

# The Hague Tribunal and Balkan Reconciliation

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*Institute for War and Peace Reporting*

July 21, 2006

*More than a decade after the conflicts in Bosnia and Croatia, IWPR asks whether criminal justice dispensed in The Hague can help divided communities in the Balkans to move on.*

Hazrudin Bilic witnessed the notorious Croat massacre of Muslims in the Bosnian village of Ahmici on April 16, 1993. Taking refuge in a cellar with his pregnant wife and four-year-old son, he could only watch as men, women and children were slaughtered before his eyes. The Ahmici attack, carried out by fighters loyal to the Croatian Defence Council, has gained prominence as the worst single atrocity of the conflict that broke out between the formerly allied Muslim and Croat forces. It has also been the focus of a great deal of work at the International Criminal Tribunal for the Former Yugoslavia, ICTY, in The Hague, the ad hoc court which has long been the core of the international community's efforts to see justice done for atrocities committed during the Balkans wars of the Nineties.

One former Croat fighter, Miroslav Bralo, has even taken the rare step of standing before Hague judges to publicly declare his deep remorse for his own role in this and other atrocities, stating that his apology "should be bigger than the globe". But standing in Ahmici today, Hazrudin Bilic is cautious about what these developments in distant courtrooms mean for Muslim-Croat relations in a village whose Muslim residents have taken to the alien practice of locking their doors at night. The local mosque and most of the houses have been rebuilt, and it is hard to imagine now that this pretty little village nestled between the lush hills of the Lasva Valley was the scene of such violence. But on some level, the animosities remain.

"I think the only thing that could help Muslims and Croats in Ahmici to reconcile with each other would be an honest talk," said Bilic. "It would mean a lot to me if they said, 'We didn't participate in the massacre but we didn't do anything to stop it either, and we regret that.' This would be important for the future of our children." Fehima Pezer, an elderly woman with thick glasses and a traditional headscarf, is more dismissive of the idea that the ICTY can repair the damage done in Ahmici. Nothing, she says, can turn back the clock on the massacre - in which her husband and 82-year-old mother died - or the death of her teenage son, who was shot by a sniper several months prior to it. She does not follow the war crimes trials that take place in The Hague, as she is not interested in the tribunal's work and she couldn't care less for the confessions of those who committed atrocities, even in her home village. "Nothing will bring back those who were killed," she said bitterly.

## FOCUS ON BOSNIA

This report represents the results of IWPR's efforts to dig deeper into the widely-held assumption that the ICTY has a central role to play in helping the divided communities of the Balkans to reconcile themselves with their violent recent histories and with one another. Our research included speaking with survivors of some of the worst atrocities of the wars of the Nineties, representatives of Balkans civil society and senior figures within the ICTY, as well as international academics whose work focuses on transitional justice and post-conflict reconciliation. While the issues at stake are region-wide, this report focuses on Bosnia, where the question of reconciliation is perhaps more crucial and more complex than in any other part of the Balkans. The war there involved all three of the main ethnic groups confronting one another in a conflict which saw some of the worst crimes of this whole period.

What we uncovered through our research proved, not unexpectedly, to be an incredibly complex state of affairs in which convenient assumptions about justice, truth and reconciliation quickly dissolve. Our findings suggest that if the ICTY is able to play any role in fostering reconciliation in the Balkans, it can only do so within the context of an intricate web of interlinked factors which could take decades to unravel. At the heart of the problem lie an intense resistance by many in the region to the reality that their own ethnic kin committed atrocities, and unanswered political questions which make it difficult to look far into the future. At the same time, it is clear that whatever chance the ICTY had to contribute to the complex process of reconciliation was for a long time compromised by its failure to engage with people in the region.

