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**Coming to terms with the past:
the contribution of international tribunals (IMT and ICTY).**

West Germany and Bosnia and Herzegovina compared.

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for the degree of **Master of Arts**

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Statutory Declaration

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“It may well be essential to hang Göring, but it is totally inadequate. That is, this guilt, in contrast to all criminal guilt, oversteps and shatters any and all legal systems.”¹

Hannah Arendt

¹ In Hannah Arendt et.al, Hannah Arendt/Karl Jaspers correspondence, 1926–1969 (New York: Harcourt Brace Jovanovich, 1992), 54.

Abstract

This master thesis analyzes the role of international trials for transitional justice and reconciliation after a conflict. It examines the Nuremberg Trial (IMT) in West Germany after WWII and the ICTY for Bosnia and Herzegovina after the war of 1992-1995. More specifically, it uses the trials against Hermann Göring and Radovan Karadžić as case-studies, as they were both politically relevant leaders during the respective conflicts and both accused of severe crimes, including genocide. This is considered important, as it raises difficult questions of individual guilt and collective responsibility. While trials have not always been seen as necessary for a process of dealing with the past, the establishment and work of the IMT has certainly contributed to trigger a broader debate in West Germany, although it rather started a long-lasting process.

The main question of the thesis is whether elements from this process, which started with the IMT and its specific contribution to Germany's confrontation with its past, may also be applied to the ICTY and Bosnia and Herzegovina. The main difference regarding Bosnia and Herzegovina are the divisions into three ethnic groups (Serb, Bosniak and Croat) and their respective competing narratives and identities. In fact, effective reconciliation has not even seriously begun, as there is no unified vision on the war, its origins, war crimes and genocidal action, despite the impressive work by the ICTY. Through the lens of the Karadžić trial (compared with the one against Göring) the thesis analyzes the impact of the international tribunals on the perception of the population and their contribution to the wider process of reconciliation and coming to terms with the past. After a literature review which explores the main theoretical concepts related to the topic, the two trials will be analyzed and discussed in separate chapters (in particular with regard to the defense strategy of Göring and Karadžić but also to their personalities), before exploring the phases of the *Vergangenheitsbewältigung* process in West Germany and going deeper into the issue of competing narratives and memories in BiH and their impact on reconciliation.

The main outcome is that judicial elaboration is certainly not enough to overcome the past, although important at the beginning of such a process: a real commitment of the entire society and additional instruments are needed – and for this reason in BiH the situation seems still rather stuck.

Key Words:

West Germany
Bosnia and Herzegovina
International trials
Nuremberg Trial
ICTY

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List of Abbreviations

BiH	Bosnia and Herzegovina
CIA	Central Intelligence Agency
EU	European Union
ERN	Evidence Registration Number (ICTY)
FRG	Federal Republic of Germany
GDR	German Democratic Republic
ICTY	International Criminal Tribunal for the former Yugoslavia (The Hague)
IMT	International Military Tribunal (Nuremberg)
NATO	North Atlantic Treaty Organization
OMGUS	Occupation Military Government United States
UNPROFOR	United Nations Protection Force
RS	Republika Srpska
SRK	Sarajevo-Romanija Corps (part of VRS)
VRS	Bosnian Serb Army

Introduction

2020 marks the 75th anniversary of the end of the Second World War and the 25th anniversary of the end of the war in Bosnia and Herzegovina². A lot has been written about both conflicts, their consequences and legacy. The aim of this research is to identify whether elements of the post-war process of coming to terms with the past in West Germany³ may eventually be useful also for Bosnia and what role (international) trials played in both countries.

The argument that trials against war criminals had an important role in influencing the process of transformation and reconciliation in both countries shall be analyzed, as well as their impact on society and on collective memory. The Nuremberg Trial (International Military Tribunal, IMT) is compared with the International Criminal Tribunal for Yugoslavia (ICTY), with a specific focus on Hermann Göring and Radovan Karadžić, as both were leading politicians in the respective regimes, fully conscious of and involved in genocidal plan and action.

The IMT has become the foundation of international criminal justice and served as example for establishing the ICTY. The hypothesis is that the Nuremberg trials were fundamental for a decisive shift permitting the process of reconciliation within West Germany through the acceptance of its own past, including genocide and crimes. The ICTY did not have the same impact in BiH: this difference is due to competing narratives of the past which hinder dialogue and comprehension, raising questions about whether the defendants truly committed international crimes and preventing the society from accepting responsibility, making reconciliation impossible, by consequence.

A literature review, emphasizing the historical dimension, will introduce central concepts upon which the analysis in the individual chapters is based. The two trials will be examined in two separate chapters, examining their history and context as well as the personalities of the two perpetrators and their defense strategies. A discussion on their impact will follow: the section on West Germany will address the concepts of collective guilt, *Vergangenheitsbewältigung*, and the historians' controversy regarding whether the history of Nazi Germany can be integrated ("normalized") into overall German history. The part on Bosnia will focus on competing narratives and memories as well as on the link between transitional justice and reconciliation. Based upon the results, two wider questions shall be addressed: how did German identity evolve after reunification and how can Bosnia discover its own, in order to create a sustainable state and social harmony among the three ethnic groups (Bosniaks, Croats and Serbs)?

² In the following text, instead of "Bosnia and Herzegovina", also "Bosnia" and "BiH" will be used as synonyms.

³ The focus will be on West Germany because the East, under Soviet occupation and influence, had a completely different approach to the past and did not share the same context of democratic transformation.

Chapter 1:

On trials and reconstruction of memory in Germany and BiH. Literature review

There is a considerable amount of literature, both on the Nuremberg Trial, whose significance in the history of international criminal law, as a precedent, is huge, and on the ICTY⁴; there is even more on the larger context of transitional justice.⁵ Also the broader societal context and in particular historiographical aspects are well explored.⁶ Nonetheless, a comparative literature on the two trials does not exist so far, nor on Göring and Karadžić specifically; even literature dealing exclusively with either Göring or Karadžić on trial is quite rare.⁷

1. Innovation in international justice: IMT and ICTY

Atrocities and crimes committed on the battlefield as well as the Holocaust had been so unprecedented that after the Second World War serious consequences were to be taken against war criminals;⁸ also, the Allies did not want to repeat the failure of not holding international trials after WWI, despite the mass murders. Soon, different approaches arose between the Allies: the USA gave the main impetus for a tribunal, arguing that it was important to bring war criminals to justice and punish them. Also, Stalin wanted top Nazis to be executed, but only after a trial⁹ (in fact, the Soviets staged show trials after the war)¹⁰. The British preferred executing around fifty top war criminals and did not want a trial, but at the Yalta Conference in February 1945, Churchill's opposition was overcome by Roosevelt and Stalin. At the London Conference in August 1945 a Charter with

⁴ On IMT: Gary Jonathan Bass, *Stay the Hand of Vengeance: The Politics of War Crimes Tribunals* (Princeton University Press, revised edition, 2014); Ann Tusa and John Tusa, *The Nuremberg Trial* (New York: Atheneum, 1984); Michael R. Marrus, *Nuremberg war crimes trial: 1945-46 : a documentary history* (Boston: Bedford Books, 1997); James Owen, *Nuremberg: Evil on Trial* (London : Headline Review, 2007); Guénaél Mettraux, *Perspectives on the Nuremberg Trial* (Oxford: Oxford University Press, 2008). On the ICTY: Rachel Kerr, *The International Criminal Tribunal for the Former Yugoslavia: An Exercise in Law* (Oxford: Oxford University Press, 2004); Theodor Meron, "Answering for War Crimes: Lessons from the Balkans", *Foreign affairs* 76, no.1 (1997): 2-8.

⁵ On transitional justice (small selection): Neil Kritz, *Transitional Justice: How Emerging Democracies Reckon with Former Regimes* (Washington, D.C : United States Institute of Peace Press, 2004); Laurel Fletcher and Harvey Weinstein, "A world unto itself? The application of international justice in the Former Yugoslavia" in: *My neighbor, my enemy: justice and community in the aftermath of math atrocity*, ed. Eric Stover and Harvey Weinstein (Cambridge University Press, 2004), 29-48; Lilian A. Barria and Steven D. Roper, "How Effective are International Criminal Tribunals? An Analysis of the ICTY and the ICTR", *International journal of human rights* 9, no. 3 (2005): 349-368; Jared O.Bell, *Frozen justice: Lessons from Bosnia and Herzegovinas failed transitional justice strategy* (Wilmington: Vernon Press, 2018); Alfons Klafkowski, *The Nuremberg Principles and the Development of International Law* (Warszawa : Zachodnia Agencja Prasowa, 1966).

⁶ On the German debate see: Matthew Jackson, "Historians' debate: The Historikerstreit and the search for national identity in post-war Germany", *History Studies | Journal of the University of Limerick History Society* 17, (2016): 25-38; Andrei Markovits, "Introduction to the Broszat-Friedländer Exchange", *New German Critique* 44, (1988): 81-84; Georges Mink, *Vie et mort du bloc soviétique* (Firenze : Casterman - Giunti, 1997).

⁷ Both trials are linked by Philippe Sands, *From Nuremberg to The Hague: The Future of International Criminal Justice* (Cambridge: Cambridge University Press, 2003).

⁸ Marrus, *op.cit.*, 2.

⁹ Tusa, *op.cit.*, 60-63.

¹⁰ Mark Lewis, *The birth of the new justice: the internationalization of crime and punishment, 1919-1950* (Oxford: Oxford University Press, 2016), 166-167.

fundamental principles for establishing an international tribunal was adopted: it was an innovation in international criminal law; the Tribunal's structure and its organization were different from anything before.¹¹ Of the 24 defendants in the Nuremberg Trial, ten were executed, one was condemned to death in absentia (Martin Bormann), and Göring committed suicide the day before his execution.¹²

When atrocities in Bosnia seemed unstoppable, the UN Security Council (UNSC) started to consider holding perpetrators liable. The basis for prosecuting war criminals was prepared with UNSC Resolution 711 (1992),¹³ which would allow the UN to receive more information about war crimes. After UNSC Resolution 808 (1993) had expressed the intention of establishing an international tribunal, on 25 May 1993, "the UN Security Council passed resolution 827 formally establishing the International Criminal Tribunal for the former Yugoslavia, known as the ICTY."¹⁴ This resolution contained the Statute of the ICTY which determined the Tribunal's jurisdiction and organizational structure, as well as the criminal procedure in general terms.¹⁵

The ICTY classified cases as important considering the rank of the defendant and the gravity of acts committed. The three most important cases were: the case against Duško Tadić, indicted for crimes against humanity, forcible sexual intercourse, and violation of the laws and customs of war, and sentenced to 24 years imprisonment. With three different indictments (for Kosovo, Bosnia and Herzegovina, and Croatia) Slobodan Milošević, President of Serbia within the Federal Republic of Yugoslavia from 1991 to 1997 and then President of Yugoslavia from 1997 to 2000, was accused of 66 counts of genocide, crimes against humanity and war crimes;¹⁶ he died in his cell of heart disease before the verdict. Radovan Karadžić, President of Republika Srpska from 1992 to 1996, is important as one of the highest officials from BiH; he was fugitive and arrested in Belgrade only on 21 July 2008.¹⁷ As Milošević had provided assistance to the Bosnian Serbs during the war, a link between the trials was established.¹⁸

Karadžić was indicted for genocide, crimes against humanity and violations of the laws and customs of war; the indictment distinguished between his participation in a general Joint Criminal Enterprise (JCE) and in a hostage-taking JCE (he personally ordered that the Bosnian Serb military take hostages). The Joint Criminal Enterprise includes crimes committed to remove Bosniaks and Croats permanently from Serb-claimed territory, crimes committed to spread terror among the civilian population of Sarajevo through a campaign of sniping and shelling, and crimes committed to eliminate the Bosnian Muslims in Srebrenica.¹⁹

¹¹ Alexander Sukharev, „The Nuremberg tribunal and the problems of international rule of law, *Revue internationale de droit penal* 77, no. 3 (2006): 711.

¹² The Editors of Encyclopaedia Britannica, "Nürnberg Trials", *Encyclopædia Britannica.*, 2020, <https://www.britannica.com/event/Nurnberg-trials> (consulted on 19.3.2020).

¹³ Michael P.Scharf, *Balkan justice: the story behind the first international war crimes trial since Nuremberg.* (Durham, NC: Carolina Academic Press: 1997), 37.

¹⁴ See Annex, 1. Infographics: ICTY Facts & Figures.

¹⁵ United Nations, International Criminal Tribunal for the Former Yugoslavia, "The Tribunal – Establishment", <https://www.icty.org/en/about/tribunal/establishment> (consulted on 19.03.2020).

¹⁶ Associated Press. "Milošević dies in his cell", the Guardian, <https://www.theguardian.com/world/2006/mar/11/warcrimes> (consulted on 19.3.2020).

¹⁷ Trial International, "Radovan Karadžić", <https://trialinternational.org/latest-post/radovan-karadzic/> (consulted on 19.3. 2020).

¹⁸ Judgement, Prosecutor vs. *Radovan Karadžić*, IT-95-5/18, 24 March 2016, 1303, ICTY.

¹⁹ The Prosecutor vs *Radovan Karadžić* (Prosecution's Marked-Up Indictment), IT-95-5/18-PT (19 October 2009).

The UN established safe zones in order to contain the conflict and limit the casualties. Srebrenica has been declared as safe area in 1993. However, already in early 1995, the Bosnian Serb Army began to surround Srebrenica and to pose a threat to the UN. After Serb troops attacked the safe zone in July 1995, thousands of Bosniaks fled to the UN military compound. The Army of the Republika Srpska (VRS) took 8,000 men and executed them in several places around the area. The ICTY has recognized this as genocide.²⁰

Karadžić had a prominent role in the planning of the conflict and was one of its main protagonists; to this extent, he can be compared to Göring and the latter's role in WWII.

The Nuremberg Trial provided the basis for the establishment of the ICTY.²¹

2. The Nuremberg trial: necessary for coming to terms with the past?

Among the relatively few sources on the IMT trial against Hermann Göring, Werner Bross provides insights into Göring's behavior during the trial,²² while Norbert Ehrenfreund shows Göring's central role, rightly pointing out that "with Hitler gone, Göring emerged as the leading man in this drama".²³ In a detailed documentary on the whole Nuremberg trial, "Nuremberg: Göring's Last Stand (2006)", Göring's personality is represented in its entirety. Göring was not only a difficult defendant, but he was also trying to avoid responsibility, in particular concerning the final solution for the Jews, even in the face of the undeniable truth.²⁴

In West Germany the establishment of the IMT by the victors has often been criticized as "*Siegerjustiz*"²⁵: the Allied powers, not Germans, brought the perpetrators to justice. Some scholars believe that the IMT was not independent, because it had been established by the Allies, the enemies during the war. There has been also criticism regarding the judges, because they had first determined the type of offenses and the rules of procedure, and then judged whether the accused suspects had committed crimes according to the offenses established previously.²⁶

The question of the effectiveness of externally imposed post-war trials against war criminals is well-researched: according to Conot, the trials were important as a milestone, but they did not stop the rewriting of history as it had continued to happen decades after Nuremberg²⁷. This was problematic for a long time in the process of "*Vergangenheitsbewältigung*", i.e. the process of confrontation with the past in West Germany. It does not only entail compensation, trials against war criminals, but also

²⁰ R. Jeffrey Smith, "Srebrenica Massacre", *Encyclopaedia Britannica*, <https://www.britannica.com/event/Srebrenica-massacre> (consulted on 13.5.2020).

²¹ Apart from the different legal basis – an Allied decision (IMT) versus a UNSC decision (ICTY) – an important difference concerns the role of eyewitnesses: fundamental in the ICTY, but not at the IMT.

²² Werner Bross and Hermann Göring, *Gespräche mit Hermann Göring während des Nürnberger Prozesses* (Flensburg & Hamburg Wolff: 1950).

²³ Norbert Ehrenfreund, *The Nuremberg legacy: how the Nazi war crimes trials changed the course of history* (New York: Palgrave Macmillan: 2007), 65-66.

²⁴ Robert E. Conot, *Justice at Nuremberg* (New York: Carroll & Graf, 1984), 329-346.

²⁵ George Andoor, „Das Nürnberger Tribunal vor 70 Jahren: Teil 1; Faires Verfahren oder Siegerjustiz?“, *Zeitschrift für das juristische Studium* 8, no. 4 (2015): 356.

²⁶ Klaus Kastner, "Der Nürnberger Prozess: Das Internationale Militärtribunal 1945-1946." *Justiz Bayern*, https://www.justiz.bayern.de/media/images/behoerden-und-gerichte/oberlandesgerichte/NuernbergerProzess/der_nuernberger_prozess.pdf (consulted on 29.01.2020).

