Global Campus Europe

UNIVERSITY OF LUXEMBOURG

European Master's Programme in Human Rights and Democratisation
A.Y. 2023/2024

Comparative study between the ICTY and ICTR on memory, victims and future generations

Author: Alazne Anduaga Mesa
Supervisor: Josip Glaurdic

Word Count Declaration: 21040

Global Campus Europe

To all the young generations still dealing with the past

ABSTRACT

In this thesis, I will analyse how transitional justice relates to two conflicts, namely the territories of the former Yugoslavia and Rwanda. Because transitional justice covers a wide range of subjects, I have focused on memory. That is why I will first set out what memory is and what aspects of it will be exposed in the course of the paper. Since there are several ways in which these two complex conflicts can be studied, I have decided to focus on the ad hoc tribunals that were created in both cases. These tribunals were created specifically for the purpose of trying crimes committed in the territories. In the course of the paper it will become clear that the interaction between the tribunals and memory, although it may not be perceptible at times, does exist. In this paper I will not only focus on the victims, witnesses, or perpetrators (who have a direct connection to the tribunals), but also on future generations, who did not live through the conflict, but are living through the process of the trials and do not fully understand their figure and involvement.

Keywords: Transitional justice, Memory, ICTY, ICTR, Genocide, Rwanda, Yugoslavia, Victims, Future Generations

INTRODUCTION

Throughout past and recent history, conflicts, wars and even genocides have been a constant. Today, when a society finds itself in a post-conflict situation, that is, when it has suffered some of the aforementioned situations, there may be an impulse to implement transitional justice processes in the territory. Transitional justice, according to the definition found on the website of the International Center for Transitional Justice: "*Transitional justice refers to how societies respond to the legacies of massive and serious human rights violations. It asks some of the most difficult questions in law, politics, and the social sciences and grapples with innumerable dilemmas. Above all, transitional justice is about victims*".

In essence, this is what my thesis is going to be about. The reason why I have chosen this central theme for my thesis is because I have always been interested in studying how a society is reconstructed after having lived through such a traumatic episode as the ones mentioned above. Another reason why I am so interested in transitional justice is because, depending on how it is implemented, or directly if it is applied or not, the future of a society can be very different.

In my view, transitional justice is a guide by which we can understand the evolution or devolution of the application of human rights in a particular society. If a society suffers a series of human rights violations, and after emerging from that situation transitional justice measures are not promoted, that society is at great risk of returning to the previous situation.

These are the reasons why I personally have taken an interest in transitional justice. However, transitional justice occupies many areas, for which I do not find a master's thesis sufficient to cover them all. That is why I will focus on one single characteristic, which is memory. As we will see in the following chapters, memory plays an important role in the transition of a society. Thanks to it, a rhetoric is constructed, which will later be used to explain what has happened, highlighting who were the victims and who were the perpetrators. For the continuation of a society, being able to have a clear and fair discourse of the past can ensure a consensual future.

However, studying the effect of memory in post-conflict societies, although an extremely interesting area of research, I was more interested in doing comparative work. To choose two post-conflict situations, and to see how they had dealt with the memory situation. The overwhelming reality is that there are many countries and societies in these situations. So, I looked at two situations that shared the same characteristic, both had had in their transitional justice process ad hoc tribunals created by the United Nations to try perpetrators.

Thus, I came to the decision to focus on the cases of Rwanda and the countries that previously belonged to the former Yugoslavia. In both cases the United Nations created ad hoc tribunals. In the case of the former Yugoslavia, the International Criminal Tribunal for the former Yugoslavia was set up to try the perpetrators of the war. In the case of Rwanda, the International Criminal Tribunal for Rwanda was created to try those responsible for the genocide.

Although both are tribunals that try actions that individuals have taken during the conflict, the fact that they were created specifically to try the actions of these two conflicts makes them unique. One can understand the reader's confusion in relation to the decision to focus on the relationship of two tribunals that judge individuals to memory. The answer is that these tribunals have been in contact with the different communities, creating educational programmes, giving lectures... In this thesis I will analyses to what extent and in what way this has affected the development of memory in the two territories.

CHAPTER 1. WHAT IS MEMORY?

In this thesis, there are two main blocks, which will constantly interact with each other throughout the thesis. On the one hand, there are the international tribunals created ad hoc, the International Criminal Tribunal for the former Yugoslavia and the International Criminal Tribunal for Rwanda, which will be studied in the next chapter, and the relationship they have with memory will be studied in the third chapter. On the other hand, there is memory, a key element of transitional justice, which will be discussed in this chapter.

Memory is a term that many of us have heard repeatedly during our lives. We may have heard about it at home, at school in history class, or when visiting a museum. It is also possible that we may not initially be able to give a description of what it is, or that we may need to specify whether we are referring to historical memory, collective memory, victims' memory... Aware that if it is not a subject of study for the questioner, it is difficult to answer, this first chapter is intended to clarify the main concepts for readers.

The reality is that with memory we find ourselves in a very broad scenario, because with memory we can refer to many things, and there are many different currents within it. Above all, within academics (sociologists, historians...) there are different interpretations. I am not going to spend too much time explaining each current, as this is not the purpose of the thesis. The aim is to see how memory interacts with the courts, not to delve into the different currents of memory studies.

General aspects of the memory

Clearly, the first thing that needs to be specified is what memory is. If we go to the simplest description of all, we have the Cambridge dictionary description: “the ability to remember information, experiences, and people”. ". In essence it is this, but in this context, the ability to remember is not based exclusively on an individual, but is understood as the memory of remembering of a society or a collective.

It may seem, especially with the sociological and historical explanations we will see below, that we are referring to a very complex and abstract concept, which only those who dedicate themselves to studying it understand. However, examples of the use of memory can be found in our everyday life. We find the use of memory in “production of memorial books and monuments and, in interacting with the wider world, in attempts to bring what happened to general notice and to bring perpetrators to justice” [1]. To a greater or lesser extent, we live with actions that either promote or repress the creation of memory. What this means is that “when memory is the subject, the focus of attention is

[1] STONE, D. (2013): Genocide and Memory. In: The Holocaust, Fascism and Memory. Palgrave Macmillan, London. Page 111

usually on commemorative practices, monuments, and museums"[2]. At the end of the day, the purpose of providing these spaces is to want to keep alive the memory and remembrance of those victims, war heroes... of the conflict for which they have been created.

It is necessary to mention one very important aspect of memory, before we begin to delve into more technical aspects, and that is the power it has, and how much it can influence a society. Just imagine for a second that there was no work, memorial, museum... about the Holocaust. What happened inside the concentration camps would be forgotten with the death of the generations that lived through it. Memory has a lot of power, especially for example in "post-genocidal conflicts over memory, especially national memory, reveal […] the question: memory can intervene in national politics in unexpected ways and present challenges to long-held and cherished national narratives"[3]. This is why many policies that affect memory are often criticised, and why it is so important to pay attention to how it has been dealt with in the two cases to be analysed in the paper.

What is the study of memory

I should first mention, that the study of memory itself, is a subject to which many scholars have devoted their professional lives to analyse it. That is why, if we talk about the study of memory, we must bear in mind that "memory studies have been transnational and international in their scope, interests, origins, and historiographical foundation"[4].

The study of memory occupies a relevant space within history. It can be said in a sense that they go hand in hand in many respects, since both are based on memories. Memory is inseparable from history, "so that even when the current 'memory obsession' has passed, when the piles of confessional literature have been pulped and the commemorative ceremonies are unattended, still, as Ricoeur notes, memory will be the 'bedrock' of history. The fact that people can say that 'this has happened' remains the starting point for historiography"[5]. That is why we find many works by historians analysing memory as a whole, or a specific project for the preservation or disappearance of memory.

Considering that this is a very sensitive subject for many people, especially if they are victims, it is necessary to create awareness among academics. Make them understand that with their work they are participating in the construction of memory or its disappearance.

---

[2] Ibidem. Page 112
[3] Ibidem. Page 116
[4] ERLL, A. & NÜNNING, A. (2010): Cultural Memory Studies: An International and Interdisciplinary Handbook. Berlin, New York: De Gruyter. Page 79
[5] STONE, D. (2013): Genocide and Memory. In: The Holocaust, Fascism and Memory. Palgrave Macmillan, London. Page 104

Thus, scholars need to consider "their own investments in memory politics, especially when writing about subjects like genocide. Interventions in, for example, debates about commemorative practices in Rwanda cannot be made on a whim"[6]. Especially when they are analysing the memory of a genocide, the issue must be treated with the empathy that the situation requires.

Since I will continuously make references to the Rwandan genocide during the thesis and the Srebrenica genocide will also be mentioned, it is interesting to know how something as important as academics analyse memory in relation to genocide. Studying the links between genocide and memory means, then, "examining the ways in which collective memories of past humiliations or victories are mobilized in the present, showing how individuals and societies are traumatized by genocide, and analysing the ways in which post-genocidal commemorative practices sustain collective memories"[7].

Explanation of types of memory that will be encountered during the thesis

Bearing in mind that the field of memory is so broad where not only different academic currents converge, but it has also become specialised, creating different types of memory in its wake. In this section I will expose those types of memory that will be used throughout the thesis.

Collective memory

For much of the work, when I speak of memory, I will be referring to collective memory, the capacity of a collectivity to make the memory of an event endure over time. The basic premise of the study of 'collective memory' "is not a quasi-mystical belief in the existence of a social mind, or that societies can be treated as organic wholes (in the manner supposed by many genocide perpetrators); rather, it is the basic claim that, in order to live meaningfully as a human being, that is, in order to have memories (for, as neurologists increasingly show, memory and selfhood are intrinsically linked), one must exist in a social setting"[8]. In other words, since we are undeniably social animals, collective memory is what the society to which we belong remembers of its past. The key to this kind of memory is that it manages to unify the memories of many individuals, and then create a unified rhetoric, in which everyone expresses their conformity, and feels identified.

However, although we may think that the creation of collective memory is something automatic, that by the simple fact that there are victims or witnesses of a conflict or tragedy, a collective memory process is immediately created, the reality is different. For since collective memory "is not an organic process (there is no group mind), it follows that the inter-relationship between individuals ('memory users') and the group ('memory

[6] Ibidem. Page 104
[7] Ibidem. Page 104-105
[8] Ibidem. Page 103

makers') needs to be analysed. One should not assume that human minds are endlessly manipulable and that schooling or the broadcasting of nationalistic commemorative ceremonies can fundamentally alter personal memories of strongly emotional, life-changing events such as violent bereavement"[9].

In essence, collective memory is the recollection of a generation's lived experiences, but how does the memory survive the mortality of that generation? "In the course of the succession of living generations, become aware of previous contexts revealed by the living memory communicated by their parents and grandparents"[10]. This solution can be useful when applied to those generations that are still close to the first generation that experienced the event. But as time goes by, the generations are also more distant, so the memory is not as precise or close.

It is this continuity between the past and the present that collective memory is confronted with on a daily basis. The interpretation of collective memory elaborated "to set on a new foundation insight not only into the continuity between past and present in the framework of group existence; it also allows us to place in a different light the topic of discontinuity between group remembrance and the historical past that played such a prominent role in Ricoeur's work"[11].

This discontinuity may not simply be temporal, but also argumentative. There can be, and indeed often are, discrepancies in recalling a fact, it is very difficult to get the whole of society to agree on the same rhetoric. If collective remembrance of the past "is always fragmented in accord with a plurality of different group perspectives, public communication depends upon a web of spontaneously graspable symbols that defines the contours of group contemporaneity shared by overlapping, living generations in its discontinuity with the historical past beyond living memory. This discontinuity is not simply a consequence of the demise of single individuals and groups, for the disappearance of living generations signals the evanescence of the concrete context in which their symbolic interaction transpired"[12].

Discontinuity in a shared context of remembrance marks the finitude of the group's life. Beyond the "finite existence of mortal individuals, group awareness is subject to a specific kind of finitude set in relief by the limited reach of group remembrance beyond the horizon of recall of living generations. The finite temporal scope of this context comes to light in the collective inability, by virtue of any specific capacity of memory, to penetrate the remote depths of the historical past. This may be achieved to a very limited

[9] Ibidem. Page 114
[10] BARASH, J. (2019): The Time of Collective Memory: Social Cohesion and Historical Discontinuity in Paul Ricœur's Memory, History, Forgetting. Études Ricoeuriennes / Ricoeur Studies. Page 103 STONE, D. (2013): Genocide and Memory. In: The Holocaust, Fascism and Memory. Palgrave Macmillan, London. Page 104
[11] Ibidem. Page 107
[12] Ibidem. Page 108

extent through historical reconstruction in which memory in its proper sense plays only an indirect role"[13].

Despite all the obstacles that exist, sometimes even from institutions, collective memory always has a strong presence in societies. Particularly in post-conflict societies, there is a great need to not forget what has just happened, partly in order not to repeat it, and as a society not to forget the victims.

Victims Memory

Speaking of victims, the next kind of memory that will also appear during the thesis is the memory of victims. This type of memory in relation to the courts will be analysed in chapter four. In this case, despite speaking in the plural (about a collectivity) it is actually a series of individual acts, performed by each victim, which together manage to create a pattern.