## RECONCILIATION AS AN AIM OF THE TRIBUNAL

The Hague tribunal was established in 1993 with the aim of bringing to justice those most responsible for the wave of horrors that was sweeping through the Balkans in the wake of the collapse of the old Yugoslav order at the start of the decade. Bosnia and Croatia were both still submerged in violence at the time, and there was a sense that something needed to be done in answer to the television images of indiscriminate shelling, burning homes and emaciated detainees, and the evidence of widespread, systematic ethnic cleansing. Today, the violence is over but the Balkans remains very much divided.

Bosnia's state system, which emerged from the peace accords that brought an end to the war there, splits the country into two ethnically-defined entities, the Muslim-Croat Federation and the Serb-dominated Republika Srpska, which are at odds over key political issues. At the same time, the federal government in Sarajevo is busy suing neighbouring Serbia for its role in the Bosnian war, in a case in which billions of dollars in reparations payments could be at stake. Serbia, for its part, has been blocked from closer relations with the European Union over its apparent reluctance to square up to the Hague court's highest-profile war crimes fugitive, the former Bosnian Serb military leader Ratko Mladic, who along with indicted ex-Bosnian Serb political leader Radovan Karadzic, are still regarded by a significant proportion of Serbia's population as heroes. And Croatia - also in the process of trying to sue Serbia for its wartime activities - only overcame a major obstacle of its own to EU membership late last year, with the long-awaited arrest of war crimes suspect Ante Gotovina, who is still equally lauded by many Croats.

Amid all this, it has been widely hoped that the ICTY had a role to play beyond simply dispensing criminal justice. Officials and expert observers are often at pains to point out that criminal justice must be the priority. “The tribunal as a tribunal has to prosecute according to the law... those who are allegedly responsible for the violations, and it starts and finishes there,” the current president of the ICTY, Judge Fausto Pocar, told IWPR. But the fact is that over the years, an expectation has persisted that the ICTY’s work would or should help to reconcile the peoples of the Balkans with their violent recent history, even if only as a by-product of its central, specifically judicial aims. The voices expressing this kind of faith are to be heard within the tribunal as well as outside it. While sticking by his assertion that the judicial process must remain the uncontested priority of the ICTY, Judge Pocar himself acknowledges that this “does not exclude of course the fact that the decisions the tribunal takes should have an impact on the reconciliation process”.

In 2001, during a speech in Sarajevo, the then president of the tribunal, Judge Claude Jorda, gave an even stronger assessment of the relationship between the court’s work and the process of post-war reconciliation in the countries of the former Yugoslavia. Referring to the United Nations Security Council resolution that established the ICTY in the early Nineties and which expressed the conviction that it would “contribute to the restoration and maintenance of peace”, Judge Jorda spoke of the court’s “mission of reconciliation”. A similar sentiment is even to be found in the words of Dragan Obrenovic, a former soldier in the Bosnian Serb army who pleaded guilty in The Hague in 2003 to involvement in mass executions of prisoners and agreed to provide prosecutors with insider information. “In Bosnia, a neighbour means more than a relative. In Bosnia, having coffee with your neighbour is a ritual, and this is what we trampled on and forgot,” Obrenovic told the court. “We lost ourselves in hatred and brutality. “It is my wish that my testimony should help prevent this ever happening again, not just in Bosnia, but anywhere in the world.”

## WHAT IS RECONCILIATION?

The idea of reconciliation in post-conflict situations is a hot topic in academic, humanitarian and political circles. But the concept at the heart of the debate is itself controversial. Some speak of reconciliation in a moral, quasi-religious sense, as involving individual acts of confession and forgiveness. But while this is a neat understanding of the term, many feel that this kind of reconciliation is rare in post-war situations and that there is also something inherently patronising in the idea that international actors should seek to promote it. Instead, in the context of discussions about the ICTY and reconciliation in the Balkans, many find it more useful to speak about concepts such as “social reconstruction”. David Bloomfield, the director of the Berghof Research Center for Constructive Conflict Management, explained, “Where we at Berghof... use the term reconciliation, it’s a much more pragmatic thing about building working relations in politics and society. It doesn’t mean loving anybody. It doesn’t necessarily mean stopping hating anybody. It just means we have to work together minimally to make politics work without killing each other.” In the long run, Bloomfield added, it is arguably possible that these “minimal grudging relations” could give rise to some kind of reconciliation. “If you set those habits in process, then gradually they develop; degrees of cooperation and trust and - who knows - even respect,” he said. “And maybe down the line, after a few years, or a few decades, it does become peace and love.”

