

EXPLORING LINKS BETWEEN CIVIL SOCIETY AND TRANSITIONAL JUSTICE IN THE WESTERN BALKANS

WITH EMPHASIS ON BOSNIA AND HERZEGOVINA: A NEW PATH TOWARDS JUSTICE AND PEACE?

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For the past few decades, civil society played a role of mighty tool for facilitating the process of transitional justice and it has helped societies affected by these atrocities to think critically and discuss past events. The main aim of this paper is to discuss the role of civil society in Bosnia and Herzegovina in creating culture of peace and building dialogue for the future, with a brief overview of the RECOM initiative.

Contextual background

The enormous suffering and absurdity of human casualties in World War II fostered an understanding that every person needs to be guaranteed a certain set of human rights and fundamental freedoms, which transcended the boundaries of sovereign states. These new ideas and concepts generated a new, substantial change in the general concept of international law. A new paradigm of international law, also known as the idealistic tendency, provides nation state growing, creating a supranational legal order by elevating citizens' rights from national to international level. The innovative core of this idea is the consistent transformation of international law, a new redesign of rights of states and rights of world citizens as rights of individuals.¹

This lead to the establishment of the new system of collective security, as envisaged by Article 1, paragraph 1, of the Charter of the United Nations:

“to maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace.”

In this new system of international relations, the security question implies the ability of the national state to provide the highest possible level of social rights, political freedoms and quality of life to its own population, which stands for effective protection from both external and internal threats to national security and the safety of the

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¹ Posavec, Zvonko: *Dilemmas of International Law – between nationalism and cosmopolitanism*, Political Thought, vol. 41, br 4, 2004, p. 115.



individual.² Although the provision of Article 2, paragraph 1 of UN Charter emphasizes that one of the basic UN principles is the principle of sovereign equality of all of its members, however, the advantage over individual interest has the protection of the general interest of the international society.

Unfortunately, two conflicts in the last decade of the twentieth century evoke the horrific images of the Holocaust. In the former Yugoslavia mass atrocities and most severe violations of international humanitarian law took place, followed by the implementation of an ethnic cleansing policy, in which genocide, mass murder, torture, systematic rape and many other atrocities have been directed at non-Serb nationalities.³ On the other corner of the world, only thirteen weeks after the plane carrying President Habyarimana was shot down, at least half a million people perished in the Rwandan genocide, perhaps as many as three quarters of the Tutsi population.⁴ This caused the United Nations to exercise its powers under the Chapter VII of the UN Charter entitled "Action with respect to threats to the peace, breaches of the peace, and acts of aggression",⁵ which gave birth to ICTY and ICTR, the two very first modern international mechanisms of transitional justice.

² Bašić, Nedžad – Stoett, Peter: *Globalization and security*, Faculty of Law of University of Bihać, 2006, Bihać, p. 184.

³ *War Crimes in Bosnia and Herzegovina*, Helsinki Watch, August 1992, available at:

<http://www.hrw.org/reports/pdfs/y/yugoslav/yugo928/yugo928full.pdf> [26.3.2015.]

On 6 October 1992 the UN Security Council unanimously adopted Resolution 780 which called for the establishment of an impartial 'Commission of Experts' to examine and analyse information related to "the violations of humanitarian law, including grave breaches of the Geneva Conventions being committed in the territory of the former Yugoslavia." The Commission faced a number of difficulties including lack of funding and states' reluctance to co-operate, but it nevertheless produced a report outlining the situation in the region, in which it "concluded that grave breaches and other violations of international humanitarian law had been committed in the territory of the former Yugoslavia, including wilful killing, "ethnic cleansing", mass killings, torture, rape, pillage and destruction of civilian property, destruction of cultural and religious property and arbitrary arrests. See more: Birdsall, Andrea: *The International Politics of Judicial Intervention – Creating a More Just Order*, Routledge, London 2009.; Secretary-General, *Report of the Secretary-General Pursuant to Paragraph 2 of Security Council Resolution 808 (1993)*.