When I mention the pattern, I mean that the memory of the victims is often useful to promote other processes, such as collective memory projects. Although they too may "fall short in the justice they provide for victims, they are also able to pave the way for the development of other collective memories and alternative histories"[14]. A classic example is the act of victims testifying in court in order to have their testimony about the events and the person on trial collected. Subsequently, some movements use these testimonies as a guide or example to intensify their rhetoric, because having been exposed in this way gives them veracity.

Truth commissions are often a great tool for giving victims the space they need to recount their experiences. The primary function "of a truth commission is to collect testimony and publish an official record of the past, a public recognition of past (state) violence, while also offering recommendations to the transitional or successor government"[15]. In these types of commissions, the space occupied by victims is central.

It is important that, when collecting the memory of victims, all victims are given a voice, especially those who were silenced or silenced during the repression or conflict they experienced. The Commission knows that "we can only know the past through many competing narratives, and we can only envision the future by incorporating this polyphony into the new national story"[16]. In this construction of history, taking as a reference the testimonies of the victims, it must be taken into account that each person has his or her own appreciation of reality. It is for this reason that "inevitably there will

[13] Ibidem. Page 108
[14] BRANTS, C. & KLEP, K. (2013): Transitional Justice: History-Telling, Collective Memory, and the Victim-Witness. International Journal of Conflict and Violence. 7. Page 38
[15] Ibidem. Page 43
[16] Ibidem. Page 43

be disjunctions between the narratives of those who testify before a truth commission and what the commission eventually relates in its report"[17].

As we will discover in the next chapter, the International Criminal Tribunal for the former Yugoslavia, and the International Criminal Tribunal for Rwanda, are not Truth Commissions. They are ad hoc tribunals, in which the acts committed by perpetrators during the Yugoslav war, on the one hand, and the Rwandan genocide on the other, are tried. Because of this, we should not expect the same treatment of victims when they testify before these institutions. But as these are specialised tribunals, there is a lot of curiosity about how they deal with this issue, and how this influences the construction of collective memory. In some cases, the rhetoric is very strong, as in Rwanda, but in other cases, there will be discrepancies as to what the official narrative of the events is, as in the countries that previously belonged to Yugoslavia.

Future generations

It is not another kind of memory, but in the last chapter of the thesis I will analyse how the courts interact with the younger generations. Those generations born after the conflict, who have not witnessed the experiences of previous generations. They are the ones who must carry on the legacy of collective memory built by generations before them. They are the ones who must confront the discontinuity we mentioned earlier. This is why it is interesting to analyse the projects that have been promoted by the courts to facilitate or strengthen these processes. Particularly in cases such as those of the countries that previously belonged to the former Yugoslavia, where many parts of society are factionalised by the different discourses that have been collected from the past.

In conclusion, memory is something with which we are in constant contact, for as long as there is history, there is memory. Determining the rhetoric of past actions, and having this rhetoric accepted by the majority, gives a lot of power and responsibility. It must be acted upon. As we have seen, academics are subject to expectations and criticism, depending on how they choose to deal with the issue.

As for collective memory, as we will see in the following chapters, it is a long, sometimes complicated, but extremely important process for society. The collective, whether large or small, wants to make sure that what happened will not happen again, and that even if time passes, it will not prevent it from being remembered. Certainly, for example, by studying the case of Srebrenica we will understand that it is not always easy to achieve this goal when there are those who deny that the Srebrenica genocide happened.

As for the memory of the victims, I think it will be much easier to understand when we look at the relevant chapter, but it is interesting to have learned what Truth Commissions are. Despite knowing that the ICTY and ICTR tribunals are not Truth Commissions, it is interesting to have been exposed to find the differences or similarities in it. As for the

[17] Ibidem. Page 43

case of Rwanda, we will see that apart from the ICTR there are also the Gacaca Tribunals (which will also be introduced later). These tribunals are the closest we will see to Truth Commissions (but they are still tribunals). This is why it is helpful to have introduced this figure, in order to better understand certain actions of the Gacaca Courts that differ from the actions of the ICTR in this case.

CHAPTER 2. HISTORY AND STATUTES OF THE ICTY AND ICTR TRIBUNALS

In this chapter, I will provide the necessary background information on the international law that applies to the creation of the tribunals, as it is these tribunals that will be analysed in subsequent chapters. I will also analyse the process of the creation of both tribunals, as well as the historical context of the two cases I am analysing (Yugoslavia and Rwanda).

With this chapter, I intend to establish the necessary foundations of knowledge about the tribunal, so that the reader will be able to understand at all times which institutions I refer to in later chapters, and thus be able to focus all their attention on the concepts of transitional justice that are the subject of study in this thesis. These concepts that will be studied later will be related to the actions or omissions of the tribunals, which is why it is important to have a general knowledge of the tribunals and the conflict that has been experienced in these territories.

The reason why I have decided to analyse transitional justice in a comparative way is that, as we will see below, both tribunals are ad hoc tribunals, which were created specifically to deal with the case of Yugoslavia, on the one hand, and the case of Rwanda, on the other. Both are conflicts that are no longer in force today, which is why they are ideal situations for studying transitional justice. Despite the fact that these tribunals, as we will see below, are criminal tribunals in which individuals who have participated in the conflict are tried, the decisions they have taken directly or indirectly affect the society they are serving. That is why I find this comparison so interesting.

Context of the conflicts in each territory

In this section, I will outline general notions of the conflict in both the former Yugoslavia and Rwanda. Knowledge of both conflicts is necessary to better understand the work the tribunals had to do and the cases they had to deal with. But above all, it is important to understand the state in which both societies found themselves in the aftermath of the conflict. Understanding the trauma, they went through helps to understand both the attitudes and needs they present in the post-conflict state.

Former Yugoslavia

Starting with the case of the former Yugoslavia, it is necessary to emphasise that this is a fragmented conflict. By this I mean that the war did not take place all over the territory at the same time, but that the war is segmented by territories and conflicts that overlap each other, which is why explaining the whole conflict is very complicated. For the purpose of this section, I will express as well as possible the general notions necessary for the understanding of this work.

I would like to start with a summary of one of the main conflicts of the war. Bosnian and Croatian "conflict was enormous: from 100.000 to 200.000 people; two million became refugees in the period of 1992-1995. One of the worst massacres took place in Srebrenica, when 7,500 Muslim men were killed by Bosnian Serb forces[18].

There are different ways of interpreting the war in Yugoslavia, for some it is due to the ethnic and religious differences that have filled the territory formerly occupied by the former Yugoslavia, coupled with a strong nationalist sentiment, which is gaining strength. How the conflict is characterized is "of more than historical interest since it affects the conflict's legal characterization, namely whether it was a conflict of an international or non-international character or a purely internal conflict" [19].

What many people wonder is how there was so much cultural and ethnic diversity under the same territory. For that, it is necessary to present the figure of Josep Broz Tito, who under his leadership unified the six republics. He then "broke away from the Soviet Bloc and received support from the West. His was a dictatorial regime dominated by the Serbs and the system remained communist" [20]. Although, during his term of office, he managed to convey the feeling of unity of a greater Yugoslavia, with his death this came to an end and nationalist movements began to gain prominence in both politics and society in the various republics that made up the former Yugoslavia.

With Tito's death, instead of a successor being established, a collective presidency was determined in which the leadership would change each year among the six republics. However, this system did not work. It soon became clear that "they did not have the charisma, background, legendary personality and the extraordinary record of having been part of the Soviet bloc and being the only leader of a country to leave that bloc and to chart a neutral course with the support of the Western states. By 1991, it became clear that the system in which the leadership changed hands once a year would not continue to work in the ethnically diverse federation"[21].

That's when tensions started, but it all came to a head when"Croatia and Slovenia held referenda on independence in December 1990, resulting in overwhelming votes in favor of secession from Yugoslavia. The two republics declared their independence on 25 June 1991. Two days later, on 27 June, the Yugoslav National Army (JNA) attacked the Slovenian militia. Slovenian officials announced that a "state of war" existed and appealed for international assistance" [22].

---

[18] NELAEVA, G. (2011): Establishment of the International Criminal Tribunal in the Former Yugoslavia (ICTY): Dealing with the 'War Raging at the Heart of Europe' Romanian Journal of European Affairs, Vol. 11, No. 1. Page 101

[19] BASSIOUNI, M. C. (2017): Investigating War Crimes in the Former Yugoslavia War 1992–1994: The United Nations Commission of Experts Established Pursuant to Security Council Resolution 780 (1992). Page 5-6

[20] Ibidem. Page 5-6

[21] Ibidem. Page 6

[22] Ibidem. Page 27

In contrast to the war in Slovenia, "the war in Croatia was bloodier and more protracted. Between August 1990 and April 1991, there were frequent clashes between Croatian units and Serbian paramilitary forces. In late June 1991, Serbian irregular forces, with the help of the JNA, launched an attack on Osijek, in eastern Croatia. By mid-July, 1991, the JNA had redeployed its troops to Croatia, ostensibly to separate the warring factions. Nevertheless, the fighting rapidly escalated"[23].

Croatia and Slovenia were not the only ones to enter into conflict with Serbia. The conflict quickly led to Bosnia and Herzegovina. In December 1990, "Alija Izetbegović's Party of Democratic Action (Stranka Demokratske Akcije or SDA) came to power in BiH, gaining eighty-six seats out of the 240 member assembly. The Assembly generally represented BiH's population as a whole. The party of Bosnian Serbs (Srpska Demokratska Stronka or SDS), headed by the psychiatrist Radovan Karadžić, gained seventy-two seats, and the party of Croatian Democratic Union of Bosnia and Herzegovina (HDZ BiH) took forty-four seats. Thus, the Assembly was 41% Muslim, 35% Serb, and 20% Croat. However, despite this "government of unity," the centrifugal forces that were tearing the rest of the nation apart appeared in BiH as well"[24].

I have tried to show the conflicts encompassing the Yugoslav war in a general perspective, although I am aware that I have not included many relevant events in the war. My aim with this section is to express the complicated ethnic and social situation that was found throughout the territory, and why a memory system is necessary and very relevant for these groups that suffered repression during the war.

To conclude this section, I think it is important to emphasise that the crimes that comprise this war were committed by individuals and most of them "they were part of policies and practices that political and military leaders developed or allowed to develop. That was why the offenders had to be prosecuted individually and their leaders needed to be criminally tried for their command responsibility. The pursuit of justice in an area that felt historically aggrieved was indispensable not only as a deterrent to future crimes and as a vindication of the victims, but also because without justice, there can be no peace"[25]. I think this last quote sums up the conflict and the reason why the construction of an ad hoc tribunal to try the perpetrators of this war was necessary.

Rwanda

Having clarified the main points of the war in the former Yugoslavia, in this section I will set out the main keys to the Rwandan genocide. In this case, the first thing to point out is that we are dealing with a genocide, not a war, a fact that makes it different from the case of the former Yugoslavia from the outset. The fact that the genocide was carried

[23] Ibidem. Page 27-28
[24] Ibidem. Page 32
[25] Ibidem. Page 60

out in the same country is also a major difference with respect to the different republics that made up the former Yugoslavia, each of which claimed its own independence.

As we have seen in the case of the former Yugoslavia, this conflict did not happen overnight. In order to better understand why and when the genocide took place, it is necessary to have some background knowledge of the political/social situation in Rwanda. Violence broke out in 1959, "in the early 1960s, in 1973, and at several points in the early 1990s. In each case, the violence had a similar character to the 1994 genocide"[26]. In each of these cases the Tutsi civilian population was attacked and, in some cases, massacred, but not as intensely as the 1994 genocide. It is important to note that "during most of the forty years of Rwandan history preceding the genocide, ethnic peace or an absence of ethnic violence was more common than ethnic killing. The same is true for ethnic ideologies: public calls for Hutu nationalism emerged and receded in different periods"[27].

If there is one thing remarkable about the Rwandan genocide, it is the speed with which the conflict escalated. This was largely because the authorities gave their blessing and encouraged the Hutu population to commit genocide "the dynamics of violence in 1994 gathered momentum and rapidly swept across the areas of the country not yet in rebel hands. Opposition to the killing was quickly overwhelmed, and Tutsis were killed in massive numbers over a relative short time, as we have seen" [28].

Initially, there was some resistance to following the tide of violence that was being generated in regions where there was political opposition, but this opposition soon disappeared. Throughout this process, "the role of the national state, then under the hardliners' control, was critical. Rather than serving to calm tension and stand between conflicting parties, the state bore down on the side of the violent. The state stoked, reinforced, and legitimized the massacres. The state made killing Tutsis synonymous with authority and "law." The state made killing Tutsis the order of the day"[29].

Although this is a brief explanation of the conflict, I believe it concisely captures the genocide to which the Tutsi were exposed. In the aftermath of what happened, and with the creation of the ICTY as a reference point, the need to create an ad hoc tribunal especially for the Rwandan case was clear.