²⁷ Conot, *op.cit.*, XI.

denazification, responsibility, education in history, and memorialization: everything that helps the society to be aware of and responsible for its own past. At first, different approaches of the Allied powers in each of the occupation zones seemed to contradict each other.²⁸ The process needs moral examples for enhancing the population's awareness. Can trials against war criminals provide these moral examples? Is there an intrinsic link between transitional justice and *Vergangenheitsbewältigung*?

A major difficulty, resulting in a concrete reason why the Nuremberg Trial could not create this moral example, was identified by Donald Bloxham, who states “Auschwitz—which has entered the popular consciousness as metonym for the Holocaust — could not be representative of anything other than itself, for the simple reason that nothing was the same as Auschwitz”.²⁹ This reveals a major ambiguity, often criticized (also by Bloxham himself), i.e. that the trial dealt with crimes against peace (with Germany's role in starting and pursuing WWII) and not focusing enough on the extermination of the Jews.³⁰ With this statement and in particular in his book *Genocide on Trial*, Bloxham defines the problematic of a trial which was heavily criticized, in particular for the way it had been conducted.

German society tended to reject guilt; a general critical assessment and collective memory of the Third Reich did not occur in the first decades after the war. This denial, in particular regarding the Holocaust, found an important limit in the Nuremberg Trial, as it established what had happened by making it public. Trials and elaboration of the past did not go together or in parallel: the distinction between justice and (absence of) memory, common also elsewhere,³¹ is efficiently summarized by the following figures for West Germany: „in 1945, there were 800,000 SS and only 60,000 were charged with murder, but prosecutors obtained only 124 convictions. Acquittals, short-term sentences, and early releases were the norm.”³²

The *Vergangenheitsbewältigung* process was as effective as the measures taken: the population would not even start to think about its past without effective trials, as a basis for any (re)education – from parents (de-nazification) to schools (for future generations). Everything was connected: how would follow-up trials be effective if old Nazis were still sitting on the bench in courts?

The German perception of the Nuremberg trial, as viewed by different scholars, varied over time and depended on the different attitude of West-German governments. Today the common perception of the Nuremberg Trial is that of a milestone on the way to a German reconstruction of identity. In the post-war phase and until 1989, the West German reaction to the Nuremberg principles was mainly defensive and negative.³³ Only after the Eichmann trial in Jerusalem and the Auschwitz trials in Frankfurt, in the early 1960's, something changed in the perception of Germans regarding those trials in general and the Nuremberg trial in particular. In parallel, the official politics of memory also changed gradually from the end of the Allied occupation until the fall of the Berlin Wall, and then with reunification.

²⁸ Martin Broszat, “Siegerjustiz oder strafrechtliche Selbstreinigung, Vergangenheitsbewältigung der Justiz 1945-1949“, *Vierteljahrshäfte für Zeitgeschichte* 4, (1981): 479-481.

²⁹ Weitz, Eric D. and Bloxham, Donald, *Genocide on Trial: War Crimes Trials and the Formation of Holocaust History and Memory* (New York: Oxford University Press. 2001), 127-128.

³⁰ *Ibid.*, 124-125.

³¹ Weitz, *op.cit.*, 14.

³² Marie Alioff, “Review: The Accountant of Auschwitz”, HotDocs, 2018: <http://povmagazine.com/articles/view/review-accountant-auschwitz> (consulted on 18.02.2020).

³³ Christoph Burchard, “The Nuremberg Trial and its Impact on Germany”, *Journal of International Criminal Justice* 4, (2006): 800-829.

“After the war, Germany had little interest in prosecuting its own. It was hard for the German public to accept that so many of its citizens were responsible for the horrific crimes committed under the Third Reich.”³⁴ The trials were seen as an attempt by the Allies to assign a sense of guilt to the whole society. In the 1960’s, with Eichmann’s trial but also with the Frankfurt trials (against those involved in Auschwitz), the debate intensified. With the student movement of 1968, young people started to ask parents questions about their past.

Trials provided a basis for reconstruction and democratic transformation in West Germany as well as a pre-condition for reconciliation with victims and neighbors.³⁵ From the late 1960’s the Holocaust shaped national identity: first as a taboo and later as sense of guilt and a gradual search for truth, particularly for West Germany, where the “unresolved past” was becoming a repetitive and unforgettable part of it.³⁶

3. The Karadžić trial: parallels and differences with the trial against Göring

The situation in Bosnia and Herzegovina is different in terms of context: the war in BiH had the character of a civil war, with three sides and neighboring states involved, while Germany’s aggression developed into a world war. At the end of the war, Germany was occupied by the Allies; post-war BiH was stabilized by international forces in order to guarantee peace among the three different groups that had fought each other. An important difference is also the omnipresence of media in the Bosnian war. Information about ethnic cleansing, mass rapes and genocide had been available to everybody, with no excuse to say, “we did not know about the crimes committed”.³⁷

Sadkovich draws an explicit parallel between the cultural contexts of unquestioned obedience, “a form of efficient bureaucratic indifference”,³⁸ in which both Nazism and ethnic mobilization in the breakup of Yugoslavia operated as “new barbarism”.³⁹ This may indeed be considered a common denominator. There is also a link between the main accused in the two trials: as underlined by Meijers and Glasius.⁴⁰ Karadžić can be seen as a kind of head of state (although Republika Srpska has never been recognized as such) and after the death of Milošević became “the most high-profile defendant”,⁴¹ similar to Göring in the Nuremberg Trial.

The main difference between the two trials is that the Nuremberg Trial was conducted in a situation with clear victors and losers; there was no such distinction for the ICTY regarding Bosnia: the three groups continued to live in the same country, and a cold-war situation had been created and consolidated since the war.

³⁴ Documentary Channel, „the Accountant of Auschwitz”, <https://www.cbc.ca/documentarychannel/docs/the-accountant-of-auschwitz> (consulted on 18.02.2020).

³⁵ Richard Overy, “The Nuremberg trials: international law in the making” in: Sands, *op.cit.*, 1-30.

³⁶ Mary Fulbrook, *German National Identity after the Holocaust* (Cambridge : Polity Press, 1999), 18.

³⁷ Thomas Cushman and Stjepan Gabriel Mestrovic, *Introduction* in: Thomas Cushman and Stjepan Gabriel Mestrovic *This time we knew: Western Responses to Genocide in Bosnia*, (NYU Press: 1996): 1-39.

³⁸ James J. Sadkovich, “The Former Yugoslavia, the end of the Nuremberg era, and the new barbarism” in *This time we knew: Western Responses to Genocide in Bosnia*, ed. Thomas Cushman and Stjepan Gabriel Mestrovic, (NYU Press: 1996): 283-284.

³⁹ Sadkovich, *op.cit.*

⁴⁰ Tim Meijers, Marlies Glasius, “Expression of Justice or Political Trial? Discursive Battles in the Karadžić Case”, *Human Rights Quarterly* 35, no. 3 (2013): 720-752.

⁴¹ Meijers, *op.cit.*, 45.

Regarding their defense strategies, Karadžić used the opportunity for political speeches and rally his supporters, still behaving like a politician, while Göring clearly did not have a political career anymore. Karadžić denied what he had done, trying to minimize it at times; Göring used a somewhat schizophrenic strategy of taking responsibility on himself while at the same time denying his involvement in genocidal actions.

In the trial against Radovan Karadžić,⁴² he was found guilty of genocide in Srebrenica, but not in other cases.⁴³ His role gave rise to comparisons with Holocaust perpetrators because of the combination of “the psychology of a genocide perpetrator with that of a charismatic narcissistic political leader”;⁴⁴ but it was also suggested by the length of the trial and the considerable amount of evidence.

Some scholars, such as Colleen Murphy, emphasize that transitional justice can play an important role in reconstructing the sense of a society,⁴⁵ and argue that the verdict against Karadžić has been essential for the sense of justice after the war,⁴⁶ in particular for the victims of war and ethnic cleansing. Others argue that his trial came too late (twenty years after the conflict!), and that some of the most important war criminals managed to escape or were not brought to justice. One may even ask whether war crime trials have become an obstacle to reconciliation, as the belief in justice in BiH appears to have vanished.

4. Different perceptions and narratives in BiH on ICTY and the Karadžić trial

According to Bell, “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”.⁴⁷ Bähr raises “the question whether international criminal trials can assist the reconciliation of war-torn societies or whether this could be better accomplished by complementary mechanisms, such as truth commissions”;⁴⁸ for some, reconciliation cannot be achieved through trials, but only through agreement on a common recognition of facts, without reproaching each other.⁴⁹

Like the Nuremberg Trial for West Germany, the Karadžić trial has particular importance for the reconstruction of memory in Bosnia and Herzegovina, but its impact is not far reaching, nor as effective as in West Germany. Karadžić was a leader in politics and war and his trial has been followed by many people. But for the majority of the population justice came too late. Finding and arresting war criminals and the complexity of indictments and trials all take time, due to the amount of evidence and the many eye-witnesses. The resulting delay paralyzed the process of reconciliation in BiH: (transitional) justice is effective if it comes quickly.

⁴² See Göran Sluiter, “Karadžić on trial: two procedural problems”, *Hague Justice Journal*, 3, (2008): 2.

⁴³ Balkan Investigative Reporting Network. “Radovan Karadžić: Wartime leader’s years on trial”, <https://birnsource.com/uploads/2019/03/karadzic-eng-1.pdf> (consulted on 25.03.2020).

⁴⁴ Kenneth Dekleva, Jerrold Post, “Genocide in Bosnia: The case of Dr. Radovan Karadžić”, *Journal of the American Academy of Psychiatry and the Law* 25, no. 4 (1997): 485-496.

⁴⁵ Colleen Murphy, “International Criminal Trials and the Circumstances of Justice”, *Criminal Law, Philosophy* 12, (2018): 575–585.

⁴⁶ Denisa Kostovicova, “The Karadžić verdict: how the trial played out and what it means for Bosnia”, *LSE European Politics and Policy (EUROPP) Blog*, 2016.

⁴⁷ Bell, *op.cit.*, 3.

⁴⁸ Claudia Bähr, “The Karadžić Judgment: The ICTY at its Peak”, *Völkerrechtsblog*, 2016.

⁴⁹ Meijers, *op.cit.*, 31.

A major difficulty lies in the ethnic divisions in BiH and their political exploitation: The three groups – Croats, Serbs and Bosniaks – have a fundamentally different understanding of the war events. Stover and Weinstein define the concept of inter-group level reconciliation that should be applied: “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”.⁵⁰ Auerbach underlines the importance of creating a common version of history for the process of reconciliation.⁵¹ If no common version of history is elaborated, and if the conflicting parties instrumentalize the rhetoric of blame and scapegoats, then the dynamics of “jeux de mémoire”,⁵² the way in which politicians use history as a means to legitimate themselves and to create a sort of emotional community, can become a serious threat to the process of reconciliation and also to the stability of the system overall. This is clearly visible in Republika Srpska: in March 2019, an “Independent International Commission for Investigating the Sufferings of all Peoples in the Srebrenica Region”⁵³ started to work, but international experts heavily criticized it as “revisionism rather than a genuine effort to establish the truth”.⁵⁴ Serbs tend to reject any sense of collective guilt and undermine the process of a construction of a common historical memory (in many case despite concrete evidence for the crimes committed), while Croats usually accept responsibility but in a limited way, and Bosniaks tend to see themselves generally as victims.⁵⁵ In such an environment, it is not possible to make progress with reconciliation.

⁵⁰ Jared Bell O’Neil, “Reconciling after Transitional Justice: When Prosecutions are not Enough, the Case of Bosnia and Herzegovina” *Croatian International Relations Review, Sciendo* 25, no.84 (2019): 57. Although the author does not give examples where this actually happened in history.

⁵¹ Yehudith Auerbach, “The Reconciliation Pyramid-A Narrative- Based Framework for Analyzing Identity Conflicts“, *Political Psychology* 30, no.2 (2009): 291-318.

⁵² Mink, *op.cit.*, 134-148.

⁵³ Albina Sorguc, “Bosnian Serbs’ War Commissions: Fact-Seeking or Truth-Distorting?” *Balkan Transitional Justice*, February 25, 2019. <https://balkaninsight.com/2019/02/25/bosnian-serbs-war-commissions-fact-seeking-or-truth-distorting/> (consulted on 4.4.2020).

⁵⁴ Filip Rudic, “Bosnian Serb War Commissions ‘Seeking to Revise Truth’: Academics.” *Balkan Transitional Justice*, February 21, 2019. <https://balkaninsight.com/2019/02/21/bosnian-serb-war-commissions-seeking-to-revise-truth-academics> (consulted on 4.4.2020).

⁵⁵ Janine Natalya Clark, “Transitional Justice, Truth and Reconciliation: An Under-Explored Relationship”, *International Criminal Law Review* 11, no. 2 (2011): 97-99.

Chapter 2:

The Trial against Göring: imposed confrontation with the past

1. Introduction: Trying Göring for trying Nazism

“The Nuremberg trials were an experiment”,⁵⁶ successful in part, as precedent in the development of international criminal law, but also much criticized for their initial negative impact on West German opinion.⁵⁷ The approaches of the Allies were different: the Americans were more interested in the German aggression leading to WWII, the UK more in German war crimes against British citizens, and the Soviets preferred show trials.⁵⁸ Nonetheless, the Allies succeeded in delivering justice concerning major war criminals who planned the destruction of Europe and the extermination of Jews.⁵⁹ Those trials started a process of confronting German people with the horrible crimes committed by the Nazis.

This is mostly related to a more dialectic process in West Germany. East Germany (GDR) is a different case. It was under Soviet influence and itself a totalitarian system; therefore, history writing in the GDR was not impartial and rather followed one single version of “official truth” which had to be accepted without questioning.⁶⁰

It is important to distinguish different degrees of responsibility of those indicted.⁶¹ There were revolutionaries (“*geborene Nazis*”) and ideologists (“*gewordene Nazis*”).⁶² Goebbels’s radicalism was ideological: he was a radical promoter of anti-Jewish propaganda. By contrast, the category of ‘revolutionaries’ wanted above all to seize power and were ready to fight for it; Hermann Göring even said: “I decided to become a member of the Party because I was a revolutionary, not because of the ideological stuff”.⁶³ Göring’s characteristic feature was his immense lust for power: the impact of his personality on people was, in some way, as strong as Hitler’s.⁶⁴ During the trial, Göring’s defense was a defense of Nazism in general.⁶⁵

2. Göring’s personality

Göring’s personality, his general conduct and his trial are key to understand the functioning of the regime and its-hierarchy. Göring is most often described as constantly searching to seize power; as someone never satisfied, who loved luxury and elevated

⁵⁶ Sands. *op.cit.*, 28.

⁵⁷ Burchard *op.cit.*, 802-806.

⁵⁸ Bass, *op.cit.*, 173-191-199.

⁵⁹ Ehrenfreund, *op.cit.*, 37-40.

⁶⁰ Anetta Kahane, *Geteilte Erinnerung? Zum Umgang mit Nationalsozialismus in Ost und West* (Berlin: Amadeu-Antonio-Stiftung, 2011), 22.

⁶¹ Eugene Davidson, *The Trial of the Germans: An Account of the Twenty-Two Defendants Before the International Military Tribunal at Nuremberg* (Columbia, MO : University of Missouri Press, 1997), 4-5.

⁶² Hermann Göring, der Zweite Mann in: *Das Gesicht des Dritten Reiches: Profile einer totalitären Herrschaft*. ed. Joachim Fest (München, Zürich: Piper, 2010, 10 Auflage), 104-105.

⁶³ See Kelley, Douglas McGlashan, *22 Männer um Hitler: Erinnerungen des amerikanischen Armeearztes und Psychiaters am Nürnberger Gefängnis* (Olten: Delphi-Verlag, 1947), 64.

⁶⁴ Nuremberg Trial Proceedings, Vol. 9, Eighty-Fourth day, (Monday, 18th March 1946), *The Avalon Project: Documents in Law, History and Diplomacy*, <https://avalon.law.yale.edu/imt/03-18-46.asp#Goering5>, 16 (consulted on 17.5.2020).

⁶⁵ Tusa, *op.cit.*, 269.

lifestyle, as particularly brutal, but not ideologically driven.⁶⁶ He also was a drug addict, after he was wounded in WW1 which explains some psychologically strange behavior. He also was a notorious liar, earning him the nickname “cheater” in the British war criminal records.⁶⁷ Never satisfied he was constantly reaching for personal success – the true reason why he decided to join the Nazi party as it would allow him a fast career and put him at the center of (public) attention.

Göring held himself responsible only for government acts and not for extermination programs. His controversy with Hitler made him less involved in official affairs since 1941-43. Göring opposed the attack on Russia, as he believed that first England had to be neutralized. Hitler did not speak with Göring in 1944, but in 1945 he asked him to head the Reich, only for changing his mind again, fearing Göring would replace him.⁶⁸ According to Göring, within the Nazi party a group (including himself) opposed the ideological fight against the Jews, but as this group had no true common interest and other tasks, so it did not oppose the fanatical group and their race project.