## A WORK IN PROGRESS

As far as the countries of the former Yugoslavia are concerned, international and local observers are agreed that reconciliation, if it has occurred to any significant degree, is still very much a work in progress. Steven Burg, a professor of international politics at Brandeis University, told IWPR that refugee returns and economic cooperation are increasing across the region. But he is sceptical about the degree to which this represents a large-scale phenomenon of reconciliation, in the sense of confession and forgiveness. "As a social phenomenon I certainly do not think it's working," he said. "There's no evidence in the political behaviours - in the voting patterns, in the way local governments function or don't function - that reconciliation has happened anywhere."

"What we have in Bosnia, unfortunately, is a continuing process of division and differentiation, instead of reconciliation," agreed Branko Todorovic, the president of the Helsinki Committee for Human Rights in the Republika Srpska. Nusreta Sivac, a Muslim former judge who fled the Bosnian town of Prijedor during the war and has since returned, told IWPR that relations with Serbs in the area have improved greatly. "It's getting better every day, we don't feel that threatened anymore," she said. She also noted that Prijedor has an exceptionally high number of refugees who have returned since the war, compared with other parts of Bosnia. Yet she cautioned, "I don't think that's an indicator that the process of reconciliation has been successful here. It's more the result of people's determination to return to their homes. "[Reconciliation] is such a complex process, in which all segments of society have to be involved. But there still isn't enough willingness to embark on it and start working on it properly."

## JUSTICE, TRUTH AND RECONCILIATION

Whatever the current situation may be, and however we define reconciliation, few believe that it is best achieved in the longer term by ignoring the wrongs of the past. And it is widely held that criminal courts like the ICTY have an important role to play. This might include helping to establish stability and a healthy political environment in an area in which conflict has broken these things down. "It's very hard to build a democracy that respects the rule of law when people who have committed mass crimes are not punished and are allowed to walk around the streets," explained Reed Brody, a counsel with Human Rights Watch. In addition, in his 2001 speech, Judge Jorda himself noted that the ICTY could help by "neutralising" major war criminals and preventing them from doing more harm. In more complex ways, he also suggested that it could individualise responsibility for war crimes, thereby preventing the stigmatisation of whole groups in whose name they were committed. And it could attempt to ease victims' suffering by giving them a "solemn but public forum".

Another task that Judge Jorda referred to, and which many experts argue is central to the process of reconciliation, is establishing an accurate historical record of the events that have disrupted a society. Of course, the question of truth in this context is complex and it would be naive to expect all sides involved in the Balkans conflicts to quickly arrive at a consensus on what exactly occurred. "When we're in a civil war situation, particularly one with a long history... every community feels victimised and it's that much more impossible to establish a shared truth," Bloomfield told IWPR. But Pierre Hazan, a senior fellow at the United States Institute for Peace and the author of *Justice in a Time of War: The True Story Behind the International Criminal*

Tribunal for the Former Yugoslavia, suggests that it is still possible and desirable to at least “narrow the scope of permissible lies”. “If you can do that, maybe you can have different memories which can coexist peacefully,” Hazan told IWPR. “And if you reach that point, even before reaching some kind of long-term common narrative, that’s something significant.”