Background history of both tribunals

In this section, I will describe the process of the creation of both tribunals. The legal decisions and social movements that led to these courts being created and functioning as

[26] STRAUS, S. (2013): The Order of Genocide: Race, Power, and War in Rwanda. Ithaca, NY: Cornell University Press. Page 175
[27] Ibidem. Page 175
[28] Ibidem. Page 199
[29] Ibidem. Page 199

they did. I will divide the section into two sub-sections, in order to analyse the case of each of the tribunals separately.

ICTY

I will begin with the case of the International Criminal Tribunal for the former Yugoslavia. One might think that, after the crimes committed in this conflict, the creation of a tribunal to judge the crimes committed would be immediate, but it was thanks to the initiative of many people and entities that this tribunal was created. To mention one movement outside the international institutions, it is worth mentioning, "Women's rights networks were prominent in the process of creating the ICTY"[30].

In the spheres of international institutions "at the international conferences held in 1992 in London and Geneva that the idea of an international tribunal began to circulate. An important point of the discussions was the moral responsibility of the international community to put an end to atrocities comparable to those committed during WWII" [31].

But the proposal for the creation of a court did not come about until the "on 16 August 1992, a conference on Former Yugoslavia was held in London, and the German Foreign Minister Klaus Kinkel, jointly with the French Foreign Minister, Roland Dumas, proposed creating a Tribunal"[32]. This proposal initiated all preparations for the creation of the ICTY.

Next, the "Commission of Experts was established, charged with the investigation of human rights abuses committed during Yugoslav conflict. Despite the fact that the Commission faced a number of difficulties, such as insufficient financing, lack of qualified experts, Commission's reports and the information it was able to collect (exhumation of mass graves, interviewing the victims) played an important role in the process of creating the Tribunal and in preparing first indictments" [33]. It is important to mention the work of this commission, because thanks to them, human rights abuses began to be collected, which the court then used for the cases.

This whole process leads up to 3 May 1993, where the UN Secretary General presents a report on the question of setting up an international tribunal to try those most responsible for violating international humanitarian law in the territories of the former Yugoslavia. The report, "contained a draft Statute for the tribunal, prepared by a UN Office of Legal Affairs working group (which collected states' suggestions, as well as proposals from the

[30] NELAEVA, G. (2011): Establishment of the International Criminal Tribunal in the Former Yugoslavia (ICTY): Dealing with the 'War Raging at the Heart of Europe' Romanian Journal of European Affairs, Vol. 11, No. 1. Page 101
[31] Ibidem. Page 101
[32] Ibidem. Page 104
[33] Ibidem. Page 105

NGOs). The draft statute was presented to the UN Security Council and adopted unanimously"[34].

The moment the statute is accepted, the International Criminal Tribunal for the former Yugoslavia is officially born. From this moment on, the process of establishing the workers and the distribution of functions to be carried out within the tribunal began. It is important to highlight that the creation of this tribunal was a long process, but with a lot of support from different institutions and social movements that saw the need for the creation of this tribunal, after the crimes committed during the war.

Establishing the Statute is necessary, because thanks to it, we know the competences of the tribunal, which cases will be judged and how they will be judged. This statute, once it enters into force, also comes into contact with already existing norms of international law. The ICTY's Statute required a "connection with an armed conflict for the prosecution of crimes against humanity, and it did not include any reference to a widespread or systematic attack. The ICTY subsequently held, however, that the nexus with armed conflict, while a requirement of the ICTY Statute, was not part of the customary definition of a crime against humanity. It also held that the customary definition of crimes against humanity required that the enumerated acts be committed as part of a widespread or systematic attack" [35]. In this way, thanks to the Statute, the court has been able to deepen or rather adapt concepts of international custom to the cases before the court.

ICTR

In this section I will delve into the process of the establishment of the International Criminal Tribunal for Rwanda. The first thing to make clear is that both the ICTY and the ICTR are entirely distinct and independent ad hoc tribunals. In this way he expressed himself "on 28 July 2003 Mr. Kofi Annan, the UN Secretary General, had written to the Security Council, asking for separate prosecutors for the ICTR and ICTY. He said separating the job was in the interest of efficiency and effectiveness as the courts attempt to complete their work by year 2008 as requested by the UN Security Council"[36].

In the case of Rwanda, it was widely accepted that what happened amounted to genocide, and having the ICTY process as a background, the process of creating the ICTR was not so complicated. Based on the ICTY Statute, the ICTR Statute was written. However, it was not possible to fully replicate the Statute, as both tribunals were faced

[34] Ibidem. Page 105
[35] FORD, S. (2019): The Impact of the Ad Hoc Tribunals on the International Criminal Court. In M. Sterio & M. Scharf (Eds.), The Legacy of Ad Hoc Tribunals in International Criminal Law: Assessing the ICTY's and the ICTR's Most Significant Legal Accomplishments. chapter, Cambridge: Cambridge University Press. Page 314
[36] ICTR Newsletter. Vol. 1, No. 5, October 2003. Page 1

with territory-specific casuistry. That is why "the ICTR Statute also added a requirement that all crimes against humanity be committed with a discriminatory motive. The ICTR subsequently held that this motive requirement, while required for prosecutions under the ICTR Statute, was not part of the customary definition of crimes against humanity"[37]. This is due to the nature of the genocide committed in Rwanda.

Common ground ICTY and ICTR

The creation of these two tribunals was revolutionary for international law, especially for the United Nations, which "never before had the Security Council created new international institutions through the exercise of its powers under Chapter VII of the United Nations Charter. The resulting courts were far from perfect, but the creation of the ad hoc tribunals demonstrated that international criminal justice was possible"[38].

The similarities that both courts share does not only lie in the organ that created them, or in the Statute of each one. The reality is that, in certain cases, they share a common form of action, as is the case with the transfer of cases to the national justice system. Although they still had "primacy over national jurisdictions, procedures were put in place to ensure that only the most serious cases came before them while cases of lower gravity or involving less responsible accused would be referred back to national systems. In this sense, the ICTY and ICTR eventually developed a division of labor with national systems" [39]. This is beneficial, because in this way, apart from reducing the workload, international courts begin to build a communicative relationship with national courts.

How they function

In order to better understand the functioning and especially the competences of both courts, I will analyse certain articles shared by both courts in their Statute. In this way, the role of both tribunals will become clearer during their activity.

The first article I want to analyse corresponds to article 6 in the ICTY Statute and article 5 in the ICTR Statute:

> ***"The International Tribunal shall have jurisdiction over natural persons pursuant to the provisions of the present Statute"***[40]
> ***"The International Tribunal for Rwanda shall have jurisdiction over natural persons pursuant to the provisions of the present Statute"***[41]

[37] FORD, S. (2019): The Impact of the Ad Hoc Tribunals on the International Criminal Court. In M. Sterio & M. Scharf (Eds.), The Legacy of Ad Hoc Tribunals in International Criminal Law: Assessing the ICTY's and the ICTR's Most Significant Legal Accomplishments. chapter, Cambridge: Cambridge University Press. Page 314-315
[38] Ibidem. Page 310
[39] Ibidem. Page 321
[40] Statute of the ICTY
[41] Statute of the ICTR

These two virtually identical articles determine the jurisdiction of the courts. This statement is extremely important, since it recognises the competence of both courts to try individuals in their court. Not all, and especially not the accused who are tried by the court recognise the jurisdiction of the court. In the case of the ICTY, there is the famous case of Slobodan Praljak, who after pleading not guilty and declaring that he did not recognise the court's competence to try him, committed suicide in front of the court. There are many cases, not as extreme as that one, in which defendants claim that they do not recognise the court's competence to try them. This is why these articles are important, because they protect the court against any such allegations.

Closely linked to the previous articles are Article 7 in the ICTY Statute and Article 6 in the ICTR Statute which deal with the Individual Criminal Responsibility of the accused. In this case I will only include one version of the articles, as they are identical in both Statutes:

> ***"1. A person who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in articles 2 to 5 of the present Statute, shall be individually responsible for the crime.***
> ***2. The official position of any accused person, whether as Head of State or Government or as a responsible Government official, shall not relieve such person of criminal responsibility nor mitigate punishment.***
> ***3. The fact that any of the acts referred to in articles 2 to 5 of the present Statute was committed by a subordinate does not relieve his superior of criminal responsibility if he knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.***
> ***4. The fact that an accused person acted pursuant to an order of a Government or of a superior shall not relieve him of criminal responsibility, but may be considered in mitigation of punishment if the International Tribunal determines that justice so requires"***[42].

Thanks to this article we are able to determine which individuals will be brought to trial before these tribunals. Above all, as both cases are conflicts with a high level of citizen participation and the presence of militias, the third and fourth sections of this article are really important, given that they include the possible perpetrators in an accurate way. Of particular note is the reference to the fact that following orders is not an exoneration for atrocities committed. Thus, despite not being a high-ranking individual within the government or the military, they will have to face the consequences of their actions in the conflict.

Finally, to conclude this analysis, I find it important to note Article 7 of the ICTR Statute and Article 8 of the ICTY Statute, as these articles set out the territorial and temporal

[42] Statute of the ICTY

jurisdiction of the tribunals. As these tribunals are ad hoc tribunals, it is very important to determine this jurisdiction in order to protect both the proceedings of the tribunal and the persons under investigation who will be tried.

> ***"The territorial jurisdiction of the International Tribunal for Rwanda shall extend to the territory of Rwanda including its land surface and airspace as well as to the territory of neighbouring States in respect of serious violations of international humanitarian law committed by Rwandan citizens. The temporal jurisdiction of the International Tribunal for Rwanda shall extend to a period beginning on 1 January 1994 and ending on 31 December 1994"***[43].
>
> ***"The territorial jurisdiction of the International Tribunal shall extend to the territory of the former Socialist Federal Republic of Yugoslavia, including its land surface, airspace and territorial waters. The temporal jurisdiction of the International Tribunal shall extend to a period beginning on 1 January 1991"***[44].

As we can see, both articles are very similar, and both perfectly fulfil the purpose of determining the territorial and temporal jurisprudence of the courts. Differences between the two articles are, on the one hand, that in the case of the ICTR the territorial jurisdiction also includes acts committed in neighbouring countries, due to the persecution of the Tutsi by the Hutu in neighbouring countries. Similarly, in terms of territorial jurisdiction, the ICTY article differs from the ICTR in that it includes the territorial waters of the countries that made up the former Yugoslavia. Finally, with regard to temporal jurisdiction, the article establishes a start and end date, thus limiting the tribunal's investigation to acts committed in the territory within a 12-month period. This limits the work considerably, but the logic is understandable, insofar as the purpose of the tribunal is to judge the genocide that took place in just over 100 days. By contrast, for the ICTY the temporal jurisdiction has a beginning, but no end. This is understandable given the number of different conflicts that were taking place simultaneously and in a staggered manner in different territories.

As this chapter has shown, both the conflict in the former Yugoslavia and the Rwandan genocide are very complex cases in which many factors play a part. My aim with this chapter is to provide a basic understanding of both the conflict and the tribunals. Having analysed the establishment of both tribunals and key articles of their Statutes, I am confident that I have conveyed general notions of the tribunals. I know that the courts make judgements, however, in this paper I will focus on how the courts' actions or omissions affect very important transitional justice issues.

[43] Statute of the ICTR
[44] Statute of the ICTY

CHAPTER 3. TRIBUNALS AND MEMORY

In this chapter I will discuss the involvement of both the ICTY and the ICTR in the construction of collective memory, one in the countries that previously belonged to the former Yugoslavia, and the other in Rwanda. As we have seen in the previous chapter, when analysing the concepts of transitional justice and especially collective memory, it draws on many resources to construct a rhetoric and eventually a memory.

I stress once again that these are ad hoc tribunals in which individuals are judged for committing crimes. They do not try states, or political/military groups as a whole. That is why they do not hand down sentences condemning an act committed by a state as the ICJ can do. Rather, in order to obtain information on the involvement of both courts in the shaping of memory in both cases, rather than on the final judgement, we must pay attention to the actions and omissions of the courts in order to get a broad picture.

Because of this need, in the first section of this chapter, I will first focus on an overview of the proceedings of both tribunals, analysing not only the elements that they have in common and that they share with most international tribunals. I will then focus on how each tribunal has dealt with this issue, and specific cases, or what other organisation they have relied on in order to positively influence the construction of collective memory in both the countries formerly belonging to the former Yugoslavia and Rwanda.

Overview of the memory proceeding of both courts

In this section, I will analyse how both tribunals have contributed to the construction of memory in each of the territories under their jurisdiction. I will begin by outlining the responsibility that both share with international law in this regard, and how they dealt with it during the tenure of both tribunals. I re-emphasise that, above all, the function of the tribunals is to try the perpetrators of both the war crimes in the Yugoslavia war and the Rwandan Genocide. However, the implication and influence that both tribunals have on each of the societies is indisputable, and it is precisely this that I come to analyse in this section from the perspective of memory.