Göring remained the only unrepentant defendant, not showing any sign of human weakness or admittance of own mistakes.⁶⁹ He truly believed in what he had fought for. Göring tried to behave as the leader of the other defendants, so that one common front could be created. This did not succeed: certain comrades detached themselves and tried to save themselves⁷⁰ by proving that they knew nothing about extermination camps. By contrast, Göring’s strategy was contradictory: while he never denied that he knew about them (but trying to relativize the murders), he showed pride in what had been accomplished altogether (the battles won). He told the psychiatrist: “I take all responsibility for what happened in National Socialist Germany but not for the things I knew nothing about, such as concentration camps and atrocities (...) I frankly admit concentration camps for communists and other enemies, but certainly not for killing people or using concentration camps as extermination camps”.⁷¹ Göring’s double strategy is a pattern we also see in Eichmann’s trial in 1961.⁷² But Göring did not follow orders, he willingly and consciously enacted a policy which led to aggression vis-à-vis neighboring countries and groups of the population and to disaster for Germany.

3. Göring on trial: cross-examination and defense

“The Goering case was vital for the prosecution: it was almost a microcosmos of their entire indictment”.⁷³ When listening to his interrogations⁷⁴ and reading through the

⁶⁶ Hitlers Helfer: *Hermann Göring - Der Zweite Mann*. Youtube. ORF - Zeitgeschichte, 2018. https://www.youtube.com/watch?v=OTXDPsXlcl8&list=PLOtyOZTqm5qrgM1k_U1aqChErT1sm8soh&index=3&t=2112s (consulted on 14.02.2020).

⁶⁷ Salvatore Zizolfi, “I test di Rorschach di Hermann Göring”, *Rassegna Italiana Di Criminologia* 10, no.3 (2016): 189.

⁶⁸ Leon Goldensohn and Robert Gellately, *The Nuremberg interviews an American psychiatrist's conversations with the defendants and witnesses* (London: Pimlico, 2006), 215-216.

⁶⁹ Goldensohn, *op.cit.*, 189.

⁷⁰ Massimiliano De Prà, “Il processo a Herman Göring”, *Diacronie, Studi di Storia Contemporanea* 2, no.14 (2013): 8.

⁷¹ Goldensohn, *op.cit.*, 235-236.

⁷² Dominik Lasok, “The Eichmann Trial”, *International and Comparative Law Quarterly* 11, no. 2 (1962): 361.

⁷³ Tusa, *op.cit.*, 269.

⁷⁴ *Goering Testifies at Nuremberg Trial*. US Holocaust Memorial Museum, 1946. <https://collections.ushmm.org/search/catalog/irn1001591>.

transcripts, the impression is that Göring was extremely lucid. First he tried to convince the others not to reveal too much evidence, but when they saw how fair the trial was, his strategy changed into a very smart and capable play of the “justice game”.⁷⁵ A perfect example is his own cross-examination by the American prosecutor Jackson: Göring remaining calm and not losing control,⁷⁶ provoked Jackson’s rage and he tried to cut Göring off, but the judge conceded Göring more time. During the discussion on the re-militarization of the Rhineland in 1936 Jackson literally exploded.⁷⁷ This episode, seen as a victory, strengthened Göring’s ego but also his defense and was celebrated by his fellow defendants.⁷⁸ By contrast, the British prosecutor, Sir David Maxwell-Fyfe, asked precise and short questions, obliging Göring to give short answers.⁷⁹ Thus, Göring lost confidence and his previous “victory” would remain an episode.

Göring passionately objected the legitimacy of the trial: “He felt that a foreign country had no right to try the government of a sovereign state. He criticized the ‘selection’ of defendants” (for him, leading Nazis were underrepresented). Also the members of the General Staff had simply accepted orders and obeyed them. “According to him, the conspiracy was among Hitler, Himmler, Goebbels and Bormann.”⁸⁰

In the indictment, Göring was charged with four main counts: common plan and conspiracy, war crimes, crimes against peace and crimes against humanity;⁸¹ he was found guilty of all four, this analysis will concentrate on the last two.

Göring had gradually become the economic responsible of the Reich. His plans included the expansion of the Luftwaffe and rearmament; he was very aggressive towards Czechoslovakia. All factors in the indictment show that Göring was an important actor in the plans for aggressive war.⁸² The most interesting elements of his defense are his representation of Austria’s “*Anschluss*” and his active role in it, his attempts to stop Hitler from invading the Soviet Union, and the overall impact of the Treaty of Versailles on the regime’s foreign policy.⁸³

Göring tried to relativize the accusation of having waged a war of aggression in Europe arguing he was against invading Norway and the Soviet Union not because of moral restraint, but because of strategic considerations. When asked why he did not warn the German population, he replied that he could not make war strategy public and that as simple officer he had no reason to turn against Hitler.⁸⁴

Having had a special bond with Austria, he was in charge of the “*Anschluss*.” On trial, Göring argued that the Austrian people had always wanted to be part of a greater

⁷⁵ Geoffrey Robertson, *Crimes against humanity: the struggle for global justice* (New York: New Press, 2nd edition, 2006), 232.

⁷⁶ Marrus, *op.cit.*, 107.

⁷⁷ *Ibid.*, 112.

⁷⁸ Goering’s Last Stand, Documentary,(2006), <https://www.youtube.com/watch?v=UpyBzoQj2a8> (consulted on 22.02.2020).

⁷⁹ Ehrenfreund, *op.cit.*, 70.

⁸⁰ Goldensohn, *op.cit.*, 263-264.

⁸¹ Hermann Göring, 1945: *Indictment presented to the International Military Tribunal sitting at Berlin on 18th October 1945, pursuant to the agreement by the Government of the United Kingdom of Great Britain and Northern Ireland, the Government of the United States of America, the Provisional Government of the French Republic and the Government of the Union of Soviet Socialist Republics for the prosecution and punishment of the major war criminals of the European axis.* London: H.M. Stationery Off, 32-33.

⁸² Fest, *op.cit.*, 101-103.

⁸³ Nuremberg Trial Proceedings Vol. 9, *op.cit.*, 398, 426-430, 437-438.

⁸⁴ *Ibid.*, 428.

Germany, and that the fact that the Nazi party existed there already before Hitler came to power, showed their will of being reunited.⁸⁵

During his defense Hermann Göring also blamed the Treaty of Versailles as main reason for the events leading to WWII. Many historians⁸⁶ still debate the impact of the Treaty of Versailles as one of the reasons for the German peoples's support of Hitler. Göring underlined the Treaty's importance for his personal decision to join the Nazi movement. "Hitler was of the opinion that Germany must be freed from the dictate of Versailles. (...) every German, every patriotic German had the same feelings."⁸⁷ This argument was used by all defendants.

The extermination of Jews was treated as a separate count: crimes against humanity.

Hermann Göring was not directly linked to the concrete organization of the murders of Jews. But he believed in the necessity of action against Jews and was proud of the racial laws adopted in Nuremberg in 1935. The prosecution held him accountable for his role in imposing a massive fine against German and Austrian Jews after the pogroms of November 1938, as well as further measures: no freedom of movement, confinement in ghettos, scarce or no food supply. The main goal was to confiscate their property in order to support financing German rearmament.⁸⁸ Göring's following statement shows this (as well as, again, denial!): "I am said to have planned to release Jews from Germany in exchange for ransom in foreign currency. This, too, is untrue. Disgusted by the Jewish pogrom of November 1938, I managed to obtain Hitler's approval to a plan which was to facilitate emigration for Jews. I intended to place 1.500 million Reichsmarks taken from confiscated Jewish property under the administration of an international committee, and Germany was to undertake the obligation to repay this amount to the committee in 20 yearly instalments, and in foreign currency, which is the exact opposite of what Justice Jackson asserted here."⁸⁹

Göring's motivation to act against the Jews was economically driven, distinguishing him from other Nazis. In a speech at the *Reich* Aviation Ministry he had stressed: "In the meeting, in which (...) we came to the decision to aryanize the German economy, to take the Jew out of it, and put him into our debit ledger, (...) to our shame, we only made pretty plans, which were executed very slowly."⁹⁰ This does not take away his responsibility: he knew about the meaning of 'final solution' and did not try to stop it. In his defense, he tried to favor Jewish emigration which he had discussed with Heydrich as the final solution of the Jews.⁹¹ Again, this is contradictory double strategy: taking distance from mass murder and extermination, while also trying to act as leading figure of all defendants. This impacts on the credibility of this statement; he appears to have

⁸⁵ Hermann Göring, *Der Prozeß gegen die Hauptkriegsverbrecher vor dem Internationalen Gerichtshof Nürnberg 14. November 1945 – 1. Oktober 1946* (Amtlicher Wortlaut in deutscher Sprache, Nürnberg 1947), 329–338.

⁸⁶ See e.g. Klaus Schwabe, „Die amerikanische und die deutsche Geheimdiplomatie und das Problem eines Verständigungsfriedens im Jahre 1918“, *Vierteljahrshefte für Zeitgeschichte* 19, (1971): 1-32.

⁸⁷ Nuremberg Trial Proceedings Vol. 9, *op.cit.*, 438.

⁸⁸ Summation for the Prosecution by Justice Robert Jackson, Vol. 19, (1946): 414, <https://avalon.law.yale.edu/imt/07-26-46.asp> (consulted 17.5.2020)

⁸⁹ Nuremberg Trial Proceedings, Vol.22, Two hundred and Sixteenth day, (31 August 1946), 366. <https://avalon.law.yale.edu/imt/08-31-46.asp> (consulted 17.5.2020)

⁹⁰ Stenographic Report for a Portion of the Interministerial Meeting at the Reich Aviation Ministry [Reichsluftfahrtministerium], November 12, 1938, in: *German History in Documents and Images*, Volume 7: Nazi Germany, 1933-1945, 2, <http://germanhistorydocs.ghi-dc.org/pdf/eng/English34.pdf>

⁹¹ Marrus, *op.cit.*, 210-211.

signed the written authorization of 1941 ordering Himmler and Heydrich to find a “final solution” for the Jewish question.

Göring never hid his intentions of using slave labor and was responsible for the pillage of the territories under German rule. He had created the Gestapo, the first concentration camps and ordered the first purges. Thus, Göring was accused to have ordered the Gestapo to murder all Jews unable to work as slaves; in the occupied territories, Gestapo men under Eichmann’s leadership carried out these measures.⁹²

Therefore, Göring’s own admissions confirm his guilt: he was indeed a leading figure. Neither in the indictment nor in the judgement, excuses are found for his actions.⁹³ With his egocentric personality and with his charisma, Göring did more damage to Europe and the world than anyone else.

4. In sum: Admittance combined with denial

Göring’s final statement sums up this contradictory strategy of admittance combined with denial: “I stand up for the things that I have done, but I deny most emphatically that my actions were dictated by the desire to subjugate foreign peoples by wars, to murder them or to enslave them, or to commit atrocities or crimes.”⁹⁴

“The recognition of crimes against humanity was the most important legacy of Nuremberg”⁹⁵ and the first attempt to prosecute those crimes. In the decades after the trial the main questions were: should someone still be held accountable for a crime committed decades ago? Where does individual culpability for genocide lie if the general system is criminal?⁹⁶

⁹² Nuremberg Trial Proceedings, Vol.22, (29 August 1946): 255, <https://avalon.law.yale.edu/imt/08-29-46.asp> (consulted on 17.5.2020).

⁹³ *Ibid.*, 256.

⁹⁴ Marrus, *op.cit.*, 220.

⁹⁵ Richard Goldstone, “Prosecuting War Criminals”, *David Davies Memorial Institute of International Studies*, occasional paper no. 10, (London, 1996), 2.

⁹⁶ Matthew Keeley, „The Accountant of Auschwitz”, *WeeReview* (2019): <https://theweereview.com/review/the-accountant-of-auschwitz/> (consulted on 18.02.2020).

Chapter 3:

The Karadžić trial: contested confrontation with the past

1. Introduction

With its activities, the ICTY, has managed to try the leadership, leaving “smaller fish” to local justice. Among the trials of fundamental importance for the ICTY are those against Slobodan Milošević, Radovan Karadžić and Ratko Mladić. They all bear responsibility for the war its consequences. Ratko Mladić was Chief of the General Staff of the Army of Republika Srpska in war in BiH in 1992-1995.

In order to allow for comparison between IMT and ICTY, it was important to choose a personality similar to Göring. Radovan Karadžić had been one of the main actors in BiH and was one of the major perpetrators responsible not only for the war but also for crimes against humanity and for the genocide of Srebrenica. Right after the war, after negotiating with the Americans, he stepped down as President of Republika Srpska (RS) and managed to escape disappearing for years, until his arrest in 2008, 13 years after the war.

The ICTY found Karadžić guilty of genocide, persecution, extermination, murder, violation of laws or customs of war, deportations, inhumane acts, unlawful attacks on civilians and hostage-taking. This chapter analyzes Karadžić and the trial against him using the same structure as in the previous chapter.

2. Karadžić’s way to power and personality

Karadžić was head of the Serbian Green Party, but in 1990 he succeeded very quickly to establish the Serbian Democratic Party of Bosnia-Herzegovina (SDS), as a response to the nationalist tendencies from the Croatian side, becoming its head.⁹⁷ His vision of a “Greater Serbia” and his intentions of defending Serb territory became soon evident. Karadžić had supported Yugoslavia, which had offered Serbia a dominant position. With its dissolution, he feared that Bosnian Serbs would lose their influence in an independent BiH. For this reason he threatened that Bosnian Serbs would secede, if BiH would become independent.⁹⁸ In fact, the Serb population was opposed to independence as they would become a minority within the state (in 1991, in BiH there were 44% Muslims, 31% Serbs, 17% Croats and 5% “others”).⁹⁹ In 1992, Karadžić was elected President of RS which controlled over 70% of BiH territory.¹⁰⁰ On January 9th 1992, representatives of political and national institutions of Serb people in BiH, gathered in a Bosnian Serb “National Assembly”, adopted the Declaration of the proclamation of Republika Srpska.

For understanding why Karadžić and RS started the war, it is necessary to consider his controversial relation with Alija Izetbegović. In fact, addressing the Bosnian Assembly on October 14-15 1991 (Slovenia and Croatia had just seceded) offering the choice between a referendum or new elections, Izetbegović stated: “(...) that is not a situation

⁹⁷ See Robert M. Kaplan, „Dr Radovan Karadžić: Psychiatrist, Poet, Soccer Coach and Genocidal Leader”, *Australasian Psychiatry* 11, no. 1 (2003): 76 and BBC, “Radovan Karadžić: Former Bosnian Serb leader”, 2016, <https://www.bbc.com/news/world-europe-19960285> (consulted on 28.4.2020).

⁹⁸ *Ibid.*, 76.

⁹⁹ R.Craig Nation, *War in the Balkans, 1991-2002* (Place of publication not identified: Books Llc, 2012), 149.

¹⁰⁰ Kaplan, *op.cit.*, 76.

we created. That is a situation created by the disintegration of Yugoslavia. No matter who was in charge, he would find himself in completely the same situation.”¹⁰¹

Karadžić replied that this declaration represented a “road to hell” on which “the Muslim nation may disappear altogether”.¹⁰² Later, this has been taken as clear genocidal intent (which is debatable, but in the judgement the Chamber concluded that the threats to Bosnian Muslims were evident).¹⁰³ Izetbegović replied by criticizing both, message and tone of the statement as exactly the reason why some people did not want to stay in Yugoslavia.¹⁰⁴ While it may be that Karadžić already had in mind the outbreak of the war and genocidal intent, it is also true that the Bosniaks, with their rigid position and no intent of an agreement, gave the Bosnian Serbs an excuse to (over)react.

But Karadžić’s greatest fear was the consequence of the dissolution of Yugoslavia for Serbs:¹⁰⁵ “Under no circumstances will Serbs accept to live in several states, and to become a minority outside Serbia. The Serbs will remain in one state, “Federative Yugoslavia”, and shall not be separated from Serbia”.¹⁰⁶ In his defense, Karadžić repeatedly argued that he had warned Izetbegović about the danger of separation from Yugoslavia; rather he wanted “unified Serbhood”.¹⁰⁷

Karadžić is described in different ways: psychiatrist, poet, politician and war criminal,¹⁰⁸ and people have contrasting memories of him, e.g. the former Sarajevo soccer star Predrag Pašić remembers him as the team’s psychologist, others remember him as a genius. Interestingly, Pašić distinguishes between during and before the war,¹⁰⁹ which has also been supported by poet Mehmedinović, who stated that Karadžić applied psychological tactic “mind-bending” which included total hatred of Bosniaks.¹¹⁰ Karadžić’s psychiatrist colleague observed he had “a thousand different faces” and “does not live in reality”.¹¹¹ In the past, Karadžić’s nationalistic attitude was hidden, as stressed by Marko Vešović, a close friend.¹¹² Other people argued that he was violent and did never refrain from using a vocabulary that denoted certain brutal ideas.¹¹³

¹⁰¹ Steven L Burg, and Paul Shoup, *The war in Bosnia-Herzegovina: ethnic conflict and international intervention* (Armonk, N.Y.: Sharpe, 1998), 77.

