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## ACCEPTANCE OF INTERNATIONAL CRIMINAL JUSTICE IN BOSNIA AND HERZEGOVINA

When the XIV Winter Olympic Games took place in Sarajevo in 1984, nobody expected that war would begin only seven years later and kill hundreds of thousands of people living in the former Yugoslavia. That millions of them would be ethnically cleansed and displaced, most of them for good. That hundreds of mass graves would be scattered around, and that war crimes unseen in Europe since the Second World War would be repeated. That severe crimes like systematic rape, torture, and massive destruction of cultural heritage and property would finally culminate with genocide. Consequently, Bosnia and Herzegovina (and the countries of the former Yugoslavia) triggered an immense boost in international criminal law and international criminal justice. That experience, during and after the war that took place from 1992 to 1995, can offer lots of valuable input. Not everything that had been done was good or perfect, but it was of great importance for the further development of international criminal law and international criminal justice in a world that is still searching for appropriate responses to the grave war crimes that occur every day, and for the development of mechanisms and practices that will ensure justice for victims and society and be perceived as such. The atrocities of the Bosnian War served as a wake-up call for the international community, highlighting the urgent need for mechanisms to hold perpetrators of such heinous crimes accountable. The establishment of the International Criminal Tribunal for the former Yugoslavia marked a significant milestone in this regard, pioneering the prosecution of individuals responsible for genocide, war crimes, and crimes against humanity committed during the conflict. However, challenges persist in ensuring access to justice for all victims and addressing the root causes of conflict to prevent future atrocities. The lessons learned in Bosnia and Herzegovina remain crucial in shaping efforts to achieve lasting peace and accountability worldwide.

**Key words:** *Bosnia and Herzegovina, justice, criminal justice, war crimes, victims.*

### *Original article*

**INTRODUCTION.** In recent decades, Bosnia and Herzegovina (hereinafter referred to as BiH) has witnessed a tremendous development of international criminal law and international criminal justice. This is partly due to the increased interest and efforts of scholars and practitioners working in this discipline, but largely because international criminal law and international criminal justice are evolving as a result of endless conflicts around the world. Furthermore, the wars since the end of the twentieth century are fundamentally different from their predecessors. They differ in scale and methods, and are characterised by low intensity combined with high levels of brutality and deliberate targeting of civilians. These wars seem to be gaining momentum, becoming less restrained and more brutal, and hence the number of civilians killed and injured is increasing sharply. (Malešević, 2023).

**PURPOSE AND OBJECTIVES OF THE RESEARCH.** Looking at numerous international

and domestic documents, it's notable that the phrase "justice for the victims of war crimes" is consistently emphasized. To deliver this justice, the international community and local authorities employ various means and methods, with criminal war crimes trials being the most prominent. In BiH, for instance, more than 700 cases have been resolved (1145 individuals)<sup>1</sup>, prompting important questions about their social impact. These effects are multi-faceted and can be observed on several levels. One significant aspect is the acceptance of victims, as these measures are specifically intended to address their suffering. This paper aims to delve into one potential avenue of this acceptance: the mechanism of international criminal justice. Through an objective analysis of the measures taken and their effects, particularly in relation to their perception and acceptance

<sup>1</sup> Šimić G. War Crimes Trials Database. <https://www.warcrimesdatabase.net>.

among victims of these crimes, it is possible to gain insights that contribute to the refinement of future international justice activities in affected countries. As societies grapple with the aftermath of conflict and atrocities, understanding the efficacy of international criminal justice mechanisms becomes paramount. By examining their impact on victim acceptance, it's possible to inform strategies to better serve the needs of those affected by war crimes. This research not only sheds light on past efforts but also paves the way for more effective interventions in regions grappling with the legacy of violence and injustice.

**METHODOLOGY.** In order to thoroughly examine the inquiries posed within this paper, sophisticated methodologies characteristic of modern scientific discourse will be employed. This will entail scrutinizing the ramifications of war crimes trials carried out in post-conflict societies and periods, as well as their influence on social reconciliation. Additionally, various legal, sociological, political, and other perspectives on the repercussions of mass atrocities in society will be presented to ensure a comprehensive understanding of their complexity. Subsequently, these findings will be meticulously analyzed both individually and relative to one another, culminating in the synthesis of conclusions based on facts.

