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A PAST GONE MISSING
Dealing with Contentious and Politicised Pasts Based on the
Experience of Human Rights NGOs in Croatia

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For a day when people no longer shrug their shoulders and say 'it happens in every war'.

ABSTRACT

This thesis focuses on the efforts carried out by human rights NGOs in Croatia to deal with the legacies of the violent events that shook the Western Balkans in the 1990s. As this research hints at, attempts to deal with the past in the country have not been successful. Instead, a common belief is that the mainstream narrative of the past is not to be touched and, additionally, the regional panorama has seriously undermined any attempt to deal with the past. This study sheds light on the major challenges that have kept the process of dealing with the past from having more impact and on the contributions made by human rights NGOs in spite of the forces playing against them. This analysis is particularly important considering the amount of years and resources that have gone into this process and because it sheds light on the limitations civil society organisations dealing with the past in similar contexts should expect and on the initiatives they should focus on.

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Thinking about what to write in my ‘Acknowledgments’ makes me realize how many amazing people surround me and how lucky I have been in every interaction I have had concerning my thesis. Many people, whether knowingly or unknowingly, have contributed to this research. Now that I think about it, what I value the most of the process of writing my thesis is the kindness shown by people who did not even know me, by my old and new friends, by my family and by the incredible human beings I have only quite recently met. Thanks to the kindness shown by the people in Croatia I interviewed, had conversations with or who became my friends and gave me strength to finish this thesis, this country feels like home to me, which is not a feeling that comes easily. I am not one to hierarchically order or quantify the support I receive. I am thankful to everyone who has been willing to listen, teach me, inform me, support me, help me feel confident about myself and simply (but quite importantly) make me laugh and relax after a day of work on my thesis. I am infinitely thankful to my parents for giving me the opportunity of studying again and of carrying out this research which has taught me not only about the past and present of this country and region, but also about myself and the incredible constellation of people around me.

Hvala
Gracias
Thank You

TABLE OF ABBREVIATIONS

AG-CS	Advisory Group on Civil Society and Aid Effectiveness
ARK	Antiratna Kampanja Hrvatske (Anti-War Campaign of Croatia)
CBO	Community Based Organisation
CSO	Civil Society Organisation
EU	European Union
HDZ	Hrvatska Demokratska Zajednica (Croatian Democratic Union)
ICC	International Criminal Court
ICTY	International Criminal Tribunal for the Former Yugoslavia
IER	Instance Équité et Réconciliation (Equity and Reconciliation Commission)
NATO	North Atlantic Treaty Organization
NDH	Nezavisna Država Hrvatska (Independent State of Croatia)
NGO	Non-Governmental Organization
OAS	Organization of American States
OECD	Organisation for Economic Co-operation and Development
OHCHR	Office of the United Nations High Commissioner for Human Rights
RECOM	Regional Commission for the Establishment of Facts About War Crimes and Other Serious Violations of Human Rights
SFR	Socialist Federal Republic
TJ	Transitional Justice
UN	United Nations
WEF	World Economic Forum
YIHR	Youth Initiative for Human Rights

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INTRODUCTION, OR HOW THE RESEARCH QUESTION CAME INTO BEING

Because in the country where I come from (Colombia) there are thousands of missing persons, I have often thought of their fate and that of their families. In cases of enforced disappearance there is often never an ending, a closure, a certainty: the victims of enforced disappearance, with the pain derived from not knowing their fate, are as much present as they are missing. Something similar happens to difficult or violent pasts in places where they are denied, buried or ‘forcibly disappeared’: as much as they seem to have gone missing, they are ever-present. While some forces in society might focus on hiding or burying certain aspects of the past, other forces or groups try hard to bring them into the light, hoping that this will keep silent tensions from transforming into new cycles of violence.

It must not be easy, I think, to try to bring to the light a past that society is trying to forget and that politicians are trying to bury. My concern regarding what society can do to keep political elites or other groups of people from fully dominating the narratives of the past or manipulating historical memory motivated this research.¹ I started wondering about groups within society that have a similar concern and how much they could actually do in environments of hostility or lack of willingness to question the past, in which, to make things more complicated, merely speaking about the past can

¹ This is a problem that is relevant in my local context. To give a recent example, the ‘JEP’ (Special Jurisdiction of Peace), which is the justice component of the transitional justice system set in Colombia (a quite exhaustive system in my view), ordered the protection of a collection of the Centro Nacional de Memoria Histórica (Historical Memory National Center) given that fears had arisen around its possible manipulation; Colombia en Transición, ‘¿Por qué la JEP insiste en proteger colección del Centro Nacional de Memoria Histórica?’ (*El Espectador*, 11 June 2020) <<https://www.elespectador.com/colombia2020/justicia/jep/jep-protege-temporalmente-una-coleccion-del-centro-nacional-de-memoria-historica-articulo-918248/>> accessed 29 July 2020.

be a quite contentious undertaking. This is how I started wondering about the role of civil society organisations in transitional justice and dealing with the past and ultimately decided to write about human rights NGOs in Croatia.

As will be seen in detail in Chapter 2, the role of civil society organisations (CSOs) is considered to have been of no little importance in different efforts to deal with the past. In my view, exploring this role, understanding it and enhancing it can thus prove to be extremely important for the commonly-debated field of transitional justice (TJ).

If it is true that CSOs are significant for all TJ efforts, then understanding their limitations and restrictions can help international actors, individuals, politicians, academics, the media and CSOs themselves understand how their role can be more effective and how to secure or protect it from what is sometimes their largest detractor or opposer: the State. I am aware, however, that this train of thought presupposes an idealized version of CSOs as righteous defenders of truth, justice and peace. This research does not intend to imply this as a rule, but to merely look at the role they might have played in the process of dealing with the past and to deduce the potential significance of their efforts in a context of unwillingness or opposition.

I decided to focus on Croatia as a case study partly by fate and partly by choice. It was the place I was bound to live in during the second semester of my master's programme, but I had also been for long inexplicably drawn to this region. However, I was unaware of what Croatian scholars would start warning me about early in my process: what has happened in this region is hard to grasp. This is one of the reasons why asking questions about the past is not an easy undertaking, which I realized as I met some people outside of my research and casually told them what I was writing about. I realized for some people it was quite problematic that I was focusing on Croatia only, since it gave them the sensation that I was somehow against this country. As much as I explained that this was not the case, and that I was focusing on Croatia for its particularities (which will be mentioned further on) and because it was the place where I had the opportunity to do research, I continued to get this reaction. I am well-aware now that studying Croatia alone is problematic because of the reactions it generates given that dealing with the past in this country is a process with a big regional

component. However, I still believe that Croatia has unique aspects (such as being a member of the EU) that make it an interesting case study by itself and that the fact that asking about the past still generates these reactions is another pointer of how much the past is simultaneously ‘untouchable’ and quite present and able to easily generate tensions. With all this in mind, following the course of my thought process and trying to address the concerns already mentioned, I reached the following research question for my thesis: **What were the major contributions and limitations of the efforts carried out by human rights NGOs in Croatia to deal with the past from the 1990s to 2020 and what does this teach us about the role of CSOs in local contexts with contentious or politicised pasts?**

While the third and final chapter of this thesis focuses on answering this question through the chosen case study, the first chapter offers an understanding of the two transversal concepts of this thesis (‘CSOs’ and ‘dealing with the past’) and the second chapter consists of a careful literature review of the role of CSOs in previous efforts to deal with the past that shows why this subject continues to be of importance.

CHAPTER 1. FUNDAMENTAL CONCEPTS

The two concepts or notions that are transversal to this thesis and the focus of its analysis are ‘civil society organizations’ and ‘dealing with the past’. This chapter looks briefly at the theories around these two notions and the way they have been understood before to build specific definitions that suit this research and offer necessary boundaries for it.

1.1 SETTING A PRACTICAL DEFINITION FOR CSOS

The term civil society regained popularity in the 1980s and ‘was identified with the non-state protest movements in authoritarian regimes in Eastern Europe and Latin America’.² However, Radon and Cano Pecharroman trace it even further back, suggesting that Plato and Aristotle already spoke of certain forms of civil society when they described citizens as people engaging in the life of the polis and caring about its development, instead of being ‘complacent or passive’.³

From ancient Greece to modern times, civil society has been present and has fostered development and stability across nations. Political theorists have shown on the basis of repeated historical experience that civil society plays a critical role in giving legitimacy to the state and also gives rise to movements that delegitimize states that do not follow or address their citizen’s will.⁴

Radon and Cano Pecharroman also write that given its critical role, civil society might be strengthened and supported by politicians. However, this will not always be the case, as ‘the actions of civil society can interfere with vested interests. It is therefore not surprising that many governments have sought to suppress civil society’.⁵

The characterization by Radon and Cano Pecharroman already sheds light on several important aspects of civil society that this research inevitably stumbles upon, but even if these very general aspects such as its engagement, concern for public affairs and crucial role for the legitimacy of governments are rather uncontested, ‘research on this field is lacking, and it is difficult to reach clear uniform conclusions about the importance of civil society’.⁶ It is equally difficult to strictly delimit civil society instead of taking the notion for granted. Civil society is widely defined as ‘the area

² Rachel Cooper, ‘What is Civil Society, its role and Value in 2018?’ (K4D Helpdesk Report, Institute of Development Studies 2018) 5.

³ Jenik Radon and Lidia Cano Pecharroman, ‘Civil Society: The Pulsating Heart of a Country, its Safety Valve’ (2017) 71 *Journal of International Affairs* 31, 31.

⁴ *ibid.*

⁵ *ibid.* 32.

⁶ *ibid.*

outside the family, market and state'.⁷ Beyond this general description, however, different organisations, institutions and countries define civil society in their own way. Not only are there multiple definitions, but these keep changing and evolving. A 2013 World Economic Forum (WEF) report shows particular concern about these changing definitions and the 'blurring' roles of civil society. Additionally, it shares the view of Radon and Pecharroman that civil society is being restricted.⁸ This point will not be further discussed here, but it is important to keep in mind that, despite the differences in definitions and the evolution of the notion of civil society, there is a belief that it is being restricted or repressed.

Having mentioned some of the difficulties surrounding the notion of civil society, I can move on to adapt a definition for this research. In the mentioned report by the WEF, some possible institutional definitions are listed: that of the World Bank, the EU and the African Development Bank.⁹ It is possible that any of them could have worked for this research, but I felt they were a little too broad. I decided to adapt a definition for this research based on findings and recommendations by the Advisory Group on Civil Society and Aid Effectiveness or AG-CS covered in an OECD publication. The fact that the definition also focused on CSOs instead of civil society was also useful.

Although the AG-CS' title refers to "civil society" in general terms, the focus of its work was more specifically on CSOs as agents of change and development. These are organisations with which donors and governments interact on a regular basis....They cover a wide range of organisations that include membership-based CSOs, cause-based CSOs and service-oriented CSOs. Examples include community-based organisations and village associations, faith-based organisations, labour unions, co-operatives, professional associations, chambers of commerce, independent research institutes and the non-for-profit media.

⁷ World Economic Forum, 'The Future Role of Civil Society' (World Economic Forum 2013) 8
<http://www3.weforum.org/docs/WEF_FutureRoleCivilSociety_Report_2013.pdf> accessed 8 April 2020.

⁸ *ibid* 7.

⁹ *ibid*.

The definition of CSOs as non-market and non-state actors points to the non-profit characters of CSOs and their reliance on voluntary contributions and outside sources for resources.¹⁰

Even though this research focuses specifically on actions carried out by local CSOs to deal with the past and not on aid effectiveness in general terms, I found the definition in the OECD publication easy to understand and useful. This definition of CSOs is a base for the general discussion on their role in dealing with the past, as will be seen in the literature review. However, the specific group of local CSOs in Croatia that this research focuses on as a case study will be further defined in the third chapter.

1.1.1 CSO or NGO? All Bs are As, but not all As are Bs

To clear confusions that might arise later on, I want to address the difference between ‘CSO’ and ‘NGO’, given that the latter will also be used throughout this research. To clarify the matter, I will quote the words of Tomlinson, who suggests that “‘NGO’ is sometimes used interchangeably with ‘CSO’, but NGOs should be properly understood as a subset of CSOs”.¹¹ It is also interesting to note that ‘Nongovernmental organizations (NGOs) have emerged as a dominant form of civil society organization in the past 35 years, often in societies undergoing social and political transitions’.¹² It is therefore not a surprise that when studying the efforts of CSOs in dealing with the past, NGOs come into the discussion. Gready and Robins, for example, observe a ‘tendency to equate civil society with non-governmental organisations (NGOs), and often human rights NGOs, and to focus on the role of NGOs in supporting official

¹⁰ OECD, *Civil Society and Aid Effectiveness: Findings, Recommendations and Good Practice* (Better Aid, OECD Publishing, 2009) 26 <<https://doi.org/10.1787/9789264056435-en>> accessed 8 April 2020.

¹¹ Brian Tomlinson, *Working with Civil Society in Foreign Aid: Possibilities for South-South Cooperation* (UNDP China 2013) 123.

¹² Laura J Heideman, ‘Rethinking Legitimation: Positional and Mediated Legitimation Processes for Croatian NGOs’ (2019) 62 (4) *Sociological Perspectives* 1 <<http://journals.sagepub.com/doi/10.1177/0731121419845882>> accessed 8 April 2020.

transitional justice mechanisms'.¹³ However, this does not mean that other types of civil society organisations including, among others, professional associations, faith-based organisations, non-for-profit media, victims' and war veterans' organisations, or community-based organisations, do not carry out or support such actions as well.

¹³ Paul Gready and Simon Robins, 'Rethinking Civil Society and Transitional Justice: Lessons from Social Movements and "New" Civil Society' (2017) 21(7) *The International Journal of Human Rights* 956, 956-957 <<https://doi.org/10.1080/13642987.2017.1313237>> accessed 8 April 2020.

1.2 DEALING WITH THE PAST: A BROAD UNDERSTANDING

To arrive at an understanding of ‘dealing with the past’ that suits this research, it is important to understand why this notion is chosen *in lieu* of ‘transitional justice’ (or TJ). With this purpose in mind, I will look briefly at the notion of TJ and the difficulties around it. Nowadays, transitional justice is understood as ‘a broad range of processes by which countries emerging from periods of conflict and repression address large-scale or systematic human rights violations for which the normal justice system would not be able to provide an adequate response’.¹⁴ Ruti Teitel recalls that she coined the expression in 1991 when the Soviet Union was collapsing and Latin America was just coming out of an era of transition to democracy.¹⁵ The notion was meant to respond to the ‘punishment-impunity’ dilemma that emerged after repressive regimes.¹⁶ Since then, it has evolved too quickly for a cohesive theory to follow it.

Many concepts have been associated with transitional justice, which can make the area of study quite confusing. For example, when looking at the ‘Contents’ section of a book titled *Transitional Justice Theories*, concepts such as transformative justice, reconciliation, peacebuilding, political liberalism, redressive politics, body memory and even trauma stand out. In fact, the ‘Acknowledgments’ page of this 2014 book states that it was born from a newfound awareness of ‘the lack of theoretical engagement with the notion of transitional justice’.¹⁷ This lack, together with the ‘ever expanding range of mechanisms and institutions’ associated with TJ, make it vague and unclear.¹⁸ Furthermore, as we shall see, there is more than one theory of transitional justice and, in some cases, it is not theorized at all.

¹⁴ Victoria Cochrane-Buchmüller and others, ‘Dealing with the Past and Transitional Justice’ in Berghof foundation (ed), *Berghof Glossary on Conflict Transformation and Peacebuilding* (Berghof Foundation Operations GmbH 2019) 43.

¹⁵ Ruti Teitel, ‘Editorial Note-Transitional Justice Globalized’ (2008) 2 *International Journal of Transitional Justice* 1,1 <<https://doi.org/10.1093/ijtj/ijm041>> accessed 8 April 2020.

¹⁶ *ibid.*

¹⁷ Susanne Buckley-Zistel and others (eds), *Transitional Justice Theories* (Routledge 2014).

¹⁸ *ibid.* 1.

Rather, transitional justice discourse and practice are largely based on implicit assumptions about transition and/ or justice that are often common sensical in Western thinking. These assumptions are strongly influenced and shaped by particular historical experiences, such as the Nuremberg and Tokyo trials after the Second World War, the transitions of South American countries from dictatorship to democracy, international criminal tribunals(...).¹⁹

Transitional Justice Theories, as its name entails, attempts to explain the different efforts to theorize this notion. I see no need to mention them all here, but wish merely to convey that there are different ways to look at and apply it, depending on the focus and the purpose. Additionally, other notions such as ‘reconciliation’ and ‘dealing with the past’ are used in relation to TJ. However, it is difficult to understand whether they are separate from TJ or share some of its jurisdiction. Cochrane-Buchmüller and others explain the complicated relationship between these three notions:

For those who have lived, researched or supported people in post-war societies that have suffered a history of (mass) violence, addressing the legacies of past violence is of crucial importance...Different ways of doing this have emerged over the past decades, among them transitional justice, reconciliation and dealing with the past. Each of these fields is defined in a slightly different and somewhat overlapping way, and each has its followers and detractors.²⁰

From the ‘slightly different’ definitions presented by the authors, it is that of ‘dealing with the past’ that I consider suits this research the best: ‘an overarching term referring to a set of measures carried out in relation to past injustice and harm which at the same time create a fair society in the present and better prospects for sustainable peace and development in the future’.²¹ In fact, one could argue that these sets or measures include the ones most commonly related to transitional justice (prosecution, truth-seeking, reparations and guarantees of non-recurrence), as well as some form or forms of reconciliation mechanisms. In this sense, I fully adhere to the following understanding of the term:

¹⁹ *ibid.*

²⁰ Cochrane-Buchmüller and others (n 14) 42-43.

²¹ *ibid* 43.

Dealing with the past has an open “repertoire”, into which both transitional justice and reconciliation mechanisms may fall. It is a holistic process, which may span generations and requires analysis and action on many different levels; both personal and public elements must be addressed along with integration of victims, perpetrators and bystanders.²²

The specific understanding of ‘dealing with the past’ underlying this research, explained in more detail in *Annex A*, is not too different from Alexander Boraine’s ‘holistic interpretation’ and was meant to be comprehensive enough as to not discriminate among the efforts carried out by CSOs to address the past.²³

²² *ibid* 45.

²³ Alexander L Boraine, ‘Transitional Justice: A Holistic Interpretation’ (2006) 60(1) *Historical Reconciliation* (fall/winter 2006) *Journal of International Affairs* 17.

CHAPTER 2. LITERATURE REVIEW

The literature review presented in this chapter aims to answer two important questions: (1) why is dealing with the past important? and (2) what has been said before about the role of CSOs in dealing with the past? Doing so not only highlights the significance of this research, but also provides a smooth transition from a more general picture to the specific case study chosen for it.

When looking at existing literature on the importance of dealing with violent pasts, the interchangeability and overlapping between dealing with the past and transitional justice becomes evident once more. The same happens when reconciliation enters the picture, also overlapping with the other two notions or understood as one of their potential outcomes. I will not delve into the many different understandings of these notions and how they have been applied, but consider the different approaches in the existing literature to be all examples of the attempt to address violent pasts. Nonetheless, it must be said that the matter of which model, approach or application works best receives much attention and focus and is therefore of no little importance. The literature on dealing with the past, TJ and reconciliation (and all it entails) is extensive, so I can only provide here a very reduced number of the available sources to offer a context that gives meaning to the main questions underlying this research.

2.1 ON THE IMPORTANCE OF DEALING WITH THE PAST

Addressing violent pasts has been seen by different authors as unavoidable, necessary for fostering human rights, reforming institutions and rebuilding society, and even as a ‘permanent feature in post-conflict situations’.²⁴ Even if TJ was previously associated mainly with establishing truths, achieving justice and obtaining reparations for victims, nowadays the objectives of TJ comprehend also some indirect goals such as ‘longer-term state-building and development processes’.²⁵

In a 2010 paper, Andrieu explores the ambitious goals of TJ and claims that, even though it is not without flaws, it ‘remains a rather optimistic answer to mass violence’, even when all the TJ measures together are never enough for repairing the past.²⁶ The author also mentions that the need to deal with the past is not questioned anymore.²⁷ The focus now is on how to do it best.

An evidence of the importance attributed to TJ or dealing with the past mechanisms is the use of the terms by the United Nations and other international or regional organisations such as the OAS, and the attention given to them by academics and field experts. For example, the following statement can be found in the United Nations Development Programme’s website:

[N]ationally led transitional justice processes contribute to atonement for past violence and human rights violations and can facilitate state accountability. These practices strengthen trust, establish the conditions for peace and democratic governance, and help societies guard against a relapse into systematic discrimination or violence.²⁸

²⁴ Neil J Kritz, ‘Dealing with the Legacy of Past Abuses: An Overview of the Options and their Relationship to the Promotion of Peace’ in M6 Bleeker and Jonathan Sisson (eds), *Dealing with the Past: Critical Issues, Lessons Learned, and Challenges for Future Swiss Policy* (swisspeace 2004) 15; Kora Andrieu, ‘Transitional Justice: A New Discipline in Human Rights’ (*Online Encyclopedia of Mass Violence*, 18 January 2010) <<http://bo-k2s.sciences-po.fr/mass-violence-war-massacre-resistance/en/document/transitional-justice-new-discipline-human-rights>> accessed 10 April 2020.

²⁵ Pilar Domingo, ‘Dealing with Legacies of Violence: Transitional Justice and Governance Transitions’ (2012) Overseas Development Institute Background Note May 2012, 3 <<https://www.odi.org/publications/6596-dealing-legacies-violence-transitional-justice-and-governance-transitions>> accessed 10 April 2020.

²⁶ Andrieu, ‘Transitional Justice: A New Discipline in Human Rights’ (n 24).

²⁷ *ibid.*

²⁸ UNDP ‘Supporting Transitional Justice’

As for reconciliation, it is often seen as a potential outcome of transitional justice or dealing with the past and as a ‘necessary requirement for lasting peace’.²⁹ For example, a report by swisspeace affirms that ‘Dealing with the Past is a long-term process that aims at establishing a culture of accountability, the rule of law and reconciliation’.³⁰ However, one can move away from this ‘utopian project’ of a final reconciliation and see that it is ‘not only an end state, but also constitutes a process. There is a *road* to reconciliation. It is made up of a great variety of gestures, symbols, instruments, and measures. Often it is taken in small steps, but it is those small steps that *can* make a difference’.³¹

Much potential is seen in mechanisms or efforts to deal with the past. While some publications advocate their use for the promotion and achievement of development goals, others see their potential capacity to address violations of economic, social and cultural rights.³² However, it seems that in theory and practice it is difficult for transitional justice to realize its different potentials.³³ It doesn’t seem that the ways in which TJ measures affect post-conflict societies are any clearer now than in 2007, when Eric Brahm wrote that the empirical evidence for these measures was ‘rather thin’.³⁴

<<https://www.undp.org/content/undp/en/home/ourwork/democratic-governance-and-peacebuilding/rule-of-law--justice-and-security/transitional-justice/>> accessed 10 April 2020.

²⁹ Martina Fisher, ‘Transitional Justice and Reconciliation: Theory and Practice’ in Beatrix Austin, Martina Fischer and Hans J. Giessmann (eds), *Advancing Conflict Transformation: The Berghof Handbook II* (Opladen 2011) 406; Paul Seils, ‘The Place of Reconciliation in Transitional Justice: Conceptions and Misconceptions’ (2017) ICTJ Briefing Paper 9 <www.ictj.org/sites/default/files/ICTJ-Briefing-Paper-Reconciliation-TJ-2017.pdf> accessed 9 April 2020.

³⁰ swisspeace, ‘A Conceptual Framework for Dealing with the Past’ (2016) Essential 02/2016, 10 <www.swisspeace.ch/assets/publications/downloads/Essentials/7bdf926517/A-Conceptual-Framework-for-Dealing-with-the-Past-Essential-16-swisspeace.pdf> accessed 9 April 2020.