¹⁰² *Ibid.*, 151. But for the whole text of the declaration see Sarajevo-based *Oslobodjenje*, 15 October 1991, 1. And Laura Silber and Allan Little, *Yugoslavia: Death of a Nation* (London: Penguin, BBC Books, 1995).

¹⁰³ Burg, *op.cit.*, 78-79 and Prosecutor v. *Radovan Karadžić*, IT-95-5/18, volume II of IV, 24 march 2016, 1043.

¹⁰⁴ *Ibid.*

¹⁰⁵ D1280 (Nikola Koljević and Radovan Karadžić’s speeches at the All-Serb Council in Banja Luka, 13 October 1990), 5–6.

¹⁰⁶ P2539 (Radovan Karadžić’s interview in NIN, 9 November 1990), 6–8.

¹⁰⁷ P2556 (Intercept of conversation between Radovan Karadžić and Nenad Stevandić, 11 January 1992, 3.

¹⁰⁸ Marina Martinovic, “Radovan Karadžić - From poet to war criminal”, *Deutsche Welle*, 2016, <https://www.dw.com/en/radovan-karadzic-from-poet-to-war-criminal/a-19137363> (consulted on 16.5.2020).

¹⁰⁹ Adam Tanner, Daria Sito-Sucic, “In Sarajevo, contrasting memories of neighbor Karadžić”, *Reuters*, 2008, <https://www.reuters.com/article/us-bosnia-sarajevo-karadzic/in-sarajevo-contrasting-memories-of-neighbor-karadzic-idUSL721899820080808> (consulted on 16.5.2020).

¹¹⁰ Semezdin Mehmedinović, *Sarajevo blues* (Sarajevo: Civitas 2004), 20.

¹¹¹ AFP, “Bosnian Serb leader Karadžić: war criminal with '1,000 faces“, *Bangkok Post*, 2019, <https://www.bangkokpost.com/world/1648108/bosnian-serb-leader-karadzic-war-criminal-with-1-000-faces> (consulted on 16.5.2020).

¹¹² Stevan M. Weine, *When history is a nightmare: lives and memories of ethnic cleansing in Bosnia-Herzegovina* (New Jersey: Rutgers University Press, 1999), 110.

¹¹³ Weine, *op.cit.*, 75.

At the trial, Karadžić paid attention to details and tried to be as elegant and distinct as possible.¹¹⁴ “Karadžić had a capacity for instant transformation, he was a Chameleon”.¹¹⁵ He seemed capable of fitting in every role in order to be successful, similar to Göring. In fact, the metaphor fits for both: “Chameleon was precisely the word that interrogator Joseph Maier used to describe Hermann Goering”.¹¹⁶

No one had expected Karadžić to become a war criminal or to start ethnic cleansing. As Stevan M. Weine states, “many Sarajevans considered him one of their own”.¹¹⁷

3. Karadžić on trial: cross-examination and defense

The Trial Chamber III, dealing with the whole trial, consisted of Presiding Judge O-Gon Kwon, Judge Howard Morrison, Judge Melville Baird and Judge Flavia Lattanzi as Reserve Judge.

Karadžić attracted media attention. From the beginning of the trial, Karadžić stated that he considered both his arrest and transfer unlawful.¹¹⁸ He tried to portray an image of the prosecution as “enemy of the Serb people” in order to be viewed as a martyr.¹¹⁹ In his defense, he adopted a dual strategy: he was well aware that his trial was a unique opportunity for rallying support in the Bosnian Serb population (telling them his own version of history), and he criticized the role of NATO (as connected to the ICTY).

Karadžić also referred to a never explicitly confirmed agreement with the U.S. government in which Richard Holbrooke had promised him exemption from indictment.¹²⁰ This argument was repeated many times. While Holbrooke denied that he ever made such a promise, 22 witnesses said the contrary, but the ICTY decided not to hear them arguing that the agreement would not be relevant in any case, as Holbrooke could not speak on behalf of the UN.¹²¹ Karadžić insisted and tried to depict the Court as a kind of agent for NATO.¹²²

Karadžić proclaimed himself “not guilty” of all 11 charges,¹²³ in particular as he had only acted to defend Bosnian Serbs and without a plan to ethnically cleanse Eastern Bosnia. It took several months for the trial to start: first procedural details needed to be clarified, from the accused and the prosecution’s side.¹²⁴

From the beginning Karadžić asked to represent himself. One important (and terrible) consequence was that witnesses, many of them victims, were being cross-examined directly by the perpetrator. Psychologically speaking, this had a terrible impact.

¹¹⁴ Slavenka Drakulic, “The monster in the mirror”, *The Guardian*, 2 August 2008.

¹¹⁵ Robert J. Donia, *Radovan Karadžić, architect of genocide; Bosnian Serb nationalism and the origins of mass atrocity* (Cambridge UP, 2014), 6.

¹¹⁶ Stern, Jessica, *My war criminal: personal encounters with an architect of genocide* (Harper Collins: New York, 2020), 126.

¹¹⁷ Weine, *op.cit.*, 106.

¹¹⁸ *Ibid.*, 49.

¹¹⁹ John Heller, *The Oxford handbook of International criminal law* (Oxford University Press: 2020), 683.

¹²⁰ The Prosecutor vs Radovan Karadžić (Trial Transcript) IT-95-5/18 (3 March 2009), 133, lines 3-19.

¹²¹ See the account of one of Karadžić’s legal counsellors: Peter Robinson, “The Karadžić Case: Fair Trial or Show Trial?”, *E-International Relations*, 2012, <https://www.e-ir.info/2012/03/01/the-karadzic-case-fair-trial-or-show-trial/> (consulted on 16.5.2020).

¹²² The Prosecutor vs Radovan Karadžić, *op.cit.*, (29 August 2008), 30, lines 17-22.

¹²³ The Prosecutor vs Radovan Karadžić, *op.cit.*, (3 March 2009), 134, lines 4-9.

¹²⁴ Nick Hawton, *The quest for Radovan Karadžić* (London: Hutchinson, 2009), 209.

Politically speaking, it allowed him to shape the trial and his version of the facts in a more comprehensive way. His version of the facts was simple: the war resulted a direct consequence of Izetbegović's successful attempt to secede from Yugoslavia. He argued that Bosnian Serbs only defended themselves as they neither wanted to be a national minority in an independent BiH, nor to be separated from Serbia. According to him, "it was Izetbegović who was preparing for civil war".¹²⁵ This remained his main argument during the whole trial.

He moved from being the accused and a subject of the trial to its main actor. But this contrasted with the strategy of denial that he adopted in certain moments: when there was talk about him being the leader, he declared – contradicting himself – that it was never his ambition to cover this role.¹²⁶ This is the double strategy also used by Göring: on one hand Karadžić wanted to take complete responsibility as the RS political leader and of Bosnian Serbs (he was no simple bureaucrat), on the other, he denied to have given orders for crimes.

In 2008, his arrest caused different reactions: in RS, Milorad Dodik stated that Karadžić alone was responsible for the war crimes, not Republika Srpska; there was no collective guilt.¹²⁷ A survey conducted in 2008 by Strategic Marketing on behalf of the National Council for Cooperation with the Hague Tribunal, shows that less than half of Serbians (42%) supported the arrest and extradition of Karadžić to the Hague, while 54% opposed it; roughly a third of the Serbian population (concrete data is not available for RS) defined Karadžić as a national hero, and 40% saw him as neither a national hero nor a war criminal.¹²⁸ Many in the population wanted his release excusing him with phrases like "he only defended us", "he is one of us", and "a political court". In 2009 as well as in 2019 this shows that polarization of discourses has impacted people.¹²⁹ Even in 2019, Karadžić is still celebrated as a hero by many Serbs.¹³⁰

"Until I am declared to be an innocent and free man, any socializing outside of the public eye could only be to my prejudice, I could not benefit from it at all. I think that the public is a very important element of my defense, and I'm convinced that I may not deviate from that".¹³¹ In interviews he made his case bigger than it was and complained about the lack of time for reading the documents before the trial and the lack of information needed for preparation.¹³² The ICTY had no other choice but to allow him to give interviews for the sake of its own legitimacy, which also depended on how

¹²⁵ P5881 (Intercept of conversation between Radovan Karadžić and Slobodan Milošević, 31 July 1991), 5.

¹²⁶ Hawton, *op.cit.*, 216.

¹²⁷ CIA, Bosnia - Reactions To Arrest Of ICTY Fugitive Radovan Karadžić, 2008, https://wikileaks.org/plusd/cables/08SARAJEVO1180_a.html (consulted on 28.4.2020).

¹²⁸ See Zala Volčič, and Karmen Erjavec, "Nostalgia for Greater Serbia: media coverage of Radovan Karadžić's arrest", *Journal of Global Mass Communication* 2, no. 1 (2009): 26; original source: Pola-pola oko

izručenja, 2008, https://www.b92.net/info/vesti/index.php?yyyy=2008&mm=07&dd=25&nav_id=310152 (consulted on 28.4.2020).

¹²⁹ Alfredo Sasso, "Karadžić, life imprisonment for the "good neighbor"", *Osservatorio Balcani e Caucaso Transeuropa*, 2019, <https://www.balcanicaucaso.org/eng/Areas/Bosnia-Herzegovina/Karadzic-life-imprisonment-for-the-good-neighbour-193542> (consulted on 28.4.2020).

¹³⁰ France 24, "Karadžić trial to close, but Bosnia's divides remain open", 2019, <https://www.france24.com/en/20190319-karadzic-trial-close-but-bosnias-divides-remain-open> (consulted on 28.4.2020).

¹³¹ The Prosecutor vs Radovan Karadžić, *op.cit.*, (24th March 2009), 4, lines 5-11.

¹³² Denis Dzidic, *History overshadowed by Trivia II: Interview with Radovan Karadžić, Vehicle for Establishment of Truth* (Birn: Sarajevo, 2011), 53.

Karadžić's supporters accepted the trial or not and if they also viewed it as fair.¹³³ Karadžić himself framed it like this: "if I can have a fair trial and bring out the truth, it will be a step towards reconciliation; whereas the prosecution's lies and false indictments were a threat to peace."¹³⁴

Although for some authors Mladić had been more powerful,¹³⁵ evidence (oral testimonies, associated exhibits, excerpts of conversations) produced by the War Crime Commission and later by the ICTY proves the contrary, even regarding the military. It shows that Karadžić was in control and in regular contact with municipal authorities; intercepted conversations prove his concrete orders, e.g. regarding the siege of Sarajevo and related regularly meetings with Mladić.¹³⁶ This again contradicts his own statements according to which he had not been influential.

a) *The Sarajevo Siege*

For more than three years, Sarajevo had been under siege by the Sarajevo-Romanija Corps (SRK), part of the Bosnian Serb Army (VRS); 13,352 people died, 5,434 of them civilians.¹³⁷ For the defense, however, the Sarajevo attacks would have not existed without Bosniaks' threats of "unilateral, unlawful and violent secession".¹³⁸ Karadžić stated that they were responsible for not trying to reach any kind of political agreement.¹³⁹ The Court judged that the war had been started by both Bosniaks and Serbs, but the judges ruled that the SRK targeted civilians expressly and randomly.¹⁴⁰ In fact, the high number of civilian deaths (on the Bosniak side) cannot be explained by equal responsibility of both sides. With regard to Karadžić's argument that Bosniaks had also killed own civilians in order to provoke the international community to intervene,¹⁴¹ the Court underlined that evidence clearly showed that the related numbers of victims were not comparable.¹⁴² Karadžić was found guilty for "murder, unlawful attacks on civilians and terror, as violations of the laws or customs of war and for murder as a crime against humanity".¹⁴³

b) *Genocide and crimes against humanity*

With regard to the two counts of genocide and crimes against humanity, the accused again used his double strategy. Concerning Srebrenica, the ICTY found that Karadžić had clear genocidal intent, but the prosecution did not have concrete evidence for genocide in

¹³³ Sluiter, *op.cit.*, 47.

¹³⁴ The Prosecutor vs *Radovan Karadžić*, *op.cit.*, (1 March 2010), 840, lines 19-24.

¹³⁵ Brendan O'Shea, *The modern Yugoslav conflict 1991-1995: perception, deception and dishonesty* (London: Routledge, 2012), 209-210.

¹³⁶ P1478 (Ratko Mladić's notebook, 27 May–31 July 1992), 36, 38.

¹³⁷ Eleftheria Christou, "What Caused the Siege of Sarajevo and Why Did It Last so Long?", *HistoryHit*, 2019, <https://www.historyhit.com/the-longest-siege-in-modern-history-how-did-the-siege-of-sarajevo-unfold/> (consulted on 9.5.2020).

¹³⁸ The International Criminal Tribunal for Former Yugoslavia, Prosecutor vs Karadžić, Defence Final Trial Brief, IT-95-5/18-T 91002, September 2014, 493, 1815.

¹³⁹ Marcus Papadopolous, 2011, "Interview with Radovan Karadžić: The other side to the Bosnian story", serbianna.com, <http://www.karadzic-odbrana.com/intervju/795-interview-with-radovan-karadzic-the-other-side-to-the-bosnian-story.html?start=2> (consulted on 16.5.2020).

¹⁴⁰ Prosecutor v. *Radovan Karadžić*, IT-95-5/18, volume II and III, 24 March 2016, 1890-1891 and 2009-2010.

¹⁴¹ As in the cases of the Sarajevo Markale shellings, on 5 February 1994 and on 25 August 1995, see Prosecutor v. *Radovan Karadžić*, IT-95-5/18, volume II and III, 1698.

¹⁴² *Ibid.*, 1821-1828.

¹⁴³ *Ibid.*, volume I, 24 March 2016, 2009.

other places in Eastern Bosnia; the assumption was based on conversations between the accused and other important actors.¹⁴⁴ Those conversations showed that Karadžić had actively participated in the goal of eliminating Bosnian Muslims from Srebrenica. This is also shown by the conversation between Karadžić and Miroslav Deronjić, from which it was clear that during the massacre Karadžić knew about it and did nothing to stop it.¹⁴⁵ Directive 7 (which bears his signature) ordered the Drina Corps to create a situation which would make it impossible for inhabitants of Srebrenica to feel secure and to survive, showing that Karadžić knew about the genocide and took part in ordering it.¹⁴⁶

Crimes against humanity in general were defined in Karadžić's case, as "overarching JCE" in the Judgement (i.e. a so-called Joint Criminal Enterprise), regarding the "removal of Bosnian Muslims and Croats from Serb-claimed territory in municipalities throughout BiH between October 1991 and 30 November 1995"¹⁴⁷. The judges found that Karadžić could have prevented murder, extermination and persecution.

In particular "the Accused bears individual criminal responsibility (...) for persecution, extermination, murder, deportation and forcible transfer as crimes against humanity, and murder, a violation of the laws or customs of war." But the Chamber also ruled that this could not be considered as genocide in Eastern Bosnia and Karadžić was not held responsible for genocide in those areas.¹⁴⁸

4. In sum: late clarity

Karadžić was well aware of his opportunity: "this trial is my shift to the front lines"¹⁴⁹. He sought to substitute the prosecution's version of the events with a distorted narrative, representing Serbs as victims of war who had only reacted to Bosniaks' threats. This was contradicted by the evidence. Karadžić did not hide behind the military's responsibility: for him the Bosnian Serb population needed to be defended, by both military and civilian leadership.¹⁵⁰

In 2016, Karadžić appealed the verdict (forty years imprisonment) arguing that the trial had not been fair. But the Appeals Chamber increased his sentence to life imprisonment.¹⁵¹ Many civic and Bosniak representatives expressed satisfaction,¹⁵² including the association "Mothers of Srebrenica".¹⁵³ But many were disappointed because of his acquittal related to genocide in Eastern Bosnia. While the verdict

¹⁴⁴ Marko Milanovic, "ICTY Convicts Radovan Karadžić", *Ejil: Talk!*, 2016, <http://www.ejiltalk.org/icty-convicts-radovan-Karadzic/> (consulted on 16.5.2020).

¹⁴⁵ Milanovic, *op.cit.*, and Milena Sterio, "The Karadžić Genocide Conviction: Inferences, Intent, and the Necessity to redefine Genocide", *Emory International Law Review* 31, no. 2 (2017): 272.