**RESULTS AND DISCUSSION.** Millions of people throughout the world suffer harm because of crimes and the abuse of power but the rights of these victims have not been adequately recognized<sup>1</sup>. More than that, in the aftermath of the crimes, societies create a notion that those victims are supposed to “accept” the justice that is offered to them so that society can move on. But what kind of justice is that? Is it “just”, right, and fair? Is it restorative and favorable to them? And if not, do they have to be forced to accept that imperfect justice? These are profound questions that demand serious consideration and action (Spoerri, 2011).

*International criminal justice in the form of tribunals and courts*

The idea of an international criminal court that would even-handedly dispense justice in cases of crimes of international concern goes back at least to the aftermath of the Holocaust. However, the Cold War context led states to distrust the ability both of other states and international bodies to render justice fairly, and the court was abandoned for forty years (De Brito, Gonzalez-

Enriquez, Aguilar, 2001). Then, the International Criminal Tribunal for the former Yugoslavia (hereinafter referred to as the ICTY) was established in 1993 with the task of bringing to justice the persons who are the most responsible for serious violations of international humanitarian law in the former Yugoslavia since 1991 and thus to contribute to the restoration and maintenance of peace in the region. Its subject-matter jurisdiction covers grave breaches of the 1949 Geneva Conventions, violations of the laws or customs of war, genocide, and crimes against humanity.<sup>2</sup>

The war in BiH from 1992 to 1995 offered a full range of war crimes, crimes against humanity, and genocide. With app. 700 war crimes trials that took place, they have a large impact on the understanding of international criminal justice in post-conflict societies like BiH and its social acceptance. Furthermore, being under the jurisdiction of the ICTY, and having international and domestic trials (initially before the Court of BiH as hybrid trials involving domestic and international judges and prosecutors), BiH conducts war crimes trials that are incomparable anywhere in the world. Influencing life in BiH on a daily basis, the war crimes trials contributed to the shaping of Bosnian past, present, and future. Since all sides in the conflict committed war crimes in the last war, in the absence of other forms of truth finding, the war crimes trials in BiH not only established the individual criminal responsibility of those who committed the crimes but also facts “beyond reasonable doubt” about the past.

Just as concerns over capacity, political interference, and local identity-based biases animated the decision to establish an *ad hoc* international tribunal, they also helped drive the creation of a specialized War Crimes Chamber (WCC) of the Court of BiH in 2005. Up to the early 2000s, efforts to prosecute war crimes in BiH encountered a tangle of courts and different criminal codes, not to mention varying levels of political will to undertake prosecutions in the first place. This gap was particularly noteworthy in a country whose population has expressed a strong desire for accountability for the grave crimes committed during the war. The WCC came into existence through the adoption of national legislation and is therefore a national institution operating under the laws of the state of BiH. The ICTY actively supported this creation to build judicial capacity for taking over some of the middle-ranking cases that the Tribunal would not be able to try as part of its

<sup>1</sup> Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, UN Doc.A/RES/40/34 (1985). <https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-basic-principles-justice-victims-crime-and-abuse>.

<sup>2</sup> UN Security Council Resolution 808 (1993). <https://igittallibrary.un.org/record/243008>.

completion strategy (Arthur, 2001). In addition, BiH adopted a wide range of new criminal laws covering cooperation with the ICTY and the use of evidence collected from the ICTY before the courts in BiH. Given such dramatic advances in bringing to justice persons responsible for human suffering in the former Yugoslavia and, in the process, advancing the goals of truth-telling and reconciliation, one might believe that the ICTY would enjoy wide popularity throughout the Balkans. But this is not the case. Among some national communities (particularly the Serbs and the Croats), the ICTY is widely despised, and within the Bosniak community, the work of the ICTY often brought a mixture of hope, gratitude, disappointment, and disillusion (Saxon, 2005).

