that although the vast majority of witnesses they had interviewed supported war crimes trials, they were far less certain about whether justice had been rendered in the cases in which they testified. In addressing the witnesses, Stover and Weinstein (as cited in Bell 2018b: 57) write that, "Tribunal Justice, they said, was capricious, unpredictable, and inevitably incomplete: defendants could be acquitted; sentences could be trifling, even laughable, given the enormity of the crimes; and verdicts could be overturned". Beyond, this there are many scholars who argue that the ICTY's main purpose was not designed to promote reconciliation processes for all post-Yugoslav societies. As I noted earlier, it is extremely impossible for the war crime trials or tribunals to try all individuals, especially within an international context. The ICTY tried the most high-profile cases and the key individuals who orchestrated or executed war crimes, genocide, and crimes against humanity. The ICTY also was implicit in revealing facts about the war, which many victims, their families, and people

across that globe would have never otherwise known.

However, despite these aspects, this has not led to fostering domestic reconciliation within the local context in Bosnia and Herzegovina. There remains competing versions of victimhood and narratives surrounding the war. Kostić (2012) conducted a study in 2005 and 2010 that asked respondents about their views on transitional justice and whether or not they found their particular ethnic group responsible for the brunt of the war. His results were intriguing. For instance, when asked in 2005 if they agreed with the statement, “my people have fought only ‘defensive wars,’” an overwhelming majority of Bosniaks (85.3%), Serbs (76.2%), and Croats (75.9%) strongly agreed (Kostić 2011: 655). Although the number of those participants strongly agreeing with this statement fell in 2010, especially among Bosnian Serb population where 54.7% agreed, the sentiment that members of their own community fought a defensive war remained consistent across the three ethnicities.

Kostić (2012) also maintains that during the hearings, there was a tendency for individuals to express interest in the trials dealing with war crimes against members of their own group, while choosing to ignore the trials where individuals belonging to their own groups were being prosecuted. These tendencies have reinforced ethnocentric narratives about the war that continue to persist today. When respondents in the same aforementioned study were asked whether or not the proceedings of the ICTY were completely fair, 30 percent of Muslims felt they totally agreed, compared to 11 percent of Croats and 4 percent of Serbs.

These sentiments expressed in Kostić’s study are still entrenched in Bosnian social and political life today. Due to a lack of shared narrative and competing victimhood, the ICTY has left a bitter feud in Bosnian society that ethno-political elites have gladly taken advantage of and used for their own political gains. We can see this from the sentencing of wartime general Ratko Mladić in November of 2017, who personally oversaw the extermination of more than 8,000 Muslim boys and men in Srebrenica. Many Bosnian Serbs support still Mladić and even consider him a hero, whom they feel had been arrested on trumped up charges by The Hague. Mladić and others have recently been celebrated in public ways, for instance in the fall of 2018 a 3.5-metre-high mural monument depicting Ratko

Mladić uniformed and saluting, was installed in his Bosnian hometown Kalinovik (Makić 2018). The Serbian handball player Vlada Mandić, who erected the mural, told press outlets that he considered Mladić, who was convicted of genocide by The Hague Tribunal, to be a “Serb hero” (Makić 2018). In another instance, the former wartime president of the Republika Srpska (Bosnia and Herzegovina’s Serb-dominated entity) Radovan Karadžić, who is also currently serving time in The Hague as well for his role in the 1995 genocide and other crimes, had a dorm dedicated to him in his honour in early 2016. Other leaders have held concerts, parades, and other public events, concerts in support of war criminals across Bosnia and Herzegovina as well. Each glorification serves as micro-aggression that further entrenches distrust and undermines the inter-group reconciliation process.

As noted above, the conception that international trials and tribunals can foster reconciliation is limited and is evident in the Bosnian context. Not only did the Tribunal not foster reconciliation, it fueled competing narratives and victimhood. Some of the key failures of this are also attributed to the lack of engagement with the local population in Bosnia and Herzegovina. Clark (2012) highlights some of these key failures by highlighting that by noting that one of the key issues was that there was not enough communication with local people, which left the ICTY as a poorly understood institution. Along these lines Gordy (cited in Ahmetašević 2015) maintains the tribunal and local courts never developed a clear idea of who their clientele never took enough of an interest in articulating or addressing the concerns of victims, or explaining to the local public what was being established and what it meant. This, according to her, then allowed local press junkets and media outlets to put their own spin on what was happening in The Hague. Media outlets in Bosnia and Herzegovina are largely ethno-politicized, so the information that many people were receiving was biased and reportedly favourable towards their particular ethnic group and their sentences. Some Bosnian political elites argued that the process in The Hague was forced by the international community and not something locally conceived of by Bosnians, therefore its rulings and mandate were illegitimate. Now that the ICTY mandate has ended, a lot of damage still remains in the fact everyday Bosnians remain distrustful of war crime trials in general. Many of the same sentiments that were present during the ICTY process were

mirrored in the domestic trials taking place on a daily basis. There remains a lingering mistrust for transitional justice processes.