³¹ Birgit Schwelling, ‘Transnational Civil Society’s Contribution to Reconciliation: An Introduction’ in Birgit Schwelling (ed), *Reconciliation, Civil Society, and the Politics of Memory: Transnational Initiatives in the 20th and 21st Century* (Transcript Verlag 2012) 17.

³² Helena Sancho, ‘Development Trends: Using Transitional Justice to Promote Development’ (Sida 2014); OHCHR, ‘Transitional Justice and Economic, Social and Cultural Rights’ (2014) UN Doc HR/PUB/13/5.

³³ OHCHR, ‘Transitional Justice and Economic, Social and Cultural Rights’ (n 32) 53.

³⁴ Eric Brahm, ‘Civil Society in Post-Conflict Situations: Transitional Justice, Civil Society, and the Development of the Rule of Law in Post-Conflict Societies’ (2007) 9(4) *The International Journal of Non-for-Profit Law* <www.icnl.org/resources/research/ijnl/transitional-justice-civil-society-and-the-development-of-the-rule-of-law-in-post-conflict-societies> accessed 10 April 2020.

A wide array of criticisms cast a shadow over TJ and dealing with the past efforts. As much as it is true that the process to deal with the past has been given much attention and importance, the theoretical and practical approaches chosen to do so have met strong criticism.

2.1.2 Dealing with Endless Criticism

In his paper ‘What Would Satisfy us? Taking Stock of Critical Approaches to Transitional Justice’, Sharp addresses the growing critical theory of TJ, worried that ‘this newfound critical enthusiasm risks producing an unwarranted sense of pessimism and failure’.³⁵ The paper covers a wide range of criticisms. One is the argument that TJ treats symptoms rather than causes. Other critics say that it pays little mind to ‘forms of economic, structural, cultural, everyday and gender-based violence’.³⁶ Furthermore, it is thought to leave out local traditions. There is wide criticism on it being applied to different contexts naïvely, thinking it will work the same throughout. This criticism of a ‘top-down “one-size-fits-all” approach’ is present in a paper by Patricia Lundy and Mark McGovern, who advocate for more local agency.³⁷ The perceived lack of local agency does not apply the same to reconciliation, which is viewed by Fischer as a bottom-up process that complements whatever top-down settlement is reached.³⁸

Other criticisms may be added to the ones listed by Sharp. In fact, ‘virtually every facet and every TJ instrument, in almost all places around the world, have been critiqued’.³⁹ However, these criticisms against TJ do not necessarily undermine it completely but tend to ‘a broader and more holistic project’.⁴⁰

³⁵ Dustin N Sharp, ‘What Would Satisfy Us? Taking Stock of Critical Approaches To Transitional Justice’ (2019) 13 *International Journal of Transitional Justice* 570, 570.

³⁶ *ibid* 570-571.

³⁷ Patricia Lundy and Mark McGovern, ‘Whose Justice? Rethinking Transitional Justice from the Bottom Up’ (2008) 35(2) *Journal of Law and Society* 265, 265.

³⁸ Fischer, ‘Transitional Justice and Reconciliation: Theory and Practice’ (n 29) 406.

³⁹ Jeremy Sarkin, Estelle Zinsstag and Stephan Parmentier, ‘Editorial: Critical Issues in Transitional Justice – A Sisyphean Exercise’ (2017) 11(1) *HRILD* 2, 4 <www.hrild.org/en/journal/hrild/11-1/editorial-critical-issues-in-transitional-justice-a-sisyphean-exercise/index.html> accessed 10 April 2020.

⁴⁰ Sharp (n 35).

Dealing with the past is a difficult matter not only in terms of what mechanisms should be used and how, but because of the confusing, complex and unfathomable nature of the violent pasts themselves. It will never be easy but, as Sarkin, Zinsstag and Parmentier write, 'like Sisyphus's never-ending effort to push his rock to the top of the mountain, we must strive to address the controversies and criticism and seek to improve TJ, always, for it to remain relevant, useful and just'.⁴¹

⁴¹ Sarkin, Zinnstag and Parmentier (n 39) 2.

2.2 ON ROLES PREVIOUSLY ATTRIBUTED TO CSOs IN DEALING WITH THE PAST AND/OR TRANSITIONAL JUSTICE EFFORTS

The literature on the role of CSOs in dealing with the past processes seems to indicate that they are very relevant actors in this field, as some authors make sure to emphasize. Hayner, for example, writes that ‘civil society has played an important role in every country that has experienced a successful transitional justice endeavor’.⁴² It is indeed significant that ‘where the decision has been made to establish some form of accountability for past human rights abuses, it often reflects the relative strength of human rights groups and organized survivors’ groups in pressing new governments to act’.⁴³ Andrieu focuses not only on the role CSOs have in TJ, but also on the role TJ should have on civil society: ‘Civil society should not be a secondary target: it should be the primary one’.⁴⁴ The author also highlights the multidimensionality of civil society’s role in TJ.⁴⁵ In terms of reconciliation, emphasis is made by Fischer on the importance of engaging grassroots civil society for the ‘simple reason’ that it is local stakeholders who need to decide how to ‘come to terms with the past and build relationships for the future’.⁴⁶

Local civil society organisations are known to have helped ‘initiate, advocate and shape some of the strongest and most interesting transitional justice initiatives that have been implemented around the world’.⁴⁷ Indeed, to Brahm, they are the ‘prime advocate for accountability for the past’.⁴⁸ The work of CSOs is important both before mechanisms for dealing with the past are selected and after the work of tribunals and truth commissions, for example, ends.

⁴² Priscilla Hayner, ‘Responding to a Painful Past: The Role of Civil Society and the International Community’ in Mō Bleeker and Jonathan Sisson (eds), *Dealing with the Past: Critical Issues, Lessons Learned, and Challenges for Future Swiss Policy* (swisspeace 2004) 45.

⁴³ Brahm (n 34).

⁴⁴ Kora Andrieu, ‘Civilizing Peacebuilding: Transitional Justice, Civil Society and the Liberal Paradigm’ (2010) 41 *Security Dialogue* 537, 537.

⁴⁵ *ibid* 550.

⁴⁶ Fischer, ‘Transitional Justice and Reconciliation: Theory and Practice’ (n 29) 424.

⁴⁷ Hayner (n 42).

⁴⁸ Brahm (n 34).

Before the end of an armed conflict, or while a repressive regime is still in place, CSOs often work to collect evidence on human rights violations. The evidence can be used to press the governments to investigate, as happened in Argentina, Uruguay and Chile.⁴⁹ Even when the government refuses to do so or does so insufficiently, ‘civil society has sometimes conducted its own investigations into past human rights abuses’.⁵⁰ Where there are systems set up for state investigations, CSOs can bring forth evidence to support them. Hayner mentions the example of Guatemala, where the Center for Human Rights Legal Action (Centro para Acción Legal en Derechos Humanos) supported cases against former leaders through a vast collection of information.⁵¹

The engagement of local civil society can be beneficial for prosecutions in several other ways. Duthie mentions some of these benefits, which include, just to mention a few: access to information and evidence, technical expertise, public engagement, data on human rights violations and monitoring.⁵² CSOs can also help involve victims in prosecution processes and press the judicial system.⁵³ As an example for the support CSOs can bring to international prosecutions, Duthie refers to the call by over 160 civil society organisations from Africa for African states to cooperate with the International Criminal Court (ICC) and enforce the arrest warrant of President Omar al-Bashir, after the African Union decided not to cooperate in 2009.⁵⁴

Civil society is not always satisfied with the official mechanisms set up for dealing with the past. This is perhaps less likely to happen when they are involved in the process of shaping TJ systems. According to Hayner, in ‘Ghana, Sierra Leone, East Timor, and Peru, for example, national or local organizations played central roles in

⁴⁹ *ibid.*

⁵⁰ *ibid.*

⁵¹ Hayner (n 42) 46.

⁵² Roger Duthie, ‘Building Trust and Capacity: Civil Society and Transitional Justice from a Development Perspective’ (Research Unit International Center for Transitional Justice 2009) 14.

⁵³ *ibid.*

⁵⁴ *ibid.*

giving shape to the justice mechanisms put in place to confront past crimes'.⁵⁵ Public consultations have proven to be useful in this and other stages of dealing with the past:

In Sierra Leone, the truth commission legislation – which was designed after the Lomé peace accord agreed in principle to establishing a truth commission – developed out of a broad process of consultation and thus has considerable support and enthusiasm from a wide audience.⁵⁶

According to the OHCHR, a process of consultation that includes victim communities and civil society organisations is key for the establishment of a truth commission, which is the means for truth recovery most commonly associated with transitional justice.⁵⁷ But there are other aspects or means for truth recovery (beyond truth commissions) on which CSOs focus. Recovering the truth (and preserving it) can be a role to last indefinitely. An example can be found in Lebanon's 'memory makers':

The role of 'memory makers' has been to foster national recollection by promoting different kinds of social activism, debate and cultural production to shed light on the war years (...). However it is an open question as to whether these have succeeded in breaking the silence on a national level – let alone in achieving the more ambitious goal of breaking the cycle of violence that has arguably fed wars throughout Lebanese history (in 1843, 1860 and 1958).⁵⁸

Here, the link between CSOs and the dissemination of facts or truth is clear. Another important form of truth recovery is the search for missing persons, relevant, among others, in contexts where systematic enforced disappearances took place. In cases where communities do not trust governmental entities, NGOs can manage to 'rally support and resources for exhumation and reburial efforts'.⁵⁹ Civil society groups

⁵⁵ Hayner (n 42).

⁵⁶ *ibid.*

⁵⁷ OHCHR, 'Rule-of-Law Tools for Post-Conflict States: Truth Commissions' (2006) UN Doc HR/PUB/06/1, 7.

⁵⁸ Elizabeth Picard and Alexander Ramsbotham (eds), *Reconciliation, reform and resilience: Positive Peace for Lebanon* (Accord: an International Review of Peace Initiatives Issue 24, Conciliation Resources 2012) 15.

⁵⁹ Brahm (n 34).

also ‘pressure governments to continue investigations, to fund truth commissions and reparations programs, and to fully cooperate with investigations’.⁶⁰ Whereas the work of truth commissions usually ends with the final report, the work of CSOs continue as they must sometimes pressure for recommendations to be implemented.⁶¹

Those truth recovery initiatives ‘that emerge from civil society and resemble, either self-consciously or coincidentally, official truth commissions such as those in Chile, Peru, South Africa, and Timor-Leste’ are called by Louis Bickford ‘Unofficial Truth Projects’.⁶² Some examples cited by this author are the Brazilian Nunca Mais project and the Greensboro Truth and Reconciliation Commission. Comparing unofficial truth projects with truth commissions, Bickford concludes that ‘neither approach is inherently superior in terms of truth recovery’.⁶³

Civil society is also known to lobby for reparations and provide psycho-social and other support services to victims. Andrieu writes that ‘in Post-Soviet Russia, filling the lack of any state-based initiatives for truth and justice about the communist past, the human rights organization Memorial (...) took the initiative of documenting past abuses and advocating for their commemoration and reparations’.⁶⁴ Where there are national truth commissions, organisations in countries like South Africa and Peru have used the needs and demands that emerge from them to advocate for reparations.⁶⁵

Trauma-support services provided by CSOs to victims can prove to be significant considering that ‘recalling their sufferings can be painful and induce post-traumatic stress’.⁶⁶ This support can be required in different moments during and after conflict or repression.⁶⁷ In regards to guarantees of non-recurrence, Hayner bluntly states that ‘the

⁶⁰ *ibid.*

⁶¹ Hayner (n 42) 47.

⁶² Louis Bickford, ‘Unofficial Truths Projects’ (2007) 29 *Human Rights Quarterly* 994, 994.

⁶³ *ibid* 995.

⁶⁴ Andrieu, ‘Civilizing Peacebuilding: Transitional Justice, Civil Society and the Liberal Paradigm’ (n 44) 550-551.

⁶⁵ Hayner (n 42) 46-47.

⁶⁶ Brahm (n 34).

⁶⁷ *ibid.*

most effective institutional reform programs often result from extensive input from civil society, sometimes including explorative research and programmatic design'.⁶⁸

Reconciliation can be a sensitive topic. On one hand, in Tunisia, for example, some proposed forms of reconciliation received widespread opposition.⁶⁹ On the other hand, in the case of Morocco, 'it can be argued that the main contribution to reconciliation was not the outcome of specific measures like the IER (...) but the process through which it was driven by civil society activism and the voices of citizens'.⁷⁰

But what happens when CSOs face governments and administrations that are 'adverse to accountability and sustain cultures of denial'?⁷¹ This question posed by Fischer with regards to the effectiveness of the efforts of CSOs in dealing with the past can be coupled with many others. The limitations, restrictions and struggles faced by CSOs are perhaps as multiple as their roles in dealing with the past.

2.2.1 Limitations, Restrictions and Struggles

Even though 'civil society groups are often the most vocal advocates of transitional justice', they are often disorganized, weak and lack independence, or have a difficult relationship with the government, partly due to the pressure they exert for accountability.⁷² This relationship could go from indifference to direct hostility to their activities, as was the case in Russia.⁷³

As Duthie puts it, 'civil society's contribution can be limited in the context of countries emerging from armed conflict or authoritarian rule, especially underdeveloped countries, for reasons related to capacity among others'.⁷⁴ He gives the example of Liberia, where the context of poverty and the weakness of civil society have

⁶⁸ Hayner (n 42) 47.

⁶⁹ Seils (n 29) 12.

⁷⁰ *ibid.*

⁷¹ Fischer, 'Transitional Justice and Reconciliation: Theory and Practice' (n 29) 414.

⁷² Brahm (n 34); Andrieu, 'Civilizing Peacebuilding: Transitional Justice, Civil Society and the Liberal Paradigm' (n 44) 550.

⁷³ Andrieu, 'Civilizing Peacebuilding: Transitional Justice, Civil Society and the Liberal Paradigm' (n 44) 551.

⁷⁴ Duthie (n 52) 14.

limited its impact on transitional justice and institutional reforms. In some contexts, he says, civil society has a limited space for advocating for transitional justice.⁷⁵

Additionally, there are instances in which civil society has not agreed with the official TJ mechanisms. For example, in Argentina ‘the Mothers of the Plaza de Mayo wanted nothing to do with the truth commission, because they perceived it as an attempt to avoid full disclosure and accountability’ and ‘they rejected all proposals for reparations dismissing it as blood money.’⁷⁶ To cite another example, ‘groups within both Guatemala and South Africa disagreed as to whether amnesties were appropriate and whether truth commissions were an acceptable substitute for trials’.⁷⁷

There can even be differences between the opinions or approaches of different types of CSOs within a same country. This is the case of Myanmar, where NGOs can be distinguished from community-based organisations or CBOs.⁷⁸ Catherine Renshaw finds ‘significant differences...in the approach and purpose of the work of CBOs such as the KBC and ND-Burma, even when both are focused on the same issue’.⁷⁹ To give another example, in Bougainville, while formal CSOs favour a liberal, international discourse and call for formal mechanisms of transitional justice, grassroots CSOs have favoured local reconciliation efforts.⁸⁰

Even in scenarios where CSOs are widely funded by international agencies, which can be essential for them to carry out their work, ‘external activities can also produce unintended side-effects, end up in failure or hamper processes of reconciliation’.⁸¹ While local groups might have a valuable perspective to provide, it is up to external actors to take any advice.⁸²

⁷⁵ *ibid* 15.

⁷⁶ Brahm (n 34).

⁷⁷ *ibid*.

⁷⁸ Catherine Renshaw, ‘Myanmar’s Transition without Justice’ in Lia Kent, Joanne Wallis and Claire Cronin (eds), *Civil Society and Transitional Justice in Asia and the Pacific* (ANU Press 2019) 130.

⁷⁹ *ibid* 144.

⁸⁰ Joanne Wallis, ‘The Role Played by Reconciliation in Social Reconstruction in Bougainville’ in Lia Kent, Joanne Wallis and Claire Cronin (eds), *Civil Society and Transitional Justice in Asia and the Pacific* (ANU Press 2019) 158.

⁸¹ Fischer, ‘Transitional Justice and Reconciliation: Theory and Practice’ (n 29) 423.

⁸² Brahm (n 34).

2.3 CONCLUSIONS: THE QUESTIONS THAT REMAIN

If anything, the literature review tells us that the roles CSOs have played in dealing with the past have depended a lot on circumstances and interests, both from CSOs themselves or other actors such as the government or international agencies. What is fair to state is that dealing with violent pasts is considered to be important and so is the role of civil society in this process. The literature also suggests that approaches to dealing with the past vary immensely, both theoretically and practically. While it is true that it is difficult to know what mechanisms for dealing with the past will work where, the role of civil society seems to be key throughout.

Where official attempts fall short or remain incomplete, CSOs can rise, even after years, to complete the work or try something new that couldn't be tried before. A remaining question, however, is how CSOs can still have a significant role in circumstances where there is little intention at the State level to deal with the past and they don't find an ally in neither the government, external actors nor the general public. Can CSOs still manage to carry out efforts to deal with the past in restrictive environments that significantly challenge them? How can CSOs tackle their most common limitations and restrictions so that they can still significantly impact the way in which the legacies of violent pasts are dealt with? Still many questions can be asked about the role of CSOs in the process of dealing with the past and this research aims to contribute to understanding it in the specific context of Croatia.

CHAPTER 3. CASE STUDY OF THE ROLE OF HUMAN RIGHTS NGOS IN DEALING WITH THE PAST IN CROATIA FROM THE 1990S TO 2020

The process of dealing with the past in Croatia and the Western Balkans in general in the last three decades has been shaped by many different factors, including the establishment of the first ad hoc tribunal by the UN Security Council, a period of strong international support and influence, periods of cooperation with the UN, preparations for EU accession, periods of lack of public interest and political will, hostility towards peace and human rights activists, advocacy for different regional transitional justice mechanisms, divisions among different types of CSOs and the public on the past and how to address it and denial of war crimes. Nowadays, in Croatia and the region, the situation is perhaps not much different than what then Commissioner for Human Rights Nils Muižnieks wrote in 2017 about the Western Balkans:

Now, after having visited all the countries of the Western Balkans, I am concerned that reconciliation has stalled and is being superceded by mounting ethnic divisions and polarisation in the region. These relate in particular to denial of genocide, glorification of war criminals and attempts to rehabilitate persons involved in crimes committed during the 1990s' wars. What is more, divisions have been exacerbated by World War II-related historical revisionism, inflammatory discourse by certain political leaders, and persisting ethnic segregation in education.⁸³

Other than describing the present situation shared by the countries of former Yugoslavia, this statement shows that questioning how they have dealt or continue to

⁸³ Commissioner for Human Rights, 'Reconciliation Stalled in the Western Balkans' (Human Rights Comment, Council of Europe Portal, 21 November 2017) <<https://www.coe.int/en/web/commissioner/-/reconciliation-stalled-in-the-western-balkans>> accessed 10 May 2020.

deal with the past is of no little importance even after almost three decades. In the case of Croatia, as Pavlaković suggests, there are significant factors that differentiate it from Bosnia-Herzegovina and Serbia: it was a victor in the wars of the 1990s, left ‘with all of its territory intact’ and succeeded in becoming a member of the EU.⁸⁴ This is therefore a very interesting, but complex, environment to study the role of CSOs and their relevance in the process of dealing with a past that some might have thought was better to leave untouched because of its inseparability from independence, even if this meant denial or lack of acknowledgment of the atrocities committed.

The status of the past in Croatia is not straight-forward and it is necessary to lay down some tools to understand why. After presenting the research methodology and limitations, this chapter first revisits meaningful events of Croatia’s past that are relevant for this thesis. Then, it characterizes the specific group of CSOs this research focuses on, human rights NGOs, locating it in the wider context of civil society in Croatia and explaining the divisions among this group and other types of CSOs dealing with the past.

The chapter then continues with an analysis directed at the first part of the research question: **What are the major contributions and limitations of the efforts carried out by human rights NGOs in Croatia to deal with the past?** Finally, the second part of the question is addressed in the conclusions for this chapter: **What does this case study teach us about the role of CSOs in local contexts with contentious or politicised pasts?**

⁸⁴ Vjeran Pavlaković, ‘The ICTY and Institutional Reform in Croatia’ in Klaus Bachmann, Gerhard Kemp and Irena Ristić (eds), *International Criminal Tribunals as Actors of Domestic Change: The Impact on Institutional Reform* (Vol 1, Peter Lang 2018) 85.

3.1 RESEARCH METHODOLOGY

This research focuses on the roles of Croatian human rights NGOs in dealing with the past processes, and aims mainly to analyse their major contributions and limitations. The research has a purely qualitative approach and is based on existing literature, including analyses, reports and articles, and on semi-structured interviews carried out to members or former members of human rights organisations in Croatia as well as other experts in the fields of culture, history or dealing with the past (interview guides are found in *Annex B* and *Annex C*).

3.2 RESEARCH LIMITATIONS

The approach of this research takes into account that while interviews offer the depth and unique perspective of personal experience and expertise in the local context, the period of time covered (1990s - 2020) is wide, and relying on literature from different years within this period was at times necessary. This work has the limitations commonly associated with qualitative research in terms of lack of precision and scope of analysis. Additionally, due to movement restrictions, most interviews had to be carried out online (through conference calls and e-mails), which presents its own limitations for the quality of information gathered. Furthermore, it might be considered problematic to carry out research on the process of dealing with the past in Croatia and not in the Western Balkans as a region. For example, many of the sources used for this research focus on Bosnia-Herzegovina, Serbia and Croatia alike, and not just one of these countries. For this reason, even though this research focuses on Croatia and its specific context and own particularities, some of which were already mentioned, it constantly brings the wider regional context to the discussion, which is absolutely necessary for understanding the national context. The final, and also important, limitation, is the language barrier as I have to rely on documents written in English. In spite of this barrier, as is not uncommon in the field of transitional justice, many of the people involved in efforts to deal with the past in Croatia or writing about this (professors, researchers, activists, NGO members, among others) are fluent in English.

3.3 THE WARS FOUGHT IN CROATIA AND THE CONTROVERSIES AROUND THEM

When I first started this research, I went to the library in Zagreb and asked for books about the war in Croatia. The inevitable question emerged of which war I was referring to. I was decided to read about the 1990s, but the Croatian scholars I spoke to unanimously advised me to go further back, to the 1940s. Marcus Tanner addresses this problem in his book *Croatia: A Nation Forged in War*.

It was out of a desire to remedy a certain gap in our understanding of the former Yugoslavia, and from a conviction that Croatia warrants study on its own...that I attempted a brief account of the war in Croatia in 1991. But it was impossible to write about the war in the 1990s without referring to the war of the 1940s, and impossible to write about that without referring to the first Yugoslavia....In the end I decided to start with the first Croat principalities in the Dark Ages.⁸⁵

So, even when I will focus on the role of CSOs in Croatia from the 1990s onwards, I will provide a wider historical context in this subchapter to shed light on the complexity of the past they are coming to terms with. I will not start in the Dark Ages as Tanner did, but in the 1940s.

3.3.1 Looking Further Back: the 1940s, the Ustashe and SFR Yugoslavia

Right before the Second World War started, Prince Paul, regent of the Kingdom of Yugoslavia, appointed politician Cvetković to make a deal with Croatia, to give them back the autonomy lost since the dissolution of the Habsburg Empire. Even though such an agreement was reached between Cvetković and Maček (a Croatian politician of the Peasant Party) in August 1939, making ‘provision for an enlarged, partially self-governing Croatian *banovina*’, history was about to take a radical turn.⁸⁶ The

⁸⁵ Marcus Tanner, *Croatia: A Nation Forged in War* (2nd edn, Yale Nota Bene 2001) xii.