⁴ Desforges, Alison: *Leave None to Tell the Story: Genocide in Rwanda*, Human Rights Watch, 1999, p. 6. The International Commission of Inquiry concerning Rwanda was established on 7 September 1995 in order to investigate reports relating to the sale or supply of arms and related material to the former Rwandese Government Forces in the Great Lakes region in violation of Council resolutions, and to recommend measures to end the illegal flow of arms in the region. The report was written on the basis of the final report of the Commission of Experts for the former Yugoslavia, but this report was missing the thoroughness of the report submitted by experts of the Commission for Yugoslavia. Report of the Commission for Rwanda was based on reports from other bodies on the situation in Rwanda and reports published by the mass media. Obradović, Konstantin *et al.*: *International Humanitarian Law*, Belgrade Center for Human Rights, Belgrade 2002, p. 346.

⁵ In this sense, particularly Article 39 of the UN Charter: „The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.“

Transitional justice: general remarks

Around 2000, 'transitional justice' became a label under which non-governmental organizations (NGOs) and university courses have been working, establishing centres and institutes.⁶ The meeting of the main transitional justice NGO, the International Center for Transitional Justice (ICTJ), took place in 2000.⁷ In 2004, Kofi Annan, Secretary General of the United Nations stated that transitional justice represents

„the full range of processes and mechanisms associated with a society's attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation.“⁸

It is often mistaken that transitional justice implies some special form of justice. In fact, it is a whole set of activities that can be implemented in transitional societies, which generally lead to the establishment of justice and the rule of law.

There are four main mechanisms of transitional justice: criminal prosecutions (international or national) for mass atrocities and violations of humanitarian law, truth and reconciliation commissions, reparation programs, and various forms of institutional reforms.⁹

As stated above, the first two international mechanisms of transitional justice were ICTY and ICTR.¹⁰ At first glance, many internationalists viewed the increased use of international criminal law as the last, best hope for stemming the tidal wave of atrocities that all too frequently have marked both international and internal armed conflicts.¹¹

However, a few decades later, the enthusiasm about international criminal courts splashed;¹² instead of representing ideal form of cost-effective and streamlined judicial

⁶ Bell, Christine: *Transitional Justice, Interdisciplinarity and the State of the 'Field' or 'Non-Field'*, The International Journal of Transitional Justice, Vol. 3, 2009, 5–27, p. 9.

⁷ The International Center for Transitional Justice is an international non-profit organization specializing in the field of transitional justice. ICTJ works to help societies in transition to address legacies of massive human rights' violations and build civic trust in state institutions as protectors of human rights. See more: <https://www.ictj.org/about> [26.3.2015.]

⁸ Report of the Secretary-General of United Nations: *The rule of law and transitional justice in conflict and post-conflict societies*, 2004, p. 4, available at: <http://www.unrol.org/files/2004%20report.pdf> [26.3.2015.]

⁹ International Center for Transitional Justice, 2009., available at: <https://www.ictj.org/sites/default/files/ICTJ-Global-Transitional-Justice-2009-English.pdf> [28.4.2015.]

¹⁰ On 25th May 1993, the Council of Security of the United Nations adopted Resolution no. 827, by which the International Criminal Tribunal for Former Yugoslavia was established. The Statute of International Criminal Tribunal for Rwanda was adopted one year later, on 8th November, with Resolution no. 955. Both Resolutions pointed out almost the same reasons for establishing the tribunals: bringing to justice those who were responsible for violation of international humanitarian law, contributing to the restoration and the maintenance of peace and ensuring that such violations are halted and effectively redressed.

¹¹ Wippman, David: *Atrocities, Deterrence and the Limits of International Justice*, Fordham International Law Journal, Vol. 23, No.2, 1999, 473–488, p. 473

¹² Numerous authors and human rights advocates argue that the accomplishment of criminal trials is not only an option but also a moral and legal obligation of the state and (where its support is necessary) of the international community in order to avoid the impunity of persons committing serious violations of human rights and humanitarian law. See more: Kirs, Eszter: *Possible models for*

bodies, the two *ad hoc* tribunals have grown into large institutions, with more than 2,000 posts between them and a combined annual budget exceeding a quarter of a billion dollars, equivalent to more than 15 per cents of the Organization's total regular budget.¹³