Domestic courts

One of the tools that have led to war crime prosecutions in Bosnia and Herzegovina has been the War Crimes Chamber. The War Crimes Chamber in Bosnia and Herzegovina and the Special Department for War Crimes in the Prosecutor's Office was established in 2003, but did not become operational until 2005. The War Crimes Chamber was designed as part of the State court to try some of the most egregious crimes committed during the 1992-1995 Bosnian War. In 2008, a War Crimes strategy was also adopted; the overall aim of the strategy was to lay out a comprehensive process to prosecute the most complex and high-level cases within a seven-year time frame. However, war crime prosecutions have not kept pace within the time frame laid out in the strategy, leaving an already doubtful and sceptical nation as to whether or not it can trust its institutions to render justice where international courts have not.

One key issue has been that many Bosnians do not trust or respect their domestic institutions to render justice. The ongoing corruption and disrespect for the rule of law has played a major role in lessening the institutions credibility for fostering reconciliation. Not to mention that war crime cases are extremely backlogged with a Prosecutor's office that is ultimately unequipped to deal with them. According to a report released in 2013 by the United Nations Development Programme of Bosnia and Herzegovina some 60.3% of Bosnians did not trust their judicial system. Moreover, the Court of Bosnia and Herzegovina has been repeatedly attacked by politicians from the Republika Srpska that claim the Court proceedings single out Serbs, while Croats and Bosnian suspects go free. Bell (2018a: 3) explains that "the Republika Srpska administration continues to regularly question the authority of federal judicial institutions, including the country's Constitutional Court, State Court and Prosecutor's Office, and HJPC. He further presents that some political leaders publicly support war criminals, denying that genocidal conduct took place, and attending public events that rally for war criminals. It is these actions that collectively continue to display to the Bosnian public that there

is no interest in joint cooperation among its country's political elites to prosecute war crimes effectively so that victims may have access to equal and fair justice (Bell 2018a: 3). These actions by Bosnian political elites continue to undermine the process of justice in Bosnia and Herzegovina, and reinforce harmful inter-group narratives that perpetuate divisions.

Considering justice and reconciliation beyond retribution: the need for dialogue

Since it has been established that the retributive measures utilized have not worked, I believe that the only way for Bosnians to move forward is to utilize other processes that actually do bring people together to talk about the past and decide on a shared narrative about the war and a collective. Moreover, this is not to say that war crime trials should cease, because they should not. War crime trials remain an important part of reconciliation, in terms of establishing truth, holding perpetrators accountable and developing facts, but as I noted earlier, one mechanism is not enough to foster reconciliation in many post-conflict societies. The ultimate goal of transitional justice mechanism and the discussions at the heart of the reconciliation process are change. In the same vein, Fischer (2011: 419) explains that the notion of change depends on long-term processes that combine factual truth, narrative and dialogical truth in order to overcome polarized, one-sided and selective views on the past.

Moving on, non-judicial mechanisms have been attempted in Bosnia and Herzegovina, but largely by civil society actors and not the state. Mallinder (2013) points out that non-judicial transitional mechanisms have been attempted by civil society actors (ranging from establishing truth commissions to memorialization projects) have largely failed. This is largely due to the fact that there is little coordination among actors, including the State and very few resources to mobilize the public. Some projects have been led by organizations such as the Post Conflict Research Center, The Centre for Nonviolent Action based in Sarajevo and Belgrade, and the Youth for Human Rights Initiative. While these organizations have committed to fostering dialog and discussions about the war and justice, they are limited in their scope and outreach. For instance, one current initiative conducted by the Centre for Nonviolent

Action has been to bring veterans from all sides of the conflict into schools to discuss their stories, their opinions on justice, and reveal the value of putting your differences behind you in order to move forward (Foden 2018: 5). This largely came about as a result of a fear that continued prejudice and intergroup animosity could lead to an eventual return to conflict. The hope is that these sessions in schools help transform the attitudes of future generations about the war (Foden 2018: 5).

