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From War Crimes to Organized Crime:

Evolving International Jurisdiction for Human Rights Violations
and the New Kosovo Court

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ABSTRACT

The measures and efforts the international community has implemented to prosecute, punish and prevent egregious human rights violations indicate a committed desire to evolve criminal jurisdiction to close impunity gaps against perpetrators of these crimes. This thesis analyzes the development of international criminal law and the objectives of a right-based approach to prosecution, particularly in post-conflict transitions. From the beginning, International Criminal jurisdiction has been an evolving process and gaps continued to exist between the International Criminal Court, the hybrid and *ad hoc* tribunals. Kosovo's newly created court (KRSJI) for prosecution of grave human rights violations is the natural progeny of this evolution to address these gaps. Kosovo exemplifies the strengths and weaknesses of a hybrid system where multi-ethnic historical complexity compounds a transitional environment that has allowed perpetrators to not only profit but to flourish and escape accountability and further evolution of criminal jurisdiction is needed to completely close the gaps. The hope is that the KRSJI can manifest its own legacy as a standard-setting mechanism for future prosecutions of gross human rights violations and organized crime.

Glossary of Acronyms

BiH	Bosnia-Herzegovina
CoE	Council of Europe
DOD	United States Department of Defense
ECCC	Extraordinary Chambers of the Courts of Cambodia
EULEX	European Union Rule of Law Mission in Kosovo
FRY	Former Republic of Yugoslavia
ICC	International Criminal Court
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the Former Yugoslavia
IMT	International Military Tribunal
IRMCT	International Residual Mechanism for Criminal Tribunals
JNA	Yugoslavia People's Army
KFOR	NATO-led International Peacekeeping Force in Kosovo
KLA	Kosovo Liberation Army (UCK in Albanian)
KRSJI	Kosovo Relocated Specialist Judicial Institution
NATO	North Atlantic Treaty Organization
OSCE	Organisation for Security and Co-operation in Europe
RPF	Rwanda Patriotic Front
SITF	Special Investigative Task Force
UNAMIR	United Nations Assistance Mission for Rwanda
UNMIK	United Nations Interim Administration in Kosovo
UNSC	United Nations Security Council
WCC	War Crimes and Organized Crimes Sections of the Court of Bosnia-Herzegovina

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*E voi fanciulle belle
Che coi fascisti andate
Le vostre chiome belle
Presto saran tagliate*

*And all you beautiful misses
Who with fascists misbehaved
All your beautiful tresses
Will presently be shaved.¹*

I.

INTRODUCTION

The movement to expand international criminal jurisdiction in order to close impunity gaps and punish perpetrators of the most heinous crimes imposes significant demands upon the international community but also provides an opportunity for greater protection of humans rights.² In recognition of the atrocities committed during both World Wars, “investigations and prosecutions were established to appease public demand for a response to the tragic events and shocking conduct during armed conflicts.”³ Said prosecutions met with varying degrees of success.⁴

As of the date of this writing, International *ad hoc* tribunals have been created, truth commissions have been established,⁵ the number of hybrid courts and national war crimes units has increased⁶ and the International Criminal Court (ICC) is now firmly entrenched in the international criminal justice system, building its own criminal jurisprudence legacy. In the Western Balkans alone, the *ad hoc* International Criminal Tribunal for the Former Yugoslavia (ICTY) and hybrid courts in Bosnia-Herzegovina (BiH) and Kosovo as well as various forms of

¹ Excerpt from a song sung after World War II by Veneto partisans depicting a popular ritual punishment inflicted on female collaborators as a form of patriotic vengeance. Lowe, *Savage Continent: Europe in the Aftermath of World War II*, New York: St. Martin’s Press. p. 170 quoting Dondi, Mirco, *La lunga liberazione: Giustizia e violenza nel dopoguerra italiano* (Rome: Riuniti, 2004) p. 126.

² See e.g. Roht-Arriaza, N. *Impunity and Human Rights in International Law and Practice* 14, 1995.

³ See e.g. Bassiouni, C, ‘From Versailles to Rwanda in Seventy-Five Years: The Need to Establish a Permanent International Criminal Court’, *Harvard Human Rights Journal*, vol. 10, Spring, p. 11, 1997.

⁴ By way of example, one critique of international tribunals is the affect of politics on these courts. “Politicians often intentionally allowed time to pass so that public interest in justice waned, public pressure eroded, and they were no longer compelled to ensure the success of the bodies.” *Ibid.* p, 12.

⁵ Hayner, P.B., *Unspeakable Truths. Facing the Challenge of Truth Commissions*, New York: Routledge, 2002.

⁶ Dickerson, Laura A, “The Promise of Hybrid Courts”, *The American Journal of International Law*, Vol 97, 2003, pp. 295-310, in Hermann, Johanna, “Hybrid Tribunals” in *Encyclopedia of Transitional Justice*, ed. Stan, Lavinia and Nadya Nadelsky (Cambridge University Press 2013), 41 (hybrids are now important transitional justice mechanisms).

international administration and peacekeeping⁷ units within the region⁸ have contributed not only to the capture and prosecution of perpetrators for war crimes and genocide⁹ but also to democratization and rule of law transitions that have built internationalized systems and trained personnel from judicial and law enforcement arenas.¹⁰

The multiple civil wars that followed within a decade of the 1980 death of president Tito in the Former Republic of Yugoslavia (FRY) are often described by commentators as the most brutal and bloodiest wars waged in Europe since World War II.¹¹ The FRY peninsula in Southeastern Europe is a microcosm of ethnic-complexity and is instructive on many fronts, where the problems and power inherent in the many-layered conflicts, alternative political agendas and undisguised hatred of other ethnic groups was harnessed by all sides¹² during the post-Tito wars and the break-up of the FRY. As will be discussed herein, the evolution of substantive criminal law and the closing of impunity gaps through international and hybrid prosecutorial mechanisms has been a huge part of the modern legacy of the multi-ethnic Southeastern European region. Still the question can be asked, is it enough?

1.1. RESEARCH QUESTIONS AND ORGANIZATION

(a) Why It Matters

⁷ Rezun, M., *Europe's Nightmare: The Struggle for Kosovo*, Westport: Praeger Publishers, 2001, p. 76 (“evidence of mass graves and the murders of thousands of Albanians is also a stumbling block to peace and stability in the region.”)

⁸ The role of the North Atlantic Treaty Organization (NATO) is necessary to this analysis as discussed briefly herein. For a more detailed examination of NATO in the Kosovo war, *see e.g.*, Latawski, P. and Smith, M.A., *The Kosovo Crisis and the evolution of post-Cold War European Security*. Manchester University Press, 2003. For a personal account of both the BiH and Kosovo wars under his leadership as Supreme Allied Commander, *see* Clark, General W. K., *Waging Modern War: Bosnia and Kosovo, and the Future of Conflict*. Cambridge: Public Affairs, 2001.

⁹ The international community first defined genocide as various acts such as “killing members of a group” pursued with “an intent to destroy in whole or in part, a national, ethnic, racial, religious group, as such.” Genocide Convention of 1948.

¹⁰ United Nations, *Rule-Of-Law Tools For Post-Conflict States: Maximizing The Legacy of Hybrid Courts*, 2008.

¹¹ *E.g.* Lowe, K, 2012, p. 262.

¹² *Ibid.* p. 250. “But there was one thread in the tapestry of violence that stood out amongst all the others: the issue of ethnic hatred. “

It is understandable that controversy and confusion has been sparked by the imminent launch of yet another International court for prosecution of war criminals,¹³ specifically the Kosovo Relocated Specialist Judicial Institution (KRSJI). Is the addition of KRSJI necessary to close impunity gaps for grave human rights violations or is it merely repetitive of other mechanisms, such as the *ad hoc* ICTY, the hybrids and domestic courts? Has justice already been found for perpetrators of human rights abuses during the Kosovo war? Or has a certain type of criminal element slipped through the cracks in the newborn yet burgeoning system such that it necessitates a new court to fill yet another gap and find justice for countless victims of the FRY wars?¹⁴ This thesis seeks to answer those questions.

In order to do so, this thesis describes the development of substantive international criminal law from the Nuremberg military tribunal to the Kosovo hybrid system¹⁵ and newly created KRSJI, analyzes the various legal systems involved and compares and contrasts their respective criminal jurisprudence to illuminate the evolution of international jurisdiction and attempt to answer the questions *why another court and why in this form?* This thesis further examines the opportunities and challenges of taking national criminal justice systems into the transnational arena and reviews the measures and efforts courts have implemented to bring perpetrators of the most egregious human rights violations to justice. It concludes with an argument supporting the expansion of international criminal law jurisprudence into new areas,¹⁶ such as for prosecution of gender-based violent crimes, human trafficking and high-level

¹³ Author interviews with NGO personnel inside Kosovo and with international scholars and administrators from all over the FRY, Croatia, Slovenia, Kosovo, Serbia, Montenegro, Albania and Macedonia during January 2017 through June 2017; see also Annex, (<https://thebloodyyellowhouse.wordpress.com/>, blog with comments edited for brevity not content by author of thesis), Selimi, The Specialist Court for Kosovo: Continuity or Departure from the Hybrid Courts Model? Academicus - International Scientific Journal, 2016, pp. 26-39.

¹⁴ Thomas, N and Mikulan, K., The Yugoslav Wars (2) Bosnia, Kosovo and Macedonia 1992-2001, Oxford: Ospey Publishing, 2006.

¹⁵ For an analysis of the political history of establishing international tribunals from Nuremberg through the ICC, including the hybrid courts of BiH and Kosovo, but excluding the KRSJI, see Reydam, L. and Wouters, J., The Politics of Establishing International Criminal Tribunals, Working Paper No. 77, Leuven Centre for Global Governance Studies, 2011. Available at https://ghum.kuleuven.be/ggs/publications/working_papers/new_series/wp71-80/wp77.pdf.

¹⁶ Hoffman, Viewpoint: Human Rights and History, Past and Present, The Past and Present Society, Oxford, p. 20. (noting “a new era in the legal prosecution of mass violence and genocide” arose out of “the civil wars in the former Yugoslavia as well as in Rwanda”).

corruption, and analyses its potential regarding the systematic deconstruction of organized crime networks within worldwide rings.

(b) Analytical Framework

This section introduces my thesis research methodology, the scope of existing research as well as the data collection methods used and the challenges and limitations inherent therein. It also reviews the significance and justification for my research questions — namely, what is the development, challenges, legacies and evolution of international criminal justice and how is it important to the relationship and potential influence on future courts, particularly as related to the case study of the Kosovo internationalized legal system?