⁸⁶ *ibid* 127-133; John R Lampe, John B Allcock and others, ‘Croatia’, *Encyclopædia Britannica* (Encyclopædia Britannica, inc., 12 May 2020) <<https://www.britannica.com/place/Serbia>> accessed 22 June 2020.

agreement was doomed to fail because of the tense political environment and the outbreak of war. Instead, in Croatia, during the Second World War, power fell in the hands of the Ustashe. The Ustasha Croatian Liberation Movement had been in exile in Italy almost since its creation in 1929 by Ante Pavelić.⁸⁷ The movement claimed the heritage of the Frankists, who said to follow the tradition of hostility toward Serbs promoted before by Croatian politician Starčević and his Party of Rights.⁸⁸ The Ustashe rose to power in April 1941, after Germany invaded Yugoslavia.⁸⁹

Upon their invasion, Germans ‘exploited Croatian discontent, presenting themselves as liberators and inciting Croats in the armed forces to mutiny’.⁹⁰ Tanner explains how ‘overnight, power slipped from the Yugoslav state....On 8 April, as soon as the German invasion began, Ustashe supporters in the Yugoslav army garrison in Bjelovar revolted against their officers and proclaimed Croatia’s independence’.⁹¹ Thus began the *Nezavisna Država Hrvatska* (Independent State of Croatia, referred to also as NDH), which ‘was to be a carbon copy of Nazi Germany’.⁹²

Independence was at first welcomed with enthusiasm, but after gaining power the Ustashe soon began ruthlessly persecuting Serbs, Jews, Roma and antifascist Croats, as one of their goals was to create an ethnically pure Croatia.⁹³ The plan was to eliminate Croatia’s Serb minority ‘partly by conversion from Orthodoxy to Catholicism, partly by expulsion, and partly by extermination’.⁹⁴ This massive persecution caused the Serbian population to flee and join resistance movements that would in the second half of 1941 participate in organized uprisings.⁹⁵ Sindbaek does a recount of the crimes committed by the Ustashe, which included raids and massacres,

⁸⁷ Tanner (n 85) 125.

⁸⁸ *ibid* 106.

⁸⁹ *ibid* 141.

⁹⁰ Liz David-Barrett, John R Lampe and others, ‘Croatia’, *Encyclopædia Britannica* (Encyclopædia Britannica, inc., 14 April 2020) <<https://www.britannica.com/place/Croatia>> accessed 20 April 2020.

⁹¹ Tanner (n 85) 141-142.

⁹² *ibid* 144.

⁹³ Ivo Goldstein, ‘The Independent State of Croatia in 1941: On the Road to Catastrophe’ (2006) 7 *Totalitarian Movements and Political Regions* 417, 419.

⁹⁴ David-Barrett, Lampe and others (n 90).

⁹⁵ Tia Sindbaek, *Usable History?: Representations of Yugoslavia’s Difficult Past from 1945 to 2002* (Aarhus Universitetsforlag, 2012) 27.

massive forced displacement and concentration camps ‘where prisoners were worked and starved to death’, Jasenovac being the most notorious one.⁹⁶ This past, however, is still subject of controversies and contradictions, which hints at particular difficulties in dealing with these events. In 2006, Ramet wrote:

Even today, 60 years after the end of the Second World War, the NDH remains the subject of controversy. There are controversies about how many people were killed at the Jasenovac concentration camp...the Church’s response to the NDH’s use of force to promote the conversion of Serbs to Catholicism; even about whether the NDH should be seen as having been an embodiment of Croatian statehood.⁹⁷

Vjeran Pavlaković, Associate Professor of the University of Rijeka’s Faculty of Humanities and Social Sciences, evidences in contemporary society the traumas and divisions over what happened during the Second World War ‘due to the complex relationship between state-building narratives, legacies of both right- and left-wing extremist ideologies and inter-ethnic violence perpetrated on a massive scale’.⁹⁸ These traumas and divisions have had periods of suppression, like under the socialist regime that held full control over the historical narrative, and periods of reawakening, like the War of Independence in the 1990s.⁹⁹

The resistance against fascism found leadership in Josip Broz Tito and the Partisans, who had a victory in the Spring of 1945 and took merciless revenge against the Ustashe and other enemies¹⁰⁰, killing tens of thousands, including civilians.¹⁰¹ The new Socialist Federal Republic of Yugoslavia (also known as SFR Yugoslavia) would be a ‘conglomerate of small states’ with no place for the kind of nationalism or disputes that had threatened the region before.¹⁰² The borders of the six new republics were

⁹⁶ *ibid* 32.

⁹⁷ Sabrina P Ramet, ‘The NDH – An Introduction’ (2006) 7 *Totalitarian Movements and Political Regions* 399, 400.

⁹⁸ Vjeran Pavlaković, ‘Remembering War the European Way: Croatia’s Commemorative Culture on the Eve of EU Membership’ in Pero Maldini and Davor Pauković (eds) *Croatia and the European Union: Changes and Development* (Asghate 2015) 120.

⁹⁹ *ibid*.

¹⁰⁰ For example, Chetniks.

¹⁰¹ Sindbaek (n 95) 33.

¹⁰² Tanner (n 85) 172.

rearranged and Yugoslavia was made a one-party State, persecuting and repressing non-communist parties in Serbia and Croatia, the clergy and even communists who were considered enemies.¹⁰³ A revival of independent political activity, or an attempt for it, known as the Croatian Spring (or *Maspok*), appeared around 1967 within the Croat league of Communists.¹⁰⁴ The hopes it brought for reform died when it was suppressed by Tito. According to Tanner, ‘the legacy of the suppression of Maspok, and the manner in which it was suppressed, was disastrous not only for Croatia but for Yugoslavia’.¹⁰⁵

Other than suppressing political opponents, the communist regime has been blamed for expropriating property and displacing people, while, on a more positive note, and ‘despite the lack of democracy – no matter how paradoxical it might sound – [it] fostered some aspects of civil society which previously did not exist, such as the separation of the church from the state, civil marriage, equal legal rights for women, national minorities, and so forth’.¹⁰⁶ In ‘Yugoslavia – Beginning of the End’ authors Gavrilović and Despotović go through different reasons for the dissolution of Yugoslavia. One of these was the industrialization of 1968-1972 and its effect on society.¹⁰⁷ Other reasons included debt, inequality, ‘exacerbating ethnic tensions’ and religion, all playing their part in Yugoslavia’s dissolution.¹⁰⁸ The centralized power of Yugoslavia cracked after Tito’s death in 1980, when free multiparty elections were held by the Slovene and Croatian communists in 1989.¹⁰⁹ In the Croatian elections of 1990, the ‘right-wing, nationalist Croatian Democratic Union (Hrvatska Demokratska Zajednica; HDZ), led by Franjo Tuđman (a former party member who had been jailed during the suppression of the Croatian Spring), was victorious’.¹¹⁰

¹⁰³ *ibid* 172-180.

¹⁰⁴ Tanner explains that *Maspok* is ‘short for *masovni pokret*, or “mass movement”’; *ibid* 184.

¹⁰⁵ *ibid* 202.

¹⁰⁶ Darko Gavrilović and Ljubiša Despotović, ‘Yugoslavia – Beginning Of The End’ (2011) 2 *Istorija* 20. veka 109, 109-118 <<https://www.ceeol.com/search/article-detail?id=96226>> accessed 20 April 2020.

¹⁰⁷ *ibid*.

¹⁰⁸ *ibid*.

¹⁰⁹ David-Barrett, Lampe and others (n 90).

¹¹⁰ *ibid*.

3.3.2 Croatia's Independence, the 'Homeland War' and the Balkan Conflicts of the 1990s

When researching Croatia's history, one of the big problems that arises is how to focus on this country without neither ignoring the region it makes part of, nor losing the boundaries for investigation. As a foreigner, it is perhaps even more difficult than it already is to put a boundary between what Croatia's past is and what the past of the whole region that used to form Yugoslavia is. This holds true for the events of the 1990s in the region and in Croatia. The sole attempt to describe these events is problematic.¹¹¹ Fischer introduces them in the following way:

The region of the former Yugoslavia experienced brutal wars and gross human rights violations in the 1990s...political constituencies formed around so-called "ethnic" identities and definitions, resulting in a struggle for territories and for political representation, power and recognition. New ethnopolitical nation-states were formed, which led to policies of exclusion of polities with multi-ethnic populations. When Croatia declared its independence in 1991, hostilities between Croatian forces and the Yugoslav People's Army began, causing devastation in some areas of this new country.¹¹²

These hostilities that lasted until 1995 made part, in Tanner's words, of the 'bloody war of independence against the Yugoslav army, the army of the Croatian Serbs and a variety of Serbian paramilitary groups'.¹¹³ In 'Confronting the Yugoslav Controversies', Bjelajac and Žunec describe some of the most controversial aspects of the war and list several of the reasons why it is difficult to render an objective account of what happened in Croatia during these years, concluding that 'one is left to one's own devices and cannot do much more than try to assess which interpretations seem

¹¹¹ Marija Šajkaš, 'Transitional Justice and the Role of the Media in the Balkans' (2007) International Center for Transitional Justice Discussion Paper 1 <https://www.ictj.org/sites/default/files/ICTJ-FormerYugoslavia-Media-Justice-2007-English_0.pdf> accessed 18 April 2020.

¹¹² Martina Fischer and Ljubinka Petrović-Ziemer (eds), *Dealing with the Past in the Western Balkans: Initiatives for Peacebuilding and Transitional Justice in Bosnia-Herzegovina, Serbia and Croatia* (Berghof Report No. 18, Berghof Foundation Operations GmbH 2013) 2.

¹¹³ Tanner (n 85) ix.

most likely to be true based on available documentation and a reconstruction of the chronology'.¹¹⁴ Jović shows how much interpretations can vary:

For Croatian nationalists and conservatives, the *Homeland War* marks the birthplace of the modern Croatian nation. For Croatian anti-nationalists and non-nationalists, it represents a tragedy, an avoidable conflict, one of the worst episodes of Croatian history. They claim that the war was produced by nationalists in order to mobilise a wider population – otherwise unwilling to fight a war and unconvinced that Yugoslavia could not survive – for the nationalist project.¹¹⁵

This poses big problems for attempts to deal with the past in Croatia. For example, it has brought disagreements as to who the real victims were and whether the Serbs who were displaced through the Croatian military operation Storm in 1995 have such status or not.¹¹⁶ Additionally, the ties between the Bosnian Croats and Croatia meant that this country, similarly to Serbia, was involved in the Bosnian war that broke out in 1992.¹¹⁷ In 1993, still in the midst of war, the International Criminal Tribunal for the former Yugoslavia (ICTY) was established by the United Nations 'in response to mass atrocities then taking place in Croatia and Bosnia and Herzegovina. Reports depicting horrendous crimes...caused outrage across the world and spurred the UN Security Council to act'.¹¹⁸ It was the first court of this kind established by the UN.¹¹⁹

It is interesting to mention that, while it was the war in Bosnia that sparked the creation of the ICTY, the 'Croatian government, seeking to portray Croatia as the victim of Serbian aggression, appealed to the United Nations already in the fall of 1991 to establish an international tribunal. Although this initial call did not yield any concrete

¹¹⁴ Mile Bjelajac and Ozren Žunec, 'The War in Croatia, 1991-1995' in Charles Ingrao and Thomas A Emmert (eds) *Confronting the Yugoslav Controversies* (2nd edn, Purdue University Press 2013).

¹¹⁵ Dejan Jović, 'The War that is not Allowed to be Forgotten: Nationalist Discourse on the "Homeland War" (1991-1995) in Contemporary Croatia' (2012) 3 *Südosteuropa Mitteilungen* 52, 58 <www.ceeol.com/search/article-detail?id=35212> accessed 21 April 2020.

¹¹⁶ *ibid* 60.

¹¹⁷ Fischer and Petrović-Ziemer (n 112) 2.

¹¹⁸ 'About the ICTY' (*ICTY*) <www.icty.org/en/about> accessed 19 April 2020.

¹¹⁹ *ibid*.

results regarding a tribunal, the victimization strategy did contribute to Croatia's international recognition in early 1992'.¹²⁰

In 1995, the presidents of Croatia, Serbia and Bosnia signed a peace agreement known as the Dayton Accords to end the war in Bosnia.¹²¹ As Fischer writes, the EU made clear that cooperation with the ICTY and implementation of the Dayton Peace Agreement (itself with provisions on dealing with past crimes) were preconditions for accession to it.¹²²

3.3.3 Conclusions: The Tensions around the Past Remain and so do the Interests Behind Them

Other than giving a brief historical context for this research, this subchapter had two aims: hinting at the scale of human rights violations and showing the controversies around Croatia's past. The tensions between different versions of violent events continue to challenge attempts to address the past in Croatia today and are thus key to this research. Perhaps looking at these periods in Croatia's past serves also to make a case about the importance of addressing it. Pavlaković writes, for example, that after the communist regime suppressed, under the official narrative of 'brotherhood and unity', the mutual atrocities committed during the Second World War, in the 1990s nationalists from different republics used these repressed memories to 'demonize the "Other" and to justify creating paramilitary defence units'.¹²³ The author warns that today 'the memory politics in the successor states threaten to repeat the mistakes of the past' (referring to those that led to the wars of the 1990s).¹²⁴

¹²⁰ Pavlaković, 'The ICTY and Institutional Reform in Croatia' (n 84) 81.

¹²¹ Bill Clinton, 'Dayton Accords', *Encyclopædia Britannica* (Encyclopædia Britannica, inc., 14 November 2019) <<https://www.britannica.com/event/Dayton-Accords>> accessed 19 April 2020.

¹²² Fischer and Petrović-Ziemer (n 112) 3.

¹²³ Pavlaković, 'The ICTY and Institutional Reform in Croatia' (n 84) 79.

¹²⁴ Vjeran Pavlaković, 'Dignity for the Defeated: Recognizing the "Other" in Post-Yugoslav Commemorative Practices' in Arnaud Kurze and Christopher K. Lamont (eds), *New Critical Spaces in Transitional Justice: Gender, Art, and Memory* (Indiana University Press 2019) 225.

3.4 FROM THE BROADER PICTURE OF CIVIL SOCIETY IN CROATIA TO HUMAN RIGHTS NGOs

Writing about any group of civil society organisations requires situating it in the broader picture of civil society. In the case of Croatia, it is important to note that there is no data source unifying relevant information on civil society in this country, no separate analyses or statistical data on CSOs published by the Croatian Statistical Bureau and big gaps in terms of data collection and reporting on these organisations.¹²⁵ Additionally, there is a general feeling that the situation of civil society in Croatia is ‘rather ambiguous’.¹²⁶

Even though the existence of civil society initiatives in Croatia can be tracked back to the 19th century, such actions were repressed to certain extent throughout the years of the fascist and socialist regimes. This can be significant in the light of the situation reported in 2005:

In general, the communist regime had a profound and long lasting impact on the development of civil society in Croatia, the effects of which can still be seen today, and will be difficult to overcome. This legacy manifests itself in the mentality of citizens who do not have a tendency towards self-organization or taking on social responsibility, since they consider it the responsibility of the state to solve their problems.¹²⁷

Civil society rose again in the late 1980s partly due to ‘the creation of a multiparty political system, with some civil initiatives subsequently transforming into political parties’.¹²⁸ The CIVICUS civil society indexes of 2005 and 2011 list around 20 types

¹²⁵ Gojko Bežovan, Jelena Matančević and Danijel Baturina, ‘Country Report: Croatia’ in Peter Vantor and others (eds), *Civil Society in Central and Eastern Europe: Challenges and Opportunities* (ERSTE Stiftung Studies 2017) 111.

¹²⁶ Gojko Bežovan and Jelena Matančević, ‘Building Identity: Future Challenges for CSOs as Professionals in the Societal Arena’ (CIVICUS Civil Society Index Report in Croatia, CERANEO 2011) 16.

¹²⁷ Gojko Bežovan, Siniša Zrinčak and Marina Vugec, ‘Civil Society in Croatia: Gaining Trust and Establishing Partnerships with the State and other Stakeholders’ (CIVICUS Civil Society Index Report for Croatia, CERANEO 2005) 17.

¹²⁸ *ibid.*

of CSOs in Croatia.¹²⁹ Some of the challenges CSOs might face are unstable working conditions and weak support from the public and the government.¹³⁰ A 2018 report focusing on the sustainability of CSOs reveals that, in Croatia, ‘the prevailing opinion among CSOs is that the government only tolerates their involvement when it benefits from it’.¹³¹

Based on some of the available literature and on the interviews carried out for this research, the three types of CSOs that have been most concerned with dealing with the past processes in Croatia are: (1) victims’ associations, (2) war veterans’ associations and (3) human rights NGOs. The following pages mention some of the differences among their views and aims and then focus on the context of the specific group this research concentrates on: human rights NGOs.

3.4.1 Conflicting Aims and Views of the CSOs in Croatia Dealing with the Past

The literature review laid out in the second chapter of this thesis mentions cases of different types of CSOs in a same country or region having different ideas on how to address violent pasts. Fischer writes that when communities have strong divisions that follow ethnopolitical lines this tends to result, in the post-conflict period, in political discourses that ‘focus on commemorating “own” victims and heroes of war and silencing “own” crimes and the suffering of the “others”’.¹³² In Croatia, the CSOs that have focused on dealing with the past have been prone to such divisions. In reference to Bosnia-Herzegovina, Serbia and Croatia, Fischer wrote the following toward 2013:

Victims’ groups are influential in shaping discourses on dealing with the past. At the same time they are often at risk of being manipulated for political purposes and ethno-

¹²⁹ While the 2005 report includes war victims’ associations (number 18 of the list), the 2011 one does not mention victims; Bežovan, Zrinščak and Vugec (n 127) 20; Bežovan and Matančević (n 126) 53.

¹³⁰ ‘2018 Civil Society Organization Sustainability Index: Central and Eastern Europe and Eurasia’ (22nd edition, USAID 2019) 67-76; Bežovan, Matančević and Baturina (n 125) 111-123.

¹³¹ ‘2018 Civil Society Organization Sustainability Index: Central and Easter Europe and Eurasia’ (n 130) 75.

¹³² Martina Fischer, ‘Transitional Justice: Lessons from the Western Balkans’ (Berghof Policy Brief 05, Berghof Foundation 2016) 5.

nationalist discourses. The same applies to *veterans' unions* who advocate for the rights of ex-combatants (...). Although victims' and veterans' groups directly compete for state funds, and veterans are often privileged in comparison to many civilian war victims, the compartmentalisation of society along ethnopolitical lines contributes to a situation where victims' associations and veterans' unions "frequently find themselves on the same side of political issues".¹³³

The tensions and divisions between the different civil society groups involved in dealing with the past were a recurrent subject in the interviews carried out for this research. As Nikola Puharić explained, 'the conflict had a big ethnic background, so victims are also divided in these ethnic terms. You wouldn't find a lot of victims' organisations in the region, in the whole of this Balkan region, bringing together all the victims regardless of their ethnic background'.¹³⁴ This can be evidenced in commemorative practices, as Pavlaković suggests when he writes that after decades since the conflicts there have been only a few cases of memorials recognizing all victims, 'especially because there are numerous memory entrepreneurs besides the government—for example, victims' groups, veterans' organisations, or particular religious communities—acting to commemorate the losses of only certain groups'.¹³⁵

Human rights NGOs incline towards inclusive forms of remembrance and some understanding of reconciliation, a controversial word in the region that also causes divisions among CSOs dealing with the past. As Pavlaković explains:

In the former Yugoslavia, reconciliation is generally considered a positive goal by those in the civil society sector, while those coming from a more right-wing position, such as nationalist politicians or representatives of veteran groups, tend to be dismissive of the term as an attempt to equalize guilt or re-create a new Yugoslavia.¹³⁶

¹³³ Martina Fischer, 'Political Context and Relevant Actors' in Martina Fischer and Ljubinka Petrović-Ziemer (eds), *Dealing with the Past in the Western Balkans: Initiatives for Peacebuilding and Transitional Justice in Bosnia-Herzegovina, Serbia and Croatia* (Berghof Report No. 18, Berghof Foundation Operations GmbH 2013) 13 (citations omitted).

¹³⁴ Interview with Nikola Puharić, Chairman of the Governing Board, YIHR (Zagreb, Croatia, 20 April 2020).

¹³⁵ Pavlaković, 'Dignity for the Defeated: Recognizing the "Other" in Post-Yugoslav Commemorative Practices' (n 124) 229.

¹³⁶ *ibid* 226.

The division between war veterans' groups and human rights organisations has been for long present. Goran Božičević remembers that 'in all the 90s there was a very clear division between war veterans and peace and human rights activists', adding that tensions started appearing 'by the late 90s with the coming of the peace and the development of the field of civil society organisations'.¹³⁷ Further explaining these tensions, which are still present today, he recalled: 'for war veterans we were traitors, not patriotic, and for us they were right-wing or fascist-oriented and these were labels which were extreme and not correct'.¹³⁸ In 2018, to cite a recent example, 'tensions were visible during the year between socially liberal and conservative CSOs and their supporters in relation to revisionist narratives about World War II and the Croatian War of Independence (1991-1995) and specifically the use of the phrase *Za Dom Spremni* (Ready for [the defense] of the home), a salute used by the fascist powers in Croatia during World War II'.¹³⁹

What adds to the gap between these groups of CSOs is the different levels of support they receive from the government. 'There are war veterans' organisations which are very influential in our public space and they are, I would say, dominating the dealing with the past stories in Croatia and are very important for the government' explained Nikola Puharić, contrasting this situation with the lack of support given to human rights organisations, which was another recurrent subject throughout this research.¹⁴⁰ In the case of victims' organisations and their relations with the government, Nielsen suggests that 'a Serb, Croat, or Bosniak victim of an atrocity holds

¹³⁷ Interview with Goran Božičević, Peace Activist and Director, Miramida Centar-Regional Peacebuilding Exchange (Zagreb, Croatia, 17 April 2020).

¹³⁸ *ibid.*

¹³⁹ '2018 Civil Society Organization Sustainability Index: Central and Easter Europe and Eurasia' (n 130) 67.

¹⁴⁰ Interview with Nikola Puharić, Chairman of the Governing Board, YIHR (Zagreb, Croatia, 20 April 2020).

interest for nationalist Serb, Croat or Bosniak politicians primarily because the victim symbolizes the collective suffering or martyrdom of the nation'.¹⁴¹

Even though this research focuses on human rights NGOs, I have a personal concern with victims having a voice in the process of dealing with the past, so I think the question of the fate of civilian victims of war in Croatia deserves special attention and consideration. The difficulties facing victims were acknowledged earlier this year (2020) at a UN Security Council meeting when Croatian diplomat Ivan Šimonović called for victim-centred transitional justice approaches and mechanisms for restitutions.¹⁴² The fact is, however, that more than two decades have passed since the wars in the region and, in the view of some of the people interviewed for this research, it is more likely that 'governments are waiting for people to die and not accomplish any of their rights', as Nela Pamuković predicted.¹⁴³ The exhumation of missing persons seems to face a similar fate. In Gordan Bosanac's words '25 years have passed and if you couldn't find the loved ones in the last 25 years no one would believe that you could find them in the next 25 years'.¹⁴⁴

3.4.2 A Story of Human Rights NGOs in Croatia

The story of NGOs¹⁴⁵ in Croatia can be divided into three periods: the **1990s** (subdivided into the war and immediate post-war periods), the period from **2000 to 2013**, and from **2013 (EU accession) until today**.¹⁴⁶ It was not long after civil society

¹⁴¹ Christian Axboe Nielsen, 'Collective and Competitive Victimhood as Identity in the Former Yugoslavia' in Nanci Adler (ed), *Understanding the Age of Transitional Justice: Crimes, Courts, Commissions and Chronicling* (Rutgers University Press, 2018) 178.