The role of civil society organizations in transitional justice

The competences of NGOs and other civil society actors justify a role in addressing human rights issues that arise in transitional settings. Some even make vital contributions to transitional justice processes.¹⁴ The strength of civil society in any given country (how many and how well organized the nongovernmental advocacy, community-based, research, and other such organizations) will partly determine the success of any transitional justice initiative. Because of their information, contacts and

the regulation of Simultaneous Functioning of Truth Commissions and Criminal Courts, In: The Rules and Institutions of International Humanitarian Law put to Test in Recent Armed Conflicts. Brill Academic Publishers, La Haye, pp. 821-862. p. 821. For much of its first decade of operation, the ICTY did little to promote domestic development or to enhance the capacity of national judicial institutions in the region. In fact, the ICTY may well have frozen out judicial reform in Bosnia & Herzegovina in the years immediately following the war in the Balkans. Since approximately 2002, however, the ICTY's impact on domestic institutions has been much more positive. During this later period, the ICTY has encouraged the development of domestic courts in BiH and catalyzed the activation of domestic judicial institutions. Specifically, the ICTY has helped spur the establishment of the new State Court of Bosnia & Herzegovina with war crimes jurisdiction. See more: Burke-White, William: The Domestic Influence of International Criminal Tribunals: The International Criminal Tribunal for the Former Yugoslavia and the Creation of the State Court of Bosnia and Herzegovina, Columbia Journal of Transnational Law, 2007, pp.279-350, p. 280. However, the characteristics of the domestic legal system should be taken into consideration and be paid more respect in the case of the international intervention, which might have gone too far in this specific case. Although the Bosnian legal system was in need of improvement for the proper management of war crime trials in order to meet international standards, the already existing inquisitorial system of the criminal procedure could have been a stronger basis for progressive changes. See more: Kirs, Eszter: Limits of the Impact of the International Criminal Tribunal for the Former Yugoslavia on the Domestic Legal System of Bosnia and Herzegovina, Goettingen Journal of International Law, Vol.3, 2011, No. 1, pp. 397-416, p. 416.

¹³ Report of the Secretary-General of United Nations: *The rule of law and transitional justice in conflict and post-conflict societies*, 2004, p. 14, available at: <http://www.unrol.org/files/2004%20report.pdf> [26.3.2015.]

The latest type of international crimes courts, inter alia dubbed 'hybrid courts', has been welcomed with great expectations. The hybrid model that is characterized by a mix of national and international components is said to 'hold a good deal of promise and actually offer an approach that may address some of the concerns about purely international justice, on the one hand, and purely local justice, on the other. Dickinson, Laura: The Relationship between Hybrid Courts and International Courts: The Case of Kosovo', 2003 New England Law Review, pp. 1059-1072, p. 1060. Hybrid courts are thus assumed to combine the best two worlds, the purely domestic and the purely international prosecution of international crimes, and to transcend the shortcomings of each world taken separately. Nouwen, Sarah M.H.: 'Hybrid courts' The hybrid category of a new type of international crimes courts, Utrecht Law Review, Vol. 2, No. 2, December 2006, pp. 190-214, p.191.

¹⁴ Backer, David: *Civil society and transitional justice: possibilities, patterns and prospects*, Journal of Human Rights, Vol. 2, No. 3, 2003, 297-313, p. 297.

expertise in human rights issues, the contribution of nongovernmental organizations (NGOs) can be critical.¹⁵

Human rights NGOs are renowned for collecting data and compiling reports on various abuses. This information is also a valuable input for transitional justice processes for several reasons.¹⁶ First, it creates a historical record that is concrete and specific and thus hard to dismiss as unsubstantiated. Second, when formal steps are actually undertaken, such contemporaneous evidence is indispensable given that memories fade and vital corroborating witnesses may no longer be available. Third, the information can permits analyses of patterns of violence and the relationships among cases and events.