My research analysis is divided into four parts. The first part reviews the beginnings of international criminal law jurisdiction and details the sources and subjects of early international criminal tribunals¹⁷ as antecedents to the formation of the ICC and the *ad hoc* and hybrid tribunals of the 1990s. Next it discusses the *ad hoc* tribunals for Yugoslavia and Rwanda, two international criminal courts that dealt with mass atrocities in the context of arms conflict and totalitarian regimes.¹⁸ It then examines the differences and similarities between *ad hoc* tribunals and the hybrid tribunals, with particular attention given to the Extraordinary Chambers of Cambodia (ECCC) and the War Crimes and Organized Crimes Sections of the Court of Bosnia-Herzegovina (WCC). WCC hybrid courts are particularly instructive to the case of Kosovo because both BiH and Kosovo were FRY conflicts and prosecution in both the WCC and the new KRSJI are based primarily on domestic criminal law.¹⁹ Lastly, the Kosovo case study reviews the multi-ethnic conflict and subsequent international administration that recently led to the creation of the KRSJI and argues that this new tribunal is an important and necessary development to

¹⁷ Wouters, J. and Basu S., The Creation of a Global Criminal Justice System: The European Union and the International Criminal Court Leuven Centre for Global Governance Studies, Working paper No. 26, 2009 (extensive analysis of twenty years of the fight against impunity for the most serious international crimes) available at <https://www.law.kuleuven.be/iir/nl/onderzoek/wp/wp136e.pdf>.

¹⁸ Hoffman, 2016, p. 21, (the ICTY and ICTR were “catalysts in the emergence of a new international criminal law and its institutions, possibly the most significant legal accomplishment in human rights of the two decades.”).

¹⁹ Unlike the WCC, the new KRSJI will be located in the Hague and use all international judges, as stated in the most current literature published on KRSJI website as of July, 14 2017, <https://www.scp-ks.org/en>.

close impunity gaps for gross violations of human rights and post-war organized crime and corruption.²⁰

1.2. METHODOLOGY

(a) Research Approach

Research for this paper focused on national and international legal documents as well as case-law developed in the various tribunals along with academic papers, articles and books on the tribunals, war crimes, and the perpetrating regimes. Further reference material was obtained from reports and documents issued by non-governmental and international governmental organisations, including but not limited to those of the United Nation Mission in Kosovo (UNMIK) and the European Union Rule of Law Mission in Kosovo (EULEX), regarding the internationalization of the Kosovo judicial system. In order to trace the development of the current state of international criminal jurisprudence that influenced the formation of the Kosovo system, additional extensive research (legal, historical and empirical) was therefore undertaken regarding the first trials conducted after World War II in the International Military Tribunals (IMTs) and those of both *ad hoc* tribunals, *i.e.* for the mass killings in Rwanda (investigated and prosecuted in the ICTR) and, in particular, the mass atrocities committed in the FRY ((investigated and prosecuted in the ICTY). Because of the hybrid nature²¹ of the Kosovo judicial system, considerable research was undertaken regarding the myriad of hybrid tribunals, in particular the BiH war crimes courts (investigated and prosecuted in WCC) and the court that prosecuted senior leaders of the Pol Pot regime in Cambodia (investigated and prosecuted in the ECCC).

²⁰ Report of Rapporteur: Mr Dick Marty, Switzerland, Alliance of Liberals and Democrats for Europe, “Inhumane Treatment of People and Illicit Trafficking in Human Organs in Kosovo,” and Draft Resolution, adopted unanimously by the Committee in Paris on 16 December 2010 (hereinafter “The Marty Report”) p. 26 para 176. (widespread organized crime exists in Kosovo and neighboring countries and these criminal groups cooperate more effectively than judicial authorities tasked with prosecuting them).

²¹ There is academic disagreement as to what constitutes a hybrid court, however, a hybrid is generally a mix of national and international elements. Marin Banocić surveyed all the international courts in existence as of 2012 and concluded that a hybrid is composed of both international and national judge panels, uses national laws and is located in the sovereign state. Banocić, M. *Internacionalizirani Kazneni Sudovi: Osnovni Problemi I Pravna Rjesenja*. Zagreb: Kaznenopravno-Kriminalistička Biblioteka, 2012.

(b) Data Collection through Field Mission Trips, Site Visits, Interviews and Memoirs

Countless interviews with judges, lawyers, governmental officials, witnesses and other key actors contributed to the writing of this project in addition to the extensive legal, historical and academic research that was necessarily undertaken. The empirical and practical information garnered from these interviews, particularly with regard to the problems inherent in developing an international criminal law and procedural framework within Kosovo (and elsewhere), was crucial and thus invaluable to this project. Moreover, my attendance and participation at the OSCE sponsored International Event and Workshop *Human Trafficking and its Victims — New Developments*²² provided fresh insight into the work that is being done by UN agencies, law enforcement and NGOs regarding criminal justice, international organized crime and human trafficking and also supplemented the data I collected from other academics and legal sources. Further insight was gained and interviews were conducted during my attendance at International and Adriatic Criminal Law²³ and Divided Societies²⁴ seminars in Dubrovnik, where I met personally with practitioners and scholars of international criminal law and discussed the subject of this thesis through many interviews with participants, lecturers and panel members.

I had the good fortune to meet the Honorable Ivo Josipovic, former President of the Republic of Croatia and lawyer who practiced before the ICTY. I have also had the pleasure to interview many significant actors from the peacekeeping and securities sectors, the international and national criminal law arenas as well as from the *ad hoc* and hybrid tribunals. At the Kosovo level, I interviewed EULEX judges and OSCE lawyers, KFOR commanders and public officials of the Kosovo police that deal with peacekeeping and/or organized crime and trafficking.²⁵ Regionally, I conferred in person, by phone or email with Western Balkan law enforcement, international law and transitional justice scholars and with Southeastern Europe former or current

²² Author participation at OSCE headquarters, Vienna, 21 October 2016.

²³ Author participation in the annual Criminal Justice Seminar and Adriatic Moot Court, *EU Substantive Criminal Law and Protection of Victims*, held at the International University Center, Dubrovnik, Croatia, 3-8 April 2017.

²⁴ Author participation in the post-graduate seminar *Divided Societies XX: Memory Wars* held at the International University Center, Dubrovnik, Croatia, 7-14 May 2017.

²⁵ These include, but are not limited to, author in person interviews from October 2016 through July 2017.

administrators of justice and NGOs that focus on or have created departments related to war crimes, tribunals or transitional justice. I also interviewed activists and academics in human rights, such as those working in the areas of criminal law and anti-human trafficking. From the international criminal justice arena, I met personally with practitioners of international criminal law to discuss the subject of this thesis.

I personally visited war museums, memorials and other historical sites throughout the FRY. This was especially important from a transitional justice perspective and also necessary to understand the multi-ethnic nature of the conflict and to conduct personnel interviews with survivors of the wars. Academic analysis of human rights atrocities can often lose the very personal human element within the mind-numbingly large numbers of fatalities, casualties and other trauma inflicted during wars. Therefore, witness testimonies and memoirs also allowed me to include personal accounts into the narrative of an academic yet tragic subject, that of war crimes.

(c) Logistical Considerations, Research Challenges and Limitations

This thesis does not attempt to offer a detailed account of the backgrounds to and the courses of each conflict that led to the formation of the various international tribunals. A plethora of literature already has been published regarding the Kosovo crisis²⁶ although few highly competent Kosovo studies have documented much of the activity that has occurred since 2001.²⁷ The main purpose of my research is to assess and examine the impact of the Kosovo war, its hybrid judicial system and formation of the KRSJI on the continuing development and evolution of the international community's response to grave human rights violations and criminal justice in the global arena overall.

Financial, temporal and security limitations affected the scope of my field research. As a female traveling alone, and considering the still somewhat tense political situation in Mitrovica

²⁶ See e.g. Judah, T, *Kosovo: War and Revenge*, New Haven, Yale University Press, 2000.

²⁷ For its most recent history (from 2011 to present) studies of Kosovo internalization are practically non-existent, particularly academic studies, which further adds to the relevancy of my research questions.

and the current controversial nature of the new court as expressed by Kososo Albanians, I excluded certain locations from my direct field mission research. However, during my visit to northern Mitrovica and the Serb-majority section while on field mission with EIUC in January, 2017, I asked questions and made contacts for email and phone follow-up. Also, as much as I would have loved to do so, I could not travel to the Albanian locations noted in witness testimony by the Kosovo task-force (SITF) report that apparently led to the formation of the KRSJI. I decided to forgo travel to these locations due to security concerns and after reading explicit details of brutal crimes committed there. As a former prosecutor, I know the importance of viewing alleged crime scenes but, unfortunately, alleged widespread organized crime in certain locations²⁸ negated the possibility of some field visits. Collecting primary data through field research is also time-consuming and expensive and relies not just on my time, safety and expense, but also the amity and availability of the interviewees. Therefore many face-to-face interviews could not be conducted *in situ* but instead were made during my participation in conferences and seminars.

Outside the scope of the research for this paper there exists substantial research into the plentiful international courts with various forms of hypothesis and critiques of their criminal jurisprudence and procedures.²⁹ This thesis also does not analyze criminal procedure within the international courts nor the national criminal law at issue in the hybrids.³⁰ Regarding the hybrids (or mixed) tribunals, it was beyond the scope of this paper to discuss them all,³¹ however, I have tried to note most of them in footnote citations for reference and continuing study. I selected the

²⁸ See e.g. The Marty Report, p.15 para. 63-68 (examples of Northern Albanian organized crime) and fn 24 (cites U.S. Drug Enforcement Administration report describing Kosovo Albanians as “second only to Turkish gangs as the predominant heroin smugglers along the Balkan route”).

²⁹ A detailed analysis of the controversy over humanitarian intervention of NATO into the FRY conflicts is also beyond the scope of this research and has been nonetheless exhaustively studied. See e.g. The Kosovo Crisis and the evolution of post-Cold War European security, Latwaski, P. and Smith M.A., Manchester University Press, 2003.

³⁰ This area of criminal law also has been extensively researched and requires academic scrutiny of a multitude of domestic courts and careful examination of national laws. Accordingly, my research is restricted to substantive criminal law issues in the context of evolving international jurisdiction and the formation of hybrid jurisprudential and legal systems within Kosovo.