To address issues that the courts and the ICTY did not address, in 2010 Bosnian authorities commissioned a National Transitional Justice Strategy tasked with addressing any unfinished business from the war. The Strategy aimed to focus on five key non-judicial mechanisms: truth and fact-finding, reparations, rehabilitation, memorialisation, and institutional reform. From what has been discussed throughout this paper, it is clear that many of these processes are needed to move Bosnia and Herzegovina forward. However, the implementation of the Strategy failed due to lack of political will from both elected officials and the general public. Like the ICTY or the domestic trials, there was not enough outreach to inform citizens about the purpose and importance of implementing the strategy's measure.

Moreover, I would argue that the ultimate measures needed to move Bosnia and Herzegovina forward are truth-seeking ones. I do not necessarily mean that Bosnia and Herzegovina should have a truth commission, but I believe that establishing a concrete truth that moves outside of the area of forensics and more into the realm of narrative is important for the country to move on. While one could argue that truth commissions have great merit, I would argue that an established state-wide truth commission would not somehow yield more facts than the ICTY has or that which will effectively change Bosnians' current narratives from the war. Activists, journalists, and academics alike have come together to create a regional truth Commission called the Initiative for RECOM that aims to uncover all aspects of the Yugoslav Wars in a collective manner. While RECOM leaders and participants have garnered thousands of supporters across several Former Yugoslav states and have developed a Statue for the project, there seemingly has not been enough political and financial support to make it a reality.

Additionally, there is currently an initiative underway to

establish another truth commission in the Republika Srpska to establish additional facts and figures about the war and in particular about the abuse of Serbs in Sarajevo. This is the second commission established by leaders in the Serb-led entity; the first was established in 2004 to generate facts about what happened in Srebrenica in July of 1995. However, the report from these proceedings was rejected by the Republika Srpska Parliament because it was argued that the coverage of the atrocities was not comprehensive enough. According to a report by the Srpska Times (2018: para.1) “the Republika Srpska Parliament is of the opinion that for the sake of a comprehensive and truthful assessment of the events in and around Srebrenica in the period 1992-1995 and for the sake of strengthening mutual trust and tolerance between the peoples in BiH, it is necessary to form an independent international commission which would determine facts about sufferings of all peoples in that area and during that period of time in an objective and impartial manner.” However, the new commission soon to be established in 2019 has been condemned within Bosnia and Herzegovina and by international experts. Rudić (2019: para.2) explains notes that thirty-one international experts on the conflicts in the former Yugoslavia have written an open letter arguing that the commissions set up by Republika Srpska to investigate war crimes in Srebrenica and abuses against Serbs in Sarajevo during the 1990s conflict resemble revisionism rather than a genuine effort to establish truth or facts.

Beyond a truth commission, I would argue that a key way to change narratives is a measure that focuses on rebuilding inter-group relationships, such as community conferencing in the form of structured dialogue sessions. The notion of community conferencing and dialog sessions is a form of restorative justice. The concept of restorative justice at its core is designed to rebuild relationships and communities. While dialog projects are happening in more unofficial capacities around Bosnia and Herzegovina, I argue that they may carry more weight if they were state-supported and state-sanctioned. While civil society can continue to work on these projects their resources and outreach is limited, as I have noted before. I also would argue that having the state at the centre of the process helps to show that governing institutions are also supporting the reconciliation and healing amongst the different groups. Moreover, I further argue that such mechanisms can be in the form of community conference or structured dialogue sessions,

which will allow citizens to come together and discuss their perceptions of the war, individualize guilt to those who have committed the crimes, decided on how and what to memorialize from the war, and what the future should look like. However, more importantly this is a process that allows citizens to take charge of their own healing process and to recreate narratives that go beyond the scope of the political wrangling and inter-group victimisation.

Dialogue expressly encourages and lays the foundations for inter-group reconciliation; it is not just about sitting around and talking about the past, it is also about challenging the way people talk, think, and communicate with one another. Dialogue requires self-reflection, spirit of inquiry and personal change to be present. In dialogue, there are no winners and losers. The aim of dialogue is to bridge communities, share perspectives, discover new ideas, and to challenge myths and half-truths (United Nations Development Programme 2009: 2-3). In this sense, one can argue that dialogue lays the foundations for socio-emotional reconciliation by bringing groups together to deal with the issues they have not dealt with due to being blocked by conflicting perspectives and narratives. Moreover, Pruitt and Kim (2004: 181) offer some great insight into how dialogue can change how former antagonists see one another. The authors assert that one key benefit of being in contact and dialoguing helps lift the veil of dehumanization. The authors additionally maintain that rather than seeing each other as evil and as one who enjoys inflicting pain upon one another, parties begin to see each other as fellow human beings who also suffers from the atrocities of the conflict (Pruitt and Kim 2004: 181). This “humanization” fosters each party’s own empathy toward the other, creating an opportunity to include each other in both their moral communities; finally, the authors explain that contact and communication contributes to interpersonal attraction, and hence to the development of positive bonds (Pruitt and Kim 2004: 181).