In previous chapters we have discussed the different ways in which memory can be interpreted. However, to start with this section, I will begin by referring to the Rome Statute, and how its preamble leads us to the conclusion that "International criminal law is thus at the core of the emerging global collective consciousness and international prosecutions of offences such as genocide 'activate' this consciousness"[45]. It is true that

[45] AKSENOVA, M. (2017): The Role of International Criminal Tribunals in Shaping the Historical Accounts of Genocide. In U. Belavusau & A. Gliszczyńska-Grabias (Eds.), Law and Memory: Towards Legal Governance of History (pp. 48–69). chapter, Cambridge: Cambridge University Press. Page 51

creating awareness is not synonymous with creating memory, but it begins the journey of the duty they have towards citizens and how that leads to the obligation of a direct connection with them.

As we have observed in the previous section, the statutes of both courts are very clear as to their jurisdiction and competences. This is also very important for this area we are going to analyse, given that "legal identity provides the basis for establishing the credibility of its social counterpart. An international judgment must follow the rules accepted within its own discipline to be perceived as legitimate and gain wider traction as a communicative symbol" [46]. In this case, if neither the ICTY nor the ICTR had credibility and their actions were not accepted by the communities they focus on, the memory-building process would find itself without the necessary backing to thrive.

The involvement of the courts in the creation of the collective memory of these societies is understood as one more tool that this society can have at its disposal to reconstruct its history. It is worth mentioning that this process takes place in times of transition, which is where we find ourselves in both courts when they begin their proceedings. The moment of rupture in the society denotes the "collapse of a shared collective identity rooted in political, cultural, and historical reality. It is, then, the law that is vested with the task of recreating this lost identity by sacrificing individual rights to the societal interest in establishing a historical record"[47]. After gathering so much information about the conflicts in preparation for the trials, the database of these tribunals is one of the most comprehensive resources for creating a rhetoric about the most important facts of the conflicts and on the basis of these facts to create a collective memory.

This reflection is not simply a personal conclusion, but we have examples in international law to back up the above. The UN Secretary General, in his 2004 report to the UN Security Council, "generously summarised multiple objectives of international criminal justice and named setting the historical record of events as one of the purposes of international trials. Academic literature also does not shun away from this goal: there is an opinion shared by some scholars that international criminal law serves as a medium for communication of a certain narrative of historical truth"[48]. Thus, after these explanations, the involvement of tribunals of these characteristics in the construction of the collective memory of the community in which they are exercising, beyond their duty to judge individuals, is proven.

As a final note, it is important to highlight that this process is also influenced by the legacy that the court leaves behind, when a large part of society evaluates it positively and, in this way, attaches great value to it. Sociological legacy thus relates to "normative legacy in that relevant audiences are more likely to view a tribunal's work positively when the tribunal adhered to appropriate moral and legal norms. However, perceptions of a tribunal's work may be more or less positive than the work itself merits for all of the

[46] Ibidem. Page 51
[47] Ibidem. Page 53
[48] Ibidem. Page 54

many reasons that perceptions often fail to reflect reality, including, for instance, confirmation and implicit biases"[49].

The case of the ICTY

After this appreciation of the involvement of the courts in the formation of a society's memory, I will focus on how each of the courts has been involved individually. In this first section I will focus on how the International Criminal Tribunal for the former Yugoslavia has influenced the creation of the collective memory of the countries that belonged to the former Yugoslavia.

First of all, it should be emphasised that tribunals, whether domestic or international, that rule on massive human rights violations cannot avoid a process of interpreting history, especially with all the evidence collected for the trials. The nature of collective violence, such as genocide, "requires establishing the context, therefore inevitably inviting determinations of historical significance. Secondly, international courts, such as the ICTY, are better suited to fulfil this objective than their domestic counterparts"[50].

To go more deeply into the ICTY casuistry, we have the example of the Dražen Erdemović case. In its first sentencing judgment in Erdemović, "the ICTY Trial Chamber underscored its truth-seeking mandate as complementary to its primary duty to prosecute and punish […] to emphasise its role in establishing the truth based on reliable and credible evidence. The argument in Erdemović was that discovering the truth about the evil perpetrated in the former Yugoslavia was fundamental for reconciliation and rebuilding the rule of law"[51]. In this way the court is involved in clarifying the past, with the obligation placed on the perpetrator to tell the truth about what happened. As a result of this, the ICTY succeeded in getting Dražen Erdemović to be "the first person openly to admit taking part in the Srebrenica massacre"[52].

Through the evidence presented in the trials, the ICTY has built up a solid inventory of the crimes committed in the war in the former Yugoslavia. This record includes: "testimony of victims, witnesses, and the accused; video footage; expert reports (such as

[49] DEGUZMAN, M. M., (2021): Mixed Messages: The Sentencing Legacy of the Ad Hoc Tribunals, in THE LEGACY OF AD HOC TRIBUNALS IN INTERNATIONAL CRIMINAL LAW: ASSESSING THE ICTY'S AND ICTR'S MOST SIGNIFICANT LEGAL ACCOMPLISHMENTS (Milena Sterio & Michael P. Scharf eds., Cambridge University Press 2019)., Temple University Legal Studies Research Paper. Page 271

[50] AKSENOVA, M. (2017): The Role of International Criminal Tribunals in Shaping the Historical Accounts of Genocide. In U. Belavusau & A. Gliszczyńska-Grabias (Eds.), Law and Memory: Towards Legal Governance of History (pp. 48–69). chapter, Cambridge: Cambridge University Press. Page 55

[51] Ibidem. Page 54

[52] TRAHAN, J. (2019): Examining the Benchmarks by Which to Evaluate the ICTY's Legacy. Page 38

DNA or ballistics reports); artifacts (such as hand ligature and blindfolds); recordings of intercepted conversations; forensic evidence (as to mass graves and re-burials of mass graves); and aerial surveillance images. This evidence is analysed in the Tribunal's judgments, and trial proceedings can be viewed in documentation centers, such as the one established by Sense News at the Srebrenica-Potočari Memorial"[53]. This is important because it demonstrates society's use of ICTY resources for the construction of collective memory.

We do not only have to look at the inventory collected to observe the ICTY's involvement in the construction of the memory of the different societies. The ICTY, through its trial and appeals chamber judgments, "also created an extremely comprehensive body of jurisprudence on the elements of genocide, war crimes, and crimes against humanity, as well as modes of individual and command responsibility, and other aspects of international criminal law"[54]. Creating this jurisprudence helps above all in the recognition of the elements necessary to classify an act as genocide, or activity against humanity, and this influences the recognition of the facts and the victims.

However, there has to be an intentionality on both sides, in the construction of collective memory. On the part of the ICTY there must be an intentionality (although at times it may be indirect) to participate in the construction of memory. On the side of the society that is carrying out this process of memory building, there must be an intentionality to accept the veracity of the facts granted by the court, and to act accordingly. As we will see below, this has not always been the practice. Survey results about whether the "public believes that crimes adjudicated by the ICTY actually occurred also reveal poor results, with an ethnic component to the findings. For example, as to whether crimes were committed in Srebrenica, barely one-fifth of the Bosnian Serb population believe that any crime (let alone genocide) happened in Srebrenica, while two-fifths say that they had never even heard of any such crime" [55].

That is why, although I have emphasised the implications of the court in this area, and how it has been able to make a positive contribution, it is also necessary to convey the reality that this court experienced in terms of memory. Judged by such broader, "socially transformative goals, the ICTY had a mixed record of success, with: (a) contributions made to international peace and security by marginalizing key perpetrators through their indictments; (b) some indications of deterrence late in the life of the ICTY, although none shown in the early years; but (c) probably no evidence that the ICTY's work caused reconciliation. […] there is also no single accepted shared narrative in the region regarding the war or crimes committed, and denial of crimes continues – although these can hardly be blamed on the ICTY, as both would likely require transformation of the political environment, which is not a task one should expect of a tribunal" [56]. Thus, even though the ICTY provided tools, and even implicated itself through its judgments in

[53] Ibidem. Page 37
[54] Ibidem. Page 32
[55] Ibidem. Page 41
[56] Ibidem. Page 44

making available to society tools for the construction of a collective memory, it was not received very positively by the majority of society.

The case of the ICTR

Having analysed the ICTY case, we now turn to the ICTR case, to verify whether we are dealing with the same casuistry or whether there are differentiating elements. A key factor that makes the Rwandan case different from that of the former Yugoslavia is the genocide factor. By this I do not mean that there was no genocide in the territories of the former Yugoslavia, but rather that these acts were part of a war as noted in the previous chapter, and not just genocidal acts as in Rwanda.

It is therefore interesting to see how "the ICTR itself, in Akayesu, affirmed that the massacres committed in 1994 in Rwanda constituted genocide. By recognizing that atrocities perpetrated against Tutsi civilians, and their Hutu sympathizers in 1994, were a crime of genocide and crimes against humanity, the ICTR rendered human dignity back to the survivors of the genocide, who had been robbed of it by the perpetrators"[57]. Testifying in front of international judges makes the survivors pay a final tribute to the victims who did not survive and did not have the opportunity to be in front of these judges. But they do it not only for the victims, but also for their children, whom they want to avoid suffering again what they experienced and for these reasons to punish the perpetrators. They describe that the crimes committed shock the universal conscience, and that they cannot go unpunished, regardless of where they were committed[58]. Through such events, they raise awareness among the population, especially the younger ones who did not live through the horrors of the genocide, and in this way, they help to foster the collective memory of society.

Through its judgments, "the ICTR ruled that command responsibility could not exonerate perpetrators from responsibility for crimes committed by subordinates. This provides a key lesson for future generations"[59]. The justice system has shown great dedication to restoring the destroyed dignity of Rwandans, and this is making people start to believe in a more just and humane world. Women and men from different cultures have, together with the court, pushed for the reality that the Rwandan genocide is not "a genocide carried out by machetes between tribes who have loathed each other for centuries, but rather the design of a military and political elite that sought to maintain its powers through any means, including the extermination of an entire part of the

[57] NSANZUWERA, F.-X. (2005): The ictr contribution to national reconciliation. Journal of International Criminal Justice, 3(4). Page 946
[58] Ibidem. Page 946
[59] Ibidem. Page 948

population"[60]. In this way, it raises awareness and participates in the Rwandan collective memory.

Exercising the courts in specific cases

Although the creation of collective memory is a long process in which the intentionality of remembering an event is conflated with the passage of time, there are different specific actions that help in the process. That is why, in this section, I will analyse specific cases in which the courts actively intervened to promote the collective memory of these territories.

ICTY action

Starting with the activities organised by the ICTY, without a doubt, the programme must be mentioned "Bridging the Gap with local communities". Details of this programme can be found on their website, and it essentially consists of day-long events in which members of the tribunal go to the villages where the most serious crimes were committed. At these events, tribunal members give a presentation on the research gathered for the case being tried at the tribunal, along with the participation of the prosecution, and the crimes alleged in each case.

These events, which take the form of conferences, provide a space in which the presenters have the opportunity to interact directly with the audience, most of whom are those affected by the crimes the court has studied in its cases, to present. This conference gives the opportunity to local community leaders, victims, returnees, legal professionals, law enforcement personnel, journalists, scholars and other members of the public had the opportunity to hear first-hand and ask questions about the Tribunal's extensive work.

Five such conferences organised in five different villages have been recorded: Brčko, Foča, Konjic, Srebrenica and Prijedor. A report has been compiled for each of the conferences, which is very useful for analysing what this interaction between the ICTY and society was like. If we make use of the table of contents of the report for example of the conference that took place in Srebrenica, we can get an idea of what the event was like. The conference was divided into six sessions: introduction to procedure before the ICTY, investigations, indictments, arrest and transfer, Krstić trial and finally plea agreements and sentencing.

However, the section that I am most interested in exploring on this occasion is the question-and-answer session that takes place at the end of the conference. This is the moment when the members of the Tribunal have the opportunity to interact with the

[60] Ibidem. Page 948

society that is the victim of the crimes they have just explained and give them veracity. I would like to pay attention to this interaction between one of the attendees, and a member of the tribunal, in which we can see how the tribunal member offers information to try to change the individual's perspective on the ICTY, and thus be more receptive to the information offered during the conference.

"What is the difference between a Serb criminal and a Muslim criminal (since your goal is to only present Serbs as criminals)?"

Mark Harmon: Well, some of those questions I can't answer. Let me start with what's the difference between a Muslim criminal and a Serb criminal: there is no difference. As to the suggestion that only Serbs are criminals, we categorically reject that. That is not and never has been the view of the Tribunal or the OTP. I want to tell you folks something that may come as a surprise to some of you: we are equal opportunity prosecutors. The first case I had to investigate and to prosecute was a case where the victims were Serbs, and I pursued it with all of my energy for over one year and I got nowhere. The reason I got nowhere was because the evidence was either in the Republika Srpska or it was in Serbia. In 1994 and in 1995, Serbia said, "we are not going to cooperate with you, we don't recognize you". And Republika Srpska said, "we are not going to cooperate with you". We are a court of law that tries cases based on evidence, not speculation, not guesswork. We need witnesses, we need documents, we need physical evidence. So that case I had, I closed it – not because I didn't want to prosecute, believe me, I wanted to prosecute that every bit as much as I wanted to prosecute General Krstić, but I couldn't, because I was hamstrung by the lack of cooperation with the authorities in Republika Srpska and Serbia[61].