³¹ Likewise, a detailed discussion of the criminal jurisprudence of the United States was beyond the scope of this thesis particularly regarding relevant areas of right to fair trial, due process guarantees and other defendant rights, and the vast amount case law analyzing those amendments. United States criminal and constitutional law has influenced the Kosovo system because it was used as a main model in the judicial development process.

hybrid courts of the ECCC and the WCC to be discussed for the reasons set forth in the pertinent sections of this thesis on each of those courts.³² Transitional justice research questions addressed in this paper are limited where possible to the context of Kosovo and the KRSJI, since criminal codes, traditional institutions, political policies and contexts vary considerably throughout the world,³³ and specifically in the Western Balkan region.³⁴ A broader analysis of its historical development is also outside the scope of this research as are language issues³⁵ except where relevant to impacts during the various FRY conflict³⁶ or as they pertain to differing ethnic groups,³⁷ such as ethnic differences in historical interpretations and changes in language use and alphabets as the FRY conflicts progressed from region to region.

Lastly, finding literature on the specifics of the KRSJI has been difficult because of the ongoing formation of the court, a unique hybrid with an international judicial nature.³⁸ Therefore the analysis that follows cannot be considered a “lessons learned” discussion. The sensitivity of the events that have been critiqued here also created limitations on the availability of literature as

³² Generally, the ECCC and the WCC were selected for their legacies and importance in the evolution of the international criminal jurisdiction and potential influence on the Kosovo system.

³³ See e.g. Apro, D, *Third Generation of International Criminal Justice: Hybrid Court in Cambodia, East Timor and Kosovo*, Submitted to Central European University Department of Political Science, Budapest, Hungary. 2014. Available at CEU eTD Collection (analyzing three hybrid models).

³⁴ Ibid (analyzing Kosovo Regulation 64 Panels), see also Banocic, Marin (2012), *Internacionalizirani Kazneni Sudovi*: (regarding Kosovo Regulation 64 Panels and Western Balkans), available only in Croatian language.

³⁵ Language translation is essential to securing human rights during detention and prosecution, however, a detailed examination of the role of language in International criminal jurisprudence is beyond the scope of this thesis. For a discussion of the interplay between translation and human rights in Kosovo, see Darts, Rebecca Thérèse, *The Interplay between Human Rights and Translation in Multilingual Newborn Kosovo*, University of Seville (Spain), European Inter-University Center for Human Rights and Democratization Awarded Thesis (2012) (analyzes the availability, accessibility, acceptability and adaptability of linguistic rights in Kosovo).

³⁶ Thomas, N and Mikulan, K., *The Yugoslav Wars (2) Bosnia, Kosovo and Macedonia 1992-2001*, Oxford: Ospey Publishing, 2006.

³⁷ Ibid. p, 31.

³⁸ Few scholarly studies have been written to date and all were written before October 2016 when the KRSKI still had not been appointed judges, or prosecutor. See e.g. Holvoet, M., *The Continuing Relevance of the Hybrid or Internationalized Justice Model: The Example of the Kosovo Specialist Chambers*, *Crim Law Forum*, 2017, 28: 35. doi:10.1007/s10609-016-9296-1, 2:1, pp. 35–73 (critical discussion of the establishment of the KRSJI and related issues of substantive criminal law); Selimi, S., *The Specialist Court for Kosovo: Continuity or Departure from the Hybrid Courts Model?* *Academicus - International Scientific Journal*, 2016, pp. 26-39 (briefly compares and contrasts the perspective KRSJI to other hybrid courts and discusses challenges the court may face regarding jurisdiction, legal basis and legitimacy).

well as the frankness of interviewees, especially regarding the proposed international make-up of the new court panels, its location in the Hague, the types of crimes alleged, certain suspected defendants and the selection and transfer of cases from EULEX to KRSJI. This resulted in the need to follow events as they happened from the beginning of my research in late 2016 until I finished in July 2017. Nonetheless I have tried to think into the future with the expectancy that this paper may explore past and current measures that might be undertaken in order to deter and punish perpetrators of grave human rights violations or to provide solutions and recommendations for law enforcement and prosecution going forward.

II.

TREATY OF VERSAILLES, NUREMBERG LEGACY, AND ROME STATUTE

The beginnings of modern international criminal jurisprudence, not only as a way to punish individual perpetrators for mass atrocities but also as a potential deterrent and hence peacekeeping measure, arguably began with an idea after World War I in the Treaty of Versailles. The Versailles Treaty's idea to prosecute individuals largely failed to take root and this is often considered a failure in the maintenance of peace and security in post-war Europe that led to the eventual outbreak the second World War.³⁹ During the second post-war period, peacemakers and proponents of respect for human rights appeared determined to not repeat the same mistakes made after World War I, like the failure to prosecute German military leaders for their war crimes and the determination of the international community to learn from these mistakes led to the establishment of not only the UN and the IMTs of Nuremberg and Tokyo⁴⁰ (to prosecute the parties responsible for gross human rights violations committed) but also initiated a plethora of treaties and conventions enacted to declare and codify the importance of protecting these human right principles for future generations.⁴¹

³⁹ Reydams, L and Wouters, J., *The Politics of Establishing International Criminal Tribunals*, Working Paper No. 77, Leuven Centre for Global Governance Studies, 2011. Available at https://ghum.kuleuven.be/ggs/publications/working_papers/new_series/wp71-80/wp77.pdf (discusses the WWI debacle of Allies reneging “on their promises to punish German war criminals.”)

⁴⁰ *Ibid.* pp. 9-19 (analysis of the political history and problems inherent therein behind the creation of the IMTs).

⁴¹ *See e.g.* Universal Declaration of Human Rights, proclaimed by the United Nations General Assembly in Paris on 10 December 1948, General Assembly Resolution 217 A (III).

This section two describes the development of international criminal law and procedure during these post-war periods and analyzes the purpose and objectives of both. In reviewing the beginnings of jurisdiction in international criminal law, both the sources and subjects of international criminal procedure and proceedings will be examined as antecedents to the later formation of *ad hoc* and hybrid tribunal and the ICC in an effort to document the evolution of international criminal jurisdiction for individuals responsible for grave human rights violations from the post-World War II military tribunals to the recently created KRSJI.

2.1. AFTER WORLD WAR I — AN IDEA

The expanding international criminal law environment resulted from a long period of progress that started with an idea after World War I when Western powers who were allied against Germany decided to prosecute military leaders as war criminals, including and most especially, Emperor William II, under the Treaty of Versailles.⁴² The treaty states that the German Emperor would be prosecuted for crimes committed that it defines in relevant part as “a supreme offense against international morality and the sanctity of treaties.”⁴³ German military leadership and the Emperor were to be prosecuted for “having committed acts in violation of the laws and customs of war.”⁴⁴ Although this early attempt⁴⁵ to prosecute mass atrocities as war crimes after WWI largely failed,⁴⁶ the idea that victorious countries in war would seek to end impunity for grave breaches of customary international law was struck in the philosophy and diplomacy of the

⁴² Treaty of Versailles, Articles 227-230 (28 June 1919). The Versailles treaty outlines the idea to prosecute the Emperor and other German military leaders. See Guilherme De Aragao, Eugenio Jose, Setting Standards for Domestic Prosecutions of Gross Violations of Human Rights Through the ICC: International Jurisdiction for Wilful Killing in Brazil? EIU Occasional Papers, ed. Ulrich G, Venice: Marsilio Editori Spa, 2005, 15.

⁴³ See Guilherme De Aragao, 2005, pp. 15-16.

⁴⁴ Thus the definition of a war crimes was to be found in established international law and customs of war and was not created by a new definition or codification of international criminal code. Guilherme De Aragao, 2005, pp. 15-17. Nor were these crimes codified by the Nuremberg or Tokyo military tribunals, although crimes against humanity, war crimes and the crime of waging a war of aggression were defined in IMT Charter Article 6 “annexed to the London Agreement. Text available in M.C. Bassiouni, Crimes Against in International Criminal Law, Dordrecht-Boston Nijhoff Publishers, 1992, pp. 573-574” (cited in Guilherme De Aragao, 2005, p. 16, fn 11.

⁴⁵ The government of the Netherlands where the Emperor sought refuge refused to turn him over for prosecution.

⁴⁶ See e.g. Guilherme De Aragao, 2005, p. 13, citing J.F. Willis, *Prologue to Nuremberg - The Politics and Diplomacy of Punishing War Criminals of the First World War*, Westport-London, Greenwood Press, 1982.

international community. Indeed the circumstances that led from the first world war to the second war⁴⁷ could be said to have contributed to the continuance of mass atrocities committed by German leadership under Hitler. Therefore, due to the failure to hold WWI violators of international standards accountable for their conduct in the war, the impunity continued, and so too continued the grave beaches of crimes against humanity during WWII.

2.2 AFTER WORLD WAR II — AN IDEAL

So we joined the lines walking down the middle of the street, flanked on both sides by young German soldiers and Jewish police. The Gestapo members entered the building to search it for anyone still remaining, and we heard shots coming from within ... my mother grabbed me hard by the hand and pulled me running into a dark side street. We heard shots behind us. 'It's all right,' she said. 'He took the bribe, he is not aiming at us.' I suppose that was true. I suppose as dead bodies we would be more trouble than as escapees with no place to go. —Kristen Keese, Holocaust survivor.⁴⁸

The unspeakable horrors discovered in Nazi concentration camps as well as the massive number of fatalities and casualties and catastrophic destruction of property throughout Europe and Asia during World War II demanded a monumental response to perceived deficiencies in the international system. The Treaty of Versailles was not the only deficiency in international criminal law that came to light in this second post-war period. For example, the 1920 proposed High Court of Justice was never achieved,⁴⁹ the League of Nations accomplished little in terms of transitional justice, international humanitarian law instruments were not drafted as criminal codes — neither the Hague Conventions of 1899 and 1907, which declared violations of war and customs of war to be followed, nor the Geneva Conventions of 1929 on the conditions of treatment of prisoners of war provided mechanisms for sanctions against war criminals.⁵⁰ Thus the Allied powers set out to rectify these impunity gaps from the lessons learned by the earlier mistakes, which now revealed the magnitude of the inadequacy of the protections availed in the

⁴⁷ Such as Allied acquiescence to both German resistance to surrender any of the accused and conviction of only a handful of German military and politicians involved in war crimes.

⁴⁸ Keese, Kristen, *Shadows of Survival: A Child's Memoir of the Warsaw Ghetto*, pp. 47-48. Brighton: Academic Studies Press, 2016.

⁴⁹ See Guilerme De Aragao, 2005, p. 13.