Some argue that criminal tribunals suffer severe limitations when it comes to uncovering the truth about conflicts, which make institutions such as truth commissions more suited to the task. The investigations and balancing of evidence that occurs under the auspices of a court, for instance, must focus on the charges laid down in narrowly-framed indictments against particular individuals. Helena Cobban, a columnist for the Christian Science Monitor who has written about transitional justice issues, argues that the trial process also naturally “pushes people into a defensive crouch” by placing them in a situation where revealing or confirming the truth could result in them being punished. At the same time, however, courts also have clear advantages of their own when it comes to uncovering the truth about conflicts and war crimes.

Criminal judgements from a reputable institution, for instance, are based on carefully weighed evidence and deal with facts that have been proven to a high level of probity, beyond reasonable doubt. And if courts are bound to focus their efforts on alleged perpetrators of crimes, Hazan points out that they also avoid the problems faced by many truth commissions which “have surveyed the victimisation of people without doing an adequate job of examining who the victimisers were”. Finally, whatever weaknesses the ICTY has when it comes to mapping the history of the Balkans wars, the fact is that for a long time it has been one of only a limited number of institutions carrying out such work on such a large scale. In Bosnia, for instance, local commissions have been established to investigate what went on in such notorious war zones as Srebrenica, and there have been moves to set up similar projects elsewhere. But, so far, initiatives to establish a state-level truth commission have come to nothing.

#### INEVITABLE LIMITATIONS ON TRIBUNAL’S CAPACITY

The tribunal’s ability to carry out the work of charging, trying and punishing individuals - and, possibly, contributing to reconciliation in the process - is of course constrained by its limited resources. Since the court was established in 1993, its prosecutors have charged over 160 individuals. But with its mandate now nearing its end, no further war crimes indictments will be issued. And in Bosnia alone, local prosecutors are said to have files on many thousands of suspected war criminals. A case in point is the massacre in Srebrenica, the worst single atrocity of the Bosnian conflict, in which invading Serb forces slaughtered thousands of the town’s Muslim men and boys in the only legally-defined episode of genocide on European soil since the Second World War. So far, the ICTY has tried and convicted just six men for their participation in the atrocity. This month, Hague trial proceedings formally began against a further seven men also alleged to have been involved, in what will be the biggest joint proceedings ever seen at the tribunal.

This scattering of trials clashes starkly with the situation on the ground in Bosnia. In October 2004, the authorities in the Republika Srpska - under pressure from the international community - released a report in which they acknowledged that Serbs had been responsible for killing prisoners from Srebrenica. It has been widely reported in the local media that a full version of the

report exists that contains the names of over 20,000 people directly or indirectly implicated in the atrocity. At the same time, the specialist war crimes chamber of the Bosnian State Court in Sarajevo, which has only been open for a short time, is already well underway with the trial of 11 men charged in connection with the massacre - nearly twice the number who have so far been convicted at the ICTY in all the years that it has existed. It has always been the Hague tribunal's stated aim to focus its limited resources on trying the most senior individuals responsible for crimes during the Balkans wars and those implicated in the most serious atrocities. But this, of course, is only the tip of the iceberg. "Everybody talks about Karadzic and Mladic," said Hatidza Mehmedovic, a Muslim resident of Srebrenica. "But the whole Drina river valley is full of Karadzics and Mladics who still walk free, and haven't even been indicted for the crimes they committed."

For those who suffered during the conflicts, it is not even always the most senior perpetrators who matter the most. "To me, those who organised these crimes are much less responsible than those who carried them out," Bilic told IWPR. "One can plan anything he wants, but if there are no people willing to execute that plan, then it's worthless." Part of the proposed solution on this front is for local courts to pick up the baton where the ICTY leaves off. To this end, the tribunal is amongst the international actors who have been engaged in capacity-building work with national justice systems in the region, including backing and closely cooperating with the Bosnian State Court's war crimes chamber.