In order to better understand this interaction and why I think it is relevant to include it in the study of memory, I must point out that, as I have stated in the previous section, there is a large majority of Bosnian Serbs who deny the genocide in Srebrenica. That is why it is so interesting and important for the collective memory of that region and the victims that the ICTY held this conference not only in that location, but also had the opportunity to interact directly with a variety of people of different ethnicities, who together make up the diverse and complex Bosnian society.

To conclude on the ICTY in this section, I would like to emphasise the words of Branko Todorović (President of the Helsinki Committee for Human Rights in Republika Srpska) in the final section of the conference, in my opinion sums up aptly the situation in the territory in terms of peace, memory and reconciliation, and the ICTY's involvement in it:

Today we had the opportunity to face frightening crimes from our recent past and first of all, I would like to express my condolences to the family members of the victims who are here, to share and express my solidarity with them.

[61] Bridging the Gap Between the ICTY and communities in Bosnia and Herzegovina. Conference Series Srebrenica 21 May 2005. Page 67

Listening to what was said here today, we really have to ask ourselves how to build peace and reconciliation in Bosnia and Herzegovina. It is certain that this question is something that many other peoples who had conflict in their history also faced and these conflicts resulted in tragic and perhaps even greater casualties. Today we see that some of those people are living united in the European Union and that memory or recollection of the worst crimes of Second World War actually is a factor in strengthening their unity because they have gone through a stage when they sat down together in a humane and just way and took a stand on those crimes. And I am hoping that in Bosnia and Herzegovina the time is coming, the time will come when we will discuss the crimes together as crimes regardless of who was the perpetrator and who was the victim because truly the perpetrators are inhumane and victims are just victims - regardless of where they were born, regardless of whether they were men, women or children, and regardless of what ethnic group or religious group they belong to.

I hope that what the Hague Tribunal has done over the past years is a contribution to justice and a contribution to peace and, of course, it is a contribution to the truth and that is why I would like to thank our visitors from The Hague, not only for participating here today but for all the time which they dedicated to investigating, processing the crimes that have taken place. I know that on top of their professionalism, their humanity is also involved in their work[62].

ICTR performance

I have tried to find an event similar to ICTY's Bridging the Gap in the ICTR programme, but have not found anything. The reality is that both tribunals face very different conflicts, as we have seen in the post-conflict situation of the countries that previously belonged to the former Yugoslavia, they have big problems of denial by society of what happened during the war, and also laws against creating memorials, for example. This is not the case in Rwanda; in fact, since 2003, 7 April has been the International Day of Reflection on the 1994 Genocide against Tutsi in Rwanda, established by the United Nations General Assembly. In Rwanda there is no denial of the genocide, and there are many laws and actions by institutions to create collective memory.

It is true that, in the case of Rwanda, collective memory takes place mostly outside of institutions thanks to the Gacaca Courts. These tribunals, as will be studied in the next chapter, are tribunals run by members of society, in which all crimes committed in that locality are tried in the presence of both the victim and the perpetrator. According to the ICTR web site, "more than 12,000 gacaca courts tried more than 1,2 million cases throughout the country"[63]. As identifying behaviour of this type of tribunal in relation to

[62] Ibidem. Page 71

[63] MØSE, E. (2015): The ICTR and Reconciliation in Rwanda. FICHL Policy Brief Series No. 30. Page 2

memory and reconciliation, "is noteworthy that the gacaca courts gave lower sentences if the person was repentant and sought reconciliation with the community"[64].

Being aware of the existence of the Gacaca Courts gives us access to new resources. The Tribunal has its own website, and on it is a digital archive from which you can access all kinds of information about the trials and the parties involved. The mere existence of this archive is a great way to contribute to the collective memory. I would like to highlight one section in particular, within this digital archive, and that is the section on testimonies. They have collected testimonies from survivors, perpetrators, elders and rescuers. In all of them there are recordings available in which the person gives their testimony. Undoubtedly, using this resource contributes very positively to the construction of Rwandan collective memory.

In conclusion, after all that has been analysed, I can say that although memory is not one of the main objectives of either court, both have found ways in which they have influenced the construction of memory in both territories. It is evident throughout the chapter that the most complex work falls to the ICTY, as there are still many differences between the ethnic groups in the different countries, and denial of the past is still a common practice there, the work done by the court may seem somewhat meagre, but it is necessary to understand it within the context in which it finds itself.

As for the ICTR, as I have highlighted above, it does not face the same problem as the ICTY, since the fact that genocide was committed in Rwanda is not in dispute. However, with the existence of the Gacaca Courts, there is a sense that they delegate to them all the actions that they could have taken to advance collective memory. By this I do not mean that they have not been involved in any way; later, in the fifth chapter, I will look at the educational programmes that they promote and which also influence the construction of memory. I simply want to point out that I would have expected them to be more involved, and not to delegate so much to the Gacaca Courts.

[64] Ibidem. Page 2

CHAPTER 4. VICTIMS AND THE ICTY AND THE ICTR COURTS

In this chapter I will study the relationship between victims and the international tribunals of the ICTY and the ICTR. The purpose of this study is to determine whether the tribunals assist in the process of creating victims' memory. The creation of memory "is a dispersed process entailing numerous layers and levels, and entails people sharing past experiences with each other"[65]. This is something that victims do when they testify in court. To study how the courts have arranged for these people to share their experiences and traumas, from the aspect of the person's safety to attend the trial, and how the fact that the person has told their story has been dealt with.

In order to delve deeper into these concepts, I will start by establishing what a victim is. According to the Oxford dictionary definition, a victim is a "a person who has been attacked, injured or killed as the result of a crime, a disease, an accident, etc". This is the definition I will be using during the work when I refer to a victim.

When I talk about the memory of the victims, I mean "a platform for individuals to externalise their memories of shared past experiences with each other"[66]. These spaces are important for victims to express and share with other victims, as well as with people who did not witness the tragedy. In this way, the experiences of these people are recorded for the future, and the events and the feelings and experiences of these victims will not be forgotten. This practice is very widespread, for example in the case of the victims of the Holocaust, where we can see museums and memorials to the victims, many of which contain their testimonies.

It is important to emphasise that collecting the memory of victims is the ultimate goal, but for that to happen, it is also necessary to analyse what the victims' experience is throughout their relationship with the courts. It is normal to think that if victims feel comfortable, they will speak more openly about their experience than if they do not feel supported and listened to, or if they are afraid. That is why I will analyse not only the memory, but also how victim care is configured in both courts.

Having explained the fundamental concepts that will guide this chapter, I will now proceed to set out the parts of the paper that will form the basis of this work. I will assess the implications for victims of testifying in these types of tribunals, and how the issue of victims' memory is dealt with in these tribunals.

---

[65] THORNE, B. (2021): Liberal international criminal law and legal memory: deconstructing the production of witness memories at the International Criminal Tribunal for Rwanda. Journal of the British Academy, 9 (2) Page 148

[66] Ibidem. page 145.

Legislation in the ICTY and ICTR on victim testimony

Before going in depth into how these two tribunals regulate the care of victims during their appearances at trial, I would like to dwell for a moment on what is established by public international law on the memory of victims. In this way we will have a clearer idea of what I am analysing. The "International criminal law-making public what were previously private individual memories is the process whereby powerful actors, such as legal counsels and judges, justify certain outcomes that shape and influence what memories become part of the publicly told collective legal story"[67]. Scholars who have analysed legal witnesses from a legal perspective and human rights norms argue that courts contribute on an individual level by allowing witnesses/victims to come to terms with the past, and on a collective level, by collecting the testimonies of so many witnesses, they facilitate the collective memory of mass violence in these cases[68].

Having made this specification on the matter, we will now go into how both courts regulate the intervention of witnesses in judicial proceedings. In both courts, the ICTY and the ICTR, the confidentiality of witnesses is regulated. This is very important, as many victims are afraid that something could happen to them and their families if their perpetrator or people close to them know that they have testified at their trial. In the case of the ICTR this right is set out in Article 21. Under "Rule 69, either party can apply to trial chamber for this protection. Once again, the trial court had to decide the appropriate time frame for disclosing witness identity"[69].

In addition to victim confidentiality, there are many other measures and aids that are provided to those who are going to testify, so that victims feel they are in a safe space. For example, "Rule 75 (B)(iii) of both the ICTY and ICTR states that a chamber may order appropriate measures such as one-way closed-circuit television. This would allow the witness to testify outside of the courtroom without seeing the accused while still allowing the accused and the chamber to monitor the witness. However, this approach was never really used by the ICTY"[70].

Although so many measures have been taken to make victims feel safe and secure, the moment of their testimony can be a very uncomfortable time. This is because they have to recount and, in some ways, relive their trauma. At this point, another type of victim memory comes into play, and that is that the victims' memories will be brought into play in order to get the most truthful narrative of the events. This can make victims feel cornered.

Because their testimony reflects whether they have had the opportunity to speak out and tell their story, or whether they have not had the opportunity to tell their story, and have

---

[67] Ibidem. Page 148
[68] Ibidem. Page 148
[69] MCLAUGHLIN, C. (2007): Victim and Witness Measures of the International Criminal Court: A Comparative Analysis. The Law and Practice of International Courts and Tribunals. Page 192
[70] Ibidem. Page 201

not felt heard. That is why I want to analyse this transcript, which has been collected from the ICTY archives, in order to get a sense of what it was like to testify in a trial of this kind:

A. I can't really say. Perhaps at that time it slipped my memory. Perhaps simply it just came. I don't know.
Q. Today when the Prosecutor asked you about Kovac's mother, you said that she never came nor did she ever bring food. Is that correct?
A. It is, yes.
Q. Also on the 5th of April this year, in the cross-examination on page 1805, when I asked you, "Did Kovac's mother ever come and bring food to you?" your answer was that you could not remember.
A. Yes. Yes. I don't remember his mother—I don't remember Klanfa's [*sic*] mother ever coming to us.
Q. So what is correct, what you're telling me or what you told the Prosecutor, "I don't remember," or, "She did not come"? Which is correct?
A. She did not come.
Q. Then on the 5th of April, why did you tell me that you did not remember if she came?
A. Well, perhaps it was my fault, perhaps the way I pronounced those words, but both times it meant that that woman really did not—I mean, Klanfa's mother did not come to the flat.
Q. **Let me refresh your memory. It was not your fault**. During the cross-examination with me on the 5th of April, you answered, "I don't remember," 49 times to my questions, and today you answered all those questions specifically. You did give answers to all those questions. So—
A. And what do you mean by that?
Q. **I'm merely telling you how you're answering the questions, and what I think about that I shall say in my closing argument. It has nothing to do with you.**
A. ***If I say, "I don't remember," it means I do not remember. And if I say "No," then that means no.***
Q. Yes, but on the 5th of April, you told me, "I don't remember," and to the Prosecutor today, you answered, "No."
A. Quite.
Q. So will you please explain why? Why did you say, "I don't remember," then and now you said "No"?
A. This difference—I don't know. ***I don't really know what to say.***
(Ms. Kuo cross-examining Witness 87, Case No IT-96-23-T and IT-96-23/1, *Prosecutor v Drajoljub Kunarac et al*, 23 October 2000, English transcript, pp. 6120–23, emphasis mine.) [71]

The parts that are underlined are the parts that the author of the article I have consulted highlights as important to frame the terms used during the trial. In this way we will be aware of the victims' lived experience.

When the interrogator says 'Let me refresh your memory', he or she is saying this in order to be able to restate in court the answers that the interrogator has given on previous occasions, but also to talk about the capacity or the state of the victim's memory in this case. Testifying implies that "that testimony (and in effect, memories), once given, becomes the property of the court as the witness's own knowledge of it can be declared suspect" [72]. After so many questions, the only thing the witness does is to define his testimony by repetition and, as we can see from this extract, also to show confusion. These are attitudes that the interrogator strategically brings out, to show that the victim's memory is not to be trusted, and therefore should not be feared in the deliberation of the sentence being discussed for the perpetrator.

As we see in the extract, the appointment of the tribunal and the use of witnesses and their testimony, whatever they say is used ""for" something (closing argument) that belongs in the realm of the court only ("it has nothing to do with you") demonstrates that

[71] PERRIN, K. (2016): Memory at the International Criminal Tribunal for the former Yugoslavia (ICTY): Discussions on Remembering and Forgetting within Victim Testimonies. East European Politics and Societies, 30(2) Page 282
[72] Ibidem. 283

this exchange contains more than strategic attempts to discredit memories"[73]. The purpose is clear where "the court's functions do not simply outweigh witness testimonies, but simultaneously claim to be the true originators of the witness role as well as the vehicle through which this role is ignored" [74].

After this, we can extract that in this example the two needs that clash with each other are very well framed. On the one hand, we have the needs of the court, which is to collect as much information as possible about the cases, and therefore the experiences of the victims are just one more instrument that they must use to achieve the goal of whether or not to convict the people they are judging. On the other hand, there are the needs of the victims. The victims want what they have experienced not to be repeated, they want what happened to be recorded for posterity so that it does not happen again. This is why many post-conflict communities have the need to record the memory of the victims.