One unique aspect of utilizing dialogue sessions is that they can be creatively and loosely designed to fit a more general context in Bosnia, whereas other mechanisms like a truth commissions are more formalised. As far as a design for such a project, there are many examples that can be employed from across the globe. For instance, following civil war in Sierra Leone, a superordinate goals approach (SGA) that included dialogue

sessions to address and help community members focus on achieving common goals (Post 2019: 93). These approaches particularly aim to build social capital between disparate groups in a community (Post 2019: 93). These dialogue sessions brought together between 4-5 neighbouring villages, who elected representatives from each community to participate in the dialogues (Post 2019: 93). The dialogues focused on how Sierra Leoneans are one people that can unite in common goals. Meetings particularly focus on uniting people, reducing community tensions, and lay foundation for later talks and cooperation (Post 2019: 93). A model such as this is feasible to be developed by state actors in Bosnia and Herzegovina and promoted in both the Federation of Bosnia and Herzegovina and the Republika Srpska. This model would be cost effective, less complicated and not as politically controversial as designing a national truth commission. This model would also be an efficient way to promote national identity and challenge divisive ethno-political narratives. Additionally, this model could also be a unique way to collect information about attitudes and ideas concerning reconciliation from smaller communities across Bosnia and Herzegovina.

Another key example we can look to for fostering dialog are the community based Gacaca Courts in Rwanda following the 1994 genocide, their main task was to create dialogue and bring victims, perpetrators, and fellow citizens together to confront the past so that they could move on. In this way, I believe that dialogue can open the door to new understandings that move beyond the biases of media portrayals and the musings of political elites' the events surrounding the 1992-1995 war, the crimes committed, and the trials that have taken place. The Gacaca Courts brought everyday citizens who suffered together and let them air their grievances and tell their stories. Often times in Bosnia this has been the exact opposite; stories of victims across ethnic (groups) are told by NGOs and or Victim groups that may have an ethnic and political stance or as noted earlier high jacked by political elites. A process like Gacaca in Bosnia and Herzegovina would allow victims to tell their own stories in raw and genuine ways without being politicised.

However, one key aspect to consider is that if these open dialogue and community sessions would actively transform the way everyday citizens in Bosnia and Herzegovina thought about the war, and both the media and political elites would

have to shift their stances. Therefore, it begs the question as to whether or not Bosnian political elites and members of the media would ever support such an initiative. If one stops to consider the possibilities, the inter-ethnic squabbling over competing victimhood and the fairness of post-conflict justice remains a key issue that keeps the citizens of Bosnia and Herzegovina divided? Which therefore gives political elites and the media legitimacy and in turn keeps both groups employed and empowered; so where exactly is the incentive to create and support projects that aim to reduce inter-group hostilities and finally push for a national narrative regarding the 1992-1995 war?

Conclusion

This article aimed to explore the concept of retributive justice and inter-group reconciliation through the context of Bosnia and Herzegovina. Throughout this article it was discussed that both the ICTY and the domestic trials — while necessary to individualize guilt, punish perpetrators, and establish the truth — did not foster reconciliation in the way of rebuilding relationships or even establishing a shared vision of the war and the war crime sentences that followed. The trials have led to more ethnic divisions furthered by political elites and media outlets. Finally, I propose that a key way to foster reconciliation is to move beyond the realm of retributive justice. It was noted that there have been attempts from civil society organisations to further non-judicial transitional justice mechanisms, but they have largely failed and so has the government National Transitional Justice Strategy. I argue that state-sanctioned dialogue sessions should be utilized, in order to help foster inter-group reconciliation by bringing people together to discuss the socio-emotional issues that were not addressed through the tribunals in The Hague and domestic courts in Bosnia and Herzegovina. Bringing everyday citizens together to tackle issues surrounding the 1992-1995 war is important for creating ownership in the journey towards reconciliation that goes beyond the realm of retributive justice, it allows everyday citizens to create a new reality and narrative that is designed and driven by them and for them.

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