⁵⁰ *Ibid.* pp. 13-18.

current human rights system.⁵¹ A massive overhaul was needed if grave atrocities were to be prevented in the future. It began with the establishment of the United Nations,⁵² the military tribunals and the drafting of the Universal Declaration of Human Rights.⁵³

2.3 TO THE VICTOR GO THE SPOILS, TO THE LOSER PROSECUTION

The legacy of Nuremberg and Tokyo IMTs while extensive has been marred by the perception of one of its legacies, that of being “Victors’ Tribunals”⁵⁴ in that no individuals were prosecuted for criminal responsibility within the military leadership of the Allied Powers.⁵⁵ Yet, vengeance against Germans, particularly in Eastern Europe,⁵⁶ and seeming collaborators⁵⁷ was unrestrained and widespread⁵⁸ and “prisoners were forced to endure the most terrible physical conditions.”⁵⁹ Women and children were not spared during these revenge campaigns.⁶⁰ Some revenge techniques used to “punish” were particularly cruel, and contained severe human rights abuses. Justice was rarely netted out fairly throughout the various Allied countries post-war.⁶¹ Atrocities committed against German civilians waiting to be expelled from various countries as

⁵¹ Reydams and Wouters, 2011, pp. 8-19 (a succinct analysis distilled from historical sources that revisits the politics of the creation of the IMTs).

⁵² Charter of the United Nations (1945).

⁵³ Universal Declaration of Human Rights, Article 11(2) (when crime is already under international law, such as war crimes, crimes against humanity, and genocide, there is no violation of the rule against retroactive prosecution).

⁵⁴ *But see* Reydams and Wouters, 2011, p. 8 (perceived shortcomings of the IMTs were also their strengths and their victors’ justice and summary procedure were remarkably efficient).

⁵⁵ Lowe, K, *Savage Continent: Europe in the Aftermath of World War II*, New York: St. Martin’s Press, 2012, p. 160.

⁵⁶ *Ibid.* pp. 125 - 144.

⁵⁷ Some countries were more lenient than others on trials and punishment than others. *Ibid.* 156. For a breakdown by country see *Ibid.* 156, *Table 2: The Judicial Punishment of Collaborators in Western Europe*, adapted from varied sources.

⁵⁸ *Ibid.* p. 145 (“Deep hatred of the collaborators and a desire for revenge was so widespread that some kind of punishment was inevitable.”)

⁵⁹ *Ibid.* p. 140.

⁶⁰ *Ibid.* pp. 163-184.

⁶¹ “The differing treatment of collaborators in different countries is just one of the many inconsistencies that hampered justice in Europe after the war.” *Ibid.* pp. 157.

well as conditions on trains transporting them back to Germany were deplorable.⁶² Death figures among prisoners of war were astounding, some due to starvation legitimately resulting from lack of food sources post-war but many from sadism and execution.⁶³ According to many witnesses, sadistic behavior of camp guards holding German civilians in forced labour camps in Eastern Europe became more creative and severe.⁶⁴ For example, when a mass grave of former POW Soviet soldiers that had been buried by Nazis was found, women were “forced to lie face-down on top of these slimy and disgusting corpses,”⁶⁵ their faces were pushed “deep into the hellish decay ... human remains were squashed into their mouths and noses.”⁶⁶ This caused the deaths of 64 women and girls.⁶⁷ Many Allied soldiers and others who witnessed the revenge killings and abuse and later remembered their gruesomeness, blamed this thirst for vengeance on the immediacy of the horrors they discovered throughout Europe and in concentration camps, which that had been committed by the Nazis and fascists.⁶⁸ These clear violations of the international customary and humanitarian law, committed by both civilians and soldiers of the Allied powers, went unpunished.⁶⁹

However, the Allied powers such as the United States and Britain did not for the most part receive spoils of the war and the Allies suffered great losses too, both economical as well as emotional, and their fatalities and casualties left catastrophic impact on the survivors of both

⁶² See e.g. Ibid. p. 139 (atrocities began almost immediately when POW camp reopened as force-labor camp for Germans civilians).

⁶³ Ibid. p. 122, Table 1: Deaths among POWs for camps run in mainland Europe (figures totaled over 11 million deaths).

⁶⁴ Ibid. pp. 139 - 144.

⁶⁵ Ibid. p. 140 *quoting* anonymous testimony, Esser Heinz, Des Holle von Lamsdorf: Dokumentation über ein polnisches Vernichtungslager (Bonn: Landsmannschaft der Oberschlesier e.V., 1969) pp. 43-5.

⁶⁶ Ibid.

⁶⁷ Ibid (significant evidence, including photographs of the graves and corroborating testimony, supports this eyewitness account).

⁶⁸ “Control was gone after the sights we saw, and the men were deliberately wounding guards ... then turned them over to the prisoners and allowing them to take their revenge on them. In fact, you’ve seen the picture where one of the soldiers gave one of the inmates a bayonet and watched him behead the man. It was a pretty gory mess.” Ibid. p. 84 *quoting* Rousso, Henry, ‘The Purge in France’, in Jon Eslter (ed.) *Retribution and Reparation in the Transition to Democracy* (New York: Cambridge University Press, 2006)103.

⁶⁹ Ibid. 17.

Axis and Allied countries. Indeed from a transitional justice viewpoint, the so-called Allied “winners” set about rehabilitation, reconciliation and prosecution in the war torn areas if not equal parts then in a part favoring rebuilding of nations destroyed, which included the so-called losers, Germany and Japan. The most important legacies for the purpose of this paper are those related to future of international criminal jurisdiction, which includes the institutions and documents developed to protect against and prevent serious human rights violations in the future.

After World War II, The Nuremberg and Tokyo International tribunals were established to prosecute war criminals for war crimes⁷⁰ under international humanitarian and customary law, however, new crimes were codified, for instance, crimes against humanity and crimes against peace, and international criminal law emerged. These IMTs also began to develop international criminal case law by attaching individual criminal responsibility under customary international law.

Beginning with the Moscow Declaration⁷¹ and the UN War Crimes Commission in 1943,⁷² documents, data and evidence were collected and preserved for prosecution of certain individuals. Then the London Agreement⁷³ was entered into for prosecution and punishment of major war criminals of the European Axis.⁷⁴ The IMTs were a mix of common law (anglo-saxon/adversarial) and civil law (continental/inquisitorial). They were not jury trials but were heard by judges from the Allied countries — United Kingdom, United States, France and Russia —and allowed cross examination and sworn statements to be taken. Although procedural rules remained underdeveloped, only 11 criminal procedure rules were used, the purpose and

⁷⁰ Guilerme De Aragao, 2005, p. 15, fn 4 *citing* Agreement for the Prosecution and Punishment of Major War Criminals of the European Axis, signed August 8, 1945 (also known as “London Agreement”), *citing* M.C. Bassiouni, *Crimes Against Humanity in International Criminal Law*, Dordrecht-Boston, Martinus Nijhoff Publishers, 1992, pp. 579-581.

⁷¹ *Ibid.* p. fn 7 *citing* Declaration of German Atrocities adopted at the Moscow Conference, November 1, 1943. M.C. Bassiouni, *Crimes Against Humanity ...*, *cit.*, pp. 573-574.

⁷² *See also* Charter of the United Nations (1945), Chapter 1, Article 2; Chapter 7, Articles 39, 41, 42 and 51, Chapter 8, Articles 52 and 53.

⁷³ For a detailed discussion of the historical political context of this series of events see Reydams and Wouters, 2011, p. 9-13 (recounts using original sources the events from the 1942 UN War Crimes Commission, The Moscow Declaration to the London Agreement).

⁷⁴ *See also* Universal Declaration of Human Rights, proclaimed by the United Nations General Assembly in Paris on 10 December 1948 General Assembly Resolution 217 A (III).

objectives of international criminal law and procedure did begin to take root.⁷⁵ For example, the IMTs birthed the manner used for indictments and trials before international criminal courts — how to submit evidence and plea bargain in an international mechanism and what were the roles of the court, prosecution, defendant, counsel, victims and witnesses in international criminal procedure. From the domestic laws of the states that participated in the IMTs, rules for investigation and coercive measures before international criminal courts would emerge. Appeals and revisions as well as contempt of court doctrine before international criminal courts evolved. Subsequent cooperation of international criminal courts with the states and the impact on the national criminal procedures on international criminal law would eventually take shape.⁷⁶ An overview of the evolving international jurisdiction from war crimes to organized crime is outlined in Table 1 below.

Table 1: Characteristic Overview of Internationalized Courts⁷⁷

	Legal Basis/Status	Make-up and Location	Legacy, Jurisdiction, Mandate
WWI	Versaille Treaty	Domestic judges. All transferred back to Germany, few brought to justice.	Legacy as first attempt at global cooperation in human rights protection. Senior leaders, including the German Emperor could and should be prosecuted for war crimes.
Nuremberg, Tokyo IMTs	Moscow Declaration, UN War Crimes Commission and London Agreement	All International judges. Nuremberg International/Tokyo	Legacy as first international courts to prosecute senior leaders under classic international law, international humanitarian law, domestic law imputed regarding certain crimes.

⁷⁵ Indeed the Nuremberg trials “were a near-total success (19 convictions) and “within a year, 24 major Axis war criminals were tried and sentenced.” Reydams, and Wouters, 2011, p. 13.

⁷⁶ For one of the few commentaries on this period that describes in detail the conflicts between the various FRY provinces and ethnic groups that resulted from the remapping of Europe after WW2, including the roles of Serbia, Bosnia, Kosovo and Croatia in WW2 and history of Yugoslav participation in ethnic targeting after WW2, see Lowe, 2012, pp. 249 - 262.

⁷⁷ Author compilation. Main sources: Apro, 2014, pp. 72-73 (ECCC and Kosovo); McLaughlin, D., International Criminal Tribunals: A Visual Overview, New York: Leitner Center for International Law and Justice, 2013, pp. 7 to 20 (ICTY), pp. 21-32 (ICTR), pp. 43-52 (ECCC), pp. 63-72 (ICC) ; Peskin, V., International Justice in Rwanda and the Balkans: Virtual Trials and the Struggle for State Cooperation, Cambridge University Press. , 2008, p. xix (ICTY), p. xxi (ICTR), Website of the KRSJI, <http://sitf.eu/index.php/en/news-other/42-statement-by-the-chief-prosecutor-clint-williamson>.