Victims' reparation

A major incentive for victims to decide whether or not to testify at trial is that, with their testimony and other evidence, they can convict the perpetrator. As part of the conviction, there is also victim reparation, whereby victims can move on, or at least receive material recognition of the veracity of their story, which they have been holding on to.

As part of the reparation benefits, victims and their families can be compensated for the terrible acts that have been committed against them. This is not "only aids the victims, but it is an extra punishment against the convicted criminals. Another benefit is that it allows victims to feel whole again"[75]. There is the sociological and psychological factor, in which if victims know that "reparations can be received, they may be more willing to leave their families in the hopes that they will be compensated for the crimes committed against them"[76]. Importantly, this reparation is not only of benefit to the individual victims and their families, but can also help the countries in which these atrocities have been committed. The "infusion of money into these countries can free up funds needed by the government to repair the country or region. Second, reparations may give more legitimacy to the Court as it seeks not only to put criminals in jail, but also to care for the victims of terrible crimes"[77].

Real examples of courts applying reparation can be found in the way it is enshrined in their rules. As the "Rule 105 of the ICTY and ICTR states that the trial chamber may

[73] Ibidem. Page 283
[74] Ibidem. Page 283
[75] MCLAUGHLIN, C. (2007): Victim and Witness Measures of the International Criminal Court: A Comparative Analysis. The Law and Practice of International Courts and Tribunals. Page 215
[76] Ibidem. Page 215
[77] Ibidem. Page 216

determine the matter of restitution of property taken unlawfully by the convicted" [78]. This rule allows national authorities to assist victims to recover their property within the national legal system. However, as with many of the other rules discussed in this section, it has not been applied in the judicial system.

Another example is in the "Rule 106 of both Tribunals states that convicted persons are equally responsible for compensation of victims under actions brought in national courts"[79]. Unfortunately, this standard has rarely been used. In Rwanda, national courts have determined lengthy reparations for victims, but lack of funds has made it impossible to do so.

How victims experience testifying at trial

In this section, I will analyse how victims have felt after appearing before these tribunals. This is a crucial point to determine whether they have felt that they have had the opportunity to tell their story, and have felt listened to. Also, it is interesting to know how they felt after testifying, to see if this process helps in the reparation process or not.

This is not a new concept, but it is important to note that this widespread feeling in Rwandan society is one of disconnection from that of the court. For the majority of Rwandans "the ICTR being located hundreds of miles away in Arusha, Tanzania, has meant court proceedings where witness memories are externalised is something they have not experienced"[80].

One indisputable reality is that everyone manages trauma as best they can within their capacity, so the reaction to testifying in court varies widely. Some argue that "the process of testifying may provide healing, closure, or catharsis to help individuals overcome traumatic events"[81]. However, this is only the experience of a few, which is why we will continue to study the various effects of it.

According to a study of victims who testified at the ICTY trials, victims were initially asked a series of questions about their impressions before the trial, with positive and negative statements, and after testifying they answered the same questions. This study demonstrates the changes a person can experience after sharing their trauma in front of a courtroom such as the ICTY. The results were that the interviewees report significantly lower levels of negative affect as compared to positive states both before and after testimony, despite the fact that there were more negative affect state options from which

[78] Ibidem. Page 212
[79] Ibidem. Page 212
[80] THORNE, B. (2021): Liberal international criminal law and legal memory: deconstructing the production of witness memories at the International Criminal Tribunal for Rwanda. Journal of the British Academy, 9 (2). Page 145
[81] KING, K. L., & MEERNIK, J. D. (2017). The Witness Experience: Testimony at the ICTY and Its Impact. Cambridge: Cambridge University Press. Page 128

the interviewees could choose"[82]. Among the list of negative adjectives that respondents could choose from, 'tense', 'forced' and 'confusing' were the most frequently repeated responses.

I think it is interesting to mention that the most frequently repeated feelings are "immediately after testifying, only "obligated" receives higher response rates, along with "exhausted" and "tired" as we might expect given the nature of human reactions to stressful situations"[83]. This does not tell us much, but simply exposes the common effects of trauma when it is verbalised, especially in such a serious and important setting as a trial.

In the following diagram we find the results of a study that was conducted according to respondents' answers about the satisfaction they experience with interpersonal relationships in their community at present and in the future.

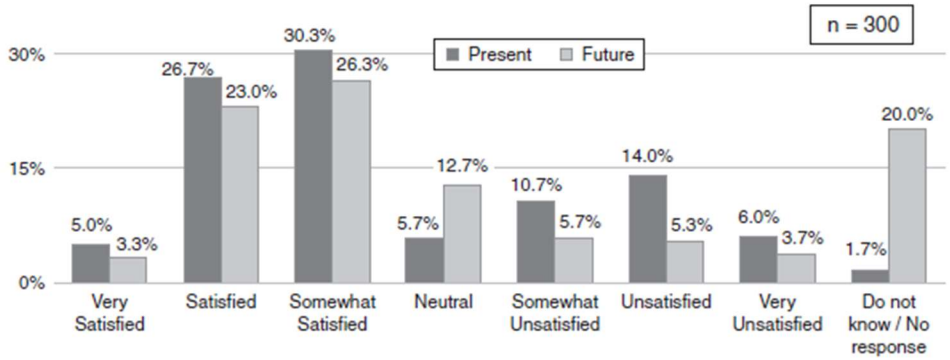

FIGURE 5.13. Satisfaction with present and future interpersonal relations in community.

84

The majority of respondents found that "they are (very) satisfied or somewhat satisfied with the present state of their interpersonal relations in their community (62%), while 52.6% expect to be satisfied in the next two to five years"[85]. This cannot be seen as an indication of a reconciliation process, but it is understandable that by sharing their stories they may have experienced a rapprochement and understanding, and that most are therefore optimistic about interpersonal relations in their community.

If we want to talk about reconciliation, although it is not the aim of the study, certain approaches in this area have been seen, when civil war violence has ended or when individuals accept the right of their former enemies to exist in the same political space"[86].

[82] Ibidem. Page 129
[83] Ibidem. Page 130
[84] Ibidem. Page 140
[85] Ibidem. Page 141
[86] Ibidem. Page 142

It is not a breakthrough, but it is a small step for a society so divided and with such a vivid memory of the past. These slim definitions "of reconciliation also stress the dynamic and multifaceted nature of this concept, which should encourage ongoing analysis over time as well as diverse indicators of reconciliation"[87].

Gacaca Tribunals

The reality is that, in the Rwandan case, citizens felt a great disconnect with the court, which is why they did not feel they had a place to share their story. The ICTR "did not facilitate a platform for individuals to externalise their memories of shared past experiences with each other. In fact, it is not the purpose of international criminal tribunals and courts to be a platform for communities exchanging personal experiences of a violent past with each other"[88]. That is why, looking for information on the history of victims in Rwanda, the most frequently named mechanism is not the ICTR, but the Gacaca tribunals.

The Gacaca tribunals (2002-12) "were used before and during colonialism as a community-based conflict resolution mechanism and were adapted and modernised to try crimes including Genocide and Crimes Against Humanity" [89]. The key to this court is that it includes the participation of the whole community, so that the victim is supported and gets to share his or her story with everyone.

What is important about Gacaca courts is that their purpose is to achieve community reconciliation through victims, witnesses, perpetrators, and with community members having the opportunity to ask questions. In other words, "the example of gacaca illustrates that the absence of plural memories at the ICTR is explicitly related to its discursive conditions and legal norms. In contrast, gacaca for many Rwandans, although not all, allowed the sharing in communities of individual experiences of genocidal violence through localised understandings of justice"[90].

Because these courts are focused on reconciling society, the victims become a cornerstone of the court. In a Gacaca court trial, everyone is present, the perpetrators and their families, the victims and their families, and members of the community. The victim(s) are at the centre of the trial, which is why it is understood that "giving testimony fulfilled a therapeutic role for victims"[91]. By offering this perspective on what it means to testify at trial, the Gacaca courts differ greatly from the other courts we have seen in

[87] Ibidem. Page 143
[88] THORNE, B. (2021): Liberal international criminal law and legal memory: deconstructing the production of witness memories at the International Criminal Tribunal for Rwanda. Journal of the British Academy, 9 (2). Page 145
[89] Ibidem. Page 146
[90] Ibidem. Page 146
[91] EPHGRAVE, N. (2015): Women's testimony and collective memory: Lessons from South Africa's TRC and Rwanda's gacaca courts. European Journal of Women's Studies, 22(2) Page 181

this chapter, as it offers this space that was missing in the other courts, both in the ICTY and the ICTR.

But neither should we be incredulous or simply embrace the belief that providing a space for victims to share their story means that everyone will feel safe to testify in front of the court. The point is that "there is clearly great potential for survivors to feel threatened in an environment in which the audience consists of former genocidaires and/or their families"[92]. This leaves some victims unable to find a safe space in the Gacaca courts to share their story. Ironically, what is most prominent in ICTY and ICTR courts, the safety of victims, is missing in these courts. In Gacaca courts everything is public, so victims and perpetrators meet face to face, and this makes many victims fear for their safety.

In view of this problem, there are some subjects in particular where victims prefer not to give certain testimonies out loud because of their personal content, but prefer to write down their testimony and not have to express what they experienced in front of their entire community. This is especially the case for women who were raped during the genocide. Most of the women "gave written testimony about sexual violence and verbal testimony of other experiences, signifying the shame and stigma attached to rape"[93]. We should therefore appreciate that the Gacaca courts provide this possibility for women or other victims to testify their experiences in this way. Also, from the point of view of memory, having the trauma recorded in writing makes it easier for their story to be preserved over time and to be passed on for generations.

After studying the phases, a victim goes through in sharing his or her story, the conclusion is that collecting victims' memory is not an easy job. It has been pointed out that both the ICTY and the ICTR do not plan in an efficient way how to meet this need of the victims in terms of memory. As for the psychological aspect, we have seen that testifying and sharing their experiences has more positive than negative effects, which is a good sign, since knowing this information will give future victims who have to testify in similar courts a reference point.

As for the Gacaca courts, it must be acknowledged that they do a better job of addressing the issue of victims' memory by providing the space and time necessary for them to share their story. However, we have to keep in mind the issue of security which seems to be the area where the ICTY and ICTR courts have more experience and resources, and that the Gacaca courts, due to their very nature of being a people's court where the whole community is part of it, cannot provide such protection.

[92] Ibidem. Page 182
[93] Ibidem. Page 182

CHAPTER 5. TRIBUNALS LEGACY AND FUTURE GENERATIONS

After analysing how the court has been part of and influenced various essential elements of transitional justice, in this section we will look at projects that both tribunals have implemented outside the courts. These projects are called "The Outreach Program", and their aim is to bring these tribunals closer to ordinary citizens in the territories of the cases they try. By outreach, we mean making them more accessible to citizens.

An important fact to bear in mind is that neither the ICTY nor the ICTR have their headquarters in the country (in the case of Rwanda) or in the countries (in the case of the countries that were formerly part of Yugoslavia) from which the cases they are trying originate. In the case of the International Criminal Tribunal for Rwanda, its headquarters are in Arusha (Tanzania), with various offices around the world. For the International Criminal Tribunal for the former Yugoslavia, its seat is in The Hague. This creates a disconnect between the population and the courts.

It is difficult to identify with or understand the decisions of a court that does not feel close to them, which for citizens is reduced to a series of decisions of a body of which they may have little or no knowledge. Especially in the case of the new generations, who have not witnessed the conflict and all their knowledge about the facts and the people being judged comes from what they have learned at home, or failing that, what they have learned at school. That is why this programme is important.

The courts want to have the support and recognition of the citizens, so that their judgements are not only legally supported, but also socially supported. The courts do not want to become a foreign entity and that is why they have set up these programmes, in order to be able to bring the courts closer to the people.

In other words, “outreach activities are theorised to provide information about the ICTR and thereby increase knowledge and understanding concerning the Tribunal's activities”[94]. These activities are intended to generate a positive reception and opinion of the population for the work of the courts, and serve as a means to contribute to the reconciliation that the courts expect[95].

It is important to emphasise that these programmes are an expected initiative of the courts. It is understood that, within their duties, there is also the duty to make the decisions and functions of the court accessible to all. Their purpose should be to encourage dialogue about the expectations of the court, and to make citizens interested

[94] SCHULZ, P. (2017): ‘Discussing community-based outreach activities by the International Criminal Tribunal for Rwanda’, Journal of Eastern African Studies, 11(2), Page 348
[95] Ibidem, page 348

in both the legal process and the implication of the court's decisions for their daily lives[96].

There are many ways to approach these programmes, it all depends on what the courts want to achieve with it, and how much they want to be involved with the project. In this sense, the writer Victor Peskin differentiates between two types of models in this type of programme: the programme with a transparency model, or the programme with an engagement model.

Types of programmes

The transparency model of outreach: "In the transparency model, the Tribunal seeks to make an opaque process more visible by disseminating basic information about the court and by removing impediments blocking Rwandans from learning about the trial process"[97]. This means that the tribunal should make it easier for the media to cover the proceedings and trials by translating the trials and the tribunal's decisions into the official languages of different territories that are affected by the tribunal's decisions. One way to further this programme model could be to establish information centres in the countries, with free access to publicly available information.