Even 30 years after the war, there are still some serious flaws that need to be addressed to have fair trials for the accused and justice for victims and the society in BiH. The absence of a sound statutory framework and unnecessary errors in creating a legal framework for the prosecution of war crimes led to unacceptable situations in BiH. One of them led even to the release of the convicted war criminals (some even for genocide) due to the annulment of final decisions of the Court of BiH by the Constitutional Court of BiH. All that affects the level of acceptance of justice provided by the courts for war crimes in BiH. But the case of the WCC also shows that it is not possible to take these institutions out of the context in which they exercise their competences (Martin-Ortega, 2012). Furthermore, unlike the ICTY, a temporary ad hoc legal institution, the Court of BiH has no end date and will hear a significant number of cases over the years (Garbett, 2010).

One of the main shortcomings of the ICTY and the national courts is the marginalization of victims. Traditionally, criminal justice focuses on providing rights and protection to the accused in order to guarantee that they are tried in accordance with the fundamental principles of due process, as they are faced with a potential conviction and deprivation of liberty. The procedure and practice of the ICTY with respect to the victim show that this principle also applies to the international criminal law regime. The victim is first and foremost dealt with as a witness, having no right to representation or participation and little provision for compensation (Boas, Schabas, 2003). In the late 2000s, the judges of the ICTY, through their President, suggested to the UN Security Council that the appropriate UN authorities should consider creating a special mechanism for reparations. Having in mind the guiding idea for establishing the ICTY: “to do justice, to deter fur-

ther crimes, and to contribute to the restoration and maintenance of peace”,<sup>1</sup> it’s fair to say that there is still space for improvements in international criminal justice. Without that, the following statement from the official ICTY’s website is conceptualized in a very narrow, retributive sense: “By holding individuals responsible for crimes committed in the former Yugoslavia, the Tribunal is bringing justice to victims”<sup>2</sup>. It is essential to recognize, however, that “for survivors of genocide and ethnic war the idea of “justice” encompasses more than criminal trials and the *ex cathedra* pronouncements of foreign judges in The Hague” (Stover, Weinstein, 2004). Still, “ad hoc” tribunals helped to change the predominant international discourse about impunity and allowed judges, prosecutors, and defense counsels to garner experiences that will prove invaluable in implementing a permanent criminal court (De Brito, Gonzalez-Enriquez, Aguilar, 2001). The International Criminal Court (hereinafter referred to as the ICC), building on this idea, established the Trust Fund for Victims and other working mechanisms for the victims of crimes under the jurisdiction of the court.

#### *Groups of various actors*

Groups of various actors could be observed in BiH in the context of international criminal justice and its acceptance. Victims, perpetrators, veterans, human rights NGOs, faith-based groups, political parties, media, court staff, and legal practitioners, and the general public – all of them have their perspectives, expectations of outcomes of actions undertaken, and the “reasons” for accepting or rejecting international criminal justice in BiH.

During the atrocities, apart from perpetrators, victims, political leaders, and media, all others stood more or less aside. These war events were commanded by political parties and their leaders, with strong support from the media (Šimić, 2023a). During that period, all parts of society, including courts and the police, took part in the war, paying no or insignificant attention to ongoing war crimes. Being under constant media pressure, fighting for their lives, with no other sources of information, the majority of the people

<sup>1</sup> UN Security Council Resolution 827 (1993). <https://digitallibrary.un.org/record/166567>.

<sup>2</sup> ICTY reached final judgment for 85 individuals accused of committing war crimes in BiH (7 of them for genocide). Out of those 85 individuals, 77 was found guilty of committing various war crimes (7 of them genocide), and most of them served only 2/3 of their sentence. No compensation was awarded to the victims.

in BiH had no complete picture of the war (Džihana, Volčić, 2011).

Only after the war, numerous actors of this group emerged. Some of them, like victim organizations, emerged as a direct consequence of war crimes. Depending on their power in society, some of them are more active, influential, and visible than others. But most of them have one common characteristic. They are not interested in “whole” truth or justice “for all”. Most of them symbolically promote peace and reconciliation but use scratches of “truth” to point fingers at “others” (Šimić, 2023a). Being strongly divided on an ethnic basis, the Bosnian society is a direct product of the most recent war. As such, the most influential speakers are political leaders. They are oriented toward their ethnic groups, and the permanent goal of their policy is to keep people of BiH under constant awareness of their ethnic affiliation. In that manner, they are constantly “mobilized” to defend themselves from “others” who present a constant threat (Seizović, 2014). To achieve that, the political leaders in BiH are constantly using trials of individual persons to convince members of their ethnic community that the courts are made to stigmatize and prosecute only members of that ethnic community. Another point that supports this thesis is the fact that the members of one ethnic community are sentenced to more years of imprisonment than the others (pushing aside the fact that those persons are prosecuted and finally sentenced by the courts as guilty for crimes committed). It is also common in BiH that leading politicians welcome convicted war criminals when they arrive in BiH after serving their sentence, and refute war crimes established by the courts (in particular the Srebrenica genocide).