¹⁴² UNSC 'To Rebuild Lives, Suffering Must Be Acknowledged, "Justice Done", Human Rights High Commissioner Says, as Security Council Takes Up Transitional Justice' (13 February 2020) Meetings Coverage SC/14109 <www.un.org/press/en/2020/sc14109.doc.htm> accessed 28 April 2020.

¹⁴³ Interview with Nela Pamuković, Activist and Co-founder, Centre for Women War Victims – ROSA (Zagreb, Croatia, 21 April 2020).

¹⁴⁴ Interview with Gordan Bosanac, Activist and former member of the Centre for Peace Studies (active from 1998-2018) (Zagreb, Croatia, 21 April 2020).

¹⁴⁵ Here I refer to the Human Rights NGOs that made part of the peacebuilding sector and that include those involved in dealing with the past.

¹⁴⁶ The suggestion to subdivide the period analysed in this research came from conversations and interviews carried out for this research.

re-emerged in the 1980s that war broke out and the environment around it became hostile. The efforts of civil society turned to war relief and peacebuilding and peace and human rights activists faced the choice of forming internationally-funded NGOs.

1990s: From Anti-War Movements to Internationally-Supported Professional NGOs

Laura Heideman, in her 2017 paper about social movements' professionalization and 'NGOization' in Croatia, explains how the peacebuilding sector emerged in this country in a time of crisis which urgently called for activism and how newly-formed NGOs had a rough start with the Croatian government and even with the public.¹⁴⁷ In her words:

From 1991 to 1995, Croatia was embroiled in a war marked by ethnic cleansing (...). The far-right nationalist government of Croatia was hostile not only to ethnic minorities, but also to any state critics, including feminists, human rights activists, and political opposition. There was little political and social space for organizing around peace issues. Peace activists faced opposition not just from the government, but also from their communities.¹⁴⁸

In the war and post-war years some NGOs were formed by people who had already been part of social movements for the previous two decades, while others emerged mostly near the frontlines of war, in regional centres such as Osijek and Karlovac, given the pressing needs felt in these areas.¹⁴⁹ The first group Heideman calls *Transformed NGOs*.¹⁵⁰ An emblematic example was the Anti-War Campaign (ARK), which was the largest peace organisation during the war and a focal point for other peace activists and for coordination with the international community.¹⁵¹ Most women's peace

¹⁴⁷ Laura Heideman, 'Cultivating Peace: Social Movement Professionalization and NGOization in Croatia' (2017) 22 *Mobilization: An International Quarterly* 345, 346.

¹⁴⁸ *ibid* 349 (citations omitted).

¹⁴⁹ *ibid* 353.

¹⁵⁰ *ibid* 351.

¹⁵¹ *ibid* 352.

organisations were also created by veteran peace activists, some active since the 1970s, in response to the particular human rights violations faced by women in war contexts.¹⁵²

Paul Stubbs goes further into the establishment of the Anti-War Campaign, explaining that it was formed in July 1991 as a ‘network of networks’.¹⁵³ As he explains, ‘The original Charter (*Povelja*) of the Anti-War Campaign states that it is “an informal association of organisations and individuals from the whole of Yugoslavia, who want to contribute to the ending of armed conflicts”’.¹⁵⁴ It is his view that the ARK was ‘being squeezed, more or less willingly, into an emerging shape of the non-governmental organization qualifying for grants from international donors’.¹⁵⁵

The post-war years were marked by the influence of international actors such as the United States, the European Union, the UN and private donors who supported local peace activists through funding and expertise.¹⁵⁶ Mainly dependent on foreign funds and ‘often donor-driven’, it is the view of some authors that the NGO sector was growing as an ‘imported, virtual civil society’, somehow disconnected from the local context.¹⁵⁷ Foreign intervention and pressures, however, were helpful in pushing the government to change its hostile attitude toward NGOs in the decade to come.

2000-2013: Better Times?

In the early 2000s a different period started for NGOs, as their relationship with the government underwent ‘something of a “normalisation”’ with initiatives like the creation of the Council for Civil Society Development.¹⁵⁸ However, activists complained that the government was still not giving them a meaningful space in policy-

¹⁵² *ibid.*

¹⁵³ Paul Stubbs, ‘Networks, Organizations, Movements: Narratives and Shapes of Three Waves of Activism in Croatia’ (2012) 15 *Polemos* 11, 15.

¹⁵⁴ *ibid* 14 (citations omitted).

¹⁵⁵ *ibid* 15.

¹⁵⁶ Heideman, ‘Cultivating Peace: Social Movement Professionalization and NGOization in Croatia’ (n 147) 349.

¹⁵⁷ Bežovan, Matančević and Baturina (n 125) 113.

¹⁵⁸ Stubbs (n 153) 21.

making.¹⁵⁹ In fact, some experts considered that little was done in practice to foster a real and effective partnership between the government and civil society.¹⁶⁰ This was coupled with the low level of trust from the Croatian citizens who viewed NGOs as being almost foreign.¹⁶¹ Heideman explains that, at the time,

Donors pushed organizations to take on particular characteristics: to be formal, professional organizations capable of handling the bureaucratic needs of project-based NGO work. The ability to engage in this kind of work had a strong set of prerequisites: NGO employees needed to be able to write grants in formal, professional English. In practice, this meant that international donors sponsored and supported NGOs run by highly educated and westernized activists.¹⁶²

The international interest received by Croatia was related to its possible admission to NATO and the European Union. Given Croatia's candidacy for EU membership, this country's civil society received peacebuilding funds to address many of the tensions left after the war and to prepare it for accession.¹⁶³ Croatia joined NATO in 2009 and the EU in 2013.

2013-2020: Falling into Oblivion

It is perhaps quite telling that there are less articles and reports on the fate of the peacebuilding sector (and civil society in general) in Croatia from 2013 on. At face value, it seems that after accession human rights organisations were somewhat left behind. The last published 'National Strategy for the Creation of an Enabling Environment for Civil Society Development' was adopted in July 2012 for the 2012-2016 period. An internet article from June 2019 denounces that the production of the National Strategy for 2017-2021, with a participatory drafting process that included

¹⁵⁹ *ibid.*

¹⁶⁰ Bežovan, Zrinščak and Vugec (n 127) 18.

¹⁶¹ Bežovan, Matančević and Baturina (n 125) 114.

¹⁶² Heideman, 'Cultivating Peace: Social Movement Professionalization and NGOization in Croatia' (n 147) 356.

¹⁶³ Laura J Heideman, 'Rethinking Legitimation: Positional and Meditated Legitimation Processes for Croatian NGOs' (n 11) 6.

more than 70 representatives of public authorities, academia and NGOs, was ‘critically delayed by the Ministry of Labour and Pension System’.¹⁶⁴ The article also mentions that CSOs were being undermined by the government again, having already suffered from financial exhaustion in 2016.¹⁶⁵

A report written by Gordan Bosanac in 2017 for the European Union Agency for Fundamental Rights denounces cuts in funding for human rights NGOs in Croatia in the first part of 2016, due to changes in the government, as well as political attacks towards these organisations.¹⁶⁶ Based on a 2018 thematic report by Human Rights House Zagreb, the situation particularly affecting human rights defenders in Croatia is rather worrisome:

Organisations dealing with issues that are deeply politicised in the Croatian society, such as refugees' and asylum seekers' rights, and transitional justice and dealing with the past, are particularly exposed. In such a negative environment, cases of threats and intimidation directed towards human rights defenders by prominent public figures and members of political parties are especially concerning.¹⁶⁷

The vague and unpromising situation of human rights NGOs in Croatia in the past few years has somehow affected the fate of transitional justice and is therefore important for this research.

3.4.3 Conclusions: A Lonely Road after All

Understanding Croatian society today is not an easy task for someone coming from such a different background. The particular history of the countries of former

¹⁶⁴ GONG, ‘CROATIA: Civil Society Strategy in Limbo Puts at Risk CSOs’ Financial Sustainability’ (*Civic Space Watch*, 6 June 2019) <<http://civicspacewatch.eu/croatia-civil-society-strategy-in-limbo-puts-at-risk-csos-financial-sustainability/>> accessed 30 April 2020.

¹⁶⁵ *ibid.*

¹⁶⁶ Gordan Bosanac, ‘Standing and Operational Space of Non-Governmental Organisations (NGOs) in Contribution to Respecting and Promoting Fundamental Rights in EU Member States’ (FRA 2017).

¹⁶⁷ Tina Đaković and Ivan Novosel (eds), ‘Human Rights Defenders in Croatia: Obstacles and Challenges’ (Thematic Report, Human Rights House Zagreb 2018) 21 <www.kucaljudskihprava.hr/wp-content/uploads/2019/01/KLJP_HumanRightsDefendersInCroatia_edit1801.pdf> accessed 30 April 2020.

Yugoslavia makes it difficult to understand where people stand in relation both to the past and the future. Regarding civil society, it would take far more research to really understand its origin, repression and re-emergence since the 19th century. The general feeling of some of the interviewees is that civil society today is quite stagnant. Its relationship with the government ranges from one of hostility or utter lack of interest to one of convenience.

Regarding the specific group of interest for this research, the analysis of the following sections will shed light on its relationship with the government and the public in general. However, it is already safe to say that, as suggested by one of the interviewees, human rights NGOs have been somewhat lonely in their work in Croatia (especially in terms of dealing with the past).¹⁶⁸ While the pre-accession years were marked by some cooperation with the government and international support, peace and human rights activists and organisations in Croatia have struggled the rest of the time.

¹⁶⁸ Interview with AV (Zagreb, Croatia, 14 May 2020).

3.5 ANALYSIS OF THE ROLE OF HUMAN RIGHTS NGOs IN DEALING WITH THE PAST PROCESSES: MAIN CONTRIBUTIONS AND LIMITATIONS

Transitional justice efforts often involve different kinds of actors. According to Fischer, in Bosnia-Herzegovina, Serbia and Croatia, ‘legal institutions such as the ICTY and the domestic courts, state-driven fact-finding commissions, international and bilateral donors, international NGOs and foundations, and local peace and human rights organisations’ are among the main actors directly involved in dealing with the past processes.¹⁶⁹ Giving a complete panorama would require analysing the role not only of these listed actors, but also of other types of CSOs interested in dealing with the past processes, society in general, the media and the political elite¹⁷⁰, among others. However, as explained already, this research focuses on human rights NGOs, so it is only a fragment of a much bigger picture.

In spite of this specific, and one could say limited, focus, it is impossible not to mention the other actors and their work in one way or another throughout this thesis, given that human rights NGOs in particular either influence or are influenced by all of them. So, instead of making a section of this thesis dedicated to these other actors, I decided to let them appear as necessary for this analysis. Some of them, in particular victims’ groups and war veterans’ organisations, have already made an appearance. In the end, the idea is that, through the analysis of the efforts carried out by human rights NGOs in Croatia to deal with the past, some broader understanding of TJ in this country is also made possible for the reader.

This subchapter is divided into a first part dedicated to an analysis of the main roles of human rights NGOs in the process to deal with the past, and examples of specific contributions, and a second part that delves into the main shortcomings and restrictions affecting their work in this field.

¹⁶⁹ Martina Fischer, ‘Theoretical Approaches and Research Design’ in Martina Fischer and Ljubinka Petrović-Ziemer (eds.), *Dealing with the Past in the Western Balkans: Initiatives for Peacebuilding and Transitional Justice in Bosnia-Herzegovina, Serbia and Croatia* (Berghof Report No. 18, Berghof Foundation Operations GmbH 2013) 24.

¹⁷⁰ The term ‘political elite’ was used by a number of interviewees. For one of the interviewees, this refers to ‘the two biggest parties, the social democrats and the HDZ’; Interview with Mario Mažić, Founder and former Director of Programs, YIHR Croatia (Zagreb, Croatia, 23 April 2020).

3.5.1 Roles and Contributions

To introduce this section on the roles and contributions of Croatian human rights NGOs to the process of dealing with the past, it might be useful to start with a general picture. According to Fischer, the panorama was the following around 2013:

In Bosnia-Herzegovina, Serbia and Croatia, a number of civil society initiatives have been working hard to counter the distortion of facts or biased politics of remembrance. Most of these organisations rely on funding from foreign donors and work without significant political support from governments and parliaments in the region. Their activities cover a variety of tasks. They focus on fact-finding, human rights and victims' advocacy, dealing with trauma, creating empathy for different narratives and inclusive cultures of remembrance, and facilitation of dialogue. Their work includes collecting information and documenting facts about war victims, supporting families searching for missing persons, marking places of atrocities, oral history projects, and advocating for alternative representations of history in schoolbooks. Some CSOs focus on peace education, dialogue and relationship-building in divided communities or between people from different constituencies. Others are working closely with the Hague Tribunal and/or national war crimes chambers, monitoring trials and providing legal, psychosocial or political advice for witnesses and victims.¹⁷¹

This panorama points to the fact that the role of civil society in dealing with the past has taken many forms in Croatia and its neighbouring countries. It also anticipates two limiting factors that will be seen further on in this chapter: the politicisation of the past and lack of support from the government. It is a good picture to start with, but requires a much closer look. This section attempts to give a closer look focusing specifically, as mentioned before, on Croatia and on human rights NGOs.

While subchapter 3.4 focused on the story of human rights NGOs in Croatia in general, it is true that not all of them have focused on dealing with the past. Nowadays, only a couple focus primarily on dealing with the past, while others carry out some work in this field but have other main components. Before looking at the different NGOs and how they contributed to dealing with the past, it might be helpful to mention

¹⁷¹ Martina Fischer, 'Political Context and Relevant Actors' (n 133) 13.

the Anti-War Campaign again, as several interviewees found it relevant to track the work of human rights NGOs back to this initiative. ‘Let’s talk about the beginning of the work of dealing with the past in Croatia’, said Goran Božičević, ‘the real pioneer was Vesna Teršelič. She was a pioneer in many ways. She was also coordinator of the Anti-War Campaign in the 90s’.¹⁷² Nela Pamuković, making reference to the Centre for Women War Victims – ROSA, one of the organisations referred to in this thesis, explained:

We started our work within Anti-War Campaign and Documenta was also developed out of Anti-War Campaign as far as I see it, like Centre for Peace Studies, so we are all grounded in Anti-War Campaign. That doesn’t really exist anymore as an organization but through all the organizations that were developed out of it.¹⁷³

To give a better idea of the ARK and the organisations it served as an umbrella for, Heideman writes:

ARK organizations engaged in direct actions such as organizing protests against nationalism, blocking the eviction of minorities from their apartments, maintaining communication between anti-war groups across former Yugoslavia, running volunteer camps in war-affected areas, and engaging in relief efforts for refugees and displaced people, all prior to major international aid.¹⁷⁴

Most NGOs mentioned in this research have this background in common and have remained, in the view of Nikola Vukobratović, as ‘a sort of subculture’: ‘I think civil society, especially this side dealing with the past, is just a bubble and it is not even a big bubble anymore’.¹⁷⁵ This view was reaffirmed throughout this research. The road that looks back to the legacies of the past, taken each time by fewer organisations,

¹⁷² Interview with Goran Božičević, Peace Activist and Director, Miramida Centar-Regional Peacebuilding Exchange (Zagreb, Croatia, 17 April 2020).

¹⁷³ Interview with Nela Pamuković, Activist and Co-founder, Centre for Women War Victims – ROSA (Zagreb, Croatia, 21 April 2020).

¹⁷⁴ Laura J Heideman, ‘Rethinking Legitimation: Positional and Mediated Legitimation Processes for Croatian NGOs’ (n 163) 9 (citations omitted).

¹⁷⁵ Interview with Nikola Vukobratović, Historian researching the war of the 1990s, Serb National Council (Zagreb, Croatia, 29 May 2020).

seems to get lonelier and lonelier. This small characterization of the organisations dealing with the past in Croatia offers some tools to understand the dimension or focus of their contributions. Before laying out the roles and contributions of human rights organisations in Croatia in terms of dealing with the past, I shall highlight that this is not an exhaustive list. The six groups of tasks or roles this section divides into try to adapt to and reflect in the best way possible the information gathered through interviews and background literature. The order in which they are laid out does not correspond to a hierarchy of any kind, but to my attempt to present them in an articulate way that allows an easy transition for the reader from one role to another.

Documenting

When I asked about the right timing for starting the process of dealing with the past, Gordan Bosanac responded that today he would advocate for such efforts to start as soon as the military conflict began: ‘It would have been easier maybe to work with the past if we had better monitoring of war crimes committed in the 90s, because many evidences have been destroyed’.¹⁷⁶ Given its importance early on in the process, I decided to start off with this role. It is not uncommon to hear about the important role of civil society actors in ‘documenting victims’ accounts and collecting relevant information and materials related to abuses’.¹⁷⁷ McGonigle mentions, as an example, the Documentation Center of Cambodia, which has a collection of information related to the crimes committed by the Khmer Rouge.¹⁷⁸ In Croatia, documentation efforts similarly came largely from NGOs.

For Nikola Puharić, the documentation of human rights abuses was one of the important achievements of NGOs in the region given that ‘governments didn’t want to

¹⁷⁶ Interview with Gordan Bosanac, Activist and former member of the Centre for Peace Studies (active from 1998-2018) (Zagreb, Croatia, 21 April 2020).

¹⁷⁷ Brianne McGonigle Leyh, ‘Changing Landscapes in Documentation Efforts: Civil Society Documentation of Serious Human Rights Violations’ (2017) 33(84) *Utrecht Journal of International and European Law* 44, 45

¹⁷⁸ *ibid.*

actually take up this task of documenting all human rights abuses that happened during the war'.¹⁷⁹ It might be pertinent to bring into the discussion the issues concerning documentation of the war in Croatia from 1991 to 1995. According to Bjelajac and Žunec, 'some of the most important developments in the war were never documented in the first place' which 'poses very serious problems for historical reconstruction'.¹⁸⁰ Of those documents that did exist, many were lost or destroyed deliberately and some are still inaccessible either because they are in private hands or because access to state archives is selective and complicated.¹⁸¹ The prosecutions by the ICTY, according to these same authors, generated fear to write about personal war experiences as 'any published book or paper could be seen as additional evidence in the prosecutors' hands'.¹⁸²

The issues around documentation of war events were not unknown to human rights NGOs in Croatia. In 2004, a group of them¹⁸³ formed *Documenta* – Centre for Dealing with the Past in response to the 'silence and falsification of war crimes and other war-related events in the period from 1941 to 2000'.¹⁸⁴

For Vesna Teršelič, the aforementioned activist who is also the director of *Documenta*, documenting human losses has been 'the first priority and the most important task since the beginning' of the organisation.¹⁸⁵ However, the job is still not completed. Up to today, the organisation has carried out interviews with 7,084 persons regarding human losses. These questionnaires form a base which allows to look for further data from secondary sources.

The contribution which is visible in public is that for two regions the results have been published, namely for Western Slavonia and for the Sisak-Moslavina County, so they

¹⁷⁹ Interview with Nikola Puharić, Chairman of the Governing Board, YIHR (Zagreb, Croatia, 20 April 2020).

¹⁸⁰ Bjelajac and Žunec (n 114) 234.

¹⁸¹ *ibid.*

¹⁸² *ibid* 235.

¹⁸³ Centre for Peace, Non-Violence and Human Rights Osijek, Centre for Peace Studies, Civic Committee for Human Rights and Croatian Helsinki Committee; 'About Documenta' (*Documenta Centre for Dealing with the Past*) <<https://www.documenta.hr/en/30.html>> accessed 26 May 2020.

¹⁸⁴ *ibid.*

¹⁸⁵ Interview with Vesna Teršelič, Activist and Director of *Documenta* (Zagreb, Croatia, 12 June 2020).

are publicly available. For other areas, namely Eastern Slavonia, and in particular the Osijek-Baranja County, the analysis is being finalised and the data will be published in autumn. Gradually, after more than 10 years of field research and of analysing our information system, results are being made public. It is hard to judge at this moment if we will eventually manage to complete the research. It will be very important for dealing with the past in the future to complete it, but it is very difficult to fundraise for it and it is complementary to what the government and institutions supported by the Croatian government do, especially the Memorial-Documentation Center on the Homeland War, which was established by a special law and is totally financed from Croatian public sources and has perfect access to official documentation we lack. We keep calling them to publish the results of their research, so that field research of *Documenta* can be combined with their findings based on official archival documentation. We need each other, but basically they do not communicate and accuse us of being traitors. We really hope very much that they publish what they have as soon as possible, so that we can eventually continue field verification of data. The longer they postpone, the less funds we can find for fieldwork.¹⁸⁶

The statement above makes visible some of the challenges facing the documentation of human losses by this human rights organisation in Croatia: lack of funding and of cooperation from the government. Additionally, *Documenta* invested much of its efforts in advocating for the establishment of an official truth-seeking mechanism at the regional level (RECOM). In Teršelič's words: 'We lately focus on publishing data on the fate of the killing and missing, because we also advocated more than 10 years and the governments were never ready to establish the commission. So, it is clear that maybe the most important contribution that we could do is human losses research'.¹⁸⁷

Since the data for human losses is not available yet for the whole of Croatia, it is difficult to measure the impact of this documentation effort, so in terms of contributions Teršelič highlights 'the simple fact that these interviews have been carried out and they have been done in a structured way'.¹⁸⁸ As she made me aware of in our interview, this is different from the case in Bosnia-Herzegovina, where research was completed:

¹⁸⁶ *ibid.*

¹⁸⁷ Anja Vladisavljevic, 'Last Despatches: The Voice of a Croatian Town Under Siege' *Balkan Insight* (Zagreb, 14 November 2010) <<https://balkaninsight.com/2019/11/14/last-despatches-the-voice-of-a-croatian-town-under-siege/>> accessed 26 May 2020.

¹⁸⁸ Interview with Vesna Teršelič, Activist and Director of *Documenta* (Zagreb, Croatia, 12 June 2020).

‘Their data was published some years ago and this data which they published became eventually relevant data which everyone is using. So, I would say that the most important factor is eventually to look at the frequency with which the data is used’.¹⁸⁹

The *Bosnian Book of the Dead* (or BBD) resulted from a ‘multi-year’ project carried out by the Research and Documentation Centre from Bosnia and Herzegovina, directed by Mirsad Tokača, who had before led the governmental commission on war crimes for many years and was thus able to combine official data with that gathered through the organisation’s research.¹⁹⁰ However, ‘in the year preceding the announcement of the findings, the Centre’s employees received numerous threats, local human rights activists were not forthcoming in their support of the project, and key stakeholders failed to show up for the presentation of the first round of the findings’.¹⁹¹ Lara Nettelfield asks herself why such a project would be so controversial, considering the strong international presence and absence of locally-established facts, a question relevant in the context of Croatia as well.¹⁹²

Considering that a final report is not yet established, I asked Vesna Teršelič whether the general public in Croatia was aware of *Documenta*’s work regarding human losses, to which she responded that this was difficult to establish since public opinion research had not been done in a while. Even if it is not possible to say how much this documenting work is known by the public, the people who do know about it, like the interviewees, consider it very significant as it accounts for some of the only information available regarding certain aspects of the war. At some point during my research, I started asking myself where a Croatian citizen could go to find alternative narratives of the events of the 1990s. The conclusion was that it was mostly through information gathered by human rights NGOs that some events could be reconstructed. At some point during our interview Vesna Teršelič cautioned me not to forget about the role of the media. While I do not focus on independent media in this research, it is

¹⁸⁹ *ibid.*

¹⁹⁰ Lara J Nettelfield, ‘7. Research and Repercussions of Death Tolls: The Case of the Bosnian Book of the Dead’ in Peter Andreas and Kelly M. Greenhill (eds), *Sex, Drugs, and Body Counts : The Politics of Numbers in Global Crime and Conflict* (Cornell University Press 2011) 159.

¹⁹¹ *ibid* 159-160.