A nation's civil society is often well suited to decide on and prioritise the ends of transitional justice as well as to design, implement, monitor and improve its various means. In particular, without a vigorous domestic civil society, backed on occasion by certain types of international civil society, new democracies are unlikely to establish effective truth commissions.¹⁷

In the post-conflict environment, a civil society continues to serve a vital role in attaining some form of justice for past human rights violations. NGOs have been able to survive or revive after conflicts, they can pressure the transitional government to investigate past human rights abuses and they do so in a robust way. They have not done so already, victims' groups often emerge in the context of transitions. They clearly have a strong interest in investigation and punishment and, in some instances, wield considerable influence.¹⁸

Lastly, civil society groups lead reconciliation efforts. Local populations often create organisations to support victims of war, provide trauma counselling and promote healing, forgiveness and reconciliation at community level.¹⁹

The prospect of transitional justice for past human rights abuses is also significantly influenced by transnational activist networks. In this sense, the most important ones are organizations such as Amnesty International and Human Rights Watch, which have prominent global presence in the system of modern international relations. For most of the global human rights movement, the ultimate to transitional justice is to punish those responsible for gross human rights violations. Aside from pressuring governments to act, international human rights activists increasingly serve an important

¹⁵ Hayner, Priscilla: Responding to a Painful Past: The Role of Civil Society and the International Community, in: Bleeker, Mô – Sisson, Jonathan (eds.): Dealing with the Past: Critical Issues, Lessons Learned, and Challenges for Future Swiss Policy, KOFF Series Working Paper, Swiss Peace, Bern 2005., p. 45.

¹⁶ Backer, David: *op. cit.*, str. 302.

¹⁷ Crocker, A. David: Truth Commissions, Transitional Justice and Civil Society, in: Rotberg, Robert I. – Thompson, Dennis (eds.): Truth v. Justice: The Moral Efficacy of Truth Commissions: South Africa and Beyond, Princeton University Press, Princeton, NJ, 2000, p. 16.

¹⁸ Brahm, Eric: Transitional Justice, Civil Society, and the Development of the Rule of Law in Post-Conflict Societies, International Journal of Not-for-Profit Law, Vol. 9, No. 4, 2007. "Mothers" groups, for example, have been a powerful response to many cases of widespread, systematic violence.

¹⁹ Anderlini, Sanam Naraghi *et al.*: *Transitional Justice and Reconciliation*, p. 8, available at: <http://www.international-alert.org/sites/default/files/library/TKTransitionalJustice.pdf> [26.3.2015.]

role in facilitating the pursuit of human rights trials in other venues when domestic prosecution is not likely. Amnesties, judicial obstacles, or military intransigence may leave a few outlets for victims in the fragile post-conflict environment.²⁰

Civil society and transitional justice in Bosnia and Herzegovina and the Western Balkans

Almost a decade of war and violence devastated the economic and political systems of countries of the former Yugoslavia and had a huge impact on the social fabric, leaving many people traumatised, displaced or still missing. Mutually excluding “truths” about committed war atrocities are making up a part of the national identities, reinforcing the fragmentation of post-war societies.²¹ Dealing with the past in the region is influenced by several factors: the pressure from the ICTY on the government to comply with the agreement on cooperation, the degree of political will of governments and parliaments to face the past, the decision of civil society actors on when and how to deal with the past, the media reporting on war crimes, and the prosecution of members of the state army and paramilitary units in domestic courts.²²

The main intention of the following paragraphs is to show the efforts that civil society actors have made so far in terms of dealing with the past events, building the dialogue for the future.

The post-Dayton atmosphere

Since the signing of the Dayton Peace Agreement in 1995²³ until today, there have been several initiatives to address many human rights violations committed between 1992 and 1995, and to facilitate access to justice for victims – citizens of Bosnia and Herzegovina, especially in terms of criminal prosecution of perpetrators, and mitigation residual division among people.

The efforts to remove injustice and enabling individuals to serve justice in Bosnia and Herzegovina can be classified into four areas: a) international and domestic prosecution of war criminals; b) the search for truth, which included the truth about missing persons and their destinies; c) material and symbolic reparations and the restitution of property, and d) institutional reforms focusing on the verification of candidates for public functions and lustration.²⁴

²⁰ Brahm, Eric: *op. cit.*

²¹ Zupan, Natascha, in: Fischer, Martina: (ed.) 2006. *Peacebuilding and Civil Society in Bosnia-Herzegovina. Ten Years after Dayton*. Münster: Lit Verlag, 327-342, p. 327.

²² Petrović-Ziemer, Ljubinka in: Fischer, Martina and Petrović Ziemer, Ljubinka (eds.): *Dealing with past in the Western Balkans – Initiatives for Peacebuilding and Transitional Justice in Bosnia-Herzegovina, Serbia and Croatia*, Berghof Foundation Operations GmbH, Berghof Report No. 18, 2013, p. 48.