## CONFESSIONS

Despite the tribunal's limited resources, one aspect of events in The Hague that many hoped would be an especially powerful force in helping to foster reconciliation in the Balkans were the decisions by a number of former officials and fighters to admit their involvement in atrocities. Inevitably, however, the reality of such confessions has been complex. Many initially saw it as a breakthrough when Biljana Plavsic, a top Serb politician during the war in Bosnia, pleaded guilty in 2002 to persecuting non-Serbs. In return, prosecutors dropped other charges against her, including genocide. A report by the International Centre for Transitional Justice, ICTJ, argued in October 2004 that "her expressions of remorse during and after the hearing, combined with her decision not to appeal her 11-year sentence, may have contributed to the process of justice and reconciliation".

But the report's authors also noted that Plavsic's reluctance to provide detailed information about or to testify about the roles of other senior Serb officials "limited the legal and moral value of her gesture". When Plavsic made her first reappearance as a witness in The Hague this month to give evidence in the trial of her former political colleague Momcilo Krajisnik, she made it abundantly clear that she was there under duress. "After Biljana Plavsic's guilty plea, I said I hoped it was honest. But as it became apparent later, it was not," Tokaca told IWPR. Noting that his opinion had been partly swung by the contents of a book that Plavsic published after she was sentenced, he added, "It seems to me now that she did it only to get a milder sentence." "I don't think she showed true remorse," agreed Edina Becirevic, a senior lecturer at the Faculty of Criminal Justice Sciences in Sarajevo, "and her whole statement in which she admitted her guilt was addressed to Bosnian Serbs. "It seemed to me that her main goal was to ease the burden of

collective guilt. And because of that, the victims thought it was just a farce and it didn't have a real effect on the process of reconciliation."

Last year, when the former Croat combatant Bralo admitted crimes including murder, burning homes and raping a woman during the war in Bosnia, it seemed to many again that a major milestone had been passed. Prosecutors said they accepted that Bralo felt genuine remorse. And the accused himself said, "I encourage anyone who can do so to come forward and talk to their neighbours, to talk to the court and begin to make their peace." Becirevic told IWPR that Bralo's guilty plea "seemed to be much more honest". Yet it would be far too simple to expect even a genuine public apology to be met with immediate forgiveness from those who lived through the Ahmici attack. "Whenever someone pleads guilty, it's a big deal to me," said Bilic, who asserts that he knew Bralo personally prior to the war. "But the fact that he confessed to the crimes doesn't mean he should be absolved of responsibility. Maybe he confessed to the murders he committed in order to ease his own conscience, but he should still face the consequences of his acts."

#### DOES THE PUNISHMENT FIT THE CRIME?

One of the main controversies surrounding guilty pleas at the ICTY is the question of the lengths of sentences handed down to those who confess their crimes. Asked whether the 20-year sentence that Bralo received seemed adequate, Bilic was firm. "No," he said. "For crimes such as murders of innocent civilians, including women and children, any sentence that is not life imprisonment is too light. When a man kills another person in a car accident, he gets five to seven years in prison. How can 20 years be enough for deliberate murders of so many civilians?" Tokaca agreed that plea agreements of the kind reached by Bralo and Plavsic - where the accused admits some crimes in return for other charges being dropped, or in the hope of a lighter sentence - are a "problem". "Guilty pleas are important, but not as important for the reconciliation process as one might think," he said. "What actually hurts victims the most is when war criminals get very light sentences after guilty pleas. The victims see it almost as an insult."

He cited as an example the case of Drazen Erdemovic, who received a five-year sentence for shooting prisoners during the Srebrenica massacre. Erdemovic, who was a young man at the time of the atrocity, broke down in court and told the judges that he himself would have been killed if he hadn't gone through with the executions. But Bilic, for his part, described the sentence he received as "outrageous". "I know a man who worked at a local petrol station and got 11 years because he shot an intruder who tried to rob him while he was at work," he said. "How can that be fair?"

In fact, the ICTY's sentencing policies are a major bone of contention in general, not just in those specific situations where plea agreements are employed. "There were too many cases when ICTY judges passed sentences that were very light," Becirevic told IWPR, echoing a widely-heard sentiment. She added that from her point of view, they seemed to have done this "to save time, money and resources". "In my opinion," she said, "that's where the tribunal failed the most."