	Legal Basis/Status	Make-up and Location	Legacy, Jurisdiction, Mandate
ICC	Rome Statute	All International judges. Seated in The Hague	Codified International criminal law is defined in statute. Mandate is time limited to crimes committed after enactment of statute. Legacy as only permanent international criminal court.
ICTY	UNSC/UN Charter, Ch.7	All International judges. Seated in The Hague	Legacy includes genocide case law, gender-based violence as war crime. Outreach functions. Residual mechanism
ICTR	UNSC/UN Charter, Ch.7	All International judges. Sits in Arusha.	Genocide case law, residual mechanisms, Gacaca domestic courts facilitate prosecution.
ECCC	UN and Cambodia agreement.	Mixed panels. Two International & three Cambodian judges. Seated in Phnom Penh.	Genocide and crimes against humanity committed between April 1973 & January 1979. Both International & domestic criminal law applied. National judge majority on panels.
WCC	Domestic courts allow international personnel by national statute.	Mixed panels throughout BiH.	Focus on Organized crime and corruption. Convictions for genocide within domestic system.
UNMIK	UN regulation, International judges & prosecutors are part of national system	Mixed panels. Two international and one domestic judge. Presides throughout Kosovo.	All cases in the domestic criminal code but with temporally limited mandate, extended by regulation.
EULEX	Extension of UNMIK, International judges & prosecutors part of national system	Mixed panels throughout Kosovo (as above).	All crimes but with time limited mandate, extended. Goal is to transfer all cases to local judges and prosecutors.
KRSJI	Kosovo parliament	All International judges. Will be seated in the Hague.	Crimes committed during and after the war between 1 January 1998 and 31 December 2000 where commenced or committed in Kosovo.

2.4. THE NEED FOR INTERNATIONAL POLICING AND THE ICC

Decades after the first international prosecutions in IMTs, a more permanent international policing mechanism became necessary to protect against massive and grave violations of human

rights,⁷⁸ while at the same time such a court would need to secure the sovereign interests of nations in the face of global anarchy.⁷⁹ Thus an attempt by the international community to resolve these impunity issues and seek justice for victims and their families⁸⁰ that began with the early post-war IMTs led to the eventual establishment of the ICC.⁸¹ The ICC's conservative, complementary⁸² yet expanding approach to jurisdiction over acts relating to gross violations of human rights is outlined below.

(a) The Road to Rome

The global community's resolve to continue to close impunity gaps for grave human rights violation through the creation of a permanent court was influenced in part by efforts to overcome certain insufficiencies of the *ad hoc*s tribunals for both the former Yugoslavia and Rwanda⁸³ and to supplant the main criticisms of their limited International jurisdiction.⁸⁴ As the first permanent international criminal court, the ICC is also related to hybrid tribunals in two situations — that is, where the ICC (1) either lacks jurisdiction or has jurisdiction but it may undermine its universal role or (2) its concurrent jurisdiction makes it only able to prosecute top level perpetrators, leaving the hybrid courts their jurisdiction over other top level or mid-level suspects.⁸⁵ In the evolving jurisdiction, the ICC as a permanent court is also an important

⁷⁸ For a detailed analysis of the political history of the creation of the ICC, *see* Reydams and Wouters, pp. 71-78

⁷⁹ *See* Bassiouni, C., 'From Versailles to Rwanda in Seventy-Five Years: The Need to Establish a Permanent International Criminal Court', *Harvard Human Rights Journal*, vol. 10, Spring, 1997, pp. 11-82,

⁸⁰ Despite the difficulty in compelling witnesses to testify in the ICC due to its lack of codified subpoena powers (among other obstacles) by July 2013 close to 200 witnesses had testified regarding grave human rights violations before the ICC, including the above-captioned case that quotes allegations made by the prosecutor. ICC Witness Report, Witnesses Before the International Criminal Tribunal, IBA (July 1993), p. 14.

⁸¹ Bassiouni, C., 1997..

⁸² Article 1 Rome Statute.

⁸³ Hoffmann, 2016, pp. 21-22.

⁸⁴ Bassiouni, C., 1997.

⁸⁵ Related to the Kosovo cases study, the ICC cannot prosecute because the crimes to be prosecuted in the KRSJI were committed before the date of adoption of the Rome statute and ICC temporal jurisdiction is restricted to crimes committed after the dates of adoption by states. Article 11(1) Rome Statute.

historical⁸⁶ as well as substantive development and legacy.⁸⁷ This evolution of international criminal jurisprudence eventually created the environment that allowed for Kosovo parliamentary to approve the creation of the KRSJI discussed more further herein in the Kosovo case study.

The ICC statute, or the Rome Statute as it has come to be known, entered into force in July 2002 and provided a “solid legal framework to deal with the atrocities in cases, such as war crimes, crimes against humanity, genocide and other acts of aggression, where the State fails its international obligations of investigations and prosecution.”⁸⁸ If there is no domestic court available to carry out “a fair and effective trial,”⁸⁹ the Court supplies “a fair procedure against individuals involved in very specific criminal acts of international concern.”⁹⁰

(b) Widening the Road

“Prosecution alleges ... Mr Abu Garda ... killed twelve (12) AMIS peacekeeping personnel and attempted to kill eight (8) AMIS peacekeeping personnel, with the knowledge that they were personnel involved in a peacekeeping mission established in accordance with the UN Charter and were taking no active part in hostilities ... entitled to the protection given to civilians under the international law of armed conflict.” —Prosecutor v. Bahar Idriss Abu Garda⁹¹

Like most criminal statutes, the Rome statute of the ICC confers broad discretion on the prosecutor to decide what cases to pursue.⁹² Using this discretion within the confines of the law

⁸⁶ Wouters, Jan and Basu Sudeshna, (2009) The Creation of a Global Criminal Justice System, 9-11 (the need for the ICC that stemmed from a culture of impunity protecting perpetrators).

⁸⁷ Ibid. 11-14 (defines the variables that determine ICC’s effectiveness).

⁸⁸ Guilherme De Aragao, Eugenio Jose, (2005) Setting Standards for Domestic Prosecutions, 13.

⁸⁹ Article 17 Rome Statute.

⁹⁰ For example, grave breaches/serious violations, Article 5 includes 4 categories (aggression added), Article 25 Rome Statute (individual responsibility) or Articles 27 and 28 Rome Statute (commander responsibility).

⁹¹ *Prosecutor v Bahar Idriss Abu Garda*, ICC-02/05-02/09-91-Red, 32-33. Witness Report, Witnesses Before the International Criminal Tribunal, IBA (July 1993) 14, fn 14 (reference to the *Abu Garda* case).

⁹² *But see* Wouters, Jan and Basu Sudeshna, (2009) The Creation of a Global Criminal Justice System, 12-13 (discusses the principle of complementarity, the ICC’s residual role, the ambiguity resulting from the concepts of a state being unwilling or unable to prosecute, the ratification status of a state to the Rome Statute and how this all effects ICC assertion of jurisdiction).

is not necessarily an expansion of jurisdiction because the defense remains free to challenge any prosecutorial interpretation of the law.⁹³ Likewise, the ICC prosecutor has discretion to broaden its focus into certain areas, such as sexual gender based violence or violence against children, and this is not necessarily an expansion of jurisdiction *per se*, but is important to its contribution in the evolution of international criminal law.

By way of example, the ICC statute codifies a wide range of sexual crimes, including rape, sexual slavery, enforced prostitution, enforced sterilization, forced pregnancy, and other serious sexual violence.⁹⁴ Besides these sexual gender based violent crimes that are specifically codified, sexual violence may also constitute other crimes codified in the Rome Statute,⁹⁵ such as any of the crimes against humanity,⁹⁶ and war crimes,⁹⁷ including conflicts of both international and non-international character⁹⁸ as well as acts of genocide. In *Ntaganda*, the ICC adopted a broad interpretation of Article 8 when it argued that children forcibly recruited to be soldiers were victims of war crimes perpetrated by the same armed force.⁹⁹ Although the defense argued convincingly that the ICC lacked jurisdiction over crimes of rape and sexual slavery allegedly committed against combatants from the same armed forces, the Trial Chambers upheld the ICC's broad definition, due in large part to increased protections afforded children under international

⁹³ See e.g. Aptel, C. *Prosecutorial Discretion at the ICC and Victims' Right to Remedy: Narrowing the Impunity Gap*, J Int Criminal Justice, 10 (5): 1357-1375. 30 November 2012 (argues in favor of broadening discretionary power and supporting positive complementarity to further close impunity gaps because to do otherwise denies victims access to judicial remedy and reparations and pits international criminal justice against international human rights law.)

⁹⁴ Article 7(g) Rome Statute.

⁹⁵ Sexual violence is: a (1) war crime if committed in the context of and associated with an armed conflict; (2) crime against humanity when committed as part of a widespread or systematic attack directed against a civilian population, with the perpetrator's knowledge that such conduct was part of the attack but with no requirement of connection to armed conflict; (3) form of torture; and (4) constituent element of genocide when used in the process of group destruction and to alter the composition of territory, particularly in ethnic conflict.

⁹⁶ Article 7 Rome Statute.

⁹⁷ Article 8 Rome Statute.

⁹⁸ Article 8 b (xxii) and e (vi) Rome Statute.

⁹⁹ *The Prosecutor v. Bosco Ntaganda*, ICC-01/04-02/06, motion affirmed on appeal.

¹⁰⁰ *Ibid.*

law and its decision was upheld on appeal.¹⁰⁰ Therefore, the ICC prosecutor is within her jurisdiction to increase focus into areas such as sexual violence.

On the other hand, the concept of complementary jurisdiction requires the ICC to defer to state prosecutors unless it finds that a nation is unwilling or unable to investigate or prosecute.¹⁰¹ States have criticized this discretion as too broad because it allows the ICC prosecutor to review and reject a sovereign's decision, such as when a state has decided to not prosecute, has found a defendant not guilty or has dismissed a case.¹⁰² Yet when requested by Palestinians to investigate Israel for war crimes (such as for using tanks against civilians armed only with rocks) the ICC took a conservative stance and declined because it lacked jurisdiction until Palestine was recognized as a state by the UN and fell under its jurisdiction.¹⁰³

Under the Rome Statute, the prosecutor may also investigate crimes on its own initiative with the approval of two out of the three judges.¹⁰⁴ Sovereign states and defense attorneys may justly claim that ICC prosecutorial discretion is therefore not subject to proper checks and balances because it is not accountable to any elected body nor to the UN Security Council, which allows too much discretion and is subject to abuse.

Therefore the ICC prosecutor must walk a fine line between expanding her jurisdiction and fulfilling her broad mandate to prosecute crimes that “threaten the peace, security and well-being of the world” in order to fight impunity against mass atrocities so that criminals who perpetrated gross acts of inhumanity will no longer rule the day and will know that they will be punished for those grave acts.¹⁰⁵ In this respects, the ICC represents an important link in the evolution of international criminal jurisprudence.

III.