Still, victims should be given particular consideration.

Pushed to the margins of society, and intentionally kept in the role of easily manipulated victim, most of them are deeply traumatized by war crimes. With no inner strength to “set themselves free” from this role, without the help of society, they had their own expectations from criminal justice in BiH (and internationally). Being victims of serious crimes such as rape, torture, and genocide, they had all the right to be. But the question is: what kind of justice is given to them and what is their acceptance of it?

Victims’ expectations after the war were high. But, at some point, it showed clearly that sending people to jail will not solve their problems. Furthermore, simplifying mass atrocities to individual criminal responsibility obscures the obvious truth that those crimes don’t arise from

individual disputes, so the answer from society cannot be so simplified. Punitive justice in this sense raised an important question in BiH of what “justice” is, and what it needs to be to “heal” the souls and bodies of the victims torn apart and to heal the corrupted core (soul) of society, poisoned with hatred and violence. It would be wrong to state that victims lost their faith in international criminal justice or that they are completely disappointed with war crimes trials. Closer to the truth would be to state that victims (mostly because of the lack of knowledge of possibilities of criminal justice and the fact that for most of them, criminal justice is the only justice that they will never receive) are disappointed that their expectations are not fulfilled. After all, there is a strong feeling in BiH society that the notion of victims of war covers a much broader population than is covered in the strict criminal law sense (Leonard et al., 2016). Having the possibility to tell their story before the court is more than acceptable for the victims in BiH. Although stressful, it has a therapeutic effect and also brings them a strong feeling of regaining their lost personal value. They believe that seeing a perpetrator sent to prison is not only fair but also represents some kind of personal victory over crime and its perpetrator. However, that is just a partial victory. After being “used” before the court as evidence, victims are left out of the court to live their lives on their own. Not only that they have nothing in the sense of material reparation, but the fact that the perpetrator is now in jail and “the justice has been served” changes nothing in their everyday struggle. Jobless and on the margins of society, some of them still living in collective camps, struggling to provide for their children and families, they soon start losing that initial sense of justice. Furthermore, being returnees in the places where they were ethnically cleansed or raped and tortured, the obvious fact that they testified before the court and sent local heroes to jail is an unpleasant circumstance. This further confirms the proposition that the victim is intended to be an instrument of the trial rather than a participant as such (Boas, Schabas, 2003). Among them, particular consideration needs to be given to the victims of sexual violence (Wald, 2002).

#### *Country context of the international criminal justice*

Considering the context of mass atrocities all around the world, there is one important characteristic to notice. Mass atrocities never emerge from individual disputes, but they always hide some kind of organized policy (ideology) based on race, ethnicity, religion, or something similar, used to rationalize crimes as necessary and justified.

Additionally, most of these conflicts could be dated back to the distant past.