## FACING UP TO THE PAST

Besides reservations concerning the punishments handed down to convicted war criminals, many observers say a rather different obstacle to reconciliation is the resistance displayed by so many people in the Balkans to the reality of what occurred in the Nineties. The website of the ICTY boasts that in the light of the court's work, "It is now not tenable for anyone to dispute the reality of the crimes that were committed in and around Bratunac, Brcko, Celebici, Dubrovnik, Foca, Prijedor, Sarajevo, Srebrenica, and Zvornik to name but a few." But the fact is that across the region, many people continue to do just that. "Every ethnic group accuses the ICTY of being biased as soon as people from their ranks are put on trial," explained Charles Ingaro, a professor of history at Purdue University. "We still have a long way to go before we finally accept the truth, no matter how hard or painful that may be," agreed Todorovic.

Bloomfield, for his part, suggested that the region as a whole is probably "decades away from a shared truth of what happened in the Bosnian war". The Serb community is often the primary focus of criticism concerning unwillingness to face the past. Many Serbs continue to hold up Karadzic and Mladic as heroes for their roles in the Bosnian war, for instance, despite the enormous quantities of evidence suggesting their responsibility for war crimes. A human rights activist in Serbia, who preferred not to be named, suggested that the problem is at its most intractable there. "Many here, if they did not participate directly in the crimes, then they ignored them.... And many have continuously supported the perpetrators of those crimes," he said. "So it's obvious why they don't want to accept the truth about the war that the ICTY is presenting to them – if they did that, then they would admit that they personally supported war crimes."

Tokaca argued that among Serbs in Bosnia, in particular, this tendency to avoid painful truths is also fuelled by a fear that admitting Serb war crimes could jeopardise the autonomy they currently enjoy within the Republika Srpska, which itself emerged as a result of the conflict. But it is by no means the case that resistance to the idea that one's ethnic kin committed atrocities is limited to Serbs. In Croatia, for instance, a private foundation channels funds for the defence of senior Croats charged with war crimes. And when it emerged that the current Croatian president, Stjepan Mesic, had secretly testified in The Hague in the trial of the Croat commander Tihomir Blaskic, the response from some quarters was virulent, with one newspaper running the headline "Mesic's knife in Croatia's back".

At the same time, many Serbs are highly critical of Bosnian Muslims' interpretation of what happened during the war in Bosnia. They argue that the standard narrative of events in the Srebrenica area, for instance, largely ignores what they say were major Serb casualties, and crimes committed by Muslim fighters. This latter controversy was stirred up following a recent decision by Hague judges to sentence Naser Oric, a high-profile commander of Muslim forces in Srebrenica, to two years in prison in connection with abuse of prisoners during the war. Oric, who had already served his time whilst standing trial, was released immediately. Senior Serb politicians reacted angrily to the verdict, claiming that it made a mockery of the suffering of local Serbs at the hands of Muslims during the war. In Ahmici, a Bosnian army soldier who wished to remain anonymous, offered his own explanation of the continuing resistance to the truth in Bosnia. Suggesting that "history has always been written by the winners", he said, "The problem is that there are no winners in this war."

## REACHING OUT

Many local and international observers told IWPR, however, that the ICTY itself is far from blameless when it comes to this persistent phenomenon in the Balkans of reluctance to face up to recent history. Currently, the court has an outreach department which maintains offices in Belgrade, Sarajevo, Zagreb, Pristina and The Hague, employing a total of ten people. Their activities include hosting conferences in conjunction with local non-governmental organisations, and producing CD-ROMs which explain the court's work in relation to some of the most notorious events of the early Nineties. The department is also involved in capacity-building work with local courts in the region. However, the outreach service was only established in late 1999, many years after the ICTY was first set up. Up until around this time, the court employed no speakers of Bosnian/Croatian/Serbian in its public information section.