¹⁰¹ Article 17 Rome Statute.

¹⁰² Articles 13, 15 and 17 Rome Statute.

¹⁰³ Article 14 Rome Statute.

¹⁰⁴ Article 15 Rome Statute.

¹⁰⁵ An analysis of sexual violence committed against child soldiers of same army is beyond the scope of this thesis but has been addressed in Rodenhauser, T., Squaring the Circle? Prosecuting Sexual Violence against Child Soldiers by their ‘Own Forces’ *J Int Criminal Justice*, 2016, 14 (1): 171-193.

A NEW GENERATION OF CRIMINAL COURTS — *AD HOC* AND HYBRID

This section describes how two unique international criminal jurisprudential mechanisms — the *ad hoc* and hybrid tribunals — each seek to effect justice for victims against perpetrators in violent conflicts and thus contribute to the evolution of international criminal jurisdiction from Nuremberg to present day. The differences and similarities between *ad hoc* and hybrid tribunals will be examined. The WCC is particularly important to the Kosovo case study not only because BiH was part of the FRY but also because its procedural mechanisms and substantive criminal law codes can be useful to the new KRSJI, a unique breed of an international court with hybrid character that will involve Kosovo's national criminal law but be located in the Hague with all international judges.

3.1 PARADE PERPETRATORS WITH PROSECUTIONS

The *ad hoc* tribunals for Yugoslavia and Rwanda both dealt with mass atrocities in the context of arms conflict and totalitarian regimes.¹⁰⁶ Inspired by the International Law Commission of Nuremberg, wherein the first international criminal community declared certain grave breaches of law in war would be prosecuted and punished,¹⁰⁷ the controversial *ad hoc* courts were established¹⁰⁸ with similar provisions declaring individual criminal responsibility for crimes committed in armed conflict¹⁰⁹ in both the ICTY and ICTR statutes.¹¹⁰ Both also incorporate the Nuremberg notion of criminal command responsibility for heads of state and

¹⁰⁶ Peskin, Victor (2008) *International Justice in Rwanda and the Balkans: Virtual Trials and the Struggle for State Cooperation*, Cambridge University Press, vi, quoting Lawrence Weschler, Lawrence (2004) *Vermeer in Bosnia: A Reader* New York: Pantheon Books (“tribunal’s founding judges and officers have all repeatedly cast their work in terms of an attempt to stem the historic cycle of floodtides of ethnic bloodletting that recurrently afflict places like the former Yugoslavia, or Rwanda.”)

¹⁰⁷ Reydams, Lue and Wouters, Jan, *The Politics of Establishing International Criminal Tribunals*, 19-46 (analyzes the political history behind the creation of the *ad hoc* Tribunals for Yugoslavia, Rwanda and Lebanon).

¹⁰⁸ The legal basis for establishment of these courts can be found in UN Charter Chapter 7, which allows the UNSC “to do whatever is necessary to preserve the peace.”

¹⁰⁹ “The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.” UN Charter Chapter 7 Article 39. The use of Chapter 7 in this instance was controversial, however, detailed analysis of this controversy is beyond the scope of this note.

¹¹⁰ “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.” Article 7 ICTY statute, Article 6 ICTR statute.

military leaders as well as for their subordinates acting under their orders.¹¹¹ In addition, both the ICTY and ICTR statutes attach individual criminal responsibility onto foot-soldiers and mid-level military commanders for their roles in the crimes.¹¹² The following subsections analyze the ICTR and the ICTY respectively as two vital mechanisms in the global fight against grave human rights violations.

(a) ICTR — The Brutality of Rwandan Genocide and the Thirst for Justice

*“Witnesses who have given evidence before the Tribunal experienced threats, torture, arrests and detentions, and, in some instances, were killed.”*¹¹³

The extraordinary brutality of the massacres that occurred between April and June 1994 in the Rwandan genocide called for extraordinary mechanisms of justice in order to punish perpetrators of such grave and massive human rights violations.¹¹⁴ The creation of the ICTR responded to this thirst for justice but also sought to preserve the memory of the events in the collective global community¹¹⁵ because the “Holocaust, the Armenian, and the Rwandan genocide, as well as other genocidal massacres, are constantly subjected to a process of denial.”¹¹⁶

¹¹¹ Both include the following language: “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,” and “The fact that any of the acts referred to in articles 2 to 4 of the present Statute was committed by a subordinate does not relieve his or her superior of criminal responsibility if he or she 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.” Article 6 (2) and (3) ICTR Statute, Article 7 (2) and (3) ICTY Statute.

¹¹² An accused person acting under Government order or of a superior is not relieved of criminal responsibility, but it may be considered mitigation factor in sentencing. Article 6 (4) ICTR Statute, Article 7 (4) ICTY Statute.

¹¹³ ICTR, Kanyarukiga Decision on the Prosecution’s Appeal Against Decision on Referral under Rule 11 *bis*, para. 26, 30 October 2008 *quoted in* Sullo, P., ‘*Lois Mémorielles* in Post-Genocide Societies: Rwandan Law on Genocide Ideology under International Human Rights Law Scrutiny,’ *Leiden Journal of International Law*, 27, 2017, pp. 419-445 doi:10.1017/S0922156514000089, available at http://journals.cambridge.org/abstract_S0922156514000089, 2014.

¹¹⁴ Sullo, P. 2014, p. 443, (analyzing Rwanda genocide ideology law in relation to international human rights norms and the affect of negationism on collective memory and transitional justice strategies throughout Europe).

¹¹⁵ For a detailed analysis of the political history of the creation of the ICTR, *see* Reydams, and Wouters, 2011, pp. 29-40

¹¹⁶ Sullo, 2014, p. 419.

In 1994, the ethnic groups of Hutu, Tutsi and Twa made up the Rwanda population with Hutu majority of 84 percent.¹¹⁷ Subsequently, the Hutu majority ethnic group sought to eliminate the other ethnic groups and that led to the RFP's genocidal actions in reprisal. An overview of key events pertaining to atrocities committed during Rwanda armed conflicts and genocide and the indictments and prosecutions in the ICTR are presented in Table 2 below.

Table 2: Timeline of Key Events during the Rwanda Conflict and at the ICTR¹¹⁸

DATES	KEY EVENTS
January 1994	UNAMIR force commander General Dallaire warns UN Secretary General and provides key information regarding the risk of Rwanda genocide.
February	As the threat of violence grows UNAMIR commander persists in requests to take more security actions in Rwanda.
March 22	With their mandate limited regarding protecting civilians, UNAMIR members from 24 participating countries expands personnel in Rwanda to 2,539 troops.
April 6	President of Rwanda, Habyarimana, and the Burundi President are killed in plane crash after being shot down near Kigali. Within hours, Hutu militias and the Rwandan army begin to massacre moderate Hutus and Tutsis.
April 7	Prime Minister Uwilingiyimana and most other government officials are assassinated. Belgian UN personnel guarding the PM are also killed.
April - July	Rwanda Genocide. Four month mass slaughter is perpetrated by hundreds of thousands of Hutus. RPF reprisals commit atrocities against Hutus.
April 11	Massacre at Murambi Technical School kills 2,600 to 4,000 people.
April 15-16	During the Cyahinda church massacre, 10,000 to 15,000 people murdered.
April 18	Tens of thousands of people killed during Karama Church massacre.
late April	After 10 Belgian UNAMIR peacekeepers are killed, all Belgian and French UNAMIR troops depart Rwanda. UNSC votes unanimously to decrease UNAMIR presence to only 270 troops.
mid-May	According to ICRC estimates, half million people have died during the genocide.

¹¹⁷ Ibid p. 421 fn 5.

¹¹⁸ Author compilation. Main Sources: McLaughlin, D., 2013, pp. 21-32; Peskin, V., 2008, p. xxi, ICTR website www.unict.org/tabid/101/default.aspx

DATES	KEY EVENTS
May 21	The Kigali airport is captured by RPF forces.
May 30	The word “genocide” is finally used in UNSC Rwanda report, but the UNSC still refuses to formally recognize the massacres as genocide.
early June	Nyakizu massacre. 20,000 people slaughtered.
June 22	UNSC deploys French troops in Rwanda, which mainly protect Hutus fearing RPF reprisals for their genocide.
Late June	RPF offensives intensify in efforts to take Kigali and other government-controlled areas, thus weakening Rwandese government forces.
July 4	The genocide effectively ends when RPF captures Kigali. In 100 days, more than one million Rwandans were killed, an average of 333 per hour.
July-Aug	Hutu government flees Rwanda. One million Rwandese follow in fear of RPF reprisals.
November 8	Under UN Charter Chapter VII, UNSC creates the ICTR
mid 1996	ICTR transfers Karamira to Arusha for prosecution.
1997	Bagosora is transferred to the ICTR in Arusha. First begins with the prosecution of Akayesu.
mid-1998	First ICTR genocide verdict with the conviction Akayesu. RPF invades Congo for second time.
late 1999	RPF suspends cooperation with ICTR because of Barayagwiza case.
2002	ICTR trial of Bagosora begins. Tutsi witnesses prevented from traveling to ICTR by RPF.
2003	ICTR Chief Prosecutor Del Ponte is not reconfirmed by UNSC after Kagame wins post-genocide election.
2004	The Media Case trial convicts various newspapers and journalists for hate campaigns that contributed to the genocide.
late 2006	Arrest warrants issued by French judge for Kagame aides implicated in Habyarimara plane crash.

The decision by the international community not to intervene militarily in Rwanda was later seen as a failure to stop the massacre when over “half million people were hacked to death

with machetes.¹¹⁹ More than one commentator has noted that the hesitance of the international community to intervene in Rwanda weighed heavily on the minds of decision makers during the break-up of the FRY, including NATO commander from the United States, General Wesley Clark,¹²⁰ who found it impossible to turn a blind eye to atrocities reportedly being committed in throughout the FRY. Therefore, although my focus is on the FRY conflicts and the ICTY indictments and trials as related to the Kosovo case study, the ICTY and ICTR are linked by these common concerns as well as similar or identical statutory language and shared appellate judges. The International Residual Mechanism for Criminal Tribunals, which will be used for ongoing appeals, retrials and archival support, will also be shared by both courts.¹²¹ More importantly, together the ICTR forms a link with the ICTY in the evolution of international criminal jurisprudence especially relating to their genocide case law legacy.

(b) ICTY — The Death of Yugoslavia and Ethnic Cleansing

“He finished raping me...and said he could perhaps, do more...but [I] was the same age as his daughter.” — Victim Testimony¹²²

The majestic and peaceful beauty of Dubrovnik’s Elaphiti Islands belies their tumultuous and violent past. Having suffered multiple wars and their aftermath,¹²³ these resort areas have not fully returned to their former glory, as noted on a welcome sign in Lopud, which describes the

¹¹⁹ Clark, 2001, pp. 44-45.