¹⁴⁶ Prosecutor v. *Radovan Karadžić*, *op.cit.* 2049.

¹⁴⁷ *Ibid.*, 224.

¹⁴⁸ Prosecutor v. *Radovan Karadžić*, *op.cit.*, 1014-1043.

¹⁴⁹ Papadopolous, *op.cit.*

¹⁵⁰ Prosecutor v. *Radovan Karadžić*, IT-95-5/18, volume II of IV, 24 march 2016, 1299-1301.

¹⁵¹ Julian Borger, „Radovan Karadžić war crimes sentence increased to life in prison“, *The Guardian*, 20 March 2019, <https://www.theguardian.com/law/2019/mar/20/radovan-karadzic-faces-final-verdict-in-bosnia-war-crimes-case> (consulted on 16.5.2020).

¹⁵² Sasso, *op.cit.*

¹⁵³ Ansa, "Mothers of Srebrenica hail Karadžić's life term for genocide", 2019, http://www.ansamed.info/ansamed/en/news/sections/generalnews/2019/03/20/mothers-of-srebrenica-hail-karadzics-life-term-for-genocide_ed4e025d-1f1d-47e4-8559-a992fbab606e.html, (consulted on 28.4.2020).

recognized the gravity of the atrocities committed, the delay of justice raises the question whether victims can be satisfied, but also whether such a late verdict can still provide a useful base for reconciliation.

Chapter 4.

The Nuremberg Trial in West Germany's Public Perception

1. From judicial elaboration to collective memory? An overview

The Nuremberg Trial dealt with prominent leading figures, but lower level war criminals were tried in different occupation zones by the Allies. The IMT set an example, in West Germany, but also for the ICTY and for establishing the International Criminal Court in 1998.¹⁵⁴ Trying the main criminals, in particular Göring, showed that no one can escape own actions.

The structure of the chapter follows the phases of “*Vergangenheitsbewältigung*”: from surrender in 1945, to the domestic trials in the 1960's-70's and a collective guilt approach and the 1968 movement. After the *Historikerstreit* in the 1980's, reunification raised the challenge of uniting two different parts of Germany. In fact, the change of perspectives over time needs to be considered. The internal division of Germany led to different narratives about the past. The West tended to “forget” about the past and start over, whereas the East did not held itself accountable attributing all responsibility for the Third Reich to the West.

2. Post-1945: an attempt to reconstruct German identity in a divided country

1945 is the “*Stunde Null*”, the German expression for starting from zero.¹⁵⁵ Many foreign journalists wondered why the population did not feel guilt¹⁵⁶: Germans were expected to accept their own responsibility immediately after the war, but it was impossible for them, psychologically; instead they engaged in the reconstruction of their country. “One of the problems was to find experiences which are able to restore the suggestion of community.”¹⁵⁷ After 1945 there was no community anymore. Building a collective memory was unthinkable; but not everyone had the same response to the overall situation and silence was not the only answer: some called the defeat “the collapse,” and some became interested in building up their credit; some had suspicions about their neighbors and voiced them, and others actively destroyed their party records and wanted to conceal their involvement.

¹⁵⁴ Jan Lemnitzer, „Nuremberg war crimes trials 70 years on: a complex legacy“, *The Conversation*, 2015, <https://theconversation.com/nuremberg-war-crimes-trials-70-years-on-a-complex-legacy-50503> (consulted on 16.5.2020).

¹⁵⁵ Sebastian Conrad, “Entangled Memories: Versions of the Past in Germany and Japan, 1945-2001”, *Journal of Contemporary History* 38, no. 1 (2003): 85.

¹⁵⁶ Some foreign correspondents of the time were: John H. Herz, Kendall Foss and Victor Bernstein. On the general perception of the concept of collective guilt see Martha Gellhorn, “Is there a new Germany?”, *The Atlantic Online*, 1964 and Larry Hartenian. “The Role of Media in Democratizing Germany: United States Occupation Policy 1945-1949”, *Central European History* 20, no. 2 (1987): 149; or Robert Moeller, *War Stories: The Search for a Usable Past* (Berkeley: University of California Press, 2001), 5.

¹⁵⁷ Milena Veenis, “Chapter 2 Germany 1945: A Country in Ruins”, in *Material Fantasies: Expectations of the Western Consumer World among East Germans* (Amsterdam: Amsterdam University Press, 2012), 58-59.

The division in occupation zones negatively affected the creation of a common version of the past: memories of war became linked to a context of a non-nation state.¹⁵⁸ Allies showed photos of concentration camps as attempts of reeducating the Germans.¹⁵⁹

The Federal Republic of Germany (FRG), founded in May 1949, gave Western powers a new ally: it had a government formed by people that had resisted the Nazis.¹⁶⁰ From West German perspective, the victors stopped occupying and the German government could act independently, with support of the Allies.¹⁶¹ In West Germany coming to terms with the past remained difficult: for Chancellor Konrad Adenauer reconstructing a country could not be done based upon a thesis of “collective guilt”.¹⁶²

The perception of the trials results from the analysis of some key documents (1940’s and 1950’s): they reveal a German society unable to deal with its past immediately.¹⁶³ There was almost no public discussion on the Third Reich in the immediate post-war period. Newspaper articles about the trials existed, but public debate on issues related to the war did not occur (families did not speak about what members had done). Public perception of the Nuremberg Tribunal has been positive at the beginning, because it tried high-ranking criminals (Prosecutor Jackson received many letters showing that Germans did not have any compassion for Göring and the other defendants).¹⁶⁴ But people also thought that with the Trials the “denazification process” had been concluded.

Only later (in the 1960’s) domestic prosecutors followed a different strategy vis-à-vis war criminals: first the big fish, than the smaller fish; but everyone who was responsible needed to be punished.

Arno Hamburger, one of the last living eyewitnesses of the IMT, describes the overall perception in 1946 as “indifferent”, for several reasons: 90% of Nuremberg had been destroyed, thus people concentrated on material rather than on moral reconstruction. Many ordinary Germans did not understand the need for trials, or some acquittals.¹⁶⁵

The population needed evidence to accept guilt and responsibility: the Trials have been an instrument to help the population to confront itself with the truth.¹⁶⁶ However, “negative remembrance” (*negatives Erinnern*) was difficult and controversial as it raised

¹⁵⁸ Conrad, *op.cit.*, 87.

¹⁵⁹ Jeffrey K Olick and Daniel Levy, “Collective Memory and Cultural Constraint: Holocaust Myth and Rationality in German Politics”, *American Sociological Review* 62, no. 6 (1997), 925.

¹⁶⁰ *Ibid.*

¹⁶¹ Adenauer, Konrad. Chancellor of the Federal Republic, *Speech at a Reception Given by the Allied High Commissioners (September 21, 1949)*, in United States Department of State, Germany 1947-1949: The Story in Documents. Washington, DC: U.S. Government Printing Office 1950, first edition, 417-19.

¹⁶² Olick, *op.cit.*, 928.

¹⁶³ Alina Utrata, “German response to the Nuremberg trials”, *Stanford University*, https://www.academia.edu/26348604/German_Response_to_the_Nuremberg_Trials, 4.

¹⁶⁴ Harald Wiederschein, “Alliierte richten über Nazi-Verbrecher 139 Zeugen und 12 Todesurteile: Die Nürnberger Prozesse waren beispiellos“, *Focus Online*, 2015, https://www.focus.de/wissen/mensch/geschichte/nationalsozialismus/alliierte-richten-ueber-nazi-verbrecher-nuernberger-prozesse-so-richteten-die-alliierten-ueber-die-nazi-verbrecher_id_5094554.html (consulted on 5.5.2020).

¹⁶⁵ Arno Hamburger, “Ich fühlte keinen Hass, nur Ekel“, *Fokus Online*, 2006, <https://www.stern.de/politik/deutschland/nuernberger-prozesse--ich-fuehlte-keinen-hass--nur-ekel--3329646.html> (consulted on 5.5.2020).

¹⁶⁶ Aaron Fichtelberg, “Fair Trials and International Courts: A Critical Evaluation of the Nuremberg Legacy”, *Criminal Justice Ethics* 28, no. 1 (2009): 9.

questions about who needed to be remembered and how.¹⁶⁷ The concept shifts away from one's own suffering to the crimes committed and the suffering of others.¹⁶⁸ This historical approach was called "*Zeitgeschichte*". Only those who had lived through the period of the Third Reich (German victims, bystanders and perpetrators, with their different experiences) could understand what had happened and interpret it. The US vision of German past was lacking something.¹⁶⁹

Under the motto "no source of intelligence is more fruitful than the statement made by Germans themselves", a series of CIA documents contain information about Germans' thoughts at the end of the war.¹⁷⁰

Those conversations, collected through interrogations of German prisoners of war – of all ranks, from officer to deserter, and even a few students. The Nazi War Crimes Disclosure Act (NWCDA, 1998) declassified reports with operational files of the Office of Strategic Services (OSS). Some showed regret and feared consequences; others still clung to their "mission" of a pure race and believed in their action. But some admitted that they had carried on because of fear (of Bolshevism and of retaliation) alongside the excuse of "I was only following orders".

The Office of Military Government for Germany (OMGUS) established in October 1945 immediately started to conduct systematic surveys on different topics such as the Nuremberg Trials,¹⁷¹ in the US occupation zone (Bavaria, Hesse, Baden-Württemberg and Bremen and West-Berlin). A specific Opinion Survey Section used the municipal food ration registers for random samples. The results are summarized in reports, which do not include the original questions or options for answers making their evaluation difficult.¹⁷² The first eight surveys (10-12/1945) focused on 39-45 communities (between 331 and 446 people answered). In December 1945 almost 1.000 persons in 80 communities took part; in 1946 it increased to 1.500 persons in 141 communities, and in 1947 it reached 3.000 persons in 241 communities.¹⁷³ The surveys intended to discover "to what extent Germans were blind adherents of National Socialism".¹⁷⁴ Seven surveys focused on the fairness of the trials, which 79% of respondents considered as fair.¹⁷⁵ This is not surprising, most Germans tried to hide their own responsibility and looked for the "true order-givers"; this can be seen with regard to Göring's trial: as main leader, Göring had participated in planning the aggression and in conducting the war; during the war he was extremely popular.

¹⁶⁷ Rainer Schulze, "Verbrechen erinnern: Die Auseinandersetzung mit Holocaust und Völkermord" by Volkhard Knigge, *Journal of Contemporary History* 39, no. 4, Special Issue: Collective Memory (2004): 640.

¹⁶⁸ Schulze, *op.cit.*

¹⁶⁹ Conrad, *op.cit.*, 91.

¹⁷⁰ Central Intelligence Agency, *What the Germans are saying*, Nazi War Crimes Disclosure Act, 1945, https://www.cia.gov/library/readingroom/docs/WHAT%20THE%20GERMANS%20ARE%20SAYING_0001.pdf, 2.

¹⁷¹ Krösche Heike, Thomas Etzemüller, and Dietmar von Reeken, „Zwischen Vergangenheitsdiskurs und Wiederaufbau die Reaktion der deutschen Öffentlichkeit auf den Nürnberger Prozess gegen die Hauptkriegsverbrecher 1945/46, den Ulmer Einsatzgruppenprozess und den Sommer-Prozess 1958“, *Univ., Diss. Oldenburg*, 2009, 24.

¹⁷² *Ibid.*, 25.

¹⁷³ Anna Merritt, Richard Merritt. "Public Opinion in Occupied Germany – The OMGUS surveys 1945-1949", *University of Illinois Press*, 1970, <https://libsysdigi.library.uiuc.edu/OCA/Books2009-07/publicopinionino00merr/publicopinionino00merr.pdf>, 5, (consulted on 17.5.2020).

¹⁷⁴ *Ibid.*, 56.

¹⁷⁵ Merritt, *op.cit.*, 61.

Almost half of the participants of one of the OMGUS surveys (42%) did not answer the question “what impression did Göring’s defense make on you?”, while almost the same number of respondents (40%) had a negative image. 12% of those who held Göring’s statements during his defense for negative stated also that he was lying. 18% of the interviewed had a positive image of Göring’s defense, 12% thought that he recognized and accepted his responsibility. Nonetheless, just 3% of those who saw Göring’s defense as positive stated that it was successful.¹⁷⁶

The surveys show the (in)capacity of the Germans to overcome the past. In March 1946, 75% Germans believed that all the accused at the Nuremberg trial were guilty, in August 1946, two months before the verdicts, this decreased to only 52%.¹⁷⁷ Germans were angry with Nazi leadership and believed that the Nazi leaders were guilty of the crimes committed.¹⁷⁸ 55% of Germans considered the verdicts as just, for 21% the verdicts were not hard enough and for 9% they were too hard.¹⁷⁹ 92% did not accept the concept of collective war guilt.¹⁸⁰

The Nuremberg Trial helped to proceed towards reconciliation within Germany in particular through the discovery of the crimes. Different surveys conducted in the 1960’s demonstrate that more than half of the interviewees discovered about the Holocaust only after World War II.¹⁸¹ The Nuremberg Trial has been fundamental: German people could not deny crimes anymore – the amount of evidence was there and undeniable. It is true that the IMT did not have a big impact until decades later, nonetheless it had the effect of starting what would become known as successful *Vergangenheitsbewältigung*.¹⁸²

3. 1968 and its impact on the development of a collective guilt

The influence of ex Nazis in West German society in the 1960’s was big and not conscious in the population. To the question: „would you state that today in West Germany many influential Nazis play a political role again“, in January 1960, 24% agreed with the statement and 26% did not.¹⁸³ The population did not want to recognize the extent to which ex Nazis were still involved in influential positions. The Auschwitz Trials in Frankfurt followed suit at domestic level and for ‘ordinary’ Nazi executioners, despite the German government not showing much interest in prosecution of former Nazis (in 1957, still 77% of the Justice ministry’s senior officials).¹⁸⁴

Radical change occurred in the 1960’s: Fritz Bauer, the general prosecutor of Hesse, dedicated his life to the prosecution of Nazi war criminals. Without much support from politicians and judges, he contributed to the capture of Adolf Eichmann (then tried in Israel) and to arranging the Auschwitz Trials in Frankfurt with 22 indictments under

¹⁷⁶ Report No. 16 of 7th August 1946. IfZ, OMGUS ICD Opinion Surveys Dk. 110.001 in Krösche, *op.cit.*, 185.

¹⁷⁷ Merritt, *op.cit.*, 60-61.

¹⁷⁸ Utrata, *op.cit.*, 10.

¹⁷⁹ Merritt, *op.cit.*, 61.

¹⁸⁰ *Ibid.*, 148.

¹⁸¹ Krösche, *op.cit.*, 183.

¹⁸² Susanne Karstedt, *Legal institutions and collective memories* (Oxford: Hart Publishing, 2009), 28.

¹⁸³ Noelle, Elisabeth und Erich Peter Neumann. *Jahrbuch der öffentlichen Meinung 1947-1955, I*, (Allensbach: Verlag für Demoskopie, 1956), 222.

¹⁸⁴ AFP, “Most post-WWII Justice Officials were ex-Nazis”, *Business Insider*, 2016, <https://www.businessinsider.com/afp-most-post-wwii-german-justice-officials-were-ex-nazis-study-2016-10?IR=T> (consulted on 16.5.2020).

German criminal law: six defendants were given life sentences, the others were released. While showing the weakness of German criminal justice and criminal law, it also created an important record of witness testimony. Trying also lower-level offenders, the legal definition of the crimes did not fit with (mass) killings without specific orders, along with the difficulty of prosecuting and trials decades after the crimes had been committed.¹⁸⁵

People born in 1945 and grown up after WWII, are known as “generation of 1968”.¹⁸⁶ At the end of the 1960’s, this generation started to ask parents about the crimes committed and began to investigate within their families. This ‘rebellion’ against the establishment was possible as the younger generation claimed moral distance from the older one.¹⁸⁷

1960-1980 is also Germany’s “long path towards the West”. German history was now interpreted as a “*Sonderweg*” (original path) in the attempt of connecting German and European history. This was supposed to bring some normality by interpreting German history differently, using “distance, difference and deviance”.¹⁸⁸ There was a shift towards “Enlightenment”, the community discussing its past as the start of “*Vergangenheitsbewältigung*”.¹⁸⁹ Germans could not consider themselves as victims anymore. The Holocaust became associated with the concept of German collective guilt;¹⁹⁰ this new approach in constructing memory has been called “*Kollektivschuldthese*”. The television screening of the US series “Holocaust” (1977) came as a shock to a mass audience triggering discussion and confrontation with the past. The debate was now in full swing.¹⁹¹

4. The *Historikerstreit* in the mid-1980’s

The controversy between historians (*Historikerstreit*) started in 1986 as a debate on academic level, launched by an article of Jürgen Habermas (“*Eine Art Schadensabwicklung*”, i.e. a kind of liquidation of damages, published in *Die Zeit*) in reaction to a speech by Ernst Nolte (“A speech which could be written but not be delivered”, published in *Frankfurter Allgemeine Zeitung*).¹⁹² The debate caught public attention and caused fierce controversies. Nolte had argued that Auschwitz was as bad as Turkish Armenian genocide or Stalin's gulags, rejecting the thesis of the Holocaust being at the center of the Nazi past.¹⁹³ Nolte’s argument was part of efforts of the German government to create a post-war West German identity, minimizing the Nazi past and the idea of collective guilt. Chancellor Helmut Kohl once referred to “the mercy of being born after” (*Gnade der späten Geburt*)¹⁹⁴ which exempted the new generations from guilt or responsibility. The main aim for Nolte and the conservative position was not take the

¹⁸⁵ Jakub Gortat, “A Case of Successful Transitional Justice: Fritz Bauer and his Late Recognition in the Federal Republic of Germany”, *Polish Political Science Yearbook* 46, no. 2 (2018): 76.