²³ The General Framework Agreement for Peace in Bosnia and Herzegovina, also known as the Dayton Agreement, Dayton Accords, Paris Protocol or Dayton-Paris Agreement, is the peace agreement reached at Wright-Patterson Air Force Base near Dayton, Ohio, United States, in November 1995, and formally signed in Paris on 14 December 1995.

²⁴ Downloaded from:

http://www.mhrr.gov.ba/ljudska_prava/tran_pravda/default.aspx?id=1801&langTag=bs-BA [25.3.2015]

In this sense, it is very important to mention two bodies, established in order to serve peace and justice in Bosnia and Herzegovina: The Human Rights Chamber for Bosnia and Herzegovina and the Institution of Ombudsman of Bosnia and Herzegovina. The Human Rights Chamber was a judicial body established under Annex 6 to the General Framework Agreement for Peace in Bosnia and Herzegovina (Dayton Peace Agreement). The Chamber had the mandate to consider alleged or apparent violations as well as discrimination of human rights as provided in the European Convention for the Protection of Human Rights and Fundamental Freedoms and the Protocols thereto, and furthermore within the texts of 15 other international agreements listed in the Appendix to Annex 6. Particular priority was given to allegations of especially severe or systematic violations, as well as those founded on alleged discrimination on prohibited grounds.²⁵ The Human Rights Chamber in its composition also had an Office of the Human Rights Ombudsman, which had a substantial international function during the first 5 years of the Chamber's mandate. In 2000, the High Representative for Bosnia and Herzegovina issued a decision on the Law on Ombudsman for Human Rights in the entities. Therefore, Ombudsmen were elected in both the Federation of Bosnia and Herzegovina and the Republic of Srpska. Thanks to the efforts of the OSCE Mission to Bosnia and Herzegovina, three institutions were transformed into one, national institution. The Mission was closely involved in drafting the Working Plan for the transitional period, the setting up of an operational framework for the new unified institution, the appointment process of new Ombudsman and in following up the process of the enactment of legislation in both entities.²⁶

Regardless of the invested material resources, and commitment of individuals, institutions and civil society organizations, planned results were not achieved.²⁷

Efforts of civil society organisations in post-Dayton atmosphere

Civil society organizations in Bosnia and Herzegovina are generally recognized as organizations that fight against denial of crime by presenting facts to which they came by realization during their program activities, primarily research. The public of Bosnia and Herzegovina agrees that, without civil society actors, the process of documenting violations of human rights and war crimes would not exist.

The work of civil society organizations in Bosnia and Herzegovina has particularly been visible in means of advocating for specific forms of justice for past atrocities;

²⁵ The Chamber's mandate ended on 31 December 2003. Pursuant to an Agreement between the Parties pursuant to Article XIV of Annex 6, entered into on 22 and 25 September 2003 and in January 2005, the Human Rights Commission was created with a mandate to decide on applications received by the Chamber through 31 December 2003. See more: <http://www.hrc.ba/> [17.7.2015.]

²⁶ The Ombudsman reform was finalized in 2010, and entity Ombudsman institutions have ceased to operate. See more: <http://www.oscebih.org/Default.aspx?id=52&lang=EN> [17.7.2015.]

²⁷ As most often mentioned reasons that contributed to these results are: a) The partiality of activities, and separation from other transitional justice mechanisms; b) Regional restriction of initiatives and activities in the field of transitional justice; c) The lack of direct involvement of government officials in the intervention and d) the lack of a unified strategy at the state level.

three separate initiatives by local CSOs and IOs to establish a national Truth and Reconciliation Commission (TRC) have failed for various reasons but mainly for the lack of political consensus on its structure and objectives. Truth-seeking efforts have thus far been much better served by localized commissions of inquiry, multi-stakeholders community dialogues and local expert panels dealing with particular episodes of war. Apart from a whole network of local NGO initiatives in this area, there are two organizations that have been consistently active in regard to truth seeking on national level. In 2005, a Missing Persons Institute (MPI) of Bosnia and Herzegovina has been launched at the state level to facilitate the process of tracing missing persons. Formerly a federal institution, the Research and Documentation Centre in Sarajevo has turned into a national civil society organization, which is one of the key resources for war crimes documentation, monitoring trials and collecting oral history in Bosnia and Herzegovina.²⁸ A draft law was prepared in late 2000; further revisions were made in 2001 and were submitted to the Ministry for Human Rights and Refugees. No progress has been made since then, as the government rejects the initiative. Another reason for the failure of the idea is the non-inclusion of victim groups in the process.