The engagement model "goes beyond informing the public by offering a more comprehensive and multifaceted approach to the outreach challenge"[98]. This type of programme facilitates constant interaction and dialogue between the courts and the citizens to whom they are addressed. This translates into seminars sponsored by the court itself to discuss the judgments and decisions made by the court, with a wide variety of individuals and experts attending these seminars.

In both cases, both the ICTY and ICTR decided to apply the engagement model. They agree that this is the best way to bring the reality of the court to the citizens, providing them with the opportunity to put a face to the body they have heard so much about and not an abstract and intimidating entity[99]. Through public activity and participation, the application of this model is intended to promote critical thinking, along with a more positive attitude among conflict-affected communities.

It is understandable that both tribunals chose this type of model to focus their outreach programme. It allows them to have the necessary proximity to be able to move away from being an abstract entity, and thus to face the problems of

[96] PESKIN, V. (2005): "Courting Rwanda: The Promises and Pitfalls of the ICTR Outreach Programme". Journal of International Criminal Justice, Vol. 3, Issue 4, Page 953
[97] Ibidem, page 954
[98] Ibidem, page 954
[99] Ibidem, page 954

communication and accessibility of continuous contact, which, for example, the seat of the tribunal may have had in countries that have not been the scene of the conflicts.

After acquiring this knowledge, we must cover the study of these programmes separately. This is because each of the courts has its own challenges to face.

The ICTY Outreach Program

We begin with a study of the Outreach Program of the International Criminal Tribunal for the former Yugoslavia. Its way of approaching the population and being able to talk about the functions of the tribunal has been through educational centres. The programme has focused on high school and university students. The Youth Outreach project "has reached nearly 8,000 young people in the former Yugoslavia since its launch in December 2011"[100]. Tribunal representatives delivered "116 presentations to high school students throughout Croatia, Bosnia and Herzegovina (BiH), Montenegro, Serbia and Kosovo reaching over 4,000 students"[101].

At these meetings, the members of the tribunal give a presentation, aided by photographs and videos of the tribunal's proceedings and the testimonies of the most relevant victims that have been witnessed during the trials. In this way, the students are brought closer to the court, and their knowledge of the court is broadened. To be more specific in terms of involvement with university students "of December 2014, 79 lectures have been given at universities across BiH, Croatia, Serbia, Montenegro, Kosovo and the FYROM, reaching nearly 4,000 students"[102].

What is most interesting in terms of analysing the impact this programme has had on the students, who did not witness the war but have grown up with the stories told by family members and teachers, are the essays written by the students. Through these essays, students give feedback on what they thought of the tribunal's presentation, and answer certain questions that they are asked to answer, to reflect on the decisions that the tribunal has had to make over the years, and their perspective on the issues that arise in a process of reconciliation and transitional justice.

As an example of feedback on the work of the court and its procedures, here is the testimony of Albertina Gashi Student, Klina/Kline High School, Kosovo ""I was quite impressed with the presentation. It had a great impact on all of us and it raised our awareness of the work of the ICTY as it provided information that we had never heard before. The presentation helped us better understand the role of the Tribunal as an international court, who the accused persons are and how judgments are delivered for the crimes charged in the indictments. The most moving part for me was the fact that

[100] United Nations, International Criminal Tribunal for the former Yugoslavia: "The Tribunal and the Next Generation: ICTY Youth Outreach Project in the former Yugoslavia: 2011-2014". Page 1
[101] Ibidem, page 1
[102] Ibidem, page 1

about 140,000 persons were killed as well as the fact that millions of people were displaced within and outside national borders. It was also very interesting to see some of the footage from the courtrooms, excerpts from testimonies of victims and guilty pleas of the accused. I think that the work of the Tribunal should become a part of the curriculum in order to improve the understanding of this issue by the students and by society in general""[103].

Thanks to this feedback, and many others that accompany it and broadly share the content of these statements, we can understand how this programme has been received by the students. We can be right when we say that the panel has more than fulfilled the objectives they had set for this programme. The students feel more affinity with the tribunal, and appreciate the decisions taken by the tribunal, of which they did not know the reasoning, or might even have been against certain decisions. It should be emphasised that this programme has not only strengthened the relationship between the court and the population, but has also created a space in which students can reflect on the past of their countries and the people around them. This is one of the keys for transitional justice to thrive, and for reconciliation to work.

In these terms, I would like us to pay close attention to the next piece of writing. It is a text written by Ajla Memić, a student of JU Secondary School of Medicine Tuzla in which her text has been selected among many in a writing competition, promoted by the Outreach program. The students were asked to write a text answering the question: How important are war crimes trials for moving foward after times of conflict?

"*I remember the days when I used to sit on the balcony of my father's house in Kamenica village near Zvornik. I was only five years old. I cannot recall all the images, but some of them are imprinted in my mind forever. Many unfamiliar people milling around the house, confused glances directed at the meadow in front of it. An excavator lifts huge mounds of earth as people dressed all in white with masks over their faces dig carefully with small shovels. I run inside the house, afraid, but also curious. I peek out behind the curtains and see something that was unfamiliar to me at the time: torn and dirty clothing, papers, wires, lighters, small objects like cigarette cases and similar items. None of it made sense to me then. A few years later I am in Srebrenica with my class, we visit a place called Potočari. My gaze first comes to rest on a large fenced area and inside it there are white tombstones lined up side by side, as if whispering to each other. There is silence; no one says a word.*

Now I'm older. I understand. I can make the connection. I can connect the stories about the war and what happened during the war and the crimes, the stories about massacres and graveyards, the stories about Srebrenica and the white tombstones. Everything is just the same as it was in Kamenica a few years ago. Now the images become clearer. It's clear now that the meadow in front of the family house in Kamenica is one of the mass graves. Whose bones were in the grave? Perhaps a close

[103] Ibidem, page 9

relative of my father? My heart tightens and I feel like I cannot breathe. The saddest image also hits me the hardest: the image of a pregnant woman, her child still inside her. The bullet killed them both. It cannot get more tragic than this. I wonder who could have done this. Did they even have a heart? I had a thousand questions and not a single answer. There is nothing but sorrow and sobbing around me. Mothers have come to visit the graves of their loved ones. Here there are graves of children too. The mothers speak of their fathers, grandfathers, uncles, neighbours and friends. I hear an old woman say, "Dear God is there justice? Punish them! Punish the war criminals!" I listen to her and think about courts and justice.

The past, the war and war crimes are linked to our future. It is extremely important that an international tribunal was created and that it tries crimes rather than criminals based on their names. This is fundamental. Some go by the adage "an eye for an eye", but I know that this only leads to society becoming blind and to violence in society. Only those with nothing to lose can gain from violence, but we have something to lose. We have ourselves and we have the generations to come. Social media is rife with comments from young people who are still poisoned by hate. I keep coming across the word "revenge". Revenge can bring us nothing but more suffering. Revenge is always the consequence of a weak and frustrated soul who cannot stand injustice. I would rather hear the word "justice", because a just person is one who is the least susceptible to social unrest. The consequences of war are huge. We have so many victims of violence, crimes, material damage, abuse and rapes…How many mothers are waiting to find their sons and bury them, and how many mothers have died before they were able to bury their loved ones? I think it is extremely unjust for them and their moral and religious values and customs that they were unable to bury their dead with dignity. It is also unjust that these mothers can see that war criminals walk freely through town. Punishing war criminals would bring peace of mind to parents and rest the souls of the dead. How many young women were abused and raped, how many children were conceived and born?

It is tragic to allow such a vile and evil act to remain unpunished and even more tragic to give off the impression that it is allowed because almost no one condemns it. Witnesses of violence go through a very difficult and traumatic experience at trial. They relive everything while testifying. This is why trials should not be made more complicated, or delayed or set aside. What worries me the most is that the consequences of war leave their strongest mark on the children. We are living with scars that are not healing. We were not players in that dirty game, but we are those paying the biggest price. The children who witnessed violence are left with the impression and belief that some violent acts are allowed and accepted by society. Those children cannot make the distinction between what is right and what is wrong. Their psychological and emotional state is frail.

Twenty-one years after the war I am still listening to bickering and arguing. Why? Because hate – one of the consequences of war – reigns on; and because fear also reigns on. Fear is a character weakness of every living being. Many of us are not living our dreams because we are living our fears: the fear of war, the fear of it

happening again. I am afraid when I go to Kamenica and see a memorial plaque that bears the names of 244 victims of war. We are afraid to go to nature camp in Ozren. We are afraid to go on a field trip to Belgrade. Another fear is that there will not be any trials and that faith in the work of the court will be lost. There is fear that there is no justice. By hiding war criminals and their sick acts, by hiding evidence, delaying trials and by remaining silent we are instilling into new generations the idea that all of this is allowed. We are changing their perspective on life and the world.

Young people are leaving their homes, going to faraway lands looking for work. I think that they are also running away from the situation in the country: bankrupt companies, economic collapse, high levels of unemployment, social tension, negative social trends, the rapid rise of nationalism, and the disintegration and frailty of the social order, all consequences of the war. How many refugees and displaced persons went to other countries, abandoning their homeland? They did not leave to escape; they left so that they would not have to live the same thing over again.

Trial judgements for war criminals cannot bring back days, months or years, a lost childhood or the victims, but they can bring hope for a better tomorrow. They can bring back self-confidence for those who survived and brighten my future and the future of new generations. Trial judgements let all those who give themselves the right to break the law know that their arrogant and insolent intentions will be thwarted and punished by taking away their freedom. They also serve as a lesson to all those considering repeating these or similar crimes. A lesson in condemnation and humanity.

If the word Tribunal denotes a term that broadly describes an individual or an institution authorised to hand down judgements and relevant decisions in legal and administrative disputes, meaning legal and administrative bodies created pursuant to specific laws – then let them do their job pursuant to the law. Let them make every effort possible to complete their mandate so that the truth can be established and war criminals punished in order to prevent new conflicts. Otherwise, we will all suffer again and it will be partly our own fault. And the war criminals? They will then always walk free. They will be like our shadow – always beside or in front of us.

Let us not allow anyone's past sins to destroy our future. We must think of our future, because if we do not, we will not have one"[104].

It is not surprising that this paper was selected for the competition, because the key points it makes are very interesting. Starting with the premise of the question, in the text we can see that the student is in favour of tribunals to try war criminals. In fact, he makes a plea for reconciliation and memory, because despite not having witnessed the tragedies, he has seen the consequences of war at first hand, and what he does not want is to relive a similar conflict situation. That is why he understands the role of the tribunal so clearly and supports it. A very beneficial conclusion, both for the

[104] 2016 High School essay writing competition. Pages 3-5

legitimacy of the tribunal and for the prosperity and peace that lies in the hands of the new generations.

Concluding with the ICTY Outreah Program study, I must highlight its educational intentionality. It is clear that they have decided to opt for the path of education, thus collaborating in transitional justice, because they offer students new perspectives that will help them to form their values and contribute in a positive way to the future of the countries to which they belong.

The ICTR Outreach Program

The reason why I want to compare the two tribunals, even in this aspect, is because even though they were created by the same body (the United Nations) the way in which they deal with the issue of disconnection is different. We have seen in the previous section that the ICTY's Outreach programme has focused mainly on schools, on students of all ages, with the aim of clarifying its relevance to future generations. The ICTR's perspective on these issues has been different, and it is precisely this that we will examine in this section.

According to the ICTR report following the "Conference on challenging impunity" on 7-8 November 2006, the programme was divided into the following sections: an information and documentation centre, media interventions, and visits and seminars with journalists, lawyers, human rights defenders and representatives of the civilian population.

Starting with the information and documentation centres, the main one is called Umusanzu mu Bwiyunge, and is located in Kigali, the capital of Rwanda. The others are spread throughout the rest of the country. The centre, "which houses a small library and computers with Internet access, has provided Rwandans with a place to access Tribunal documents and general information about the court"[105]. Through these centres, the court is able to make all existing information available in an accessible way, and provide a safe environment in which to share it with those who are actually affected by the court's decisions, even if only indirectly. They also serve as meeting places for meetings. By having, albeit smaller, such centres throughout the country, they provide the opportunity for many communities to make use of the space, thereby facilitating reconciliation and remembrance activities.

During the war, radio was a key instrument used by the Hutus to propagate their hate speech towards the Tutsi population. The ICTR is aware of the power of the media and, in order to ensure that information about its work reaches the Rwandan population, has included as part of its programme a section dedicated to the media,

[105] PESKIN, V. (2005): "Courting Rwanda: The Promises and Pitfalls of the ICTR Outreach Programme". Journal of International Criminal Justice, Vol. 3, Issue 4, page 956

with a special focus on radio. The idea of the tribunal is to offer a weekly radio programme aimed specifically at the Rwandan audience. The broadcast would consist of "to be broadcast by Rwandan private radio stations, will present 30 minutes of news and analysis summarizing weekly developments in the on-going trials at the Tribunal"[106].