¹⁸⁶ Norbert Frei, „Deutschlands Vergangenheit und Europas Gedächtnis“ in: *Europas Gedächtnis*, edited by Helmut König, Julia Schmidt, Manfred Sicking, Bielefeld: transcript Verlag, 2008, 72.

¹⁸⁷ Olick, *op.cit.*, 929.

¹⁸⁸ Conrad, *op.cit.*, 94.

¹⁸⁹ Frei, *op.cit.*, 75-77.

¹⁹⁰ *Ibid.*, 77.

¹⁹¹ *Ibid.*, 77-78.

¹⁹² Original title: „Eine Rede, die geschrieben, aber nicht mehr gehalten werden konnte“; cited in Stephen Brockmann, “The politics of German history”, *History and Theory*. 29 (2): 1990: 179.

¹⁹³ Olick, *op.cit.*, 932.

¹⁹⁴ Helmut Kohl 24 January 1984 in Yad Vashem, opening a speech in occasion of an official State visit to Israel.

Holocaust for granted or unchallengeable.¹⁹⁵ For Nolte neither was the murder of Jews something exceptional, nor was a comparison impossible between the Holocaust and the murder of nobility and bourgeoisie by the Bolsheviks; Nazism was an answer to the threat of Communism and Bolshevism.¹⁹⁶ Habermas criticized this as revisionism and undermining collective responsibility.¹⁹⁷

Historian Martin Broszat argued that German history needed “normalization”: the history of the Third Reich should include all aspects of society,¹⁹⁸ and identification is not always the right tool to understand the past; for him “historical judgement” is needed and Auschwitz does not always need to be at the center of analysis.¹⁹⁹ By contrast, for Saul Friedländer problems existed in trying to “historicize” the Nazi period: the risk of losing interest in criminal aspects of the regime and the vague definition of historicization would allow historians to excuse the very existence of National-Socialism, which he saw as exceptional phenomenon not to be oversimplified using historical instruments as in other cases. The discussion in an exchange of letters was published in 1988.²⁰⁰

The *Historikerstreit* favoured confrontation with the past; it ended with the speech in 1988, in which President Richard von Weizsäcker supported Habermas’ thesis and arguments.²⁰¹ In the end, Habermas’ position prevailed. The *Historikerstreit* was helpful for the *Vergangenheitsbewältigung* and the Nuremberg Trial began to be considered as first step.

5. Germany in Europe and the development of a new collective memory

Germany’s criminal justice system failed to do its part: out of 170.000 cases, only 6.700 ended with a guilty verdict. The reluctant punishing had a practical dimension: punishing everybody involved would have meant the collapse of the German judicial system.²⁰²

“Fair trials help us to discover the truth”.²⁰³ The Nuremberg Trial has played a role in shaping German consciousness. In November 1946, 40% of respondents in surveys saw them as one of the two most important events since the end of the war. 91% agreed that the trials had “set up an international legal basis for trying those who commit crimes

¹⁹⁵ Olick, *op.cit.*, 933.

¹⁹⁶ Peter Borowsky, Rainer Hering, and Rainer Nicolaysen, *Der Historikerstreit. Wie geht die deutsche Geschichtswissenschaft mit der nationalsozialistischen Vergangenheit um?* (Hamburg: Hamburg University Press, 2005), 70.

¹⁹⁷ Olick, *op.cit.*, 932.

¹⁹⁸ Mary Nolan, “The Historikerstreit and Social History”, *New German Critique* 44, Special Issue on the Historikerstreit (1988): 60.

¹⁹⁹ Cattaruzza Marina, “The historiography of the Shoah – An attempt at a Bibliographical Synthesis”, *Zeitschrift für internationale Diktatur- und Freiheitsforschung: Politische Freiheit – Traditionen in Ost und West* 3, no. 2 (2006): 285–321.

²⁰⁰ Martin Broszat, Saul Friedländer, „Um die Historisierung des Nationalsozialismus“, *Vierteljahrhefte für Zeitgeschichte* 2, no. 36 (1988): 339-372.

²⁰¹ Richard von Weizsäcker, *Ansprache des Bundespräsidenten zur Eröffnung des 37. Historikertages in Bamberg*, Bulletin of the Press and Information Bureau of the Federal Government, #131, 1988, 1185-88, <https://www.bundesregierung.de/breg-de/service/bulletin/nachdenken-ueber-geschichte-ansprache-des-bundespraesidenten-zur-eroeffnung-des-37-historikertages-in-bamberg-806170> (consulted on 17.5.2020).

²⁰² Tobias Buck, “Trial to the last Nazi”- “Processo all’ultimo Nazista”, *Internazionale* 1351, 2020, 36-37.

²⁰³ Fichtelberg, *op.cit.*, 9.

against humanity or against peace.”²⁰⁴ Is the process of memory re-construction in West Germany a process of shared history?²⁰⁵

New ways of dealing with collective guilt paved the way for an attempt of unifying national consciousness (*Volksggeist*).²⁰⁶ “The collapse of the GDR as a point of reference for the FRG’s national identity made a new search for meaning necessary”.²⁰⁷

German national identity is characterized by the peculiar role of history: future German generations will continue to bear a specific legacy, but this burden will also allow a deeper, critical confrontation with the past.²⁰⁸ As a counter-reaction, “many young Germans want to be normal, unburdened by the immense legacies of the national past”.²⁰⁹ The danger of politics coming into play with issues of the past risks becoming a “jeux de mémoire”:²¹⁰ issues of the past can be used to justify political moves in the present. Common memory is nowadays challenged by the extreme right in Thuringia and Saxony who claim to be “double victims”: first of the Stasi, then of West German “takeover.” However, their impact is still limited.

²⁰⁴ Merritt, *op.cit.*, 164.

²⁰⁵ Gregor Feindt et al. „Entangled Memory: Toward A Third Wave In Memory Studies”, *History and Theory* 53, no. 1 (2014): 31-32.

²⁰⁶ Mark James Barnard, *The past becomes the present: German national identity and memory since reunification* (Salford: University of Salford, 2008), 159.

²⁰⁷ Sanya Romeike, “Transitional Justice in Germany after 1945 and after 1990”, *Nuremberg International – Nuremberg Principles Academy*, Occasional Paper 1, 2016, 20-22.

²⁰⁸ Barnard, *op.cit.*, p.28

²⁰⁹ Fulbrook, *op.cit.*, 235.

²¹⁰ Mink, *op.cit.*, 134-148.

Chapter 5:

Competing Memories in BiH

1. Trials and collective responsibility.

“Trials establish individual responsibility over collective assignation of guilt; justice dissipates the call for revenge (...) victims are prepared to be reconciled with their erstwhile tormentors, because they know that the latter now paid for his crimes; a fully reliable record is established of atrocities so that future generations can remember.”²¹¹ Criminal trials assume a special role by “fostering the social conditions required for law’s efficacy”.²¹² as individual responsibility needs the reckoning of the society of its own past, as a whole, based on evidence,²¹³ However, despite the evidence produced by the ICTY, neither its work nor the facts made public have been accepted by all in BiH; instead, wide-spread and even official denial of war crimes exist as well as glorification of war criminals.

2. Transitional justice and reconciliation in the context of BiH

Reconciliation between former enemies involves personal grief, collective consciousness, and transitional justice. BiH needs to develop politically to be able to foster reconciliation in a sustainable way.²¹⁴ Reconciliation entails “engaging former enemies in redefining the antagonistic identities and belief systems that motivated past violence”.²¹⁵ Denial should not exist in society and justice should not be disputed.²¹⁶ This is not the case in BiH. Reconciliation needs to be defined. Individual reconciliation means that people of different ethnicities fighting on different sides (friends, neighbors) interact among each other, without intervention by the state. Collective reconciliation brings different groups of society closer. This has to be fostered by actors from below, building institutions. Those two aspects go hand in hand, but this is not a must: as interpersonal reconciliation is more difficult, it shall not be precondition for societal reconciliation; dynamics of those aspects can develop separately.²¹⁷

Several instruments of transitional justice have been established to achieve reconciliation: The *ICTY* and the *UN Residual International Mechanism for Criminal Tribunals in 2010* are examples of international instruments. *Special War Crimes Chambers in Bosnia, Croatia and Serbia* are uneven in the quality of prosecution. *Truth-seeking initiatives* as the BiH Government’s Commission did not achieve results. The

²¹¹ Antonio Cassese, “Reflections on International Criminal Justice”, *Journal of International Criminal Justice* 9, no. 1 (2011): 272. Antonio Cassese was the ICTY’s first President (1993 to 1997).

²¹² Colleen Murphy, “Political Reconciliation and International Criminal Trials”, in: *International Criminal Law and Philosophy*, edited by Larry May and Zachary Hoskins (Cambridge: Cambridge University Press, 2010), 225.

²¹³ Jelena Subotic, “Expanding the Scope of Post-Conflict Justice: Individual, State and Societal Responsibility for Mass Atrocity”, *Journal of Peace Research* 48, no. 2 (2011): 167.

²¹⁴ Roland Kostic, “Transitional justice and reconciliation in Bosnia-Herzegovina: Whose memories, whose justice?”, *Sociologija* 54, no. 4 (2012): 664.

²¹⁵ Nevin T. Aiken, “Learning to Live Together: Transitional Justice and Intergroup Reconciliation in Northern Ireland”, *International Journal of Transitional Justice*, Volume 4, no. 2 (2010): 169.

²¹⁶ Janine Natalya Clark, *International trials and reconciliation: assessing the impact of the International Criminal Tribunal for the former Yugoslavia* (London Routledge Taylor & Francis Group, 2015), 8.

²¹⁷ Giada Girelli, *Understanding transitional justice: a struggle for peace, reconciliation, and rebuilding* (Basingstoke, Hampshire: Palgrave Macmillan, 2018), 138.

RECOM (Regional Commission), for jointly establishing the facts about war crimes and their victims, did not function as Croatia has ignored it completely and in BiH it played a secondary role.²¹⁸ *Vetting procedures for judges* and (financial) *reparations for victims*, restitution of rights, building of memorials are important, but the focus was on persons of the dominant ethnic group. The lack of coordination between these initiatives as well as of results adds to the difficulty of cooperation between prosecutors for war crimes.²¹⁹

The BiH government has adopted a strategic document on transitional justice for 2013-16: its main conclusions are that prosecution of war criminals is useful, but there are limitations of transitional justice as other mechanisms are missing.²²⁰ The same applies to the establishment of facts: efforts had been made to prove the crimes, but insisting on criminal prosecution undermined its effectiveness.²²¹ The same reasoning can be applied to reparations, memorials and institutional reforms: many efforts, but not enough impact. The preparation for accession to the EU might help with its conditionality,²²² but there is not much progress either.

The most effective instruments in transitional justice remain prosecution and trials as they lead to punishment of perpetrators, give justice to the victims and establish rule of law and the truth.²²³ However, the ICTY did not act as “filter of messages between the communities formerly at war with each other”, but rather as agent of justice.²²⁴ The ICTY was not seen as impartial, but as voice of the international community.²²⁵ Janine Natalya Clark conducted a survey in ten fieldworks between 2008 and 2013 in BiH, in areas with significance for the ICTY. 210 persons (98 Bosniaks, 51 Bosnian Serbs, 41 Bosnian Croats) were asked in 32 places across the country.²²⁶ The connection between justice and ethnicity is perceived as main problem; there is no consensus between the three ethnicities, only equal disappointment towards the ICTY; denial is most problematic for comprehension.²²⁷

3. Different views I: competing narratives in past and present

In BiH the three narratives are based on “remodeled” historical events. For Serbs, sacrifice and martyrdom is the key concept enshrined in the Battle of Kosovo, in WW1, in WW2 and in the 1990’s, as “Serbians were defending themselves from the Islamic expansion”.²²⁸ The Serbs call the 1992-1995 Bosnian war a “homeland defence war”, started to defend Serb territory. This is in contrast with crimes committed: in 2004, RS excused itself for those crimes, but this was later minimized by establishing Truth Commissions to change facts. According to Bosnian Serbs, “everyone did commit

²¹⁸ Pierre Mirel, “European Union-Western Balkans: For a Revised Membership Negotiation Framework,” European Issue n°529, *Fondation Robert Schuman*, 2019, 2.

²¹⁹ *Ibid.*

²²⁰ BiH Ministry for Human Rights, *Transitional Justice Strategy for Bosnia and Herzegovina 2012- 2016*, http://www.nuhanovicfoundation.org/user/file/2013_transitional_justice_strategy_bih_-_new.pdf, 15 (consulted on 17.5.2020).

²²¹ BiH Ministry for Human Rights, *op.cit.*, 15.

²²² Georges Mink et Laure Neumayer, *L'Europe et ses passés douloureux*. La Découverte, Paris, 2007, 255.

²²³ Bell O’Neil, *op.cit.*, 55.

²²⁴ Fatic Aleksandar, *Reconciliation via the war crimes tribunal?* (Routledge, 2020), 9.

²²⁵ *Ibid.*, 10.

²²⁶ Clark, *op.cit.*, 8-12.

²²⁷ *Ibid.*, 40.

²²⁸ David Bruce MacDonald, *Balkan holocausts?: Serbian and Croatian victim-centred propaganda and the war in Yugoslavia* (Manchester, England : Manchester University Press, 2018), 258.

crimes”.²²⁹ Milorad Dodik, Serb member of the Presidency of BiH and leader of the Alliance of Independent Social Democrats (SNSD) repeatedly stated that the Srebrenica genocide is “a fabricated myth”²³⁰ and that “radical Islam” was a threat to the Serbs.²³¹ Dodik made a declaration on the “Survival of the Serb people”, with Serbian President Aleksandar Vučić, to demonstrate that RS is a result of ethnic cleansing against Serbs.²³² During his testimony at Karadžić’s trial, Dodik stated: “Karadžić never insisted that any crimes be committed, nor have I witnessed him participating in them”.²³³ He argued that the former leader had tried to find a peaceful resolution to the conflict.²³⁴ The way of remembering for Bosnian Serbs takes place in a form of justification of the establishment of RS in museums, memorial sites and books.²³⁵

Croats had a similar perspective focusing on their sacrifices during WW1 and WW2 and the 1990’s. They emphasize that Serbia always dominated,²³⁶ Muslims were either “true Serbs” or “true Croats”. Croats consider themselves as victims in the war of 1992-1995: “we have only been defending ourselves”. The nationalism of Bosnian Croats is celebrated in official military commemorations. In 2019, war veterans participated in a march in Stolac (where Bosniaks were expelled in 1993), to commemorate a military unit, displaying the (illegal) flag of Croat Herzeg-Bosna.²³⁷ Dragan Čović, then Croat member of the BiH Presidency, was present at the event. Crimes committed by Croats are not discussed at all. After a former Bosnian Croat general convicted for crimes against humanity (Slobodan Praljak) had poisoned himself, Čović stated: “(Praljak) showed before the whole world what kind of sacrifice he is ready to make to prove that he is not a war criminal.”²³⁸ Čović warns: “A civic state in today’s BiH means classic centralism which means an Islamic state”. The idea of Islamic threat is still present in Croat

²²⁹ Nicolas Moll, “Fragmented memories in a fragmented country: memory competition and political identity-building in today’s Bosnia and Herzegovina”, *Nationalities Papers* 41, no. 6 (2013): 918.

²³⁰ Zamira Rahim, “Srebrenica massacre is ‘fabricated myth’, Bosnian Serb leader says”, *Independent*, 2019, <https://www.independent.co.uk/news/world/europe/srebrenica-massacre-genocide-milorad-dodik-bosnia-myth-a8869026.html> (consulted on 11.5.2020).

²³¹ Heinrich Böll Foundation Southeastern Europe, “Perspectives: Narratives in the Balkans. In the Combat Zone”, *Perspectives Südosteuropa* 4, 2018, 4-5.