¹⁹² *ibid.*

important to mention that they also had a role in documenting war events. The story of journalists covering the 1990s wars in the Balkans, some foreigners, but mostly citizens of the former republics of Yugoslavia, is one that in my view warrants attention also in relation to the right to truth and justice, as ‘impunity for violence against reporters and other media workers has persisted for decades after the Balkan wars ended’.¹⁹³

The different publications and sources revealing alternative versions or denied truths of the events of the 90s are scattered and, as mentioned by Teršelič, there is no source offering an instant solution for the different questions one might have. In her words:

Writing about the newest history is a very hot potato and not many historians are very keen on that. Gradually we will also produce sort of digested interpretations of facts which have been established through this or that proceeding. What we have established so far still needs a lot of additional digestion.¹⁹⁴

Nikola Vukobratović, himself carrying out research on the 1990s, regards documentation as perhaps the biggest part of the work by civil society: ‘It’s actually the most useful thing they did. I am not sure if, in regards to documentation, they could’ve done much more’.¹⁹⁵ However, he notices that a ‘wholesome, anti-nationalist narrative’ about the 90s is lacking, as previous efforts have ‘stopped at collecting some documents, writing NGO reports that nobody will read and occasionally producing journalists’ articles from this’.¹⁹⁶ When I asked him what a good place would be to look for reliable information on the wars of the 90s, he mentioned civil society reports and foreign reports. In our interview, as happened in most others, we discussed the case of military operation Storm and the role of civil society in documenting the crimes committed during this operation.

¹⁹³ BIRN, ‘Last Despatches: About the Project’ (*Balkan Insight*) <<http://last-despatches.balkaninsight.com>> accessed 10 June 2020; See ‘Las Despatches’, a project by the Balkan Investigative Reporting Network covering the stories of the 148 killed journalists and media workers.

¹⁹⁴ Interview with Vesna Teršelič, Activist and Director of *Documenta* (Zagreb, Croatia, 12 June 2020).

¹⁹⁵ Interview with Nikola Vukobratović, Historian researching the war of the 1990s, Serb National Council (Zagreb, Croatia, 29 May 2020).

¹⁹⁶ *ibid.*

As the 2004 ICTY ‘Amended Indictment’ against General Ante Gotovina reads, ‘During Operation Storm and its aftermath, Croatian forces attacked and took control of towns, villages and hamlets in the southern portion of the Krajina region’.¹⁹⁷ The document reveals the different crimes committed by the Croatian forces during this operation. As Rudić and Milekić point out, a report by the Croatian Helsinki Committee¹⁹⁸ has stood out in the absence of ‘credible and comprehensive data on the number of Serb civilians killed during the operation’.¹⁹⁹ The disputed report, published as a book called ‘Military Operation Storm and its Aftermath: Report’ in 2011, was presented as an exhibit at the ICTY, however ‘during examination of Puhovski in court it became apparent that there were errors in the book. For these reasons, the Trial Chamber decided not to rely on exhibit P2402 in relation to information described therein if uncorroborated by other evidence’.²⁰⁰ Even though its accuracy is questioned, I noticed through my research that it was often quoted and spoken about. ‘Yes, because it was the only such report’, explained Vukobratović.²⁰¹ He mentioned other sources where alternative information on the events of the 1990s could be found, including documentation or literature released by Serb minority organisations, the Red Cross (who have information on refugees and prisoners exchange) and various UN agencies, and memoirs from Western diplomats.

While it might be that public awareness on war crimes committed by the Croatian forces owes itself largely to human rights NGOs and the independent media, Vesna Teršelič points out that people generally ‘will not be really aware of all details and they

¹⁹⁷ *Prosecutor v Ante Gotovina* (Amended Indictment) ICTY-04-IT-01-45 (19 February 2004).

¹⁹⁸ While this organisation still exists, almost all (if not all) interviewees mentioned that it has taken an opposite direction and that they do not really consider it a human rights organisation anymore. Given the emphasis given to this by several interviewees, I decided to include this information on a footnote. While I do not go into this case, it would be interesting to see what motivated such change in this NGO that in the midst of war was concerned with documenting crimes by the Croatian forces.

¹⁹⁹ Filip Rudić and Sven Milekić, ‘Prosecution Failures Shadow Croatia’s Operation Storm Anniversary’ *BIRN* (Belgrade, Zagreb, 2 August 2018) <<https://balkaninsight.com/2018/08/02/croatia-s-operation-storm-crimes-unprosecuted-23-years-on-08-01-2018/>> accessed 10 June 2020.

²⁰⁰ *Prosecutor v Ante Gotovina, Ivan Čermak and Mladen Markač* (Judgement) ICTY-11-IT-06-90-T (15 April 2011).

²⁰¹ Interview with Nikola Vukobratović, Historian researching the war of the 1990s, Serb National Council (Zagreb, Croatia, 29 May 2020).

will also not be sure if they should trust, for example, for military operation Storm, the first publication that came out that was by the Croatian Helsinki Committee. Should they trust their data or should they trust what the State attorney published?'.²⁰² She is not sure whether people in Croatia would be able to tell if the number of civilian victims of Operation Storm runs in the tens or the hundreds: 'I would say that the outcome on the large map is that due to the work of human rights organisations and independent media there is quite clear awareness about these crimes, but it is not very precise'.²⁰³

The previous paragraphs show how important and time-consuming the job of documenting has been, and how important it can be for public opinion and for history and historical research. It can't be denied that there have been many limitations to this job in Croatia and the region. To start with, it is the State that should be responsible for documenting war events and human losses. So, already the fact that an NGO is taking this job as its main responsibility shows a significant failure in the local context. Additionally, for the reasons mentioned before, the work is not finished. As much as there is no measurable end result yet, there is, as Vesna Teršelič indicated, a large amount of documentation collected.²⁰⁴ This documentation is a legacy that may or may not be picked up by future generations. At this point, even after 25 years since the end of the war in Croatia, the impact of NGOs through their documentation efforts cannot be fairly measured or understood.

Monitoring War Crimes Trials

In Croatia, war crimes trials were already being held as early as 1992, but these were often partial, unprofessional, mainly against members of Serb military and paramilitary groups and lacking in evidence.²⁰⁵ In the year 2000, the Croatian

²⁰² Interview with Vesna Teršelič, Activist and Director of *Documenta* (Zagreb, Croatia, 12 June 2020).

²⁰³ *ibid.*

²⁰⁴ *ibid.*

²⁰⁵ Tamara Banjeglav, 'Dealing with the Past in Post-war Croatia: Perceptions, Problems, and Perspectives' in Olivera Simić and Zala Volčič (eds), *Transitional Justice and Civil Society in the Balkans* (Springer 2013) 39-40.

parliament, under the pressure from the EU, committed to cooperating with the ICTY and in 2003 the parliament adopted a law responding to judicial reform requirements for accession to the EU and setting up specialized war crimes chambers at country courts in Zagreb, Osijek, Rijeka and Split in accordance with such law.²⁰⁶

The efforts carried out by the State in terms of prosecution of war crimes and judicial reforms largely obeyed Croatia's goal to become a part of the EU. In fact, when it comes to transitional justice, EU conditionality focused exclusively on this aspect (namely, on cooperation with the ICTY), causing the international community, according to Rangelov, to ignore the need for a wider process.²⁰⁷ This is why in Croatia there is not really a developed, official 'broader strategy in which war crimes prosecution is connected and supplemented with other key elements of transitional justice'.²⁰⁸ In spite of the pressure from the international community, criminal proceedings in Croatia were far from ideal, as Ivo Josipović, who would become president of Croatia in later years, explained in a 2006 article:

Croatia has in fact held a large number of war crime trials, but almost all of them were against members of different hostile units, and only rarely against representatives of its own armed forces. Besides, the proceedings were partly conducted unfairly (...). Although the Croatian judiciary certainly has the professional and other qualifications to try all cases, it is obvious that the general political and moral climate was not conducive to initiating and conducting correctly criminal proceedings for war crimes (...). Because of the very points mentioned above, the international community carefully monitors trials in Croatia. The project "Dealing with the Past – Monitoring of War Crime Trials", run by esteemed non-governmental organizations for the protection of human rights, aims to improve judicial practice and help build trust in domestic courts.²⁰⁹

Cooperation between human rights NGOs and international actors to monitor the progress of war crimes trials in Croatia became particularly important in the light of

²⁰⁶ *ibid* 40.

²⁰⁷ Iavor Rangelov, 'EU Conditionality and Transitional Justice in the Former Yugoslavia' (2006) 2 *CYELP* 365, 368.

²⁰⁸ Banjeglav (n 205) 42.

²⁰⁹ Ivo Josipović, 'Responsibility for War Crimes before National Courts in Croatia' (2006) 88 *International Review of the Red Cross* 145, 150-151.

the State's shortcomings and the focus of the EU on prosecutions. In fact, to Pavlaković, monitoring by NGOs was key for Croatia to come closer to accession to the EU and it meant strong cooperation between these organisations and EU monitors.²¹⁰ In our interview, Puharić explained that in these years of closer collaboration with international actors 'usually the opinions of civil society were taken into account, so then civil society could monitor the progress of each country and here, in Croatia, civil society was monitoring the way in which human rights and justice reforms were made, and then reporting that to the European Commission'.²¹¹

There is multiple evidence of the monitoring role of human rights NGOs in regards to war crimes trials. Among the records I was able to find were the annual reports for such monitoring work, done by human rights NGOs under the project mentioned by Josipović in his article. The reports, found on *Documenta's* website, go from the year 2005 to the year 2017 and evidence the involvement of different Croatian human rights NGOs in war crimes trials monitoring and the support from different international actors. Among the different organisations involved in this work, *Documenta*, the Centre for Peace, Nonviolence and Human Rights – Osijek and the Civic Committee for Human Rights stand out, with only the first two having their names appearing on all reports from 2005 to 2017.

The first report, that of 2005, explains the role and purpose of civil society organisations in addressing and monitoring war crimes trials. Its introduction reveals several intentions or interests of the organisations involved in war crimes trials monitoring, namely, challenging the negation of responsibility for crimes, strengthening cooperation with the ICTY, improving domestic conditions for prosecutions and contributing to Croatia's accession to the EU.²¹² Additionally, the report establishes that the final aim of CSOs 'is to establish restorative justice for victims and to foster the need for individualisation of legal, political and moral

²¹⁰ Interview with Vjeran Pavlaković, Associate Professor, University of Rijeka (Zagreb, Croatia, 4 May 2020).

²¹¹ Interview with Nikola Puharić, Chairman of the Governing Board, YIHR (Zagreb, Croatia, 20 April 2020).

²¹² Katarina Kruhonja (ed), *Monitoring of War Crimes Trials: Annual Report '05* (Centre for Peace, Nonviolence and Human Rights - Osijek, 2005) 6.

responsibility'.²¹³ The report gives a very good idea of what the organisations involved in monitoring war crimes trials actually did that year through the financial support of the European Commission:

Since January 2005 the monitoring teams monitored most ongoing war crimes trials in the Republic of Croatia (with the exception of several proceedings conducted before the Country Courts in Zadar and Slavonski Brod (...)). The monitoring teams were present at all hearings.²¹⁴

Additionally, the teams monitored pre-investigation and investigation events, participated in monitoring of criminal proceedings in other countries of the region, wrote reports for each hearing and established key observations which were published online.²¹⁵ The 2005 annual report is filled with observations (negative and positive) and very detailed recommendations. It is possible to find information on each case monitored that year in the report's 'Appendix No. 1'.²¹⁶

For the years 2006 and 2007, the available resources in English in the *Documenta* website are shorter summaries of main findings, and even though they refer to a full report to be found on the website of the Centre for Peace, Nonviolence and Human Rights – Osijek, I was unable to find the full versions in English and found the mentioned website to be outdated and difficult to navigate.²¹⁷ These details I find significant as they reflect the fate of the work carried out by human rights organisations in Croatia for dealing with the past in the last decades.²¹⁸ In other words, the online platforms for the mentioned reports give the impression that the subject is now archaic, even though much was left undone by the State in terms of prosecutions. In spite of this, the websites of the mentioned NGOs continue to be, as Vesna Teršelič stated, 'the only available resources of war crimes trials in Croatia including documentation from

²¹³ *ibid*; See Susanne Buckley-Zistel and others (eds), *Transitional Justice Theories* (Routledge 2014) for different discussions on restorative and retributive justice.

²¹⁴ Kruhonja (n 212) 7.

²¹⁵ *ibid*.

²¹⁶ *ibid* 34-41.

²¹⁷ See <https://www.centar-za-mir.hr/en/publikacije-izvjestaji/>.

²¹⁸ As does an analysis of the pattern of support from international actors reflected in the reports.

indictment to final verdict for more than 500 proceedings’ given that ‘you cannot find that on the page of the State attorney or of the responsible courts’.²¹⁹

The annual reports, from start to beginning, are critical towards Croatian institutions. To give an example, while the 2012 report observes a ‘commencement or resumption of several war crimes trials, which had for years been held-up due to a lack of willingness to prosecute’, it also denounces that it was becoming increasingly difficult to prosecute crime perpetrators given an impoverishment in the quality of evidence material ‘due to investigations which are carried out in an unduly and below-quality manner’.²²⁰ Additionally, and quite relevantly for this research, the report shows concern regarding diminishing public interest (both domestic and international) in war crimes trials.²²¹ It is significant that Croatia became a member of the EU in the same year in which these concerns were reported (2013).

Going back to the goals of war crime trials monitoring, if the ultimate goal was contributing to accession to the EU, then one can talk of success. However, if the goal was to strengthen prosecutions domestically and through cooperation with the ICTY in order to effectively bring justice to victims, the extent to which human rights organisations managed to have impact in this sense is harder to tell. Was the job done? Should we take EU accession as an indicator that Croatia was adequately prosecuting war crime trials?

The monitoring work by human rights NGOs, as the reports show, continued after 2013. However, in 2014, only one year after accession, the organisations monitoring war crime trials denounced that the reconciliation process had basically frozen since Croatia became an EU member.²²² The last available report in English (a short version), presenting the situation for 2017, states that ‘regional cooperation, although determined by limited protocols/agreements on co-operation between prosecutors in the region

²¹⁹ Interview with Vesna Teršelič, Activist and Director of Documenta (Zagreb, Croatia, 12 June 2020).

²²⁰ Mladen Stojanović, Milena Čalić Jelić and Marko Sjekavica (eds), *Ensuring the Right to ‘Effective Remedy’ for War Crime Victims: Monitoring War Crime Trials Report for 2012* (Documenta – Centre for Dealing with the Past, 2013) 12-14.

²²¹ *ibid* 14.

²²² Pavlaković, ‘Dignity for the Defeated: Recognizing the “Other” in Post-Yugoslav Commemorative Practices’ (n 124) 240.

(...) is almost non-existent in the area of transferring evidence'.²²³ Additionally, it affirms that there are still too many 'unprocessed crimes for which no investigation has been initiated' and that 'there is no website with information on all processed crimes, which would be presented in a simple and insightful way to the public'.²²⁴ It also mentions the necessity for a 'national program and a law on the establishment of a fund for the compensation of all civilian casualties of the war in order to remedy the damage'.²²⁵ All this is important evidence left by human rights NGOs in their report that much was left to be done.

Additional literature shows that Croatia's prosecution of war crimes is far from completed, which was also repeatedly stated in the different interviews carried out for this research. As Fischer wrote in 2016, 'International actors have emphasised that in Croatia in particular, considerable progress is needed on accountability, especially with regards to the events during and after Operation Storm'.²²⁶ The Croatian judiciary has prosecuted only 'a handful of war crimes cases, while Serbia has failed to launch its own investigations', as stated 23 years after the military operation Storm in a 2018 Balkan Insight article by Rudić and Milekić.²²⁷

As director of *Documenta*, Vesna Teršelič is well-aware of the process carried out by human rights NGOs in terms of war crimes trials monitoring and of the fate of such efforts:

The trials are ongoing, but the number is stagnating. We have no funds for the continuation of the monitoring of all trials but continue following selected ones. In the best case, we might have a few hours of work per week, so it is very difficult, but we basically manage still to follow some trials. We are aware that the number of new indictments and trials is oscillating between 20 and 30 per year. They go on in a not so speedy fashion and the State attorney lacks capacity to work with more effort, and this is simply not changing.²²⁸

²²³ 'Report on War Crime Trials in Croatia for 2017' (*Documenta* – Centre for Dealing with the Past, Centre for Peace, Non-violence and Human Rights – Osijek, Youth Initiative for Human Rights) <<https://www.documenta.hr/en/izvještaj-o-praćenju-suđenja-za-ratne-zločine-u-2017.-godini.html>>.

²²⁴ *ibid.*

²²⁵ *ibid.*

²²⁶ Fischer, 'Transitional Justice: Lessons from the Western Balkans' (n 132) 6.

²²⁷ Rudić and Milekić, 'Prosecution Failures Shadow Croatia's Operation Storm Anniversary' (n 199).

²²⁸ Interview with Vesna Teršelič, Activist and Director of *Documenta* (Zagreb, Croatia, 12 June 2020).

What significance could we attribute to the years of monitoring work done by human rights NGOs, if they have not actually lead to accomplishing the greater goals of regional cooperation or restorative justice? First of all, I must mention that interviewees were generally aware of the reduced impact of human rights NGOs in terms of pressuring the government to fulfil the rights to justice and to reparations. This is reflected perhaps in Mario Mažić's words on his own experience through the Youth Initiative for Human Rights (YIHR):

When it comes to the transitional justice program, monitoring war crimes and that there are more war crime trials (...), there have been some contributions in individual cases, though quite limited, and I would say that there were more contributions that we were able to facilitate at a time before Croatia became a member state of the European Union, because during the accession negotiations there was a lot of pressure on Croatia to deliver on its commitments.²²⁹

I think it is quite clear that monitoring by human rights organisations was justified and needed, for the different reasons already mentioned in previous paragraphs. However, what happens when political will is too low and you lose international support to carry on with monitoring activities? 'You can have the best war crime trials monitoring project that comes out with clear and meaningful recommendations, but if the institutions don't take them on board, your impact is next to non-existent' said Mažić in our interview.²³⁰ When I looked at the annual reports for the monitoring of war crime trials –showing that extensive work was done for this purpose by the organisations involved– and their tendency to oblivion, I understood what he meant.

While in many ways justice has not been served, it is important to recognize that, as Pavlaković explains, 'it was only due to the courage of independent reporters and human rights activists that many of the Croatian crimes were even reported or eventually investigated'.²³¹ The monitoring work of human rights NGOs forms part,

²²⁹ Interview with Mario Mažić, Founder and former Director of Programs, YIHR Croatia (Zagreb, Croatia, 23 April 2020).

²³⁰ *ibid.*

²³¹ Pavlaković, 'The ICTY and Institutional Reform in Croatia' (n 84) 81.

along with the documentation covered in the previous section, of the limited evidence of what happened during and after the 1990s. Without this, perhaps there would be even less public awareness of narratives alternative to the mainstream story protected by state institutions and authorities since Croatia obtained its independence. I wonder how a researcher, like myself, would be able to access information on domestic war crimes trials, the shortcomings of the State and the work carried out by civil society in Croatia if it were not for reports such as the ones analysed here. However, they would need to reach a wider audience for visible impact and, while they were read at some point by the international community, after Croatia's accession to the EU it seems that they went from that small visibility to none.

The feeling expressed by some interviewees that the reports produced by NGOs are now seldomly read, if at all, gives force to the idea that the subject of dealing with the past has been losing relevance. Gordan Bosanac said, for example: 'Funding for dealing with the past was not easy and also there was a kind of "tiredness" to work on this topic. Like, it is 2010 and you are still talking about what happened in 1993, 1994. You have a feeling that your NGO is just outdated'.²³² But, again, one could concentrate on the simple fact that these reports exist, as 'on a symbolic level, it can mean a lot to people that there's a group in a society that sheds light on a case that is being denied or forgotten'.²³³ Even when impact in terms of justice is limited, it is at the very least symbolically significant, in the name of history and in the name of the past, for people who find this important to be able to access information on what the State did or did not do in terms of prosecuting war criminals, and it is mainly through the monitoring work of NGOs in Croatia that this information has been preserved.

²³² Interview with Gordan Bosanac, Activist and former member of the Centre for Peace Studies (active from 1998-2018) (Zagreb, Croatia, 21 April 2020).

²³³ Interview with Mario Mažić, Founder and former Director of Programs, YIHR Croatia (Zagreb, Croatia, 23 April 2020).

Establishment of and Advocacy for other Mechanisms for Dealing with the Past

While dealing with the past in Croatia meant to the State and to international actors, as mentioned before, mainly carrying out efforts in the field of criminal justice, civil society actors in the region went further, creating proposals in the fields of restorative justice and ‘restorative forms of truth-finding as a contribution to healing, trust- and relationship- building’.²³⁴ One of the proposals that stands out, and which I had the opportunity to discuss with most, if not all, interviewees, is that known as RECOM, a regional commission that to the date has not been established, despite of the work carried out towards this purpose.

The Documenta Center (Zagreb), the Research and Documentation Centre (Sarajevo) and 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.

The document stated that a *Regional Commission for Truth-seeking and Truth-telling about War Crimes in the Former Yugoslavia* (REKOM), should be established by the Governments of Bosnia-Herzegovina, Croatia, Kosovo, Macedonia, Montenegro, Serbia and Slovenia, and with the support of the United Nations and the European Union.²³⁵

‘For some years, I was member of the coordination committee at the regional level, which existed until the statutes and everything was created from our side and we presented it to the state leaders, mostly presidents’, remembers Nela Pamuković.²³⁶ The Coalition for RECOM’s proposal for the Statute of the ‘Regional Commission for Establishing the Facts about War Crimes and Other Gross Violations of Human Rights

²³⁴ Fischer and Petrović-Ziemer (n 112).

²³⁵ *ibid* 14.

²³⁶ Interview with Nela Pamuković, Activist and Co-founder, Centre for Women War Victims – ROSA (Zagreb, Croatia, 21 April 2020).

Committed on the Territory of the Former Yugoslavia' is dated March 26, 2011. The Statute reveals many of the gaps that the regional commission was meant to fill.

By reading the 'Preamble' of the 2011 Statute Proposal, one can gather that RECOM was meant to: (1) complement the work of the ICTY in terms of satisfying the victims' right to justice (given the ICTY's own failures); (2) empathise with all the victims from former Yugoslavia and keep them from being manipulated for political purposes; (3) become a means for the creation of a 'comprehensive historical record of the crimes committed in the period 1991-2011 and the role that national elites, institutions, and individuals played in those traumatic events'; (4) establish the fate of missing persons; (5) contribute to the acceptance and understanding of past events by citizens and, last but not least, (6) strengthen democracy, the rule of law, and a culture of respect for human rights.²³⁷ What this 'Preamble' indicates, among other things, is that the members of the Coalition that wrote it were well-aware of the shortcomings of the transitional justice process in the region and found in RECOM a way to address several of them.

The book titled *Transitional Justice and Civil Society in the Balkans*, published in 2013, contains several papers that mention the RECOM initiative, showing that at the time it was considered a relevant subject in the region. Tamara Banjeglav describes some of the work carried out by the civil society actors involved in the RECOM initiative:

In April 2011, civil society activists across the region started collecting signatures for the establishment of RECOM, with the aim of handing in the signatures to governments and parliaments in the region, which are supposed to support it and adopt a decision on its establishment. The forming of RECOM has so far been publicly supported by Presidents of Croatia, Serbia and Montenegro (...).

In Croatia, the initiative received first strong public support by President Ivo Josipović at the Transitional Justice Forum held in Zagreb in October 2010.²³⁸

²³⁷ Coalition for RECOM, 'The Statute Proposal of The Regional Commission for Establishing the Facts about War Crimes and other Gross Violations of Human Rights Committed on the Territory of Former Yugoslavia' (28 October 2014) 3.

²³⁸ Banjeglav (n 205) 43.