*The same applies to Bosnia and Herzegovina*

Looking briefly at the history of BiH, it is more than obvious that mass war crimes and atrocities committed in the period from 1992 to 1995 did not just suddenly emerge (Malcolm, 2002). The long history of BiH is full of conflict, violence, conquests, and suffering inflicted upon its inhabitants. Being in such a geostrategic position, BiH did not suffer only from the inside, but it was subjected to external struggle, if not to occupy its territory, then to influence it (often using the local population). This centuries-long atmosphere created strong tensions among the local population of BiH, very often misrepresented as being purely of ethnic and/or religious origin. In reality, in many cases, only historical circumstances created those who were in more or less favorable positions. An entire series of such events could be traced back to medieval uprisings, the Balkan wars (1912, 1913), and the First and Second World Wars until the present times. Ethnically motivated conflicts (not exclusively) have been taking place in BiH for hundreds of years, never solving the basic issue of creating a society “fit for all”. The lack of solutions to problems during or after a conflict, “the potential for conflict”, and the search for new opportunities to “settle the score” is something that has lasted in BiH for centuries. In that course, perpetrators and victims change their roles depending on a specific historical context in BiH and thus lose the exclusivity of being a victim or a perpetrator. Unfortunately, precisely because of the organic multicultural fabric of the Bosnian society – and the political objectives of the war to create zones of ethnic exclusion – the last war in BiH was much more brutal and tragic than in other parts of former Yugoslavia. However, it would be wrong to suggest that the Bosnian cultural diversity was the source of conflict, as some have implied. Cultural diversity was, rather, the target of carefully orchestrated ethnic violence aimed at the “ethnic unmixing” of Bosnians (Halilovich, 2013). To do so, the tactics were very simple and rather simplistic. The tactics were merely to engage in the type of violence that would cause people to leave, after many had suffered and been killed, with the fear of what might happen to them and with the terrorizing effect that is created. By the end of the war, the population of BiH was largely concentrated in three ethnically homogeneous territories. While some areas of diversity remained (like the cities of Sarajevo and Tuzla), the country was transformed from being highly intermixed in 1991 to nearly full segregation of the three na-

tions. Furthermore, some 1.2 million Bosnians were refugees in neighboring countries and around the world and 1.1 million Bosnians were displaced within BiH. Thus, more than half of the population had left their pre-war homes in the course of the conflict (Bieber, 2006).

Questions that clearly arise from the experience of the wars in BiH are the following: Who are these people who are committing such crimes? Are they cold-blooded trained professional soldiers “doing their job” or “ordinary people” in an “extraordinary situation”? And finally, are they doing that for their “own pleasure” or “in the name of the state (or some other greater good)”. In the ICTY case *Sikirica et al.* (IT-95-8), while pleading guilty, the accused Dragan Kolundžija stated: “I am aware now that I was a tool in the hands of others, and this I deeply regret”.

Apart from what other similar sciences would have to say on this, these questions in BiH could be respectively seen through the prism of cca. 700 cases of solved war crimes. In that sense, the first point is that the majority of perpetrators were ordinary people before and after the war. That indicates that in ordinary circumstances ordinary people would probably never commit crimes such as genocide and torture and would even be revolted by such atrocious crimes. So, if ordinary people would not commit such crimes in ordinary circumstances, it could only mean that the factors that turn ordinary people into war criminals are extraordinary circumstances (Smeulders, 2004). And that “transformation” is easy to track down in BiH in war crime courts. After the two Balkan Wars, the First and Second World Wars, those extraordinary circumstances reappeared in the 1980s. Following large-scale propaganda preparations, political violence finally turned into armed violence in 1991 in the former Yugoslavia (Biserko, 2012). By the early 1990s, Bosnian society was ideologically deeply divided around three mutually incompatible grand blueprints – the unification of all ethnic Serbs in a single state, the creation of an independent Croatian state incorporating large parts of Bosnia, and a multi-ethnic sovereign state with a Bosniak majority (Malešević, 2006). Finally, the referendum for sovereignty that took place in February of 1992 (supported by the majority of Bosnian Muslims and Croats and boycotted by the Serbs) and the declaration of independence of BiH, set a playground for a new war.

Without delving deeper into the roots, evolution, and course of the 1992–1995 war in BiH, it is necessary to notice the existence of three territorial units (with all state prerogatives, including armed forces). All of them, while controlling territory depending on the luck they had during the

war, exercised all state prerogatives on their territory, including recruitment (Šimić, 2008). Having that in mind, ordinary people had no other choice but to enlist or, in some cases, to voluntarily fight for the “right cause” to finally “settle the score”. Being recruited in the “regular” armed forces, it seems that most of the perpetrators perceived that they were required to perform their duty by the authorities and that they were assured that this activity was necessary and that they would not be responsible for possible consequences since they were doing the “right” thing. Being surrounded by an environment (circumstances) that are not only discouraging violence but rather the opposite, most of the perpetrators quickly got used to a new, much more important role that they were now playing in society (Waller, 2002).