The process of civil society development in Bosnia and Herzegovina reflects the top-down approach of the international community and donor agendas rather than authentic bottom-up initiatives and priorities. A vast amount of the civil society assistance has been channelled to NGOs providing service delivery, effectively taking on functions of the state. Most beneficiaries of donor funding are professionalized NGOs in urban centres, some of which have even been created in response to available funding schemes. By contrast, civic associations and interest groups have largely been ignored both as interlocutors and beneficiaries of international donors. This has diminished the space for autonomous civil society actors, necessary to build an accountable and responsive state. Such organizations have been marginalized because they are seen as politicized and often have not been able to professionalize. Victims associations illustrate this point. On the one hand, they are usually perceived as too political and exclusivist. On the other hand, these are often rural associations that lack the skills to draft complicated proposals and cannot fit their demands within donor priorities.²⁹

Civil society has been a key agent of public debate regarding issues of war crimes and justice in Bosnia and Herzegovina with individual intellectuals, journalists and civil society activists often taking the lead on these sensitive subjects. Documentaries, films and art projects have provided alternative avenues for stimulating public debate on dealing with the past.³⁰

Civil society actors have put much effort in peace-building and reconciliation. There are dozens of CSOs that have been trying to overcome entrenched ethno-religious

²⁸ Access to justice – Facing the Past and Building Confidence for the Future, UNDP Project Document 2009-2011, p. 8.

²⁹ Rangelov, Iavor – Theros, Marika: Maintaining the Process in Bosnia and Herzegovina – Coherence and Complementarity of EU Institutions and Civil Society in the Field of Transitional Justice, International conference Building a Future on Peace and Justice, Nuremberg, 25-27 June 2007, p. 7.

³⁰ *Ibid.*, p. 9.

divisions: for example, Youth Initiative for Human Rights (YIHR) tries build bridges among young people through seminars and trainings; on the other hand, organizations such as the Association of the Alumni of the Center for Interdisciplinary and Post-graduate Studies for Sarajevo have contributed to academic research and debate.

International assistance to civil society has been much more forthcoming in areas such as legal aid and socio-economic aspects of refugee return and reintegration, i.e. activities related to service delivery. Donors have mostly avoided supporting civil society work on sensitive and politicized issues of transitional justice. Furthermore, it is in the nature of transitional justice to focus on advocacy and the broader political process rather than the measurable outcomes and deliverables preferred by the donor community.³¹

However, one of the main reasons why the process activities have done in the field of correcting mistakes committed in the past have not resulted in enormous changes is the fact that the majority of interventions to were carried out by civil society organizations and international organizations (such as establishing National Truth and Reconciliation Commission), without direct participation of government representatives.³² Also, it is important to note that civil society organizations implement their activities in the field of transitional justice without any strategy.³³ In fact, most of them implement short-term projects and only focus on certain population's groups, in terms of status, gender and ethnicity.³⁴ Finally, it is important to point out that the general environment in which these projects take place is consisted of distrust between actors of the political processes in Bosnia and Herzegovina, insufficient cooperation among mere civil society organizations, general politicization of one part of the civil society and unsustainability of their programs due to limited funds.³⁵

Strategy for transitional justice in Bosnia and Herzegovina for the period 2012-2016

Understanding that facing the past is one of the key preconditions for building stable future in Bosnia and Herzegovina, and realizing the need for approaching the past in a systematic and comprehensive way, the Council of Ministers of Bosnia and Herzegovina decided to launch the process of drafting a Transitional Justice Strategy.

The decision to launch the drafting process is based on one of the recommendations from the Report on Consultations, which the Council of Ministers of Bosnia and Herzegovina adopted at its 87th meeting held on 14 May, 2009. Prior to the decision, the Ministry for Human Rights and Refugees of Bosnia and Herzegovina and the Ministry of Justice of Bosnia and Herzegovina, in cooperation with the United Nations Development Programme (UNDP), held over the course of several months a series of consultations within which the representatives of the government institutions, organisations and individuals from the civil society and the representatives of the associations and families of victims exchanged in a direct interaction, for the first time

³¹ *Ibid.*, p. 10.