¹²⁰ Ibid. p. 44 (“we were also among the countries responsible for not permitting the U.N. forces in Rwanda to intervene”).

¹²¹ In 2010, the International Residual Mechanism for Criminal Tribunals was established by UNSC resolution 1966 as legal successor to the ICTY and ICTR. For a thorough discussion of this entity see McIntyre, G., *The International Residual Mechanism and the Legacy of the International Criminal Tribunals for the Former Yugoslavia and Rwanda*, *Goettingen Journal of International Law* 3, 2011, pp. 923-983.

¹²² *Kunarac et al* trial, victim testimony. *quoted in* McLaughin, D., 2013, p. 8. (detailed report and succinct format also includes overviews of underlying conflicts, description of tribunals and case by case information, timelines, costs and other significant figures for ICTY, ICTR, ECCC, ICC, Special Court for Sierra Leone and Special Tribunal for Lebanon).

¹²³ Author visit to Mirogoj Cemetery, Zagreb, March 20, 2017. Croats, Serbs and Bosnians all suffered tremendous losses in WWII as memorialized in monuments throughout the FRY — for example, The Grave of The National Heroes, erected in 1950, the work of sculptor Duros Kavarić. The tomb holds “not only the partisan war heroes ... but also some of the prominent personalities of the Labour movement.” Among the most prominent individuals buried inside are Croatian anti-fascists such as Rade Koncar, Duro Salaj, Vojo Kovacevic and the prominent mayor of Zagreb, Veceslav Holjevic. Ibid.

consequences of war — from first having all property confiscated by Yugoslav communists after WW2 to near total destruction during Serbian bombardment of Dubrovnik's old town and islands.¹²⁴ The bloody civil wars that occurred nearly a decade after the death of President Tito¹²⁵ from 1991 to 1995 in the multi-ethnic territory resulted in the break-up of the FRY and culminated in what has been described by many as the deadliest European conflict since WW2.

Once again acting under its authority in Chapter VII, the UN adopted numerous resolutions¹²⁶ and established the ICTY to indict and punish perpetrators of war crimes and other grave breaches of humanitarian law¹²⁷ in the early stages of the FRY conflict,¹²⁸ including a particular resolution regarding grave breaches of international criminal law for the various provinces, such as BiH.¹²⁹

Croatia:

The war memorial near the entrance to Plitvicka Lakes National Park honors the first Croatian fatality of the war, Josip Jovac, who, along with a group described as "an anti-terrorist unit," helped Croatia win back the park from Serbian occupation and bring national pride to the country.¹³⁰ The memorial does not describe this battle as a civil war defense initiative but as a fight against Serbian terrorism.¹³¹ Another memorial, this one in Zagreb, honors more than 13,000¹³² killed during the Croatian War of Independence (also known as the Homeland War),

¹²⁴ Author's personal visit to Lopud Island, Croatia, April 2017.

¹²⁵ For a thorough analysis of Tito's attempt to establish ethnic harmony throughout the FRY after WW2, *see e.g.* Lowe, K., 2012, pp. 249-262.

¹²⁶ *See e.g.*, United Nations Security Council, Resolution 808 (1991), S/Res/808, United Nations Security Council, Resolution 713 (1993), S/Res/713.

¹²⁷ Reydams and Wouters, 2011, pp. 21-29 (analysis of the political history behind the creation of the ICTY).

¹²⁸ United Nations Security Council, Resolution 808 (1991), S/Res/808 (an international tribunal shall be established for the prosecution of persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991).

¹²⁹ United Nations Security Council, Resolution 827 (1993).

¹³⁰ Author's personal visit to the site, Plitvice Jezero, near Zagreb, 10-11 March 2017.

¹³¹ *Ibid.*

¹³² Author personal visit to Mirogoj Cemetery, Zagreb, 20 March 2017. The Monument Voice of Croatia Victims — Wall of Pain. Dedicated to Croatian soldiers and civilians killed during Serbian aggression against Croatia between 1990 and 1995. It is inscribed with the names of 13500 victims of the war.

which is considered to have started with those shots fired at Plitvicka on Easter Sunday, March 1991.¹³³ Croatian forces would later drive more than 200,000 Serbian civilians, who were Croatian nationals,¹³⁴ from their homes in retaliation, an alleged Croatian example of the myriad of ethnic cleanings done throughout the FRY.¹³⁵ In Ante Nator's book, the author attempts to reconstruct answers to the often-posed question 'what happened in the Balkans in the first half of the 1990s?' Nator's extensive research describes a Serbian imperialism and his analysis blames on the domination and strength of the Yugoslav People's Army (JNA) and the concept of a "Greater Serbia" that caused profound destruction and loss of life and continued unabated in Croatia for at least four years.¹³⁶ According to Croatian memorialization and history, the Homeland War culminated in "Operation Storm" and the liberation of a quarter of Croatian territory from four years of Serb military occupation.¹³⁷

Bosnia-Herzegovina;

From when the FRY conflict first began in Slovenia and then proceeded to Croatia, brutal cruelty was rampant, however, it was in BiH that "the first signs of international crimes began to emerge: mass executions, mass sexual assaults and rapes, the existence of concentration camps and the implementation of a policy of so-called *ethnic cleansing*."¹³⁸ The UN expressed grave alarm at reports of egregious violations of international humanitarian law¹³⁹ taking place on a

¹³³ Guco, A., *In the Eye of the Storm: Political, Diplomatic and Military Struggle for Croatian Independence*, 2016 (details the most significant events in the dissolution of the FRY and the creation of the Republic of Croatia, and dissects events from late 1980s that led to Serbian aggression against Slovenia, Croatia, BiH and Kosovo).

¹³⁴ Vucic, I., Remembering "Bloody Easter" of 1991, Croatia, 2012, <https://inavukic.com/2012/04/01/remembering-bloody-easter-of-1991-croatia/> ("the Plitvice Lakes management was expelled by rebel Krajina Serb police under the control of Milan Martić sentenced by ICTY to 35 years prison for war crimes in Croatia) supported by paramilitary volunteers from Serbia proper under the command of Vojislav Šešelj (Serb, currently in ICTY on strings of war crimes in Croatia charges)")

¹³⁵ *But see*, Nator, A., *The Croatian War of Independence, Serbia's War of Conquest Against Croatia and the Defeat of Serbian Imperialism 1991-1995*, Amazon Publishing, 2016 (reconstructs Croatia's victory over FRY military and Chetnik Serb paramilitaries to defend its territory and independence).

¹³⁶ *Ibid.*

¹³⁷ *See. e.g.* *Ibid.*

¹³⁸ Shraga, D. and Zacklin, R., *The International Criminal Tribunal for the Former Yugoslavia*, 5 EJIL 1994, 360.

¹³⁹ *Ibid.* pp. 363-370 (succinct yet detailed analysis of ICTY statute's subject matter jurisdiction and its nexus with international humanitarian law and customary international law as well as its reproductions and derivations from the Nuremberg charter).

massive scale within the FRY, which were especially widespread in BiH. As public pressure for an international response mounted, the UN soon acted under Chapter VII in its authority to maintain peace and security and voted to establish a tribunal to halt and redress these especially heinous human rights abuses.¹⁴⁰

Kosovo:

It has been said that the break-up of the FRY began and ended in Kosovo, where Milosevic first began his nationalist campaign for Serbian hegemony in June 1989 and refused to capitulate to International pressure to end it until NATO air campaign intervened in Kosovo and struck the heart of the Serbian infrastructure in June 1999. A decade after the wars began, peace in the FRY was finally achieved but at great costs.

An overview of key events pertaining to atrocities committed during the FRY wars (including Croatia, BiH and Kosovo) and the establishment of ICTY, its main indictments and prosecutions are presented in Table 3 below.

Table 3: Timeline of Key Events in the FRY Wars and the ICTY¹⁴¹

DATES	KEY EVENTS
June - July 1991	War breaks out after Slovenia and Croatia declare independence from the FRY. Although the Slovenian conflict is brief, the conflict in Croatia continues to escalate.
Fall 1991	Weapons embargo imposed by UNSC. UN personal envoy is appointed to the region.
December 1991	Croatian Serbs forcibly expel non-Serbs from Croatia and declare a third of the territory to be an independent Serb state.
January 1992	UN-sponsored ceasefire is negotiated and agreed upon.

¹⁴⁰ United Nations Security Council, Resolution 827 (1993), in relevant part: “Determining that this situation continues to constitute a threat to international peace and security, Determined to put an end to such crimes and to take effective measures to bring to justice the persons who are responsible for them, Convinced that in the particular circumstances of the former Yugoslavia the establishment as an ad hoc measure by the Council of an international tribunal and the prosecution of persons responsible for serious violations of international humanitarian law would enable this aim to be achieved and would contribute to the restoration and maintenance of peace, Believing that the establishment of an international tribunal and the prosecution of persons responsible for the above-mentioned violations of international humanitarian law will contribute to ensuring that such violations are halted and effectively redressed.”

¹⁴¹ Author Compilation. Main Sources: McLaughlin, D, 2013, pp 7-20; Peskin, Victor, 2008, p. xix, ICTY website (www.icty.org/sid/322).

DATES	KEY EVENTS
February 1992	UNPROFOR is formed and grows to 39,000 personnel but fighting continues despite ceasefire agreement.
March 1992	Bosnian Croats and Muslims approve referendum (which Serbs boycott) to declare Bosnia's independence from the FRY.
April 1992	After EU and US formally recognize Bosnia's independence, conflict turns bloody, breaks out into war and Bosnian Serbs proclaim 70% of Bosnia a Serbian republic. Bosnian Croats, Serbs and Muslims fight for territories and all establish detention camps although most are Serb-run.
Mid-1992	Although JNA withdraws from Bosnia, Serb forces and arms are left behind. Serb forces conduct massive attacks in Bosnia, including around Sarajevo, which remains under siege for four years until February 1996.
January 1993	An international criminal tribunal to prosecute atrocities is called for by the UN. Croat forces resume fighting against Serb positions.
May 1993	Under UN Charter Chapter VII, UNSC creates the ICTY.
Summer 1993	Widespread ethnic cleansing across Bosnia continues.
Summer 1994	First ICTY prosecutor, Richard Goldstone, is appointed. NATO meets to approve command and control arrangements for use of air power.
November 1994	ICTY issues first indictment.
March 1995	UNPROFOR is replaced by three different missions in Croatia, Bosnia and Macedonia.
Summer 1995	Croat forces launch two major offensives to regain all but a pocket of territory causing a major exodus of Serbs into Bosnia and Serbia. Bosnian Serbs led by Ratko Mladic massacre over 7,000 men and boys in Srebrenica, a designated UN "Safe Area" committing the largest war crime in Europe since WWII. Mladic and Karadzic are indicted.
August - September 1995	In order to stop attacks upon designated safe areas, NATO launches air campaign that targets Bosnian Serb locations.
Oct-Dec 1995	The war in Croatia effectively ends. Peace talks held in Dayton, Ohio. In Paris, Dayton Peace Accord signed.
1996	Erdemovic is allowed to depart Serbia for the ICTY. Blaskic' is transferred to the ICTY. First guilty verdict in ICTY.