²³² Tanjug, “Nacrt deklaracije RS i Srbije o opstanku srpskog naroda je pri kraju, ostale finese”, *Blic*, 2018, <https://www.blic.rs/vesti/drustvo/nacrt-deklaracije-rs-i-srbije-o-opstanku-srpskog-naroda-je-pri-kraju-ostale-finese/1j15qc0> (consulted on 11.5.2020).

²³³ Jelena Subotic, “Radovan Karadžić Leaves a Legacy of Cruelty”, *Balkan Transitional Justice*, 2019, <https://balkaninsight.com/2019/03/21/radovan-karadzic-leaves-a-legacy-of-cruelty/> (consulted on 12.5.2020).

²³⁴ Balkan Investigative Reporting Network, “Karadžić Was Innocent, Dodik Tells Hague Tribunal”, *Balkan Transitional Justice*, 2013, <https://balkaninsight.com/2013/04/10/accusations-of-crimes-political-speech-claims-dodik/> (consulted on 11.5.2020).

²³⁵ Jelena Subotic, “Remembrance, Public Narratives, and Obstacles to Justice in the Western Balkans”, *Studies in Social Justice*, 7 (2): 2013, <https://www.recom.link/remembrance-public-narratives-and-obstacles-to-justice-in-the-western-balkans/> (consulted on 12.5.2020).

²³⁶ United States Institute of Peace, *Confronting the Yugoslav controversies: a scholars' initiative* (Washington, D.C.: United States Institute of Peace Press, 2013), 26-30.

²³⁷ Mladen Lakic, “Bosnian Croat Veterans’ March Alarms Bosniak War Victims”, *Balkan Insight*, 2019, <https://balkaninsight.com/2019/06/07/bosnian-croat-veterans-march-alarms-bosniak-war-victims/> (consulted on 11.5.2020).

²³⁸ Stephanie van den Berg, Bart H. Meijer, „Bosnian Croat war crimes convict dies after taking 'poison' in U.N. court”, *Reuters*, 2017, <https://www.reuters.com/article/us-warcrimes-bosnia/bosnian-croat-war-crimes-convict-dies-after-taking-poison-in-u-n-court-idUSKBN1DT1E7> (consulted on 11.5.2020).

nationalism,²³⁹ and remembrance takes place by celebrating Croatia as “Motherland” and the uniqueness of Catholicism.²⁴⁰

At the center of Bosniak identity is the legacy of the Ottoman Empire. The identity developed slowly: only in 1961 Muslims had been added as an ethnic category and efforts were made to balance the ethnic groups.²⁴¹ Bosniaks consider the war as aggression by Serbia and Croatia. Central in their narrative are Srebrenica and the war of liberation.²⁴² On June 16, 2018, a ceremony was held at the Martyr’ Memorial Cemetery Kovaci. Bakir Izetbegović, son of Alija Izetbegović, and President of the Party of Democratic Action (SDA), stated: “Bosnia and Herzegovina would not exist if they (Bosniak youths) did not show courage and sacrificed their lives. Our people are always ready for this sacrifice”.²⁴³ In 2012 Dodik accused Alija Izetbegović of having fought with fascist units in WWII. The reaction of Bakir Izetbegović came immediately: “In WWII, Alija Izetbegović was drafted to the partisan army (...) If Dodik continues to bend historical facts and to lie about the engagement of Alija Izetbegović in WWII or during the aggression on BiH from 1992-1995, he will be asked to answer for all those lies before the Courts of BiH.”²⁴⁴ For Bosniaks remembrance justification of a unitary, majority-Bosniak State is central: injustice and genocide are the core of this narrative.

Ordinary people coexist peacefully, but politicians use historical anniversaries to stress suffering or victories to separate them.²⁴⁵ This is shown by a survey conducted by IPSOS (market research agency) and Roland Kostić (Director of Holocaust and Genocide Studies, Sweden): In 2005 (2.500 respondents) an overwhelming majority of Bosniaks (85.3%), Serbs (76.2%), and Croats (75.9%) strongly agreed with the statement “my people have fought only “defensive wars”. In 2010 (1.500 respondents), this feeling fell among Serbs (54.7% agreed) but remained stable for the others.²⁴⁶ Worrisome is the comment by the Head of the RS Research Centre of War, Milorad Kojić: “As a nation, we must know that Karadžić is the first President of RS and a significant historical figure. (...) We must consider him as our hero.”²⁴⁷ In 2016, right before the verdict, Dodik named a student dorm after Karadžić,²⁴⁸ showing the total denial in the Bosnian Serb narrative of the war. The problem of competing identities is seriously hindering reconciliation.

²³⁹ Marion Kraske, “In the combat zone”, in: *Perspectives: Narratives in the Balkans. In the Combat Zone*, ed. Heinrich Böll Foundation Southeastern Europe, *Perspectives Südosteuropa* 4, 2018, 4.

²⁴⁰ Subotic, *op.cit.*

²⁴¹ United States Institute of Peace, *op.cit.*, 26-30.

²⁴² Moll, *op.cit.*, 915.

²⁴³ Anadolu Agency, „Bosnia marks Martyrs Day to remember war victims”, *AA*, 2018, <https://www.aa.com.tr/en/europe/bosnia-marks-martyrs-day-to-remember-war-victims/1176539> (consulted on 11.5.2020).

²⁴⁴ Presidency of Bosnia and Herzegovina, „Public statement of BiH Presidency Chairman Bakir Izetbegović over the statement of Republika Srpska President“, 2012, <http://predsjednistvobih.ba/saop/saziv5/default.aspx?id=41409&langTag=en-US> (consulted on 17.5.2020).

²⁴⁵ Kostic, *op.cit.*, 654.

²⁴⁶ Kostic, *op.cit.*, 655, see Annex, 2. Surveys on perception of transitional justice in BiH: war.

²⁴⁷ Srna, “Justice Does Not Live In The Hague, But Nato, Karadžić Is Hero”, 2019, <http://www.srna.rs/novosti3/676387/justice-does-not-live-in-the-hague--but-nato--karadzic-is-hero.htm> (consulted on 11.5.2020).

²⁴⁸ Staff and agencies, “Student dorm named after war crimes suspect Radovan Karadžić”, *The Guardian*, 2016, <https://www.theguardian.com/world/2016/mar/21/student-dorm-named-after-war-crimes-suspect-radovan-karadzic> (consulted on 11.5.2020).

4. Different views II: the perceptions of the ICTY

According to the report “After the ICTY” (collecting comments from civil society, expert community, institutions, academia, and media), in 2000 the Croatian Parliament adopted a “Declaration on the Homeland War”,²⁴⁹ in contrast with ICTY verdicts. Similar in Serbia (as well as in RS)²⁵⁰: in 2010 the Serbian Assembly adopted a “Declaration on Condemnation of Crimes from Srebrenica” without referring to genocide.²⁵¹ The ICTY did not have a positive impact on the population, it did not contribute to individual or to collective reconciliation.²⁵²

Initially, Bosniaks welcomed the ICTY hoping that Serb war criminals would be prosecuted, but this changed when also Muslims were indicted. This created mixed feelings towards the ICTY.²⁵³ Izetbegović asked not to politicize the Karadžić verdict as it was “the most important one since the Nuremberg trials”,²⁵⁴ adding that it was important “first of all for the Serb people, so that this [guilt] is put onto the individuals who led the people the wrong way”.²⁵⁵ Reacting to the acquittals of two Serbian security officials in 2013, Izetbegović stated: “the Tribunal had veered from its primary goal of punishing the perpetrators of the gravest war crimes. How else to understand the acquittals on appeal of the command responsibility of leaders of military, police?”²⁵⁶

Croats did not see the ICTY favorably, they feared that it would just divide the blame between Serbs and Croats. Cović officially recognized the ICTY’s legitimacy but undermined it by attending a celebration of a released convicted war criminal, Dario Kordić, in 2014 in Busovača.²⁵⁷

Due to the Serb concept of victimhood, the ICTY has not been accepted as a neutral institution but seen as “anti-Serb”.²⁵⁸ Dodik stated that it is impossible that only one side was guilty.²⁵⁹

²⁴⁹ Deklaraciju o domovinskom ratu. Croatian Parliament, 13 October 2000.

²⁵⁰ Declaration of Condemnation of Crimes from Srebrenica, *National Assembly Serbia*, 2010, <http://www.parlament.gov.rs/upload/archive/files/eng/pdf/2010/deklaracija%20o%20srebrenici%20ENG.pdf> (consulted on 16.5.2020).

²⁵¹ Balkan Investigative Reporting Network, “After the ICTY: Accountability, Truth and Justice in former Yugoslavia”, *BIRN*, 2018, 18-20, <https://birn.eu.com/outputs/after-the-icty-accountability-truth-and-justice-in-former-yugoslavia/> (consulted on 21.4.2020).

²⁵² James Gow, Rachel Kerr, and Zoran Pajić, *Prosecuting war crimes lessons and legacies of the International Criminal Tribunal for the former Yugoslavia* (Abingdon: Routledge, 2014), 108.

²⁵³ Dan Saxon, “Exporting Justice: Perceptions of the ICTY Among the Serbian, Croatian, and Muslim Communities in the Former Yugoslavia”, *Journal of Human Rights* 4, no. 4 (2005): 563-564.

²⁵⁴ Zoran Culafic, “After Karadžić Verdict, Long Path To Justice In The Balkans”, *JusticeInfoNet*, 2016, <https://www.justiceinfo.net/en/tribunals/icty/26562-after-karadzic-verdict-long-way-ahead-to-achieve-justice-and-reconciliation-in-the-balkans.html> (consulted on 11.5.2020).

²⁵⁵ Denic Džidić, “Karadžić Verdict: Mixed Reactions Reflect Divided Bosnia”, *Balkan Transitional Justice*, 2016, <https://balkaninsight.com/2016/03/24/karadzic-verdict-mixed-reactions-reflect-divided-society-03-24-2016/> (consulted on 11.5.2020).

²⁵⁶ Daria Sito-Sucic, “Survivors of Bosnian war turn backs on U.N. court head”, *Reuters*, 2013, <https://www.reuters.com/article/us-bosnia-tribunal-protest/survivors-of-bosnian-war-turn-backs-on-u-n-court-head-idUSBRE9AQ0QF201311127> (consulted on 11.5.2020).

²⁵⁷ Alisa Karović, “CSOs demand the resignation of HDZ officials for openly supporting criminal Dario Kordić”, *Zašto ne*, 2014, <https://zastone.ba/en/csos-demand-the-resignation-of-hdz-officials-for-openly-supporting-criminal-dario-kordic/> (consulted on 11.5.2020).

²⁵⁸ Saxon, *op.cit.*, 566-567.

²⁵⁹ N1 Sarajevo, “Bosnian Serb leader: Republika Srpska does not trust the Hague tribunal”, *NI*, 2019, <http://rs.n1.info.com/English/NEWS/a469289/Bosnian-Serb-leader-does-not-believe-regularity-of-war-crimes-court.html> (consulted on 13.5.2020).

Those declarations of politicians need to be matched with their impact on public opinion. A survey conducted in 2002 by the International Institute for Democracy and Electoral Assistance shows that while 51% in the Federation trust the ICTY, only 3.6% in RS do so.²⁶⁰ More than a decade later, surveys by UN Resident Coordinator explore perceptions regarding war crime trials and reconciliation (1.500 interviews carried out on a random sample of BiH citizens). “Approximately 20% of respondents believe that reconciliation among the countries of former Yugoslavia is already achieved (answers „Completely” and „Fairly“), more than a third that reconciliation is only partially achieved, whereas 41% state that reconciliation has not been achieved, or only in small portion.”²⁶¹ The largest percentage, more than a fourth, believes that finding the truth is necessary to achieve reconciliation. Other respondents’ attitudes are divided between the necessity to talk about the past, or to forget about it, to apologize, or to emphasize the importance of reconciliation”.²⁶² There are differences between ethnic groups: “Croats are more likely to state that reconciliation is already achieved (32%), compared to both, Bosniaks (19%) and Serbs (18%). Serbs are more likely to state the opposite (47%), in comparison to Croats (31%), the difference is not significant when it comes to Bosniaks (40%).”²⁶³ Complex and dissimilar perspectives emerge based on ethnicity and regarding age. The majority of respondents between different age groups (18-35, 36-50, 51-65) answered that reconciliation has been partially achieved (the first group with 33%, the second with 37%, the third with 38,6% and the fourth with 44,4%).²⁶⁴

The surveys by IPSOS and Kostic show different results. In 2010, the impact of ICTY trials has been characterized as short-term impact; while 74.3% of Bosniaks and 61.2% of Croats believe that ICTY can foster peace and coexistence, only 15.2% of Serbs agree. 56.7% of Bosniaks agree on the fairness of the trials (Croats too, with 56.6%), but 89.6% Serbs disagree with this position,²⁶⁵ they do not accept the facts established by ICTY. The results are the same in 2010. Croats recognize the importance of the ICTY, as Bosniaks;²⁶⁶ 85% of Bosniaks, 83% of Croats and 65% of Serbs think that a truth commission is needed. However, existing Commissions have not been recognized by all ethnic groups.²⁶⁷ Reconciliation in BiH remains a challenge and an ongoing difficult process.

5. Different roads to reconciliation?

Transitional justice and reconciliation should enable a society to agree on a common past for building a future together. This did not happen in BiH because of its institutional complexity. A “minoritarian” (Bosnian Serbs and Bosnian Croats) versus a

²⁶⁰ International Institute for Democracy and Electoral Assistance (IDEA), *South East Europe (SEE), Public Agenda Survey, 2002* and Diane Orentlicher, *Some Kind Of Justice: The ICTY's Impact In Bosnia And Serbia* (S.L.: Oxford Univ Press US, 2019), 131.

²⁶¹ Office of the UN Resident Coordinator in Bosnia and Herzegovina, “Public Opinion Poll”, (2013): https://www.undp.org/content/dam/unct/bih/PDFs/Prism%20Research%20for%20UN%20RCO_Report.pdf (consulted on 4.11.2019), 37.

²⁶² Office of the UN Resident Coordinator, *op.cit.*, 40.

²⁶³ *Ibid.*, 37-38.

²⁶⁴ *Ibid.*, 38.

²⁶⁵ Kostic, *op.cit.*, 659. See Annex, 3. *Surveys on perception of transitional justice in BiH: impact of ICTY.*

²⁶⁶ *Ibid.*, 657.

²⁶⁷ Kostic, *op.cit.*, 661.

“majoritarian” (Bosniaks) discourse developed and will not be changed until consensus about the State is reached.²⁶⁸

Due to ethnic segregation, reconciliation does not take place at a collective level: different school times for pupils from different groups, different history textbooks are expression of the stalemate.²⁶⁹ Politicians exploit transitional justice to enhance ethnic divisions, as nationalist parties would otherwise lose their influence.²⁷⁰ Reconciliation is never a linear process, but due to the disillusionment of many Bosnians it appears that the ICTY has failed not only in fostering it but also in giving the prospect of justice.²⁷¹

This is why some propose different approaches. The German Friedrich Ebert Foundation supports projects which intend to foster remembrance and develop a common version of the past through comprehension of other narratives, dialogue and mutual trust.²⁷² European integration could facilitate this process of reconciliation. “Negative remembrance” is needed, the capacity of acknowledging suffering of others and the acceptance of own responsibility for crimes.²⁷³

²⁶⁸ Heinrich Böll, *op.cit.*, 28.

²⁶⁹ Mirjana Adamović et al, “Process of Reconciliation in the Western Balkans and Turkey: A Qualitative Study”, Zagreb, *Institute for Social Research in Zagreb (ISRZ)*, 2017, 37.

²⁷⁰ *Ibid.*, 37-38.

²⁷¹ O’Neil, *op.cit.*, 65.

²⁷² Timo Kivimäki, Marina Kramer, and Paul Pasch, *The dynamics of conflict in the multi-ethnic state of Bosnia and Herzegovina: country conflict-analysis study* (Sarajevo: Friedrich-Ebert-Stiftung, 2012), 98.

²⁷³ Moll, *op.cit.*, 928.

Final Conclusions

The central question is the efficacy of (international) trials in the process of reconciliation. How do externally imposed trials after a conflict impact the (re-)building of a democratic and peaceful identity? Are they a precondition for reconciliation processes? What was the effect of the Göring trial on German transformation and identity? Did the impact of the Karadžić trial serve the creation of a functioning polity?