The vast majority of all perpetrators of the war crimes committed in BiH were members of military, police, or paramilitary groups or worked in cooperation with them. This indicates that most of the recent war crimes were committed on behalf of the state and its authorities, following strict orders, or based on an implied order or policy. Leaders, whose personality and motivation allowed them a different circumstance, were not “direct” perpetrators (executors), but rather planners and strategic decision-makers. They directly helped and supported those committing crimes to rationalize and justify crimes by presenting them (in accordance with their ideology) as necessary means to achieve goals. By dehumanizing victims, those means were not perceived as crimes at all. This dehumanization is a crucial and necessary factor for explaining the commission of crimes such as genocide because it “overcomes the normal human revulsion against murder” (Clark, 2009a, Clark, 2009b).

Secondly, currently solved cases in BiH show that all sides in the conflict committed war crimes. That does not necessarily mean that the scope, brutality, and pattern of the crimes were the same, but it rather emphasizes the lack of an easy (black and white) scenario. Since all sides in the conflict were perpetrators and victims, we need to be careful when making general statements about those who committed crimes and those who were victims. The solution however lies in careful and complete mapping of all individual crimes so that the number, pattern, and wider conclusion can be determined.

Finally, some parts of the “truth” are more covered in solved cases and offer a clear picture of events and some are still waiting to be revealed with more cases solved. Only by solving all cases, the picture will be complete. Without that, parts

of the “truth” established with individual cases solved will be used for generalization and patternization (Lawry-White, 2015). It also needs to be taken into consideration that, in reality, not all cases will be solved. Having that in mind, they need to be prioritized to cover as many events as possible so the whole picture can be clearer. Taking into consideration all the conflicts that took place throughout the history of BiH, which were never fully explained, nor the role of the participating individual ethnic groups demystified, the “solid” base for the development of a “healthy” society can never be created. In such circumstances, only one spark is enough to return all ethnic groups in BiH to the path of ethnic-based nationalist ideology (Seizović, 2014). Without an objective historical possibility to perceive “all sides” in conflicts, or identify the objective power of “ideology”, a chronic lack of deflection toward “crimes of own people” is present, creating constant tension between ethnic groups in BiH (Franočić, 2008).

#### *Acceptance of international criminal justice by victims*

Many groups of actors can be observed in the context of the acceptance of international criminal justice in BiH. Groups like perpetrators, veterans, human rights NGOs, faith-based groups, media, political parties, judiciary, and the public would be worth of extensive studying.

But the group of victims is particularly worthy of such attention.

Most studies conclude that the citizens of BiH hold negative perceptions of the ICTY. A study comprising of interviews with inhabitants of Prijedor and Mostar, as well as the Croatian town of Vukovar, found no indication that the work of the ICTY has facilitated reconciliation. Instead, it has further divided populations and the study researchers raised doubts about its impartiality and its attempts at individualizing justice (Stover, Weinstein, 2004). In most of the cases of war crimes in BiH (internationally and domestically), “criminal justice” is the “only justice” that will be provided to the victims of the crimes and one of the leading ideas of criminal proceedings in the war crimes trials is justice for the victims. In cases of war crimes trials, that means that victims will have an opportunity to tell their stories and see behind bars those who harmed them. Rarely, some monetary compensation will be awarded to them. In that sense, and in connection with the one-dimensional possibility of sanction (only imprisonment), it is hard to expect that the work of the ICTY and domestic courts is fully accepted (or more), perceived as just, and in light of the above-mentioned, in the best interest of victims.

Namely, this approach neglects that following the period of violation of the rights, victims and survivors often suffer both physically and mentally, and in some cases, live in extreme poverty caused by the loss of a breadwinner, destruction of property, and inability to work. Numerous victims require medical care to treat their bodies or psychological trauma caused by brutal torture (Hayner, 2001). Victims mostly have no inner strength or resources to rebuild their lives by themselves. Although the idea of undoing harm can sound extremely elusive, since life does not have an “Undo” button, it is also impossible not to take into account that suffering had occurred in the interval between the time the wrongdoing took place and the present state of victims and society (Elster, 2004). Certainly, any victim of crime needs to see the person responsible held to account for their actions in a court of law. However, there is widespread dissatisfaction among victims with the ICTY’s sentences and its work in general. Almost without exception, these sentences are viewed as unacceptably lenient in many cases, and its work as political and interest-driven (Omerović, Alić, 2017).