Despite of this manifestation of political support, a public opinion survey showed that Croatian citizens were less likely to sign a petition for the establishment of RECOM than those of Serbia, Kosovo and Bosnia-Herzegovina.²³⁹ Still, as Jamie Rowen writes about the Coalition, it ‘engaged thousands of people and sparked public debate about truth-seeking initiatives’.²⁴⁰ There were, however, disagreements around RECOM, emerging around the questions of who justice was for, what kind of justice would be achieved and how it would be pursued. For authors Irvine and MacMahon, these matters were mostly shaped and constrained by some of the choices of the international community.²⁴¹ Other issues around RECOM that these authors mention are its ‘overly centralized nature’ and the uneasy feeling of some NGO leaders towards the Coalition’s own leadership and functioning.²⁴² There has also been lack of support from some organisations, whether it were victims’ groups, war veterans’ associations or women’s organisations.²⁴³ Member organisations fluctuated considerably and their involvement was often seen as a manifestation of support and not as real commitment to the process.²⁴⁴ On top of this, political support of RECOM has been ‘sporadic at best, and thus far subject to the political calculations of particular leaders’.²⁴⁵

‘We advocated for many years for establishing it and came closest in the time of president Josipović²⁴⁶ in Croatia and president Tadić²⁴⁷ in Serbia, when they appointed envoys who discussed and eventually proposed changes to the RECOM Statute’, explained Vesna Teršelič thinking back on her involvement in RECOM, ‘when they eventually lost elections political will was gone’.²⁴⁸ Already in 2015 a YIHR Croatia publication described RECOM as waking little ‘political enthusiasm’ and, furthermore,

²³⁹ *ibid.*

²⁴⁰ Jamie Rowen, ‘Truth in the Shadow of Justice’ in Olivera Simić and Zala Volčič (eds), *Transitional Justice and Civil Society in the Balkans* (Springer 2013) 130.

²⁴¹ Jill A Irvine and Patrice C McMahon, ‘From International Courts to Grassroots Organizing: Obstacles to Transitional Justice in the Balkans’ in Olivera Simić and Zala Volčič (eds), *Transitional Justice and Civil Society in the Balkans* (Springer 2013) 225.

²⁴² *ibid* 227.

²⁴³ *ibid* 228.

²⁴⁴ *ibid* 223.

²⁴⁵ *ibid* 230.

²⁴⁶ President from 2010-2015.

²⁴⁷ President from 2008-2012.

²⁴⁸ Interview with Vesna Teršelič, Activist and Director of *Documenta* (Zagreb, Croatia, 12 June 2020).

as being surrounded by an ‘overwhelming feeling that the majority of the public is against this idea’.²⁴⁹ This information reveals that problems such as lack of political will and support from the public persisted after 2013. International support, nevertheless, specially from the EU, was still viewed perhaps as a light of hope for this initiative.²⁵⁰

In January 2018, a Balkan Insight article shared the Coalition for RECOM’s announcement that five Western Balkan states (Bosnia and Herzegovina, Kosovo, Macedonia, Montenegro and Serbia) were ‘likely to sign an agreement to establish the new regional commission in London in July’.²⁵¹ Notably, Croatia is not mentioned. This probably obeys the logic and structure of the Berlin Process, ‘an initiative to boost regional cooperation among the Western Balkan countries and their European integration’.²⁵² However, these Western Balkans do not include EU-member Croatia. In the words of Nikola Puharić:

Now there is a whole strategy by the EU toward the Western Balkans, which is now considered to be Serbia, Bosnia, Macedonia, Albania, Kosovo and Montenegro, on how to get these six countries into the EU, and they have this diplomatic process which is called the Berlin Process right now (...) and there are meetings on a high level, cooperation between CSOs (...), but it is very weird because one of the components of this Berlin Process is reconciliation, but Croatia is not in it.²⁵³

It was the Berlin Process that last gave hope to the RECOM initiative, but somehow, at some point, this intention fell through. Nela Pamuković explained that ‘at the last meeting, there were some representatives from the European side that said that

²⁴⁹ YIHR, ‘Transitional Justice: About and Main Challenges’ (Youth Initiative for Human Rights - Croatia, 2015).

²⁵⁰ *ibid.*

²⁵¹ BIRN, ‘Balkan States “Expect to Sign Truth Commission Agreement”’ *BIRN* (Sarajevo, 29 January 2018) <<https://balkaninsight.com/2018/01/29/recom-announces-state-forming-agreement-soon-01-29-2018/#gsc.tab=0>> accessed 15 June 2020.

²⁵² Civil Society Forum of the Western Balkans, ‘Home’ (*The Berlin Process: Information and Resource Centre*) <<https://berlinprocess.info>> accessed 15 June 2020.

²⁵³ Interview with Nikola Puharić, Chairman of the Governing Board, YIHR (Zagreb, Croatia, 20 April 2020).

currently there is not hope'.²⁵⁴ 'This was told because the year before, at our meeting, it was said that we had some hope through the Berlin process (...), but last year in December they gave up' added Pamuković.²⁵⁵ The coalition advocating for RECOM is 'very disappointed in the support from the EU or the lack of it, and they don't know right now what to do in terms of advocacy and how to actually establish this commission'.²⁵⁶

Looking at different moments of the RECOM initiative since 2006 is significant because it shows that it never really counted with all the support it needed from the State, the public and even perhaps some part of civil society itself. While the RECOM process at times 'received its greatest financial and political support from the EU', this didn't prove to be enough and also fell through.²⁵⁷ Telling what factors have contributed more to the failure of the establishment of RECOM is not a task I will undertake here, as it would require far more research. While the Coalition seems to have had its own shortcomings, it is unlikely that fixing them could have significantly changed the way in which external factors, such as political will, societal participation and international involvement, shaped the fate of the initiative.

The remaining question, and the central one for this research, is whether the work carried out by human rights organisations towards the establishment of RECOM made any contributions to the process of dealing with the past. While the ultimate goal of getting the commission established has not been reached, Nikola Puharić considers that the campaigns carried out within the initiative have been important for the recognition of victims and their suffering and that RECOM can be seen as a success story in terms of raising public awareness about what actually happened.²⁵⁸ The RECOM initiative

²⁵⁴ Interview with Nela Pamuković, Activist and Co-founder, Centre for Women War Victims – ROSA (Zagreb, Croatia, 21 April 2020).

²⁵⁵ *ibid.*

²⁵⁶ Interview with Nikola Puharić, Chairman of the Governing Board, YIHR (Zagreb, Croatia, 20 April 2020).

²⁵⁷ Irvine and McMahon (n 241) 233.

²⁵⁸ Interview with Nikola Puharić, Chairman of the Governing Board, YIHR (Zagreb, Croatia, 20 April 2020).

has implied several years of work and is seen in hindsight by Pavlaković as ‘a huge effort and a huge process of reconciliation’.²⁵⁹

The legacy of RECOM, considering it has not been established, is mostly symbolic. Indeed, several interviewees early on in my research made an emphasis on the ‘symbolic’ aspect of the contributions of human rights NGOs in the process of dealing with the past. If RECOM had been established, however, the years of work by human rights NGOs would have paid off in other less symbolic ways, and organisations hoped for this:

You’re not expecting that those governments will have this backlash, this nationalism, this populism, and that after being well-funded for five or six years suddenly there’s no political support and everything you’ve invested is like falling through and the government is actually working against you.²⁶⁰

Another regional initiative in the field of dealing with the past is the Women’s Court. While its organizers were well aware of the importance of RECOM, and participated actively in it, they considered that ‘due to its quite broad scope of activities it did not meet the expectation of fulfilling the women’s/feminist perspective’ and decided to carry on with the development of an unofficial initiative called The Women’s Court.²⁶¹

Following the premise that Women’s Court is a space for women’s testimonies, a space for hearing women’s voices as well as the space for acknowledging their resistance, in 2010 an initiative to go ahead with this process was revived during which, the preparing and organizing the Women’s Court gathered activists from all successor countries of SFR Yugoslavia.²⁶²

The Women’s Court organized in the region of the former Yugoslavia has as a predecessor the first Women’s Court organized in 1992 in Lahore, Pakistan and many

²⁵⁹ Interview with Vjeran Pavlaković, Associate Professor, University of Rijeka (Zagreb, Croatia, 4 May 2020).

²⁶⁰ *ibid.*

²⁶¹ Staša Zajović (ed), *Women’s Court: About the Process* (Women in Black and Center for Women’s Studies, 2015) 9.

²⁶² *ibid.* 4.

others organized mostly in Asia and Africa.²⁶³ The full name of this initiative is ‘The Women’s Court – a Feminist Approach to Justice’ and it attempts to respond to the ‘invisibility of women’s contributions to the process of transitional justice’.²⁶⁴ It does not only seek for justice within the mainstream system but tries to change the approach of the system itself to reflect the experience of women. To clarify, while women’s courts might be somewhat structured as legal proceedings, they are only metaphorically designated a court.²⁶⁵ The Court ‘does not render verdicts, and does not pass punitive sentences’ but it does attempt to raise awareness about the violations of human rights. In our interview, Nela Pamuković shared some of her experience with this regional initiative:

The leading or coordinating organization was Women in Black from Belgrade, but Centre for Women War Victims was one of the first that joined the initiative and finally there were some 11 organizations in the organizational committee. We still continue the activities but now a smaller number of organizations is continuing. We continue organizing support for women who testified at the Women’s Court.²⁶⁶

Nela Pamuković highlighted the regional aspect of the Women’s Court and also how it helped several women survivors to become activists in their communities or at the regional level. In Croatia, she also spent years lobbying for recognition of the rights of war rape survivors through a law. ‘This law was a big step. It is a special law’, she explained, ‘a big role was played by UNDP. They funded the process of study which was made before the law’.²⁶⁷ The law, passed by the Croatian parliament on May 2015, had its ‘pluses and minuses’: ‘We submitted a request for reviewing the constitutionality of the law and in February this year actually it was negatively decided

²⁶³ *ibid* 70-71.

²⁶⁴ *ibid* 12.

²⁶⁵ *ibid* 72.

²⁶⁶ Interview with Nela Pamuković, Activist and Co-founder, Centre for Women War Victims – ROSA (Zagreb, Croatia, 21 April 2020).

²⁶⁷ *ibid*.

by the Constitutional Court, but we will continue to put visibility into negative decisions by the ministry in charge'.²⁶⁸

Women's organisations have been important for Croatia and the region not only in terms of establishing, lobbying or advocating for mechanisms to deal with the past. After my interview with Sanja Sarnavka, who coordinated and presided the Croatian women's organisation B.a.B.e for 17 years, it was clear to me that the story of women's organisations is one that still warrants attention. With war, she explained, came repatriarchization, which is why organisations such as B.a.B.e (Be Active, Be Emancipated) gathered importance. She highlighted several aspects of the work carried out by women and women's groups, including the way they continuously communicated and collaborated with women's groups from other countries of the region: 'For us it was never a question whether we should work on reconciliation or should we protect Serbs as a minority (...), so it was just in our mission, in our fundamental belief system, that we should always go against war, against hate speech, against whatever divides'.²⁶⁹ The role of women in dealing with the past and in civil society in general in Croatia has, thus, been quite interesting for me to learn about, not only in terms of contributions like the Women's Court and the law passed in 2015, but also because of how they might have contributed to public awareness on issues affecting women in war and in daily life.

Public Awareness

When I asked Sanja Sarnavka how the work carried out by women's organisations after the war had affected public opinion on gender issues, she answered:

It was fantastic. In the very beginning it was huge, because when we came out, for instance, with women not being present in the political sphere and the parliament, after our campaign, we had risen from 7 per cent of women in the parliament before our

²⁶⁸ *ibid.*

²⁶⁹ Interview with Sanja Sarnavka, Coordinator and President of B.a.B.e for 17 years until 2017 (Zagreb, Croatia, 9 June 2020).

campaigning and our public speeches to I think 28 per cent of women. Of course we were supported. Our efforts wouldn't be so efficient and effective if it wasn't for this accession process to the EU.²⁷⁰

Whether we speak about public awareness on women's issues, on war crimes or on the pacifist movement, it is this symbolic realm of bringing human rights violations to the public sphere that several interviewees considered most significant in terms of the contributions of human rights NGOs. This is visible, for example, in the way Mario Mažić understands the contribution of the YIHR:

I guess a lot of the organisation's contribution was on a level that is rather symbolic, where we fought to ensure that certain perspectives that I mentioned already, specially perspectives of victims, crimes against whom are often denied and marginalised, are present in the public.²⁷¹

In fact, looking back to the other mentioned roles of human rights NGOs and their contributions, namely, documenting, monitoring and advocacy, while several of their grand goals of achieving reparations, truth and justice have not been achieved, they have contributed to awareness. This is to say that a lot of the work done by human rights NGOs, whether it was its main objective or not, has contributed to public awareness on matters that would otherwise be denied or go unnoticed. As stated before, Pavlaković and Puharić both think that while RECOM failed to be established, it raised awareness of what actually happened.²⁷²

Additionally, the work by *Documenta* and other organisations, in the view of Bosanac, contributed to changing the perception of war crimes in Croatia significantly since the 90s, something for which journalists investigating war crimes committed by the Croatian soldiers should be recognized as well.²⁷³ As explained before regarding

²⁷⁰ *ibid.*

²⁷¹ Interview with Mario Mažić, Founder and former Director of Programs, YIHR Croatia (Zagreb, Croatia, 23 April 2020).

²⁷² Interview with Vjeran Pavlaković, Associate Professor, University of Rijeka (Zagreb, Croatia, 4 May 2020); Interview with Nikola Puharić, Chairman of the Governing Board, YIHR (Zagreb, Croatia, 20 April 2020).

²⁷³ Interview with Gordan Bosanac, Activist and former member of the Centre for Peace Studies (active from 1998-2018) (Zagreb, Croatia, 21 April 2020).

Operation Storm and war crime trials, the information released by human rights NGOs and independent media was instrumental and significant especially considering that sometimes it was all that there was, so if today there is public awareness on the fact that there were crimes committed by ‘the Croatian side’, it is largely due to them. However, the mainstream narrative of the war still greatly overshadows any other, obeying the fact that, as Bjelajac and Žunec suggest, after the wars each country ‘developed a corpus of “truths” that simply cannot be questioned and that have the status of sacred cows in both national ideology and politics’.²⁷⁴

Other ways in which NGOs tried to contribute to public awareness was through peace education and memorialisation. Gordan Bosanac explains how the Centre for Peace Studies, which was not only focusing on dealing with the past, did have this as a component, working on peace education but also trying to promote positive peace actions that happened during the war, neglected by the government:

It wasn’t only neglecting the war crimes, mass killings, etc. The government was also ignoring the peaceful solutions to the military conflict, such as the peaceful reintegration of Eastern Slavonia, an extremely importance UN peace mission which was quite successful (...). Or we were also memorialising some of the peace activists who lost their lives and who were trying to resolve the conflict without military engagement, like Riehl-Kir, the famous police officer who was killed in 1991. A Croat killed by Croats because he was against violence.

Nowadays I would say that this Dealing with the Past component in Centre for Peace Studies is still connected with this remembering and promoting the peace initiatives during the war, and actually there was a success for this year as the government finally recognised the peaceful reintegration of Eastern Slavonia as a national commemoration day after many, many years of advocacy.²⁷⁵

Based on the interviews, there is still not general awareness of the pacifist movement in Croatia and the region during the war. In fact, a 2016 Balkan Insight article covering a commemorative event for the 25th anniversary of the assassination of Croatian policeman Josip Reihl Kir on July 1, 1991, organised by the city and by the

²⁷⁴ Bjelajac and Žunec (n 114) 235.

²⁷⁵ Interview with Gordan Bosanac, Activist and former member of the Centre for Peace Studies (active from 1998-2018) (Zagreb, Croatia, 21 April 2020).

Centre for Peace Studies, mentions the statement by Gordan Bosanac that ‘pacifism was and still is completely marginalised in Croatia’.²⁷⁶

Human rights NGOs’ initiatives for remembrance in general have not reached the mainstream. ‘I cannot say that the landscape of remembrance through official memorials, through memorials in concrete, has changed very much’, said Vesna Teršelič.²⁷⁷ It is, therefore, difficult to make any conclusions about public awareness of pacifism, of the different war events exposed by civil society and the media and of the work carried out by human rights NGOs. The answer I am left with is that public awareness of these matters is not widespread, but the fact that there is some is perhaps significant enough, as instead of having zero space, alternative narratives of the events in the 90s have filtered, at least in very small proportions, through the cracks of the main narrative.

Nothing can be firmly stated about public awareness without carrying out a serious public opinion research, especially considering that the distance between the public and the work of human rights NGOs and those events they, as well as the media, tried to bring to the public sphere, is probably growing now as time goes by and the number of human rights NGOs working on dealing with the past reduces. In the words of Vesna Teršelič:

It would demand actually public opinion research and we have only once in 2006 been able to complete and publish results of public opinion research because we simply cannot find money to do it again. People forget. The simple fact that you did something doesn’t last in public memory.²⁷⁸

To get an idea of the real impact of dealing with the past, considering that it is ‘a long-term and dynamic process which takes place at different levels in a society and that many activities that accompany it differ in their efficiency and extent’, it would be

²⁷⁶ Sven Milekić, ‘Assassinated Croatian Policeman Commemorated As Peacemaker’ *BIRN* (Zagreb, 1 July 2016) <<https://balkaninsight.com/2016/07/01/1990s-killed-croatian-policeman-commemorated-as-peacekeeper-07-01-2016/>> accessed 20 June 2020.

²⁷⁷ Interview with Vesna Teršelič, Activist and Director of *Documenta* (Zagreb, Croatia, 12 June 2020).
²⁷⁸ *ibid.*

interesting to carry out surveys nowadays.²⁷⁹ This would at least help in understanding what the efforts of the last two or three decades of human rights and peace activists allowed in terms of public awareness and how much the fact that time has passed and that interest in the topic is at a low has undermined the few achievements that human rights NGOs and the independent media might have had.

Involving Young People

One of the things that Goran Božičević now advises to people from Ukraine with whom he works is to invest in young people: ‘these young people in 10 years’ time or 20 years’ time will not be young people, they will be decision-makers, so you start investing in them now’.²⁸⁰ He remembers working with youth in his own local context, in Croatia:

I would say working with youth was very important. That’s why we started trainings with young people. They were regional, but let’s say on every regional training we had maybe 6, 7, 8 people from Croatia and the same number from Bosnia and Serbia (...). I am proud to say that many of them became extremely active, valuable, extraordinary individuals in the region.²⁸¹

Working with youth has been the focus of the YIHR, as Mario Mažić explained in our interview:

In 2008, in coordination with the then regional network, I set up the Youth Initiative here in Croatia and we started basically actively working in 2009, and that’s when we started running our programme. The organization from the beginning focused on engaging youth in the process of dealing with the past and reconciliation and transitional justice.²⁸²

²⁷⁹ Banjeglav (n 205) 39.

²⁸⁰ Interview with Goran Božičević, Peace Activist and Director, Miramida Centar-Regional Peacebuilding Exchange (Zagreb, Croatia, 17 April 2020).

²⁸¹ *ibid.*

²⁸² Interview with Mario Mažić, Founder and former Director of Programs, YIHR Croatia (Zagreb, Croatia, 23 April 2020).

For Mažić, the contributions of the YIHR are observed most easily through the direct engagement with young people: ‘I’m very happy when I look back now and see how many young people who participated in the work of the organisations in one way or another (...) are still committed to the topic’.²⁸³ According to Nikola Puharić, the YIHR is most known for its youth exchanges. However, he notes that ‘this kind of reach towards youth is actually in a way limited. As an organisation we can only reach out to, I don’t know, several hundred or maybe thousands of people inside of these five or six countries’.²⁸⁴

What is somewhat different about the Youth Initiative is that it is a ‘fairly new NGO’, as Pavlaković explained, different from those NGOs that were created and run by many years by people who were activists in the 90s.²⁸⁵ One of the interviewees shared her experience collaborating with the YIHR: ‘We have done something beautiful with them for the last anniversary of the “Oluja”, the Storm operation. We got Croatian and Serbian kids in a bus and my colleague and I were with them and we had commemorations on three places of war crimes. These small things are giving us will to carry on’.²⁸⁶ Even when this interviewee sees the impact of the YIHR on the younger generation, she admits that it is not enough, as it is not easy for the organisation to get into schools, which is ‘the biggest problem’: ‘this is why I am emphasizing why it is so important to force the State to open this door’.²⁸⁷ The door she is talking about is that of official education and, if it continues shut to alternative narratives, the work carried out by human rights NGOs with youth can only be through one-time projects and hence not widespread enough.

²⁸³ *ibid.*

²⁸⁴ Interview with Nikola Puharić, Chairman of the Governing Board, YIHR (Zagreb, Croatia, 20 April 2020).

²⁸⁵ Interview with Vjeran Pavlaković, Associate Professor, University of Rijeka (Zagreb, Croatia, 4 May 2020).

²⁸⁶ Interview with AV (Zagreb, Croatia, 14 May 2020).

²⁸⁷ *ibid.*

Education

Even if human rights NGOs contributed through their work to raising public awareness on certain denied or previously undiscovered war events or on war crimes trials, there continues to be an unavoidable, huge challenge to any achievement made in this sense: history education curricula continue to perpetuate the mainstream narrative of the ‘Homeland War’. In our interview, Vjeran Pavlaković highlighted the educational impact of human rights NGOs and their efforts in education and in working on textbooks, among other things.²⁸⁸ As mentioned before, one of the focuses of some human rights organisations, such as the Centre for Peace Studies, were education activities, including a programme of peace studies conducted for several years. However, they have met a wall when it comes to impacting educational institutions and school curricula. In the words of Gordan Bosanac:

We didn’t achieve to integrate the narrative on peace activism in the 90s in the high school education curricula, so this is still missing. People are not aware, kids are not aware that during the war there was also Anti-War Campaign Croatia, that there were a group of people that were against the war, etcetera. So we have failed at that. We are still working on that. It is a continuous process.²⁸⁹

For Bosanac, this has been due, among other things, to the lack of a committed minister of education who would realize the need for a reform.²⁹⁰ What was needed were professors and policy-makers who understood the importance of teaching other narratives on the war and counterwar narratives.²⁹¹ For Nikola Puharić, the fact that the official curricula of high school or elementary schools do not present a critical view of

²⁸⁸ Interview with Vjeran Pavlaković, Associate Professor, University of Rijeka (Zagreb, Croatia, 4 May 2020).

²⁸⁹ Interview with Gordan Bosanac, Activist and former member of the Centre for Peace Studies (active from 1998-2018) (Zagreb, Croatia, 21 April 2020).

²⁹⁰ *ibid.*

²⁹¹ *ibid.*

the whole conflict limits the impact that organisations such as the YIHR can have on young people:

I would say that this kind of curriculum is focused on the nationalistic perspective and not so much on the perspective of the victim, of human rights abuses, regardless of who committed these crimes and what is the nationality or ethnic background of the victims or perpetrators.²⁹²

In ‘The Homeland War in Croatian History Education: Between “Real Truth” and Innovative History Teaching’, Dea Marić focuses on the history education developments in Croatia between 2009 and 2013, paying particular attention to how the war in Croatia from 1991 to 1995 is taught.²⁹³ Her analysis is based on the idea that education on recent conflicts is one of the pillars of dealing with the past, considering the risk of ‘misusing’ history:

In post-conflict societies in which the past has been abused to instill tension and conflict, using history as an obedient servant to politics and a channel through which one exclusive version of the past is transmitted not only fails to contribute to overcoming the legacy of the violent past, but can potentially preserve or deepen the tension and consequently contribute to new conflicts.²⁹⁴

After an analysis of how the ‘Homeland War’ is taught in different textbooks, she concludes:

What authors omit is often more indicative of their position on how history should be taught than what they include. This is particularly relevant when documenting or ignoring crimes committed by Croatian forces. The fact that most of the authors give greater space to military history than other dimensions of war (impact on society, migration, human rights aspects), speaks volumes on their perception of the essence of war and how they wish to convey it.²⁹⁵

²⁹² Interview with Nikola Puharić, Chairman of the Governing Board, YIHR (Zagreb, Croatia, 20 April 2020).