³² Access to justice – Facing the Past and Building Confidence for the Future, UNDP Project Document 2009-2011, p. 8.

³³ Transitional Justice Guide Bosnia and Herzegovina, UNDP, 2007, p. 137.

³⁴ *Ibid.*

³⁵ *Ibid.*

after the end of the war, their views on transitional justice issues. It was during those discussions that they defined the need for approaching issues of the past in a new, systemic and inclusive way, through the drafting of a national Transitional Justice Strategy.

Together with related strategies – such as the War Crimes Strategy, the Gender Action Plan, and the Dayton Agreement – the Strategy represents a comprehensive plan to combat impunity, provide redress for injustice, establishes facts about the past, regains trust of citizens towards institutions and deters future human rights violations.

Civil society efforts in the region of the Western Balkans: The RECOM Initiative

The Coalition for RECOM is a non-political gathering of civil society organizations. It consists of a network of more than 1900 non-governmental organizations, associations and individuals who represent and promote the initiative for RECOM towards the establishment of a Regional Commission Tasked with establishing the Facts about All Victims of War Crimes and Other Serious Human Rights Violations Committed on the Territory of the Former Yugoslavia in the period from 1991-2001 (RECOM).³⁶

The Documenta Center (Zagreb), the Research and Documentation Centre (Sarajevo) and the Humanitarian Law Center (Belgrade) established cross-border cooperation on dealing with the past in 2004. In 2006, they initiated a campaign to establish a regional fact-finding mechanism for the countries of the former Yugoslavia. After a two-year consultation process (with regional forums held in Sarajevo, Zagreb, Belgrade and Prishtina), 108 local CSOs and 77 individuals from various countries signed an agreement in October 2008.³⁷

The establishment of a regional commission by national governments in the Western Balkans would significantly contribute to fulfilling the goals set by the European Commission in the stabilization and association process for each of the EU aspirant states of the Western Balkans. RECOM would directly promote democratization goals – by giving marginalized groups a voice in the transition process.

The support it has received from the international community, including considerable funds, has by far been bigger than any other restorative-justice initiative ever received in the Western Balkans.³⁸ Proponents of the establishment of RECOM have stated that a commission's principal goals include: creating an accurate record of the past abuses; debunking prevailing myths and exaggerations in the interpretation of the past in the region; helping to resolve the fate of the missing persons; assisting efforts of the judiciaries to bring justice to victims; providing a public platform for victims to be heard and to be acknowledged by others; and promoting tolerance and building solidarity with the victims, irrespective of their ethnic affiliation.³⁹

³⁶ See more: <http://www.zarekom.org/The-Coalition-for-RECOM.en.html> [26.3.2015.]

³⁷ Fischer, Martina, in: Fischer, Martina and Petrović Ziemer, Ljubinka (eds.): *op. cit.*, p.14.

³⁸ Kisić, Izabela: Transitional Justice in the Western Balkans – The Core Elements at the First Level – Truth, Reconciliation and Compensation, in: Kisić, Izabela et al.: *Transitional Justice – Experiences from Africa and the Western Balkans*, Landesverteidigungsakademie (LVAK) / Institut für Friedenssicherung und Konfliktmanagement (IFK), Vienna 2013, p. 58.

³⁹ *Submission to the Universal Periodic Review Of the UN Human Rights Council Seventh Session: February 2010*, International Center for Transitional Justice, 2009, p. 9,

Three years later in March 2011, a statute proposal was agreed by members of the coalition that proposes the establishment of a “Regional Commission for Establishing the Facts about War Crimes and other Gross Violations of Human Rights Committed on the Territory of the Former Yugoslavia in the period of 1991-2001”).⁴⁰ As the main principles of functioning of the Commission, Article 10 of the RECOM Statute proposal outlines: (a) Respect for human dignity; (b) Independence and impartiality; (c) Dedication to truth; (d) Equality and the respect for human rights and freedoms; (e) Accountability, accessibility, and openness; (f) Rigorous inquiry and procedural fairness; (g) Integrity, resoluteness, and the maintenance of the highest standards of professional ethics; (h) Special care in providing protection for victims of sexual violence as well as persons who were underage during the period within the mandate of the Commission; and (i) Protection of confidentiality.