If anything in international criminal justice needs to be reconsidered, it is the above-mentioned concept of “justice”. This modified concept of justice would then establish the individual criminal responsibility more and, as a by-product of criminal proceedings, create the space for victims to tell their stories and collect some amount of data (necessary to establish a final decision “beyond reasonable doubt”). It would be a changed concept of criminal proceedings, whereas opposed to the existing one, victims’ rights and the interests of the society would be the main focus. That would change the whole concept of “imaginary justice” that does not recognize the victim as a human being with all its needs, but as some “imaginary” entity who will carry on with their lives “as usual” after sending the perpetrator to prison and the “justice is served”. Following this, the next logical question concerns the punishment for war crimes in BiH (which is in reality only imprisonment). Although the ICTY and the courts in BiH proclaim in practically every judgement that one of the goals of the punishment is justice for the victims, it is a rather symbolic statement (the Criminal Code of BiH, article 6)<sup>1</sup>. It is symbolic in that proclaiming prison sentences for those who have raped, tortured, and killed

“real, living people” will not change much in victims’ lives or the lives of their families who were directly or indirectly affected by those crimes. To change this, criminal sanctions for war crimes need to be reinvented in the way that the proclaimed goals of justice for the victims and society could be achieved (or achieved to a greater extent possible)<sup>2</sup>. Even with that, the societies affected by war crimes must realize that the primary task of courts is not to bring justice but to establish individual criminal responsibility. Therefore, wider social activities need to be performed in synergy with trials to achieve these goals. Still, on the side of the courts and criminal proceedings, there is lots of space for improvement (Campbell, 2003). Without that, the acceptance of international criminal justice will always be questionable for the victims. Not only because they have great expectations, but rather because, in many cases, it is the “only justice” they will ever receive. If the practice in BiH shows so, then “international criminal justice” needs to be “upgraded” and “improved” with contents that will be more focused on living beings who suffered than on some “abstract” notion of justice for some “abstract” creatures. By now, many victims have realized that the “justice” provided for the victims through criminal proceedings at the ICTY is just one factor in the reconstruction of lives torn apart by war. Justice for the war victims also means living their lives free of fear, securing meaningful employment (or any employment), providing their children with good education and opportunities for the future, and locating and identifying missing relatives. This suggests that in addition to trials, more attention must be paid to non-judicial interventions in societies fragmented and polarized by war (Kastner, 2017). Universally, victims recognize the necessity for punishment for those who committed war crimes in BiH. They believe that trials and punishment for perpetrators are a crucial part of justice. For them, trials represent the final recognition of their innocence in acts of violence and restore their dignity. After being victimized for decades, victims wish high monetary fines and long-term prison sentences for perpetrators. Although many of them demand social condemnation of perpetrators, the final decisions of courts make the victims feel empty, used, abandoned, unsatisfied, and realize that their everyday life is burdened with trauma just like before. Aware that judicial justice will not meet their

<sup>1</sup> Criminal Code of Bosnia and Herzegovina (“Službeni glasnik BiH”, br. 3/2003, 32/2003 – ispr., 37/2003, 54/2004, 61/2004, 30/2005, 53/2006, 55/2006, 8/2010, 47/2014, 22/2015, 40/2015, 35/2018, 46/2021, 31/2023 and 47/2023).

<sup>2</sup> Out of 1145 final judgements of the courts dealing with war crimes committed in BiH, only in 41 cases, property claim was subject of decision of the court.

expectations, victims demand symbolic and moral satisfaction, social solidarity, empathy, and understanding of their problems (Omerović, Alić, 2017). However, all victims are aware that some of their traumas are irreparable (like the death of their family members or loss of dignity). They believe that material reparation is crucial for rebuilding their lives and regaining their social status. Only by giving a chance (in a broader social sense) to the victims to regain self-respect and their “value” in the community, they can have a chance to rebuild their lives (Urban Walker, 2016). By doing so, society will give the victims in BiH a chance to overcome initial dissatisfaction with international criminal justice in BiH and accept “limited” justice that can be provided by the courts and influence society to take other necessary activities (Šimić, 2023a).