Trials are important for punishing criminals and for clarifying what is injustice for society; nonetheless, they have a limited role in reconciliation because their judicial method and the selection of very few people on trial limits their scope.²⁷⁴ An international tribunal establishes criminal responsibility of individuals, as any court, but if those individuals are leaders, their responsibility also involves collective responsibility of those who followed.²⁷⁵

The two defendants chosen show a similar picture in terms of personality, prominent position and even their actions: Göring pretended to be the leader of the accused and created many difficulties for the prosecution during the trial, and Karadžić almost staged a show, trying to demonstrate that he was still politically relevant. Despite contrary evidence, Göring denied responsibility for the Holocaust. This reflects how German society defended itself vis-à-vis the Allies: when asked about their role during the war, the tendency in the population was to deny an active role in the Holocaust; this developed into collective denial until the 1960s.²⁷⁶ Karadžić did accept responsibility for Srebrenica, but not for the outbreak of the war, which he qualified as mere “defense of the Serbs”. This became dominant discourse of RS politicians for denying any responsibility for war crimes (as the rhetoric by Milorad Dodik shows).

The context of both trials was different: after 1945, Germany was a defeated country occupied by the Allied Powers; in 1995, after the end of the Bosnian conflict, there was no victor and, and therefore the conflict continues as a Cold War between the ethnic groups controlling parts of the territory. This is reflected by different views on the role of NATO’s stabilization force: Muslims supported NATO for the protection provided, Serbs resented its occupation, and Croats took a middle ground.²⁷⁷

The background of the trials is different: while in Germany the IMT was conducted after the war by the Allies against the heads of the defeated system, the ICTY had already been established during the war, for Yugoslavia, to prosecute crimes committed by all sides. Also, their main aim was different: as a social concept, for the IMT first collective guilt needed to be established (by trying the leadership) before the individual guilt of single perpetrators, whereas the ICTY concluded that for war criminals only individual responsibility can exist.

The position of prosecutors and judges was different: in Nuremberg, the Allies wanted to be seen as legitimate in the eyes of the German population and tried to show the German population that the trial was fair; however, the Soviets’ participation in the IMT

²⁷⁴ Girelli, *op.cit.*, 155-156.

²⁷⁵ Fichtelberg, *op.cit.*, 19.

²⁷⁶ United States Holocaust Memorial Museum, “Some Were Neighbors”, <https://www.ushmm.org/teach/teaching-materials/roles-of-individuals/ethical-leaders/background/some-were-neighbors> (consulted on 14.5.2020).

²⁷⁷ Magnú Bjarnason, *The war and war-games in Bosnia and Herzegovina from 1992 to 1995: the main events, disagreements and arguments, resulting in a "de facto" divided country* (North Charleston, S.C: BookSurge, 2nd edition, 2007), 67.

was criticized (due to the non-aggression pact with the Nazis and their war crimes, e.g. Katyn). By consequence, a Military Tribunal of victors trying the defeated enemy was seen as biased “victor’s justice”. By contrast, the ICTY, also an international tribunal, sought to judge with equal distance to all sides and regarding different conflicts and countries, all related to the dissolution of Yugoslavia. To some extent, its own legitimacy depended also on whether the supporters of the accused viewed the trials as fair.²⁷⁸ Witnesses were used in both cases, but less so in Nuremberg, again by contrast with the frequent use in ICTY trials (which is again related to legitimacy, based upon the need to respond to the victims’ demand for justice). The amount of evidence was different: the Nazis had compiled and stored an incredible number of files with every kind of evidence, whereas Karadžić was certainly not a disciplined bureaucrat, which turned out to be an advantage in his trial.²⁷⁹

Distinctions have to be made regarding the different impact on the population. In West Germany, engagement with the past increased since the early 1960’s and in the 1990’s. It is undeniable that the Nuremberg Trial was an important basis for a process of reconciliation; it even contributed to establishing a new West German identity founded on democracy and human rights. But it was a long transition, some perpetrators were released, and the delay of justice by domestic courts guaranteed that many Nazis held important positions until the 1960’s-70’s. However, with time and patience, Germans have accepted their peculiar and problematic history: future German generations will continue to bear a specific legacy of grief and responsibility, but exactly this burden will allow for a deeper and critical confrontation with the past in order to overcome it, i.e. “*Vergangenheitsbewältigung*”.²⁸⁰ This was necessary for Germany’s democratic transformation and international re-integration.

In BiH this process has not worked in a similar way: mainly because BiH is (still) not a functioning state and its fragmentation reflects and favors the three competing ethnic narratives developed in the past and during the conflict. Thus, the ICTY does not have a positive effect on the population: while Serbs and Croats question its legitimacy, Bosniaks doubt it has delivered effective justice.²⁸¹ When trials are the only element of transitional justice efforts, they are incapable of fostering reconciliation:²⁸² groups on different sides need to talk through the facts in order to create a common version of history.

Vergangenheitsbewältigung in West Germany would not have been possible without the Nuremberg Trial; it might not even have started without external pressure. In the case of BiH, the fact that high-level trials came so late after the war produced a general sentiment of injustice pervading Bosnian society. And even today, 25 years after the end of the war, a commonly accepted truth, a joint multinational elaboration of the war events, remains a mirage. While in Germany after the unconditional surrender there was no choice but to break with the past, in Bosnia resistance and opposition by each of the three groups prevail(ed), together with denial which explains the limited impact of the trials, despite the victims’ vocal role.

Serious truth and reconciliation commissions could have been a useful complimentary tool with the task to establish facts as a basis for a common version of the war events accepted by the three ethnic groups. But those commissions may be hijacked by

²⁷⁸ Sluiter, *op.cit.*, 47.

²⁷⁹ Sterio, *op.cit.*, 291.

²⁸⁰ Barnard, *op.cit.*, p.28

²⁸¹ Bell, *op.cit.*, 64.

²⁸² *Ibid.*, 67.

politicians, as the recent RS Srebrenica Commission shows. A public forum for broad discussions of what happened and for recognizing atrocities seems impossible to achieve, as long as ethnic tensions are exploited politically and there is no will to overcome them, which is why, until now, a truth commission in BiH has failed.²⁸³

During the Frankfurt-Auschwitz Trials, Fritz Bauer, the general prosecutor once said: “When you are ordered to do something that is unjust and wrong, then you must say no. This is the fundamental message that needs to come out of these trials: you must have said no.” And this is the second key message of any trial: if you commit an atrocity, you will not go unpunished and, above all, neither will those who gave the orders.

Both cases, Germany and BiH, show that trials are necessary for establishing a (judicial) truth and identifying the values on which a society is based. Judicial elaboration is not enough, however: a broad discussion in the population and commitment by leaders is necessary. Coming to terms with the past is a permanent challenge: according to a survey by the Forsa Institute in 2015, 42% of west Germans and 41% of east Germans want to move on and not always be reminded of the Holocaust. This is lower than in 2000, when 48% and 39% argued the same way,²⁸⁴ but there is now also a new extreme right party, Alternative für Deutschland (AFD), even represented in the Bundestag, which is openly criticizing Germany’s “memory culture”.

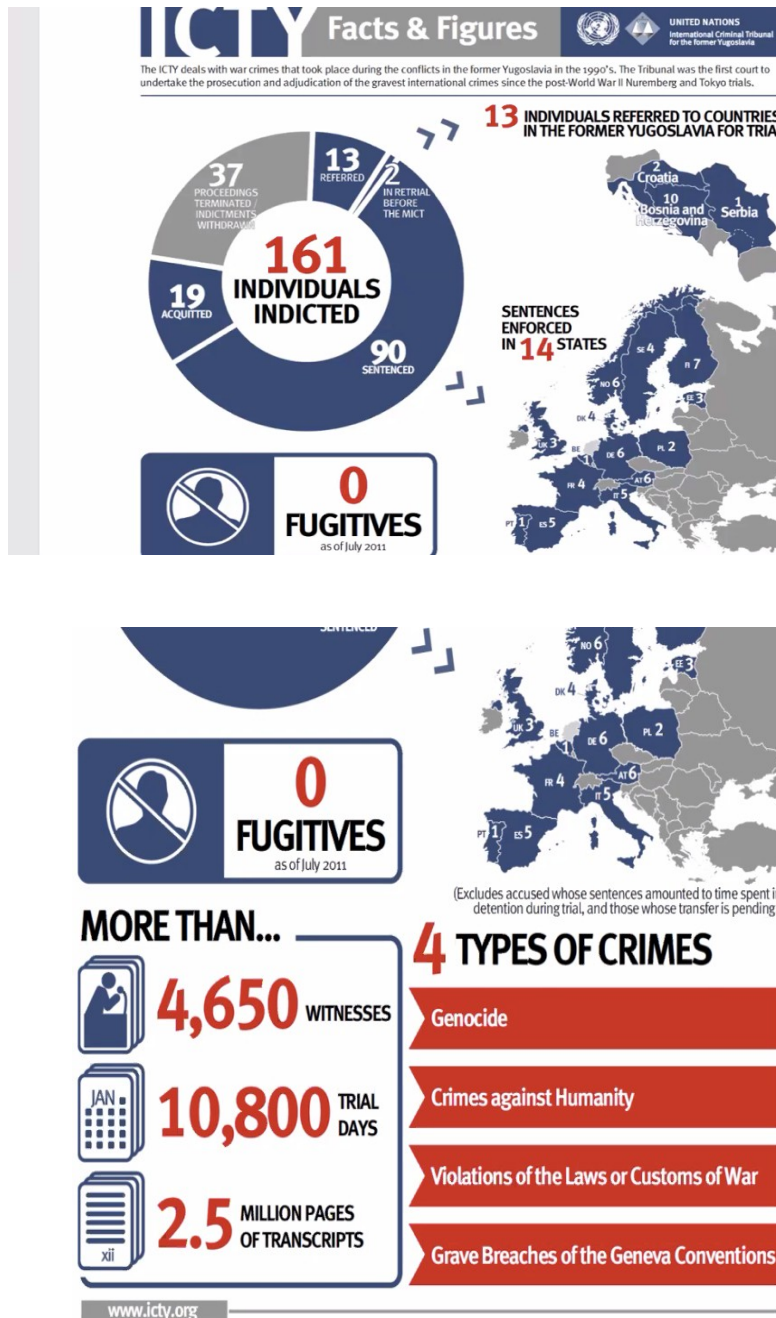
In Bosnia the challenge is different: confrontation with the past is still lacking and competing narratives prevail which, in turn, relativize even the war crimes trials.

²⁸³ Jasna Dragovic-Soso, “History of a Failure: Attempts to Create a National Truth and Reconciliation Commission in Bosnia and Herzegovina”, 1997–2006, *International Journal of Transitional Justice*, Volume 10, no. 2 (2016): 292.

²⁸⁴ Stern Umfrage, “Ostdeutsche sind stolzer auf ihr Deutschein”, *Stern*, (2015), <https://www.stern.de/kriegsende--deutsche-wollen-laut-stern-umfrage-unter-ns-vergangenheit-schlussstrich-ziehen-6963288.html> (consulted on 17.5.2020) and Patrick Donahue, “German Atonement for Nazi Past Seen Enough by 42 Percent”, *Bloomberg*, 2015, <https://www.bloomberg.com/news/articles/2015-04-15/german-atonement-for-nazi-past-seen-enough-by-42-percent> (consulted on 14.5.2020).

Annex:

1. Infographics on ICTY



Source: UN International Criminal Tribunal for the Former Yugoslavia, “Infographic: ICTY Facts & Figures”, <https://www.icty.org/en/content/infographic-icty-facts-figures>, (consulted on 11.5.2020).

2. Surveys on perception of transitional justice in BiH: war

TABLE 1. GROUPS AND PARTICIPATION IN DEFENSIVE WARS (PER CENT)

MY PEOPLE HAVE FOUGHT ONLY DEFENSIVE WARS (2005)	NATIONAL BELONGING			
	BOSNIAK	CROAT	SERB	TOTAL
Totally agree	85.3	75.9	76.2	79.4
Somewhat agree	11.7	16.6	16.8	14.9
Somewhat disagree	1.8	2.9	4.1	2.9
Totally disagree	.2	.5	.4	.4
Don't know	1.0	4.1	2.6	2.5
MY PEOPLE HAVE FOUGHT ONLY DEFENSIVE WARS (2010)	NATIONAL BELONGING			
	BOSNIAK	CROAT	SERB	TOTAL
Totally agree	81	70	54.7	68.6
Somewhat agree	16.6	24.5	33.5	24.8
Somewhat disagree	0.5	2.7	5.8	3
Totally disagree	0.3	0.8	0.2	0
Don't know	1.0	2	5.8	2.9

TABLE 2. DEFINITION OF WAR IN BOSNIA AND HERZEGOVINA (PER CENT)

IN YOUR VIEW, WHICH OF THESE IS THE BEST DEFINITION OF THE LAST WAR IN BOSNIA AND HERZEGOVINA? (2005)	NATIONAL BELONGING			
	BOSNIAK	CROAT	SERB	TOTAL
Civil war	3.7	16.7	83.6	34.2
Aggression	95.1	73.2	9.0	59.8
Don't know	1.2	10.1	7.4	6.0
IN YOUR VIEW, WHICH OF THESE IS THE BEST DEFINITION OF THE LAST WAR IN BOSNIA AND HERZEGOVINA? (2010)	NATIONAL BELONGING			
	BOSNIAK	CROAT	SERB	TOTAL
Civil war	2.7	28.3	87.3	39.4
Aggression	96.6	69.6	9	58.4
Don't know	0.6	2.1	3.7	2.2

TABLE 3. WAR IN BOSNIA AND HERZEGOVINA AND DEFINITION OF DEFENDERS (PER CENT)

PLEASE TELL US, ACCORDING TO YOU, WHICH OF THESE MILITARY FORCES CAN BE BEST CHARACTERISED AS DEFENDERS IN THE LAST WAR? (2005)	NATIONAL BELONGING			
	BOSNIAK	CROAT	SERB	TOTAL
HVO	5.9	92.7	1.8	31.0
Armija BiH	91.4	1.2	1.2	34.0
Vojska RS	.1	.1	89.6	29.8
Vojska AP Zapadne Bosne	.6	.0	.0	.2
JNA	.0	.3	4.5	1.6
Don't know	2.0	5.7	2.9	3.4
PLEASE TELL US, ACCORDING TO YOU, WHICH OF THESE MILITARY FORCES CAN BE BEST CHARACTERISED AS DEFENDERS IN THE LAST WAR? (2010)	NATIONAL BELONGING			
	BOSNIAK	CROAT	SERB	TOTAL
HVO	5.9	92.1	1.6	33.2
Armija BiH	91.2	6.6	2	33.2
Vojska RS	.9	.6	88	29.8
Vojska AP Zapadne Bosne	1.5	.0	.6	.7
JNA	.3	.4	6.8	2.5
Don't know	.2	.2	1	.5

Source: Kostic, Roland. "Transitional justice and reconciliation in Bosnia-Herzegovina: Whose memories, whose justice?", *Sociologija* 54, no. 4 (2012): 665-666.

3. Surveys on perception of transitional justice in BiH: impact of ICTY

TABLE 4. PERCEPTIONS OF THE ICTY IN 2005 (PER CENT)

TO WHAT EXTENT DO YOU AGREE WITH THE FOLLOWING STATEMENTS?		NATIONAL BELONGING			TOTAL
		BOSNIAK	CROAT	SERB	
The war crimes tribunal in The Hague is a precondition for a just peace and normal relations	Totally agree	51.6	18.7	4.7	26.0
	Somewhat agree	28.7	38.4	11.1	25.8
	Somewhat disagree	5.1	11.0	15.4	10.3
	Totally disagree	11.0	27.7	63.3	33.5
	Don't know	3.7	4.2	5.5	4.4
The trials at the Tribunal are fair	Totally agree	32.7	11.3	4.3	16.7
	Somewhat agree	35.2	31.9	9.2	25.6
	Somewhat disagree	9.3	15.2	11.2	11.7
	Totally disagree	19.8	36.7	68.0	41.0
	Don't know	3.0	4.9	7.3	5.0

TABLE 5. PERCEPTIONS OF THE ICTY IN 2010 (PER CENT)

TO WHAT EXTENT DO YOU AGREE WITH THE FOLLOWING STATEMENTS?		NATIONAL BELONGING			TOTAL
		BOSNIAK	CROAT	SERB	
The war crimes tribunal in The Hague is a precondition for a just peace and normal relations	Totally agree	45.5	22.9	3.2	23.8
	Somewhat agree	28.8	38.3	12.0	26.3
	Somewhat disagree	10.3	19.5	24.6	18.1
	Totally disagree	11.7	16.5	58.7	29
	Don't know	3.6	2.8	1.5	2.7
The trials at the Tribunal are fair	Totally agree	24.8	10.9	4.0	13.2
	Somewhat agree	31.9	29.2	5.2	22.1
	Somewhat disagree	15.1	22.9	22.0	20.0
	Totally disagree	24.0	33.7	67.6	41.7
	Don't know	4.2	3.3	1.2	2.9

Source: Kostic, Roland. "Transitional justice and reconciliation in Bosnia-Herzegovina: Whose memories, whose justice?", *Sociologija* 54, no. 4 (2012): 659.

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