²⁹³ Dea Marić, ‘The Homeland War in Croatian History Education: Between “Real Truth” and Innovative History Teaching’ In Denise Bentrovato, Karina V Korostelina and Martina Schulze (eds), *History Can Bite: History Education in Divided and Postwar Societies* (V&R unipress 2016).

²⁹⁴ *ibid* 86.

²⁹⁵ *ibid* 100.

In ‘What Past is Present?’, Brkljačić argues that the twentieth-century history in Croatia ‘had to be rewritten in order to build a mental shield against the Balkans and traverse the route to Europe’.²⁹⁶ The research by these authors, and some of the statements given by interviewees, reveal, at the very least, that the subject of education in Croatia deserves attention in connection to how the past is dealt with, which is why some human rights NGOs, as Bosanac and Puharić mentioned, advocated for other narratives to be included in the curricula. However, the situation in terms at least of education doesn’t seem to have changed, which means that the doors of schools continue to be mostly shut and the advocacy of human rights NGOs in these terms has not given much results. This is perhaps why Fischer recommended that international actors supported initiatives for textbook reform and alternative history education.²⁹⁷ With regards to other moments of the past, like the Partisan history, one of the interviewees stated: ‘It is not normal that you have to be a history teacher and be brave’, meaning that presenting narratives that are not accepted in the mainstream can represent an act of courage in Croatia.²⁹⁸

Given the lack of success in integrating other narratives to the school curricula, human rights NGOs’ impact in terms of youth and education has been limited to some of the programs or activities already mentioned, carried out for example by YIHR and Centre for Peace Studies. Vesna Teršelič also shared her own experience working with schools or in the area of education through *Documenta*:

We never had this plan that we would do something that most schools would directly reproduce. Our modest goal is to produce didactic materials which we make publicly available (...). There are years in which we succeed to organise seminars for teachers, while there are years in which we are not successful in fundraising for seminars for teachers and youth workers, because for education, if you have didactic materials, basically teachers will use it if they attended a seminar on that topic. They will not use something which is published on internet. So, to introduce something in schools is a very time- and resource- consuming effort. But we keep all the time developing new

²⁹⁶ Maja Brkljačić, ‘What Past is Present?’ (2003) 17 *International Journal of Politics, Culture and Society* 41, 42.

²⁹⁷ Fischer, ‘Transitional Justice: Lessons from the Western Balkans’ (n 132) 10.

²⁹⁸ Interview with AV (Zagreb, Croatia, 14 May 2020).

things, not losing our energy on the question of whether it will reach 30% of schools in Croatia, because we know it will not.²⁹⁹

Having curricula integrate past events that have not reached the mainstream might have significantly changed the scenario of public awareness and might have meant a much wider impact from human rights NGOs. The fact that this has not happened, and that young people, on the contrary, have been for long exposed to the mainstream narrative, as Zdenka Pantić explained in our interview, might be related to what some researchers are finding about younger generations in Croatia: that they are much more conservative than their parents.³⁰⁰ In other words, newer generations are distancing themselves from the alternative narratives that human rights NGOs were able to bring to the public sphere at some point in time, but they are still learning the mainstream narrative, which means that there is less and less space for opening questions about the past. In our interview, Bosanac explained that the fact that younger generations are more conservative might be a consequence of not dealing with the past, which could become a long-term problem for how fundamental rights are viewed in Croatia.³⁰¹

3.5.2 Shortcomings and Restrictions

Generally speaking, the greater goals and aspirations of the work carried out by human rights NGOs to deal with the legacies of the wars of the 1990s in Croatia and in the region have not been met or accomplished. With greater goals and aspirations I mean, for example, opening significant space in the public sphere for truth or for establishing facts (overcoming State-promoted narratives that are at times based on denial of own crimes) or achieving justice. As for regional reconciliation, it is nowhere

²⁹⁹ Interview with Vesna Teršelič, Activist and Director of *Documenta* (Zagreb, Croatia, 12 June 2020).

³⁰⁰ Interview with Zdenka Pantić, Psychologist, former leader and active collaborator of the Rehabilitation Center for Stress and Trauma (Zagreb, Croatia, 12 June 2020); Interview with Gordan Bosanac, Activist and former member of the Centre for Peace Studies (active from 1998-2018) (Zagreb, Croatia, 21 April 2020).

³⁰¹ Interview with Gordan Bosanac, Activist and former member of the Centre for Peace Studies (active from 1998-2018) (Zagreb, Croatia, 21 April 2020).

to be seen in the horizon. The previous section on their roles and contributions showed that the work done by peace and human rights activists and by human rights NGOs in terms of dealing with the past has been time-consuming and extensive. So, on one hand, we have a couple of decades of hard work and, on the other, a rather small visibility of contributions by human rights NGOs and a limited impact.

It is perhaps easier to talk about the work of human rights NGOs and their visibility in the years right before accession, when there was more funding and dealing with the past was given some importance, at least in terms of helping prove Croatia was ready to be part of the EU. However, it is evident that after accession the situation changed. ‘How could the situation change so much and what happened with all the work done before 2013 after Croatia entered the EU?’ I asked some interviewees, given that the literature I was reading and the conversations I was having indicated that the work on dealing with the past started dropping substantially after 2013. The interviewees made sure to mention different reasons why this could have been the case, concluding that human rights NGOs could hardly have done much more. The following part of the analysis goes through the different limitations, restrictions and shortcomings that interviewees consider significantly limited the efforts of human rights NGOs in terms of dealing with the past. Understanding them can shed light onto which of these efforts were bound to fail from a beginning, which can be significant for CSOs dealing with the past in similar contexts to not invest years upon years in actions that will most likely be undermined and to choose wisely how to go about funding and cooperation with actors such as the international community and the general public.

Internal, Regional and International ‘Politicisation’ of the Past

As has been mentioned already several times in this thesis, in Croatia there is a main narrative of the ‘Homeland War’ which is generally preferred by politicians. This means that efforts to deal with the past in a different way can interfere with interests of the political elite and be seen as a nuisance that needs to be restricted. As Pavlaković explained in our interview, the internal barrier for dealing with the past in Croatia ‘is

that the dominant narrative is one of victory. Victimization and then victory. So, the argument is “we know what the truth is, we know that we won, why do we need this?”³⁰². Looking at the regional picture, for Croatia this is a rather easy position to take, as its conflict ended the “cleanest”, its borders and territories were secured and it achieved Euro-Atlantic integration, unlike Bosnia, Serbia, Kosovo or Macedonia, for example, where it is not clear if the conflict ended and there are still territorial disputes.³⁰³

The politicisation of the past has more than one level, the first one being this internal narrative of the ‘Homeland War’ which is also promoted by some war veteran groups. As Gordan Bosanac explained, extreme right-wing war veteran groups still have some significant influence in Croatia and they survive solely on spreading the idea that they are protecting the truth of the ‘Homeland War’. These groups have ‘made new partnerships with extreme Christian groups and they are attacking women’s rights around abortion and migrants and refugees’ and they also have ‘strange partnerships with politicians, especially with the HDZ, the main conservative party’.³⁰⁴

An example of how the past is politicised is found in a 2019 Balkan Insight article by Sven Milekić focusing on how the Croatian Democratic Union (HDZ) was using the 1990s war to appeal to right-wing voters ‘by making the commemoration of the fall of the town of Vukovar a national holiday’.³⁰⁵ The article also goes through the historical precedents of this use by the HDZ of the 1990s war symbolism or rhetoric to ‘woo’ voters.³⁰⁶ While the war of the 1990s, specially the main narrative of the ‘Homeland War’, is used in politics, it is at the same time, according to one of the interviewees, not present in political programs: ‘In political parties’ programs you don’t have dealing with the past. The only parties that are dealing with the past are

³⁰² Interview with Vjeran Pavlaković, Associate Professor, University of Rijeka (Zagreb, Croatia, 4 May 2020).

³⁰³ *ibid.*

³⁰⁴ Interview with Gordan Bosanac, Activist and former member of the Centre for Peace Studies (active from 1998-2018) (Zagreb, Croatia, 21 April 2020).

³⁰⁵ Sven Milekić, ‘Croatian Government Woos Right-Wingers with War Symbolism’ *BIRN* (Zagreb, 9 October 2019) < <https://balkaninsight.com/2019/10/09/croatian-government-woos-right-wingers-with-war-symbolism/>> accessed 2 August 2020.

³⁰⁶ *ibid.*

right-oriented, because the “left” ones or “central” ones are like “let’s not go there, it is not a political question, leave it to the historian””.³⁰⁷

The way in which dealing with the past at the same time is and is not a political question in Croatia leads to thinking that it would rather need to be depoliticised, as suggested by one of the interviewees, or that alternative ways of dealing with the past would have to reach the political sphere: ‘It’s about a fight, a political fight. If you don’t have social democratic parties or these progressive urban parties realizing why this is so important, you don’t have politics’.³⁰⁸

The problem of politicisation gets even more complicated when the regional dynamics are observed. As Nikola Puharić explained:

When we had in power politicians who were, let’s say, more social democrats or liberals, and it was also like that in Serbia, there was a good cooperation between the governments, and not just in terms of finding missing persons but we also had official visits on the places where human rights abuses happened, where war crimes happened.³⁰⁹

That time in which there was some cooperation between both countries, when Tadić was the president of Serbia and Josipović was the president of Croatia, was mentioned often in the interviews. However, time would show that such relations would be the exception and not the rule. After these two presidents, both Croatian and Serbian voters elected more ‘nationalist right-wing governments’ which, in the view of Puharić, ‘profit from trying to be in bad terms with each other’.³¹⁰ For Goran Božičević, normalising relationships between the countries in the region would mean opening the question of whether the wars were really necessary, which is too much of a burden. Reconciliation is thus far from being of political interest.³¹¹ In Pavlaković’s views:

³⁰⁷ Interview with AV (Zagreb, Croatia, 14 May 2020).

³⁰⁸ *ibid.*

³⁰⁹ Interview with Nikola Puharić, Chairman of the Governing Board, YIHR (Zagreb, Croatia, 20 April 2020).

³¹⁰ *ibid.*

³¹¹ Interview with Goran Božičević, Peace Activist and Director, Miramida Centar-Regional Peacebuilding Exchange (Zagreb, Croatia, 17 April 2020).

There's a huge number [of actors], whether they are political actors or have other interests, that don't want reconciliation. They prefer these kind of issues to be perpetuated, that's how they build their careers. They do these symbolic politics. You want to have the enemy in Serbia; you want to have someone in Bosnia-Herzegovina constantly threatening your borders. I mean, this gets you votes, maintains certain borders, divisions, you know, there's a profit to it. So, there isn't interest in reconciliation, actually, or dealing with the past. There's definitely a lot of effort to not deal with the past because that is a constant pool of political power and so having NGOs, which by definition should be non-governmental and that do act as a voice of alternative views (...) I think is a good thing, because they are able to work across borders a lot easier than politicians.³¹²

The politicisation of the past at the regional level has hindered the search for missing persons and the prosecution of war crimes.³¹³ The regional dimension of the wars of the 1990s means that cooperation between the different governments is required for some transitional justice mechanisms or efforts to succeed. But instead of cooperating, the governments of the region have preferred to use the past for their political agendas, which implies holding narratives that are at odds with each other and ultimately keep facts and justice from being established at local and regional levels. Additionally, the fact that cooperation with the ICTY was made a condition for accession to the EU was seen by some as having politicised this tribunal, as found in previous studies:

The majority of the interviewees in all countries also criticise the international community for making the governments' cooperation with the Hague Tribunal a condition for the EU accession process. Some of the interviewees argue that the ICTY has thus taken on a political role.³¹⁴

In the view of Nikola Puharić, the processes of dealing with the past have been generally used for political games. For example, he foresees that Croatia will use these

³¹² Interview with Vjeran Pavlaković, Associate Professor, University of Rijeka (Zagreb, Croatia, 4 May 2020).

³¹³ Albina Sorguc and BIRN, 'Search for Balkan Wartime Missing "Must be Depoliticised"' *BIRN* (Sarajevo, 4 October 2018) < <https://balkaninsight.com/2018/10/04/search-for-balkan-wartime-missing-must-be-depoliticised-10-04-2018/>> accessed 2 August 2020.

³¹⁴ Fischer and Petrović-Ziemer (n 112) 51.

processes to block Serbia from joining the EU: ‘Until these processes are moved out of this political sphere, I think we won’t have any kind of result’.³¹⁵

Lack of Political Will and Support

The politicisation of the past is closely tied to the lack of political will to face its legacies. As Mario Mažić explained, the government and the political elite don’t want to go into the past in any critical way since ‘it seems to not be politically smart to rock the boat in that sense’.³¹⁶ For him, the two biggest parties in Croatia prefer to promote the belief that history is gone and this has resulted in lack of developments in terms of prosecuting war crimes, identifying missing persons and supporting victims. Additionally, whoever did want to ‘rock the boat’ and look into the past, that is, peace and human rights activists, had to face threats and be treated as enemies. In Vukobratović’s words: ‘Questioning the whole narrative of the mythology of the war in the 90s is actually a bit dangerous’.³¹⁷

For Gordan Bosanac, the lack of political will makes it nearly impossible for NGOs to re-open questions concerning the past.³¹⁸ In 2013, Fischer and Petrović-Ziemer identified that it was essential for the countries of the region to have initiatives supported both by political and civil society actors, which is perhaps a response to their tendency to work parallel to each other, as seen in the case of the documentation of human losses. Most of the interviewees of their research considered that there was still very low willingness in Serbia, Bosnia-Herzegovina and Croatia to deal with legacies of the recent past.³¹⁹ This can also be evidenced in the fact that RECOM was never picked up by governments. In fact, the case of RECOM, as explained by Pavlaković in

³¹⁵ Interview with Nikola Puharić, Chairman of the Governing Board, YIHR (Zagreb, Croatia, 20 April 2020).

³¹⁶ Interview with Mario Mažić, Founder and former Director of Programs, YIHR Croatia (Zagreb, Croatia, 23 April 2020).

³¹⁷ Interview with Nikola Vukobratović, Historian researching the war of the 1990s, Serb National Council (Zagreb, Croatia, 29 May 2020).

³¹⁸ Interview with Gordan Bosanac, Activist and former member of the Centre for Peace Studies (active from 1998-2018) (Zagreb, Croatia, 21 April 2020).

³¹⁹ Fischer and Petrović-Ziemer (n 112) 132.

our interview, pointed at the wider dimension of the problem of political will, since such initiatives require regional political support: ‘even if you get some people on board, the other ones aren’t on board and that undermines your efforts and by the time in that country they bring someone that is more supportive, support has fallen in this country’.³²⁰

Looking back on the previous section on roles and contributions of human rights NGOs in terms of dealing with the past, almost all the efforts by these organisations were somehow frustrated or delayed by lack of political will, which is why it was mentioned by each one of the interviewees in terms of what has limited the process of dealing with the past in Croatia the most. In the words of Mažić:

I think the more convincing argument, if you ask about serious gaps that exist and that we as civil society were unable to respond to, they mostly have to do with lack of commitment on the part of the government to work on these things, because you can only do so much without holding the levers of governmental power.³²¹

Partly because of their reduced quantity, and because they have been somewhat kept on the margins, unable to reach the main public sphere, human rights NGOs working on the process of dealing with the past in Croatia required governmental support to reach their objectives and have a higher impact. ‘Generally speaking, although we are not aware of that and are very critical and disappointed, we have done much more than expected, but we never realized that our limits are given in a frame of small, nationalist, party-run, corrupted States’, answered Božičević when asked for his view on the process of dealing with the past in Croatia and the region.³²²

³²⁰ Interview with Vjeran Pavlaković, Associate Professor, University of Rijeka (Zagreb, Croatia, 4 May 2020).

³²¹ Interview with Mario Mažić, Founder and former Director of Programs, YIHR Croatia (Zagreb, Croatia, 23 April 2020).

³²² Interview with Goran Božičević, Peace Activist and Director, Miramida Centar-Regional Peacebuilding Exchange (Zagreb, Croatia, 17 April 2020).

Disappearance or Reduction of Previous International Monitoring and Enforcement Mechanisms

The answers I get when I ask about Croatia's accession to the EU and its relation to dealing with the past have a bittersweet feeling to them. As explained several times before, cooperation with the ICTY was set as a precondition for accession to the EU. For a moment, this sparked cooperation between EU institutions and civil society, for example in terms of war crimes trials monitoring. However, as Pavlaković wrote, 'after accession many of the mechanisms previously used to enforce compliance on war crimes issues disappeared, and further judicial reforms or investigations of perpetrators in numerous cases are no longer in the agenda'.³²³

Some of the interviewees were active in human rights NGOs both before and after 2013 and experienced this reduction or disappearance of external monitoring or enforcement mechanisms. 'Until 2013, we used accession in advocacy a lot and made pressure and since Croatia is a member of the EU they are not pressured by them anymore,' shared Pamuković, adding that it is clear that 'the EU has no pressure mechanism in the area of human rights anymore'.³²⁴ Puharić added an aggravating factor: 'Transitional Justice in general is not an important question for the European Union. If you look at their strategic documents and policies, they have this transitional justice policy which is about external transitional justice measures, but they don't have any kind of internal European Union transitional justice mechanism'.³²⁵ Puharić explained that now human rights NGOs have no one to turn to. Having ruled the government out, and not exactly counting with widespread support from the public, human rights NGOs were glad to count with international support and perhaps did not expect it to fade after EU accession.

³²³ Pavlaković, 'The ICTY and Institutional Reform in Croatia' (n 84) 85.

³²⁴ Interview with Nela Pamuković, Activist and Co-founder, Centre for Women War Victims – ROSA (Zagreb, Croatia, 21 April 2020).

³²⁵ Interview with Nikola Puharić, Chairman of the Governing Board, YIHR (Zagreb, Croatia, 20 April 2020).

‘I think that civil society organisations in Croatia really wanted for this to continue, but it didn’t continue,’ said Puharić, referring to the kind of monitoring from the EU which allowed human rights NGOs to advocate for changes.³²⁶ He considers that after 2013 it became clear that ‘the EU will not solve all of your problems and you are on your own in terms of how you are actually trying to build your country and society’.³²⁷

The effect that EU accession may have over domestic actors has been discussed before. Indeed, as Natascha Wunsch writes, ‘Europeanisation scholars have coined the term “differential empowerment” to describe alternations in the domestic power balance induced by the European integration process’.³²⁸

[P]revious research on the impact of the EU accession process on civil society in Central and Eastern Europe countries (CEE) yielded mixed results: while some authors found a limited degree of empowerment in the presence of enabling transnational coalitions, others have suggested that civil society actors in accession countries are too weak to effectively capitalize on new opportunities and instead function essentially as agents of an EU agenda.³²⁹

Wunsch suggests that what took place in the case of Croatian NGOs was a temporary strengthening, with resource mobilisation as one of its factors, that allowed for professionalisation of the sector.³³⁰ However, it must be noted that ‘the strong shaping power of EU leverage for NGO strategies meant that the sudden drop in pressure following the closure of negotiations pulled the rug from under the Croatian NGO coalition member’s feet’.³³¹

³²⁶ *ibid.*

³²⁷ *ibid.*

³²⁸ Natascha Wunsch, ‘Coming full circle? Differential empowerment in Croatia’s EU accession process’ (2016) 23(8) *Journal of European Public Policy* 2 (citations omitted).

³²⁹ *ibid.*

³³⁰ *ibid.* 17.

³³¹ *ibid.* 18.

Funding Logics and Issues around Sustainability

One of the interview questions for this research centred on funding, given that I repeatedly heard that this had been an issue in the last several years for human rights NGOs and for work on dealing with the past. This issue has been indirectly mentioned already in several sections of this thesis. To start with, already in the section dedicated to the story of human rights NGOs in Croatia the problem of financial exhaustion was mentioned. In the specific field of dealing with the past, some of the initiatives I covered, such as the monitoring of war crimes trials or the recollection of documentation, have been suspended or have an unclear future because of unstable funding. To mention another example, as Gordan Bosanac mentioned in our interview, advocacy towards the change of education curricula has also stopped.³³²

There are a few issues related to funding that might have affected NGOs working on dealing with the past in Croatia and that I would like to mention here. To begin with, there is the general view that, in Croatia, donor-driven programs caused donor-dependency and that ‘the later withdrawal of foreign funds led to increased financial instability among CSOs’.³³³ Several interviewees are well-aware of this problem and have tried to find ways around it. Pamuković, for example, stated: ‘We try to keep our independence towards funders as much as possible to keep the process in our hands’.³³⁴ In the case of the YIHR, for example, Mario Mažić was also aware of the trap funding can represent: ‘It was quite early on that I decided that we don’t want to pursue the organisational development that highly depends on the funding and projects that we are able to get’.³³⁵

The problem with donor-driven programs became evident in Croatia specially after its accession to the EU. While at some moment there was considerable funding for

³³² Interview with Gordan Bosanac, Activist and former member of the Centre for Peace Studies (active from 1998-2018) (Zagreb, Croatia, 21 April 2020).

³³³ Bežovan, Matančević and Baturina (n 125) 113.

³³⁴ Interview with Nela Pamuković, Activist and Co-founder, Centre for Women War Victims – ROSA (Zagreb, Croatia, 21 April 2020).

³³⁵ Interview with Mario Mažić, Founder and former Director of Programs, YIHR Croatia (Zagreb, Croatia, 23 April 2020).

dealing with the past processes, looking back Božičević realizes that this was largely due to the negotiation process with the EU.³³⁶ As Puharić explained, ‘after Croatia joined the EU, a lot of different donors just vanished’ and it is far more difficult for NGOs in this country to get funding now since Croatia is somehow seen as not needing this support anymore, even though, as seen already throughout this thesis, the process of dealing with the past barely took off and much was left to be done.³³⁷

Considering that ‘Sustainability is premised on the idea that the work of an intervention will be able to continue after external support ends’, one can conclude that, generally speaking, the work on dealing with the past by NGOs in Croatia did not fully stand the sustainability test, as it has significantly dropped since external funding started to disappear (post EU-accession).³³⁸ An evidence of this is the reduction in size of NGOs working on dealing with the past. ‘I know organisations in which 20 people worked before and now they are teams of four or five people’, said Nikola Puharić.³³⁹ Some of the problems with ‘big funding’ or ‘donor-dependency’ discussed with interviewees were that it might have led to lack of creativity to keep the work relevant and sustainable after donors removed their support, that it burdened organisations with too much administrative work and led them to lose focus, and that it significantly changed the configuration of civil society. ‘I found no examples where an organization without English-speaking staff received international funding’, wrote Laura Heideman, explaining how ‘NGOization’ in Croatia led to professionalization of the people working in the field of human rights.³⁴⁰ Sanja Sarnavka also raised this issue in our interview: ‘you had predominantly to bring people who knew English and who were competent in the sense of managing European projects and very often you have no

³³⁶ Interview with Goran Božičević, Peace Activist and Director, Miramida Centar-Regional Peacebuilding Exchange (Zagreb, Croatia, 17 April 2020).

³³⁷ Interview with Nikola Puharić, Chairman of the Governing Board, YIHR (Zagreb, Croatia, 20 April 2020).

³³⁸ Laura J Heideman, ‘Institutional Amnesia: Sustainability and Peacebuilding in Croatia’ (2016) 31 *Sociological Forum* 377, 393.

³³⁹ Interview with Nikola Puharić, Chairman of the Governing Board, YIHR (Zagreb, Croatia, 20 April 2020).