### CONCLUSIONS

The work of the courts which have tried war crimes committed in BiH over the past 30 years shows that courts alone are not sufficient. Trials will not build memorials or identify every victim. Courts are not meant to establish 'truth' or administer 'justice', but rather to determine criminal responsibility and collect certain facts. (Šimić, 2023b). Furthermore, courts deal with individual cases rather than broader explanations of context or other forms of accountability other than criminal liability. (Hayner, 2001).

But how can truth and justice be established? Over the past decades, it has become quite clear that trials are insufficient in achieving all these goals. Although they help to determine a part of the truth and identify perpetrators and victims,

trials do not lead to things such as reparation, history books, or victim rehabilitation. Nevertheless, the courts have done their share of work. If there was not this “imperfect” mechanism, then all those who commit war crimes in BiH would, probably, still hold leading positions in the BiH society. In this context, “punishing” in a post-conflict society means much more than detecting criminal acts and implementing the imposed sentence on persons (Teitel, 2000).

In the future, the UN and all those who establish courts elsewhere should critically look at the ICTY and the work of international and domestic courts dealing with war crimes in BiH, keeping what is the best but also addressing the shortcomings. The application of international criminal justice clearly shows the necessity of a reaction of the community to crimes, but it also raises many questions. The questions concerning the position of the victims in international criminal justice, punishment for the perpetrators, establishing the truth in criminal procedure, the relation of individual criminal responsibility and mass crimes, and the reparation for the victims are just some of the questions emerging from the application of international criminal justice in BiH. Having that in mind, it is necessary to accept the fact that courts cannot solve all problems in post-conflict societies, rather they are one of the factors of a better future without war crimes and suffering working in synergy with all others. Only in that way, “justice”, that word that is often used too easily, will be justice without quotation marks for victims and society. And it will be accepted (or accepted more) as such, especially by the victims.

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## ВИЗНАННЯ МІЖНАРОДНОГО КРИМІНАЛЬНОГО ПРАВОСУДДЯ В БОСНІЇ І ГЕРЦЕГОВИНІ

Коли в 1984 році в Сараєво проходили XIV зимові Олімпійські ігри, ніхто не очікував, що лише через сім років почнеться війна, яка забере життя сотень тисяч людей, що живуть у колишній Югославії, що мільйони з них зазнають етнічних чисток і будуть змушені покинути свої домівки, більшість – назавжди. Сотні масових поховань будуть розкидані довкола, а воєнні злочини, небачені в Європі з часів Другої світової війни, будуть повторені.

Тяжкі злочини, такі як систематичні зґвалтування, тортури, масове знищення культурної спадщини та майна, врешті-решт завершаться геноцидом. Як наслідок, Боснія і Герцеговина (і країни колишньої Югославії) спричинили величезний поштовх у міжнародному кримінальному праві та міжнародному кримінальному правосудді. Цей досвід, набутий під час і після війни 1992–1995 років, може бути дуже цінним. Не все, що було зроблено, було добрим чи досконалим, але це мало велике значення для подальшого розвитку міжнародного кримінального права та міжнародного кримінального правосуддя у світі, який все ще шукає адекватних відповідей на тяжкі воєнні злочини, які відбуваються щодня, а також для розробки механізмів і практик, які забезпечать справедливість для жертв і суспільства та сприйматимуться як такі. Звірства боснійської війни стали тривожним дзвіночком для міжнародної спільноти, підкресливши нагальну потребу у винайденні механізмів притягнення до відповідальності винних у таких жахливих злочинах. Створення Міжнародного кримінального трибуналу щодо колишньої Югославії стало важливою віхою в цьому аспекті, започаткувавши переслідування осіб, відповідальних за геноцид, воєнні злочини та злочини проти людяності, скоєні під час конфлікту. Однак залишаються проблеми із забезпеченням доступу до правосуддя для всіх жертв та усуненням першопричин конфлікту, щоб запобігти майбутнім звірствам. Уроки, отримані в Боснії і Герцеговині, залишаються вирішальними у формуванні зусиль, спрямованих на досягнення тривалого миру і притягнення винних до відповідальності в усьому світі.

**Ключові слова:** *Боснія і Герцеговина, правосуддя, кримінальна юстиція, воєнні злочини, жертви.*

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