David Gray, a visiting assistant professor of law at Duke University Law School who has written on transitional justice, emphasises how important it is that the activities of institutions like the ICTY are visible to people in the regions they deal with. "Transparency is one of those essential features of democracy and the rule of law that is notably absent in abusive regimes," he said. "To keep faith with their commitments to these principles, transitions and their supporters, including international tribunals, must function transparently." Eric Stover, the director of the University of California, Berkeley Human Rights Centre, argued that international criminal tribunals should not become engaged in "social engineering", and that they should focus their work on the demanding task of rendering fair and impartial justice in difficult circumstances. "But as they work to that end, tribunals need to find ways of engaging communities so that those most affected by mass violence come to understand the criminal justice process," he added.

The ICTY's current efforts to reach out to people in the Balkans receive some praise. Todorovic told IWPR that when the Helsinki Committee organised conferences along with ICTY outreach staff to publicise the court's findings in relation to some of the worst crimes committed during the Bosnian conflict, many of those who attended were initially sceptical. But their reactions to the meetings were "amazing". "When faced with the true nature of the crimes committed, they were shocked," he remembered. "They all - without a single exception - condemned those crimes. Some of them were very emotional, some cried. They said that while they knew some crimes were committed, they were not aware of their full scale and the horror the victims went through." Tokaca agreed that the tribunal's more recent efforts have been impressive, "When their policy changed and they started with more aggressive outreach several years ago, the effects were almost immediate," he told IWPR. "People in the areas where the crimes were committed were able to see first hand what really happened and were forced to face the truth."

But he underlined that such work should have begun much earlier. Indeed, many are agreed that the delays in undertaking outreach work in the Balkans has been a major obstacle to the ICTY's chances of contributing to reconciliation there. A report released earlier this year by the Scholars' Initiative - an association of international academics concerned with mapping the recent history of the Balkans, of which Ingaro is a member - notes, "In retrospect perhaps it [the ICTY] can even be said to have been seriously negligent in its failure to address this audience. "Given the relative incomprehensibility of the tribunal and the lack of commensurability between

its achievements and expectations within the region, the local peoples have often tended to the conclusion that the tribunal favours other interests than their own.

“In these circumstances, it has been possible for politicians to ‘fish in troubled waters’, and seek to use criticism of the tribunal (some of it, but by no means all, well-founded) to further their own ends.” Ingaro himself describes the ICTY’s “lack of sensitivity towards public perception” in the early days as “a major mistake”, the effects of which are still felt today. “They didn’t know how they wanted to be perceived in Belgrade, Zagreb or Sarajevo; they acted in a very institutionalised way,” he told IWPR. “The work of the ICTY could have been publicised in the former Yugoslavia to a far greater extent,” agreed Richard Goldstone, who was the chief prosecutor at the court in the early years of its existence. “I would agree that it would have been ideal for outreach to have begun at the outset, when the ICTY was established,” the court’s deputy outreach coordinator, Olga Kavran, told IWPR. “However, it is very difficult to say how much would have been accomplished given the situation on the ground,” she added. “The war was still raging and, after the end of the war, the governments on the ground were generally hostile to the tribunal, especially those of Serbia, Croatia and Republika Srpska.”

Kavran also noted that resources are “a serious constraint”, and explained that the outreach department has never been part of the tribunal’s main budget and is forced to survive on voluntary contributions. “However, despite all of this, outreach has been able to accomplish a great deal,” she said. Judge Pocar, for his part, underlined that while outreach “may help the reconciliation process”, for a criminal tribunal like the ICTY it is “in a way a sort of side activity” rather than a main priority. At the same time, he said, “In my view the outreach service is a good one. Whether it does all that could be done, that is another question - that depends on resources.” Hazan suggests that the lack of any real effort on this front for the first half of the ICTY’s lifespan is linked to the way in which the institution came into being in the first place. In his opinion, the court was created as a kind of “fig leaf” or “alibi”, partly in order that the West would be seen to be doing something about the Balkans crisis. “The ICTY was established to be a PR exercise - or PR gadget - over western public opinion, and was not designed to address the people in the Balkans,” he explained.