³⁴⁰ Heideman, ‘Cultivating Peace: Social Movement Professionalization and NGOization in Croatia’ (n 147) 356.

activists, people who believe in the cause'.³⁴¹ It is perhaps because of these reasons that Goran Božičević stated that 'ten euros coming from Croatian citizens is more valuable than ten thousand euros coming from Brussels or somewhere else'.³⁴² However, it is to be kept in mind that widespread support by the citizenship was not really there for this to be possible. This, together with the hostility suffered by peace and human rights activists from the government, explains their dependency and reliance on foreign donors, as several interviewees pointed out. As discussed with one of them, the alternative might have been too risky:

To try to build a mass movement, and not to become a completely isolated bubble of well-funded people who communicate more with the Western embassies than they do with the local people, that would be a much, much more difficult job (...) that would've meant for the people to sacrifice much more. Much more people would've gotten beaten up, killed or have their lives destroyed.³⁴³

Considering the difficulties around funding and the tendency to rely on foreign donors, it was interesting for me to learn about an initiative called Solidarna, which Sanja Sarnavka told me about:

It is a foundation where we each gave like 60 euros because you have to have some income to be legalized as a foundation (...). Maybe even we were too late, but we still succeeded through really hard work to get some visibility and to become influential and now actually foundation Solidarna very often brings together different players and goes into the public and advocates and talks about issues that are relevant because civil society organizations are not visible.³⁴⁴

The issue of where money comes from and how funding shapes what work gets done, how it gets done and by whom it gets done is perhaps quite inherent to NGOs in

³⁴¹ Interview with Sanja Sarnavka, Coordinator and President of B.a.B.e for 17 years until 2017 (Zagreb, Croatia, 9 June 2020).

³⁴² Interview with Goran Božičević, Peace Activist and Director, Miramida Centar-Regional Peacebuilding Exchange (Zagreb, Croatia, 17 April 2020).

³⁴³ Interview with Nikola Vukobratović, Historian researching the war of the 1990s, Serb National Council (Zagreb, Croatia, 29 May 2020).

³⁴⁴ Interview with Sanja Sarnavka, Coordinator and President of B.a.B.e for 17 years until 2017 (Zagreb, Croatia, 9 June 2020).

general, whether they are working on dealing with the past or any other field. In Croatia, the issue around funding is used to discredit human rights NGOs, as explained by Pavlaković:

If you read and follow the right-wing discourses that are mostly against this kind of NGOs, it is either that they are getting paid by foreigners, so they're foreign mercenaries, and in the very next article these are parasites sucking off of tax payers. So, it's like, well, what do you want them to be? Do you want them to be domestically-funded or do you want them to be paid from outside funding?³⁴⁵

The question of how to fund the work of NGOs is one of no little importance for this research, especially considering that the process of dealing with the past might take decades.

The Configuration of Croatian Society

After more than four months living in Croatia, and bringing up the subject of the past in Croatia and the region with almost anyone I met, I have been left with the impression that in general people have contradictory thoughts and feelings about the war. Many people defend that it is no longer something that needs to be spoken of, while at the same time immensely caring about whatever is said about it. This is not a foreign experience to Vesna Teršelič: 'My life is full of meetings with people who tell me that they are sick of discussing the past (...), and then, ten minutes after they've said it, they are screaming at me about something related to dealing with the past'.³⁴⁶

What the attitudes of the citizenship have meant for human rights NGOs in Croatia is lack of widespread support, as suggested by all interviewees alike. As Zdenka Pantić stated, 'it is always difficult when you try to say to your own people, to the group you belong to, some negative aspects of what they are doing', adding later that the activities of NGOs were not very welcome by citizens as they challenged the narrative they

³⁴⁵ Interview with Vjeran Pavlaković, Associate Professor, University of Rijeka (Zagreb, Croatia, 4 May 2020).

³⁴⁶ Interview with Vesna Teršelič, Activist and Director of *Documenta* (Zagreb, Croatia, 12 June 2020).

followed.³⁴⁷ As another interviewee said: ‘For the NGOs it was really, really hard to get more citizens than they did and I would congratulate them for whatever the number is, because all the time they worked in an atmosphere of fear’.³⁴⁸

Even if human rights NGOs tried to reach out to Croatian society, the way in which this society is configured made it difficult for this outreach to have a significant impact.³⁴⁹ Pavlaković mentioned, for example, the citizens’ scepticism towards civil society, since it is a new thing that did not really exist under communism, and their general mistrust towards any organisation or institution besides the Catholic Church.³⁵⁰ Despite of the open wounds, the younger generations do not seem interested in opening questions about the past and, as explained before, might be holding on even tighter to the mainstream narrative of the war. In spite of the fact that regional reconciliation is far from being achieved, there is a sort of ‘normalisation’, as Božičević and Bosanac mentioned, and this also gives the impression that talking about the past is not necessary anymore. Additionally, citizens have ‘new challenges to face’, as stated by Bosanac and other interviewees, such as Zdenka Pantić, who explained: ‘We are now experiencing more problems than we used to have in terms of employment, social security, quality of life, education, the health system...There are too many things in our lives’.³⁵¹

Time

Three decades is simultaneously too little time to deal with the legacies of a violent past and too much time for this topic not to lose its relevance. Without reaching the

³⁴⁷ Interview with Zdenka Pantić, Psychologist, former leader and active collaborator of the Rehabilitation Center for Stress and Trauma (Zagreb, Croatia, 12 June 2020).

³⁴⁸ Interview with AV (Zagreb, Croatia, 14 May 2020).

³⁴⁹ Interview with Vjerran Pavlaković, Associate Professor, University of Rijeka (Zagreb, Croatia, 4 May 2020).

³⁵⁰ Interview with Goran Božičević, Peace Activist and Director, Miramida Centar-Regional Peacebuilding Exchange (Zagreb, Croatia, 17 April 2020); Interview with Gordan Bosanac, Activist and former member of the Centre for Peace Studies (active from 1998-2018) (Zagreb, Croatia, 21 April 2020).

³⁵¹ Interview with Zdenka Pantić, Psychologist, former leader and active collaborator of the Rehabilitation Center for Stress and Trauma (Zagreb, Croatia, 12 June 2020).

mainstream (through education, for example) the alternative narratives of the past are bound to fade away or to generate even more contentious reactions. Additionally, continuously working on subjects that lose their relevance as time passes and being faced with all the challenges mentioned before in this thesis, the people involved in dealing with the past have grown exhausted. 'It's the same people from the 90s and 2000s who are there, so the new generations were not motivated enough to open that question', said Bosanac.³⁵² Another interviewee also mentioned the problem that arose from 'not passing the torch' of the work on dealing with the past.³⁵³ So, in short, the torch was not passed to the younger generations and the older generations working on dealing with the past have grown exhausted. The younger generations are not particularly interested in the subject and echo the opinion that it is not necessary to deal with the past anymore, but the tensions or, as Bosanac called them, 'silent frustrations' are still there. As he suggested in our interview, 'maybe there was a lack of imagination on how you can work on dealing with the past issues to make them more contemporary (...) because everyone was fed up with this topic'.³⁵⁴

Generally speaking, time exhausts, it makes people lose focus and it can easily give the impression that something is gone or is not a problem anymore. However, the past in Croatia is visible everywhere: in graffiti making reference to the Ustasha movement or to SFR Yugoslavia, in museums, in cemeteries, in Homeland War or Anti-Fascist monuments or memorials, and even in the awkward conversations on the past that easily turn from lack of interest to heartfelt defences of one or another understanding of the past. These are all visible proof of unsolved tensions and contradictions that the process of dealing with the past could not successfully address given all the restrictions and shortcomings mentioned in this thesis.

³⁵² Interview with Gordan Bosanac, Activist and former member of the Centre for Peace Studies (active from 1998-2018) (Zagreb, Croatia, 21 April 2020).

³⁵³ Interview with AV (Zagreb, Croatia, 14 May 2020).

³⁵⁴ Interview with Gordan Bosanac, Activist and former member of the Centre for Peace Studies (active from 1998-2018) (Zagreb, Croatia, 21 April 2020).

3.6 FINDINGS AND LESSONS LEARNED FOR CSOs DEALING WITH THE PAST IN CONTENTIOUS AND POLITICISED LOCAL CONTEXTS

Almost three decades have passed since the beginning of the war in Croatia (1991) and today the process of dealing with the past is not only unfinished but largely forgotten by the public. However, much resources and efforts went into the different mentioned initiatives to deal with the legacies of the past. Of these initiatives, those depending highly on political will and support have yielded little results. In my view, human rights NGOs in Croatia would have benefited from a careful analysis of what actions would have had more impact or significance in their local context (which was perhaps not possible at the time given that much less was known about processes to deal with the past). This is something that would be relevant for donors as well, as often their grants define the projects that NGOs can carry out. In the case of Croatia, for example, focusing on documenting (and starting such work as soon as the war started, considering the loss of evidence), on education and on youth (keeping the subject of the past relevant for the newer generations) was perhaps more relevant and significant than advocating for the punishment of war criminals and for the establishment of a truth or fact-finding commission, which depended ultimately on political will. This explains why, as mentioned before, after years of advocacy for RECOM, Documenta is again focusing on its documenting role and also on new local history projects that could contribute to their documentation efforts. Working with local communities now seems a better option than focusing on ministries and foreign embassies, which in the end exhausted and frustrated the process of dealing with the past.

Dealing with the past is a process that takes time, and even though it is true that political will and support are required for real widespread impact, in a context where there is no such political interest, the slower road of preserving historical memory together with the local communities might have more impact in the long-run. Victims and perpetrators are growing older and much will be left undone in terms of retributive or restorative justice, but one thing that civil society organisations can do, in the name of the truth and in the name of all that was lost to violence, is to try to protect, since the start of the conflict and for as long as it takes, the unknown facts that must survive

attempts of repression from the State or the political elite. As Vukobratović stated about the legacies of the past, ‘I don’t expect the society to be prepared to deal with this legally or politically in the next couple of decades, but what we must do is keep trace. Write books, not just reports. Do serious research and keep this for future generations as historical memory.’³⁵⁵

In any place where there is little political will to carry out a comprehensive process to deal with the past, where such process is politicised, and where there is a culture of denial or at least big divisions as to what the past really is, civil society organisations can, as in the case of Croatia, take on the role of documenting human losses and war events, which might indirectly (or in future attempts) lead to truth and justice. Without the work of CSOs, much of what happened could be erased and, in a context where there is little hope for greater goals such as justice and reconciliation to be achieved, this might be the most important thing that civil society can do and what it should focus on: preserving truth and memory through documenting, history work, research, education and work with youth and local communities (if they are willing to cooperate).

As seen in the case of Croatia, civil society needs to think well what actors to work with and how this might affect its work in the long-run, especially considering that dealing with the past might be a never-ending process that will require engaging generation after generation. A process of dealing with the past that depends too much on external actors such as foreign donors or governments and State institutions (given how much they can change from term to term) is unstable, as seen in the case of Croatia in regards to funding, EU-support before and after accession and the changing panorama of political will. In contexts similar to that of Croatia, civil society has the challenge of going against the odds and keeping its work sustainable, both in terms of relevance (to the public) and in terms of resources. For this reason, knowing beforehand who to work with and what to dedicate their attention to would have saved enormous efforts from human rights NGOs that were perhaps, as mentioned in one of the

³⁵⁵ Interview with Nikola Vukobratović, Historian researching the war of the 1990s, Serb National Council (Zagreb, Croatia, 29 May 2020).

interviews, too naïve or that did not have any other option but to work with external actors whose support would eventually fall through.

Considering how much work was done by the rather small amount of NGOs working on dealing with the past in Croatia, and their level of impact, which is quite invisible today (but still quite significant for truth and for the past), knowing who to work with and what to work on, picking goals and objectives carefully and betting for sustainability and for small but steady progress in the process of dealing with the past might have kept them from spending years and resources on initiatives that ultimately failed because they depended on political will to succeed. In the end, this research shows that the experience of human rights NGOs in Croatia has left behind many lessons for civil society organisations or movements looking to work on dealing with the past in contexts of low political will and of politicised pasts. In regards to the process of dealing with the past in Croatia and the region, it would be interesting to carry out new public opinion research (after almost 30 years since the beginning of the wars) to have a better idea of where society stands today in relation to the past and to the attempts to address it in the last decades.

FINAL REMARKS: SAVING THE PAST FROM ENFORCED DISAPPEARANCE

As expressed throughout this thesis, civil society organisations can have a very important role in the process of dealing with the past, but they need to understand how to best work in their local context to actually have impact. This research sheds light on what civil society needs to look at in terms of where to put their efforts and what restrictions or shortcomings to avoid. Of course, this could not have been known thirty years ago, when human rights and peace activists started working in an environment of hostility, had to rely on foreign actors and were not sure of how the political environment would be in the following decades. Perhaps now is the right time to look back and understand where the process fell through and what civil society could have done to keep the work on dealing with the past and the less known facts of the events of the 90s relevant to the public and to the newer generations. In a wider scope, it seems that the efforts placed on official transitional justice mechanisms or institutions such as prosecutions, truth commissions, reparations and guarantees for non-recurrence can be easily undermined by lack of political will and State repression. It could be that civil society in contexts similar to Croatia's needs to move away from these more technical, top-down understandings of transitional justice, and even from the larger goal of reconciliation often invoked by foreign actors, and focus on leaving evidence of historical truths, human losses, human rights violations and alternative understandings that challenge mainstream stories that might be harmful for society and end up fuelling conflicts in the future. Eventually, society might be ready to go back to the traces left by civil society and open up questions about the past.

Personally, and thinking about the case of my own country, Colombia, where despite the comprehensive official mechanisms set for transitional justice the process

of dealing with the past is still very much at risk and undermined by the government and by State and non-State actors, I can see how easily the past can become confusing, irrelevant, politicised and how parts of it may be slowly erased. It pains me to think that the facts about conflicts or wars that ended or transformed the lives of thousands of people can be repressed or manipulated, and that truth might be erased. To me, civil society and even society at large in Croatia and elsewhere has been key to save the memory of painful events that, whether forgiven or reconciled with or not, should not be forgotten as they form part of the story of thousands of individuals and of the configuration of society. Such events have defined the present and will define the future in Croatia, whether they are understood and dealt with or repressed and allowed to emerge in unpleasant ways.

ANNEXES

ANNEX A. DETAILED DEFINITION OF 'DEALING WITH THE PAST'

Dealing with the Past was understood for this research as including: (1) prosecutions, (2) truth recovery, (3) reparations and victim support, (4) guarantees of non-recurrence and (5) reconciliation efforts. Even though this seems like a rather classical view of transitional justice, with the exception of separately adding 'reconciliation efforts', each subcategory has been defined separately, based on existing literature, to be as comprehensive as the research requires, including areas that have only recently received more attention, such as history, victim support, memory work and education reform.¹ Additional to the different mechanisms or strategies adopted to address the past, it must be kept in mind at all moments that 'a better understanding of gender, culture and power structures is needed to appropriately analyse the causes, dynamics and consequences of conflict and violence'.²

Prosecutions basically refer to criminal trials. Kritz writes that 'trials communicate that a culture of impunity which permitted abuses is being replaced by a culture of accountability, giving a sense of security to victims and a warning to those who might contemplate future abuses'.³ The author also mentions different options that have been

¹ Victoria Cochrane-Buchmüller and others, 'Dealing with the Past and Transitional Justice' in Berghof foundation (ed), *Berghof Glossary on Conflict Transformation and Peacebuilding* (Berghof Foundation Operations GmbH 2019) 44.

² Martina Fischer, 'Theoretical Approaches and Research Design' in Martina Fischer and Ljubinka Petrović-Ziemer (eds.), *Dealing with the Past in the Western Balkans: Initiatives for Peacebuilding and Transitional Justice in Bosnia-Herzegovina, Serbia and Croatia* (Berghof Report No. 18, Berghof Foundation Operations GmbH 2013) 22.

³ Neil J Kritz, 'Dealing with the Legacy of Past Abuses: An Overview of the Options and their Relationship to the Promotion of Peace' in Mô Bleeker and Jonathan Sisson (eds), *Dealing with the Past: Critical Issues, Lessons Learned, and Challenges for Future Swiss Policy* (swisspeace 2004) 18.

used: international tribunals, local trials and hybrid courts.⁴ Reparations refer to the ‘restitution, compensation or rehabilitation provided to victims of human rights violations’.⁵ They can be multiform, and range from collective to individual and from financial to symbolic.⁶ I grouped victim support with reparations given that they are both victim-centred. According to Fischer, reparations ‘belong to the few efforts undertaken directly on behalf of the victims’.⁷ Guarantees of non-recurrence include ‘democratic structures, civilian oversight of security forces, a functioning judicial system and the rule of law’.⁸ They may include demobilization and disarmament, free and fair elections, reforms to the constitution and the security sector, reform of the legal system and lustration/vetting.⁹

The next two subcategories were the most difficult to define. Initially, I was decided on separating truth-seeking from search of missing persons, memory and education on the past, because the relation was not always clear in the literature and sometimes they were seen as separate. However, they also became inseparable to me as I researched previous examples of the role of CSOs in dealing with the past. Finally, I found a definition that allowed me to join everything in one single subcategory. In ‘Transitional Justice and Reconciliation: Theory and Practice’, Fischer uses the term truth recovery (based on Alexander L. Boraine¹⁰) as covering four different notions:

objective and forensic truth (evidence and facts about human rights violations and missing persons), narrative truth (storytelling by victims and perpetrators and communicating personal truths and multi-layered experiences to a wider public), social or dialogical truth (truth of experience that is established by interaction, discussion and

⁴ *ibid* 18-20.

⁵ swisspeace, ‘A Conceptual Framework for Dealing with the Past’ (2016) Essential 02/2016, 10 <www.swisspeace.ch/assets/publications/downloads/Essentials/7bdf926517/A-Conceptual-Framework-for-Dealing-with-the-Past-Essential-16-swisspeace.pdf> accessed 9 April 2020.

⁶ *ibid* 11-12.

⁷ Martina Fisher, ‘Transitional Justice and Reconciliation: Theory and Practice’ in Beatrix Austin, Martina Fischer and Hans J. Giessmann (eds), *Advancing Conflict Transformation: The Berghof Handbook II* (Opladen 2011) 411.

⁸ swisspeace (n 5) 12.

⁹ *ibid* 12-14.

¹⁰ Alexander L Boraine, ‘Transitional Justice: A Holistic Interpretation’ (2006) 60(1) *Historical Reconciliation* (fall/winter 2006) *Journal of International Affairs* 17.

debate) and healing or restorative truth (documentation of facts and acknowledgement to give dignity to the victims and survivors).¹¹

This subcategory cannot ignore its relation to the notion of ‘right to truth’ or ‘right to know’ used by organizations such as UN, swisspeace and the ICTJ. The UN, for example, states that the ‘right of individuals to know the truth is supported by several treaty bodies, regional courts, and international tribunals’.¹² Even though Boraine extracted the four different types of truth from the final report of the South African Truth and Reconciliation Commission¹³, I wish to use the term truth-recovery even in relation to efforts that do not form part of official truth commissions (the mechanisms most commonly associated with truth recovery in transitional justice), such as unofficial investigations, memory work, education on the past and other initiatives carried out by CSOs to recover and protect the truth.

We finally arrive to reconciliation, a notion that overlaps with transitional justice at times and ‘has been both controversial and vague as a concept, giving rise to different understandings and approaches’.¹⁴ Paul Seils describes it as ‘a complex set of processes that involve building or rebuilding relationships....It can occur at the individual, interpersonal, socio-political, and institutional levels’ and ‘can be promoted through specific reconciliation policies’ or result from processes typical to transitional societies, including transitional justice mechanisms.¹⁵ Since the mechanisms commonly associated to TJ already fall into other subcategories of this research’s dealing with the past definition, here ‘reconciliation efforts’ will borrow Seil’s understanding of those other activities that ‘may contribute to processes of reconciliation, some of which are directly labelled reconciliation efforts’.¹⁶

¹¹ Fischer, ‘Transitional Justice and Reconciliation: Theory and Practice’ (n 7).

¹² Guidance Note of the Secretary-General, ‘United Nations Approach to Transitional Justice’ (2010) 8.

¹³ Boraine (n 10) 20.

¹⁴ Paul Seils, ‘The Place of Reconciliation in Transitional Justice: Conceptions and Misconceptions’ (2017) ICTJ Briefing Paper 1 < www.ictj.org/sites/default/files/ICTJ-Briefing-Paper-Reconciliation-TJ-2017.pdf> accessed 9 April 2020; Fischer (n 7) 415.

¹⁵ Seils (n 14) 1-15.

¹⁶ *ibid* 10.

The breakdown presented here for ‘dealing with the past’ is not too far in form from Boraine’s ‘holistic interpretation’.¹⁷ However, it is important to highlight that, despite its resemblance to and inspiration from such holistic approaches, it was constructed from bits and pieces of existing literature to frame this research and to be comprehensive enough as to not discriminate among the efforts carried out by CSOs to address the past.

¹⁷ Boraine (n 10).

ANNEX B. INTERVIEW GUIDE FOR HUMAN RIGHTS NGOs MEMBERS OR FORMER MEMBERS

1. Tell me about the organization you work (or worked) with and the roles it plays (or played) in dealing with the past in Croatia. Does it still carry out such roles?
2. Could you mention some of the achievements of the initiatives by the CSO to deal with the past?
3. Are there aspects of dealing with the past that the organization focuses (or focused) more on? Which ones are they and why are (or were) they prioritized?
4. How are (or were) activities directed at dealing with the past funded and how much space does the organization have (or had) for decision-making regarding the area, purpose and scope of these activities?
5. Has the organization received training/guidelines on transitional justice and/or dealing with the past from external actors? If the answer is yes, who are these actors (in general terms) and how did such activities affect the work of the CSO?
6. How did (and does) the government view, restrict or support the activities carried out by the CSO to deal with the past throughout the specified periods of time (until now)?
7. How did (and does) the citizenship view, restrict or support the activities carried out by the CSO to deal with the past throughout the specified periods of time (until now)?
8. How did (or do) other CSOs view the activities carried out by the organization to deal with the past (until now)? Are there important differences between the approaches of different CSOs?
9. How did preparation for EU accession affect, impact, support or limit the role of the CSO in dealing with the past?
10. Are (or were) there activities related to dealing with the past that the organization wants (or wanted) to carry out but can't (or couldn't) because of lack of funding or support?
11. What is your view on the success or effectiveness of transitional justice or dealing with the past mechanisms in Croatia? How is their effectiveness or lack of it evident today?

ANNEX C. INTERVIEW GUIDE FOR OTHER RELEVANT INTERVIEWEES

1. Would you say that the efforts carried out in the past by human rights NGOs to address the legacies of the wars have proven to be highly significant or to have a meaningful impact in society? Or have they had reduced impact?
2. For you, what is the major contribution of human rights NGOs in terms of their work in dealing with the past?
3. Do you think the contribution of human rights NGOs in dealing with the past has been restricted or limited by internal or external factors? If so, which are the main ones you can think of?
4. Based on your knowledge, have human rights NGOs had enough support from the government for their activities that address the wars of the 1990s? Whether the answer is yes or no, is it the same case for other types of organizations working to address these past events (namely, war veterans' groups and victims' groups)?
5. In your opinion, how is the relationship among human rights NGOs, war veterans' associations and victims' groups in terms of dealing with the past?
6. Do you think the initiatives by human rights NGOs in terms of dealing with the past have adjusted to the local context and needs?
7. How do you view the relationship between human rights NGOs and Croatian society and how has this translated into poor or strong levels of support or trust?
 - a. In your opinion, did NGOs make the process of transitional justice more accessible to the public?
8. What is your view on the relationship between human rights NGOs and international agencies or mechanisms?
 - a. What is your view on their cooperation with the ICTY?
 - b. Did they have a role in preparation for EU accession?
 - c. How do you view their relationship with donors?
9. Do you think there is still space today for human rights NGOs to focus on dealing with the past?
10. Do you think there is still space in general, in Croatia, for dealing with the past, and what do you think the priorities would be, if any, right now?

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