As a consequence of the genocide, many judges died, and the judicial system was dismantled. This has led to special attention being given to include in the programme a special focus on those law students who, because of their studies and careers, have a close relationship with the court.

The key to this initiative aimed at young students is to provide the students with "law students from Rwandan public and private universities to visit the ICTR where they get first-hand information about the work of the Tribunal and current challenges facing international criminal courts"[107]. In order to further promote this initiative, awards were created, the Annual program of research fellowship awards for the National University of Rwanda law student. Every year, "up to six students from the National University of Rwanda spend eight weeks at the Tribunal conducting research for their dissertations and theses about the ICTR jurisprudence and international justice. Staff members from the various sections at the ICTR serve as supervisors for the students' research and as advisors for preparation and defense of their academic theses"[108].

Continuing in the field of education, it is worth mentioning that in 2012 "particular activities covered 13 secondary schools located in different parts of the country, thereby reaching an audience of about 8200 students"[109]. It is interesting to analyse the result of a study that was done on the impact of this initiative. However, before we start, it is important to highlight the fact that "the spread and reach of activities in secondary schools was further impacted and dependent upon Rwanda's Ministry of Education, which selectively and politically motivated decided in which schools the outreach activities could be conducted and in which not"[110]. The study was done by comparing the responses of a group that had participated in the programme with a group that had not taken part in the programme. This way they would know to what extent the activities of the court influence the young people.

The results of the study found that "of the 54 respondents, 42 or 77.8%, claimed to have heard or known about the Tribunal and its work before having participated in the outreach activity"[111]. This is very surprising, given that the court, because of the

[106] NOVOTEL, K. (2006): "The ICTR Outreach Program: Integrating Justice and Reconciliation" Conference on challenging impunity, 7-8 November. Page 3
[107] Ibidem. Page 4
[108] Ibidem. Page 4
[109] SCHULZ, P. (2017): 'Discussing community-based outreach activities by the International Criminal Tribunal for Rwanda', Journal of Eastern African Studies, 11(2), page 351.
[110] Ibidem. Page 351
[111] Ibidem. Page 357

cases it tries, is known to most of the population. It is therefore normal that most of the students knew about the existence of the court beforehand. However, there were "the remaining 22.2% of the sample size of outreach beneficiaries reported that they had not been informed about the ICTR's work prior to having participated in the Tribunal's event, but only learned about it because of the outreach activity"[112]. This exemplifies the disconnection in which many Rwandans live.

Connecting the above, I think it is important to pass on this student's testimony about his experience after receiving the ICTR presentation: ""Initially we thought that the ICTR is unjust but through the presentation [by the outreach unit] we learned that there is justice. We didn't know about the procedures and about the cases before that but now learned about it, which is important""[113]. This kind of testimonies resemble the testimonies we have seen earlier in the ICTY section. Therefore, these testimonies mean that the courts achieved their goal with these talks with the young people. Furthermore, to conclude on this issue, it is worth noting that "81.5% of respondents in the target groups attested that the Tribunal is important for reconciliation"[114]. This is key to the tribunal's interest in advancing the process of transitional justice, and especially in reconciliation, which after such a traumatic event as genocide, is necessary to avoid repeating history.

These are the key elements that make up the ICTR Outreach Programme. As we can see, it is a programme with many aspects, in order to achieve its purpose of leaving a legacy and a good pattern for the next generations. In the next section, we will see to what extent this has been achieved and how much Rwandan society has benefited from all these projects.

Problems implementing the ICTR Outreach Program

The truth is that the expectations attached to a programme are not the same as what is actually carried out. The reality is that the ICTR Outreach Program has been exposed to a lot of criticism, usually for not achieving its objectives in the expected way. In this section, I will outline the criticisms and how some projects have been left unfinished.

It is important to note that from the beginning there were voices predicting this outcome: "it is unrealistic to expect that the outreach programme will maintain its current level of funding, to say nothing of receiving a significant increase, as the Tribunal begins to scale down its operations under UN pressure to close its doors by

[112] Ibidem. Page 357
[113] Ibidem. Page 357
[114] Ibidem. Page 359

the end of the decade"[115]. The reality is that since "mid-2013, community-based outreach activities rapidly decreased, and since the closure of the Tribunal proceedings since December 2015, the ICTR's outreach programme is no longer functional"[116].

As for the court information meeting centres, it is criticised that smaller centres, far from the capital, are being closed due to lack of funding. For two years "between 2013 and 2015, the Information Center remained as the only outreach-related presence and activity in the country"[117].

It must be acknowledged that, despite the difficulties that may arise from the decision to implement this programme in a country undergoing reconstruction, it has clearly served its purpose. In both cases, they have been able to tackle the legacy of the courts, along with addressing the issue of disconnection between citizens and the courts. Aspects to highlight, I would stress that the ICTY has derived its programme from a more educational perspective, which benefits the next generations to take action and adopt attitudes beneficial to the prosperity and peace of the countries they come from. The ICTR, with its programme, shifted its attention to a more varied field of study, trying to cover the most vulnerable points, and to give an adequate response to each of these situations. Although in the end it has not succeeded as hoped, it has managed to reach a wide range of different groups within Rwandan society who would otherwise remain unaware of the tribunal's true purpose and thus better understand its work.

Although we have been able to verify that the ICTY has promoted programmes with the clear intention of communicating with the new generations, doubts may arise as to whether it has been sufficient. One of these doubts is whether the number of students who have had access to the programme is sufficient compared to the total population of each country. Sometimes it seems that when talking about numbers, it all seems like a lot, but when put in context, it does not cover a large part of the population. Another aspect of the ICTY programme to note is the court's inaction in implementing its programme in Serbia. On their website they say that students from Serbia take part in the programme, but then when looking at the locations where the lectures are held, there are none in Serbia. This may be due to Serbia's refusal to cooperate with the court during the investigations for the trials. However, if that is the case, the court should have found a solution and implemented the Outreach programme within Serbian territory.

[115] PESKIN, V. (2005): "Courting Rwanda: The Promises and Pitfalls of the ICTR Outreach Programme". Journal of International Criminal Justice, Vol. 3, Issue 4, page 957
[116] SCHULZ, P. (2017): 'Discussing community-based outreach activities by the International Criminal Tribunal for Rwanda', Journal of Eastern African Studies, 11(2), page 351.
[117] Ibidem. Page 351

CONCLUSION

In conclusion, we can say that although the ICTY and ICTR tribunals are courts that try individual cases, there is a relationship with the transitional justice process in which they participate, and in particular with memory, as we have seen. It is true that they are not institutions that have been created exclusively to promote the memory of the societies in which they exercise their jurisdiction, so this should be borne in mind when making any criticism.

With regard to the ICTY, we can see that we are faced with a court that has to deal with criminal cases from different territories, each with its own version or perception of the past. Because of this we have seen that on many occasions they have encountered impediments to being able to promote memory projects. Undoubtedly, despite not having held a seminar in Serbia, the fact that the members of the tribunal themselves went to places as significant for the recent history of the territory as Srebrenica is very positive. Above all, the exposure to all kinds of questions and opinions strengthens the figure of the tribunal in the territory, and gives a voice to the official version of events, which helps the collective memory. Also, although it can be criticised for not having involved more students in its programmes for future generations, it is still a very positive programme. Considering that it is a court trying individual cases, they have no legal duty to engage with society in terms of memory building. However, they have done so, and it is clear from analysing the student surveys that all those students were grateful to have had this opportunity and, in some way, it will influence their image of the past, but also of how to act in the future.

As for the ICTR, they were not confronted with a case where they had to prove through the cases, they judged that genocide had taken place. It has always been accepted by both international and national institutions that what happened in Rwanda corresponded to genocide. However, reconciliation and collective memory is a difficult and lengthy task. Personally, in the case of the ICTR, it seems to me that the involvement with collective memory is weaker than in the case of the ICTY. I have the impression that with the existence of the Gacaca courts in the country, where there is a greater focus on community reconciliation and a special focus on victims, any action they might take is put on the back burner. It is positive that they provided spaces where citizens could learn about the court, but taking an overview of their youth programme, it is disappointing that many activities had to be closed due to lack of funds.

Nevertheless, it must be acknowledged that in both cases the courts have been a positive impulse in the process of remembrance. It is noteworthy that, thanks to their rulings, they have given truth to the history and memory of many victims, providing evidence that helps to keep alive the memory of what happened. Perhaps on some occasions indirectly,

but undoubtedly, the involvement of these tribunals in transitional justice in both territories would be a positive sign.

BIBLIOGRAPHY

2016 High School essay writing competition

AKSENOVA, M. (2017): The Role of International Criminal Tribunals in Shaping the Historical Accounts of Genocide. In U. Belavusau & A. Gliszczyńska-Grabias (Eds.), Law and Memory: Towards Legal Governance of History (pp. 48–69). chapter, Cambridge: Cambridge University Press.

BARASH, J. (2019): The Time of Collective Memory: Social Cohesion and Historical Discontinuity in Paul Ricœur's Memory, History, Forgetting. Études Ricoeuriennes / Ricoeur Studies. Page 103 STONE, D. (2013): Genocide and Memory. In: The Holocaust, Fascism and Memory. Palgrave Macmillan, London.

BASSIOUNI, M. C. (2017): Investigating War Crimes in the Former Yugoslavia War 1992–1994: The United Nations Commission of Experts Established Pursuant to Security Council Resolution 780 (1992).

BRANTS, C. & KLEP, K. (2013): Transitional Justice: History-Telling, Collective Memory, and the Victim-Witness. International Journal of Conflict and Violence. 7.

Bridging the Gap Between the ICTY and communities in Bosnia and Herzegovina. Conference Series Srebrenica 21 May 2005.

DEGUZMAN, M. M., (2021): Mixed Messages: The Sentencing Legacy of the Ad Hoc Tribunals, in THE LEGACY OF AD HOC TRIBUNALS IN INTERNATIONAL CRIMINAL LAW: ASSESSING THE ICTY'S AND ICTR'S MOST SIGNIFICANT LEGAL ACCOMPLISHMENTS (Milena Sterio & Michael P. Scharf eds., Cambridge University Press 2019)., Temple University Legal Studies Research Paper.

EPHGRAVE, N. (2015): Women's testimony and collective memory: Lessons from South Africa's TRC and Rwanda's gacaca courts. European Journal of Women's Studies, 22(2)

ERLL, A. & NÜNNING, A. (2010): Cultural Memory Studies: An International and Interdisciplinary Handbook. Berlin, New York: De Gruyter.

FORD, S. (2019): The Impact of the Ad Hoc Tribunals on the International Criminal Court. In M. Sterio & M. Scharf (Eds.), The Legacy of Ad Hoc Tribunals in International Criminal Law: Assessing the ICTY's and the ICTR's Most Significant Legal Accomplishments. chapter, Cambridge: Cambridge University Press.

ICTR Newsletter. Vol. 1, No. 5, October 2003.

KING, K. L., & MEERNIK, J. D. (2017). The Witness Experience: Testimony at the ICTY and Its Impact. Cambridge: Cambridge University Press.

MCLAUGHLIN, C. (2007): Victim and Witness Measures of the International Criminal Court: A Comparative Analysis. The Law and Practice of International Courts and Tribunals.

MØSE, E. (2015): The ICTR and Reconciliation in Rwanda. FICHL Policy Brief Series No. 30.

NELAEVA, G. (2011): Establishment of the International Criminal Tribunal in the Former Yugoslavia (ICTY): Dealing with the 'War Raging at the Heart of Europe' Romanian Journal of European Affairs, Vol. 11, No. 1.

NOVOTEL, K. (2006): "The ICTR Outreach Program: Integrating Justice and Reconciliation" Conference on challenging impunity, 7-8 November.

NSANZUWERA, F.-X. (2005): The ictr contribution to national reconciliation. Journal of International Criminal Justice, 3(4).

PERRIN, K. (2016): Memory at the International Criminal Tribunal for the former Yugoslavia (ICTY): Discussions on Remembering and Forgetting within Victim Testimonies. East European Politics and Societies, 30(2)

PESKIN, V. (2005): "Courting Rwanda: The Promises and Pitfalls of the ICTR Outreach Programme". Journal of International Criminal Justice, Vol. 3, Issue 4

SCHULZ, P. (2017): 'Discussing community-based outreach activities by the International Criminal Tribunal for Rwanda', Journal of Eastern African Studies, 11(2)

Statute of the ICTR

Statute of the ICTY

STONE, D. (2013): Genocide and Memory. In: The Holocaust, Fascism and Memory. Palgrave Macmillan, London.

STRAUS, S. (2013): The Order of Genocide: Race, Power, and War in Rwanda. Ithaca, NY: Cornell University Press.

THORNE, B. (2021): Liberal international criminal law and legal memory: deconstructing the production of witness memories at the International Criminal Tribunal for Rwanda. Journal of the British Academy, 9 (2)

TRAHAN, J. (2019): Examining the Benchmarks by Which to Evaluate the ICTY's Legacy.

United Nations, International Criminal Tribunal for the former Yugoslavia: "The Tribunal and the Next Generation: ICTY Youth Outreach Project in the former Yugoslavia: 2011-2014".