The RECOM would publicize its report within the period of 2 years – including findings about war crimes and recommendations for reparations – and pledging “no more” to war crimes. The planned regional commission would open its archives to the general public. Some 500,000 persons (out of the planned 1 million) from all ex-Yugoslav republics put their signature under the initiative. Copies of the petition were handed over to the Presidents of Croatia and Montenegro, the Presidency of Bosnia and Herzegovina and Slovenian authorities.⁴¹

This regional commission gradually loses support in the region, criticized for its operations and concept even by civil society organizations – primarily those from Kosovo, Bosnia and Croatia. As for conceptual differences, according to the Helsinki Committee for Human Rights in Serbia, civil society representatives also hold that the proposed regional approach for RECOM is inadequate and does not give an insight into the context, causes and main culprits of the war in former Yugoslavia.⁴² They advocate that is very important to cover a much broader context, political, cultural and social context on the eve of the war.⁴³

Conclusion: How can civil society serve justice and peace in Bosnia and Herzegovina?

<https://www.ictj.org/sites/default/files/ICTJ-FormerYugoslavia-Bosnia-Review-2009-English.pdf> [26.3.2015.]

⁴⁰ Article 13 of the proposed RECOM Statute outlines the following purposes, which aim to be achieved: a) To establish the facts about war crimes and other gross violations of human rights committed on the territory of the former SFRJ in the period from January 1, 1991 until December 31, 2001, the political and societal circumstances that led to the commission of these acts, and the consequences of the crimes and human rights violations; b) To acknowledge injustices inflicted upon victims in order to help create a culture of compassion and solidarity with victims; c) To contribute to the fulfilment of victims’ rights; d) To help political elites and society in Parties to the Agreement to accept the facts about war crimes and other gross violations of human rights; e) To help clarify the fate of the missing persons; and, f) To help prevent the recurrence of war crimes and other gross violations of human rights.

⁴¹ Kisić, Izabela in, Kisić, Izabela *et al.*: *op. cit.*, str. 58.

⁴² Helsinki Committee for Human Rights in Serbia Report, cited according to: Kisić, Izabela in: Kisić, Izabela *et al.*: *op. cit.* str. 58.

⁴³ Kisić, Izabela in: Kisić, Izabela *et al.*: *op. cit.*, p. 58.

Ever since the war in Bosnia and Herzegovina ended, a number of national and international transnational initiatives have been launched. Although it is widely accepted that, without ICTY, it would not be able to prosecute those who are responsible for harsh violations of international humanitarian law on the territory of former Yugoslavia, and that criminal prosecution is the best mechanism for dealing with past mass atrocities, it soon became clear that the success of the process of transition depends in a great deal on involvement of non-judicial actors.

However, despite being one of the rare countries in the region which launched the process of drafting a Transitional Justice Strategy, which is owned in a great deal to efforts of victims' associations and civil society organizations, the politics and culture of memory in Bosnia and Herzegovina is still being politicized through a one-sided view of past events.

Although civil society organizations are recognized as the driving force and pioneers in the fight for protection of victims' rights, it is clear that they lack a vision of strategic implementation of their goals in the field of transitional justice. This is also a result of lack of in-depth knowledge of transitional justice that would help them to consolidate their position as defenders of transitional justice and creators of peace dialogue.

There are four elements necessary for building a better Bosnia and Herzegovina, where rule of law is an imperative and not a dead letter: responsible government representatives, responsible representatives of civil society, responsible representatives of international community and appropriate expertise. What does this mean for civil society organizations? First of all, civil society organizations must inform themselves about activities of other CSOs in this area, in order to build a network for easier work and functioning. This is linked to another failure of civil society organizations – they must show a greater readiness to cooperate with government institutions, which was not the case until now. This means that civil society actors, along with their partners, should systematically monitor the work of the state institutions and point out to problems and controversies in order to be resolved. And, finally, being better equipped with information on institutions' activities, they can better help their beneficiaries in terms of realization of their fundamental rights and, thus, helping create a more just order in Bosnia and Herzegovina.