He added that a concern to keep the court alive forced staff to neglect those who were actually supposed to benefit from its work in the early days, in order to gear their efforts towards impressing those in the West who had the powers to provide funding and arrest suspects. It was only once the court was more firmly established, he says, that it was really free to focus on people in the Balkans. The Scholars’ Initiative report echoes this sentiment, noting, “The orientation which it [the ICTY] has adopted towards global actors, and global criteria of its success, have resulted in it turning, to some extent, a blank façade towards the very region which might have been presumed to be its most important constituency – the peoples of the former Yugoslavia.”

## POLITICAL BARRIERS

While the court may have been at fault in relation to issues such as outreach, some observers say political factors far beyond its control are also always likely to act as major obstacles to reconciliation. “The large political questions that remain unresolved I believe stand in the way of

reconciliation in the humanitarian sense of the word,” Burg told IWPR. “Because reconciliation requires first and foremost problems to be settled. Whether people like the settlement or not, they have to be settled. And then people have to reconcile themselves to those circumstances and then to each other.” Among issues which have the potential to stand in the way of reconciliation efforts in the Balkans, he listed questions surrounding the nature of the Bosnian state and the future of Kosovo.

Addressing the specific situation in Bosnia, Tokaca pointed to factors such as its two ethnically-defined entities and “bad constitution”, and agreed that “the problems are so deeply rooted in the society, so many issues remain unresolved... that it is really hard to be an optimist”. Todorovic also underlined that the ICTY has to contend with resistance from actors in the region itself. “Unfortunately, those who are in positions of power in Bosnia are still largely against reconciliation,” he said. “They undermine every effort made in that direction.”

## GIVE IT TIME

In view of the complexity of the problem of post-conflict reconciliation and the lack of research that has been carried out in this field, some observers are keen to underscore the difficulty of predicting how all of these issues will unfold in the Balkans. “A lot of the thinking that we have on this comes from the Second World War, when we’re talking about countries reconciling across a national border,” Bloomfield told IWPR. He expressed doubts about how neatly such lessons might apply to the recent conflicts that occurred in the Balkans, where survivors are often forced to go on living directly alongside those who were to blame for brutalities. However, many are agreed that at this point in time it is still very early to be looking at whether reconciliation is occurring, and to be reviewing the ICTY’s role in that process.

“Reconciliation, if it is to be achieved, is an immense task which will clearly require more than judicial intervention, and will extend well beyond the lifetime of the tribunal,” the Scholars’ Initiative report notes. The anonymous human rights activist in Serbia suggested that it would be for future generations who had no direct involvement in the conflicts of the Nineties to finally come to terms with what happened. In the meantime, Hatidza Mehmedovic continues to go about her daily life in Srebrenica. “Of course, nothing can bring my children back,” she said. “What gives me strength and hope, though, is when I see that Muslims are returning to their homes - about 4,500 of them have returned to the Srebrenica municipality. Some of them come only on weekends, some stay in the daytime and leave at night, but the numbers are increasing gradually. “I’m sure we’ll be able to live with our Serb neighbours again, but we’ll all have to work on it. Serbs will have to accept the truth and the responsibility for their crimes sooner or later, and we will have to forgive them. That’s the only path to reconciliation in this country. But we will never forget.”

Another interviewee, a Serb resident of Sarajevo who hasn’t seen her husband since he was arrested during the war, told IWPR, “There cannot be lasting peace and true reconciliation until all sides put their cards on the table and tell the truth about crimes that were committed by members of their ethnic groups. “We need to know where our loved ones are buried, where their bones are and we are all entitled to that - Serbs, Muslims and Croats alike. Only then can we talk about reconciliation.”

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