DATES	KEY EVENTS
1997	Serbian police forces assault a peaceful protest of 20,000 in Pristina and detain Kosovar Albanian opponents. Ten Bosnian Croats are transferred to the ICTY.
January - April 1998	Serb paramilitary groups enter Kosovo. Armed skirmishes between Serb and Kosovar Albanians increase dramatically. Amnesty International reports that extra-judicial executions, excessive force, and disappearances perpetrated by Serb forces are frequent and evince an established pattern.
July - August 1998	Serb shelling and attacks on civilians fleeing Kosovo are reported as well as Serbian incursions into Albanian territory.
January 1999	Large numbers of Serb forces continue to move into Kosovo.
March - June 1999	NATO air intervention against Serbia takes place in order to stop atrocities in Kosovo. Campaign suspended when Serbian leadership agrees to withdraw from Kosovo.
May to end 1999	Slobodan Milosevic is indicted by the ICTY for crimes in Kosovo. The charges are later expanded to cover crimes in Bosnia and Croatia. KFOR enters Kosovo under UNSC resolution. Croatia's president Tudman, who oversaw independence transition, dies.
October 2000	Kostunica becomes president until FRY dissolves in February 2003 when it becomes the union of Serbia and Montenegro. Kostunica becomes prime minister of Serbia the following year.
mid-2001	Milosevic and Gotovina are transferred to ICTY. Bobetko is indicted the following year.
2003	Assassination of Serbian leader, Dindic.
2005	EU suspends Croatia's membership talks but resumes membership talks by year end. Indictment of Gotovina.
2006	Milosevic Mladic.

(c) Genocide Case Law Legacy in the ICTY and ICTR

The legacy of the *ad hoc* tribunals includes the development of significant case law regarding the crime of genocide, such as interpreting and refining the amount of intent required

to needed prove the crime.¹⁴² Other legacies of the *ad hoc* tribunals include, for example, the International Residual Mechanism for Criminal Tribunals (IRMCT)¹⁴³ and the outreach programs of the ICTY.¹⁴⁴ Various genocide denial laws¹⁴⁵ also arose from the public outcry and international response to the egregious acts of genocide crime that were exposed in the *ad hoc* tribunals.¹⁴⁶

According to the UN, the crime of genocide is distinguishable from war crimes, crimes against humanity and other offenses by an additional element of “intent to destroy, in whole or in part, a national, ethnical, racial, or religious group,”¹⁴⁷ which the ICTY and ICTR have often dubbed genocide’s special intent. Special intent is a requirement under customary international law and the intentional acts necessary to fulfill the element has been clarified by these two *ad*

¹⁴² Genocide Convention Article 2.

¹⁴³ For an analysis of the IRMCT, *see* McIntyre, G., 2011, pp. 923-983.

¹⁴⁴ Information on the outreach program including documentary films, press releases and videos of legacy conferences can be found at <http://www.icty.org/en/outreach/outreach-programme>.

¹⁴⁵ A detailed discussion of the laws on genocide denial is beyond the scope of this paper but highly competent studies already exist. *See e.g.* Sullo, 2014, p. 425 - 434.

¹⁴⁶ For a thorough analysis of genocide denial and the enactment of laws criminalizing it, *see* Ibid. pp. 419-445.

¹⁴⁷ Genocide Convention Article 2. Genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: (a) Killing members of the group; (b) Causing serious bodily or mental harm to members of the group; (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) Imposing measures intended to prevent births within the group; (e) Forcibly transferring children of the group to another group.

hoc tribunals.¹⁴⁸ For example, in interpreting the meaning of genocide as a criminal offense,¹⁴⁹ the ICTY and the ICTR adopted a subjective standard to determine the existence and identity of the group, i.e. when either the victim or the perpetrator considers the group to exist, but also combined this test with case specific objective factors.¹⁵⁰ While the prosecution must only prove the genocide perpetrator intended to destroy the group “in part,” when interpreting this requirement, ICTY and ICTR courts have ruled that a substantial part of the group must be targeted,¹⁵¹ although not necessarily a very important part.¹⁵² Nonetheless, in order to satisfy this requirement it is enough to prove the perpetrator targeted a small number of important members of the group.¹⁵³

¹⁴⁸ *Prosecutor v. Akayesu*, case no. ICTR964T, Judgment, September 2, 1998, para. 505–506 (methods of destruction such as subjecting the group to a subsistence diet, systematic expulsion from homes, and denial of right to medical services satisfies requirement of intent to destroy); *Prosecutor v. Krstic*, case no. IT98 33T, Judgment, August 2, 2001, para. 576, 580 (genocide perpetrator must intend to destroy physical or biological parts of group, not just cultural or sociological cultural characteristics of a group); *Prosecutor v. Brđanin*, case no. IT9936T, Judgment, September 1, 2004, para. 684 (intent inferred from facts, pattern of purposeful action or concrete circumstances but inference must be only reasonable inference from evidence).

¹⁴⁹ A complete analysis of genocide case law in the ICTY and ICTR is beyond the scope of this thesis. See e.g. *Prosecutor v. Kayishema et al.*, case no. ICTR951A, Judgment [Reasons], June 1, 2001, para 151 (no requirement that the killing be premeditated); *Prosecutor v. Krstic*, case no. IT9833T, Judgment, August 2, 2001, para 513 (deportation and inhuman treatment are among acts that may cause serious mental or bodily injury.). *Prosecutor v. Kordic et al.*, case no. IT9514/2T, Judgment, February 26, 2001, para 236, 229 (actions or omissions need not be sole cause of death, but must be “a substantial cause) *Prosecutor v. Krnojelac*, case no. IT9725T, Judgment, March 15, 2002, para 329 (causing a person’s suicide may amount to killing where the accused’s acts or omissions “induced the victim to take action which resulted in his death, and that his suicide was either intended, or was an action of a type which a reasonable person could have foreseen as a consequence”); *Prosecutor v. Kunarac et al.*, case no. IT9623/1A, Judgment, June 12, 2002, para 98, fn. 114 (not required to prove “plan or policy” of genocide); *Prosecutor v. Stakic*, case no. IT9724T, Judgment, July 31, 2003, paragraph 517 (crime of genocide includes use of methods, such as lack of proper hygiene, clothing or physical labor that lead to slow death). *Prosecutor v. Niyitegeka*, case no. ICTR9614A, Judgment, July 9, 2004, para 53 (noting clear distinction between mass murder and crimes where perpetrator targets a specific group because of race, nationality, religion or ethnicity); *Prosecutor v. Ntakirutimana*, case nos. ICTR9610A and ICTR9617A, Judgment, December 13, 2004, para 363 (interpreting phrase “as such” in Genocide Convention), *Prosecutor v. Rutaganda*, case no. ICTR963T, Judgment and Sentence, December 6, 1999, para 51 (causing serious mental or bodily harm group members does not mean harm is permanent and irremediable but harm does need to be serious).

¹⁵⁰ *Prosecutor v. Brđanin*, case no. IT9936T, Judgment, September 1, 2004, para. 684 (subjective criteria not always sufficient to determine the group targeted for destruction); Genocide Convention Article 4(2) (a) to (e) (acts must in fact be directed against members of the group).

¹⁵¹ *Prosecutor v. Kayishema et al.*, case no. ICTR951T, Judgment and Sentence, May 21, 1999, para. 97 (crime of genocide requires intent to destroy considerable number of individuals).

¹⁵² See e.g. *Prosecutor v. Jelusic*, case no. IT9510T, Judgment, October 19, 1999; *Prosecutor v. Bagilishema*, case no. ICTR951AT, Judgment, June 7, 2001, para. 56–59.

¹⁵³ *Prosecutor v. Jelusic*, case no. IT9510T, Judgment, December 14, 1999, para. 82 (targeting significant part of group, for example its political or religious elite, satisfies requirement because of impact their disappearance would have on survival of group).

In order to prove genocide,¹⁵⁴ the prosecution must establish that the suspect specifically intended to destroy in whole or in part a national, ethnical, racial, or religious group as such, or recklessly disregard the likelihood that death will result from such acts or omissions. Therefore, to establish the mental element, *mens rea*,¹⁵⁵ there must be evidence that the perpetrator intended to kill or inflict serious bodily injury¹⁵⁶ in reckless disregard of human life.¹⁵⁷ The ICTY and ICTR have also noted that there are five punishable acts of genocide,¹⁵⁸ each with its own physical and mental elements that the prosecution must prove in addition to the elements required under Article 2. Therefore, an important legacy of ICTY and ICTR jurisprudence¹⁵⁹ has been in “deconstructing the definition of genocide [and that] prosecution of the criminal offense of genocide, in addition to articulation of a precise meaning of this criminal offense, is complicated.”¹⁶⁰

3.2 HYBRID TRIBUNALS — BEST OF BOTH WORLDS?

The UN defines hybrid courts as judicial entities of mixed jurisdiction composed of both domestic and international elements, usually seated in the country where the crimes were

¹⁵⁴ If the special intent cannot be proven for the crime of genocide, an intentional killing may also be prosecuted as a war crime or a crime against humanity.

¹⁵⁵ Despite the Genocide Convention and various criminal codifications of the term, “[t]he very concept of genocide is heatedly debated in both legal and historical terms, in particular with regard to the psychological element of the crime, the so-called *mens rea* of the perpetrator and to the targeted group. Sullo, 2014, p. 420.

¹⁵⁶ *Prosecutor v. Akayesu*, case no. ICTR964T, Judgment, September 2, 1998, para. 731–733 (Rape and sexual violence may constitute “serious bodily or mental harm” on both a physical and a mental level).

¹⁵⁷ *Prosecutor v. Delalic et al.*, case no. IT9621A, Judgment, February 20, 2001, para.422.

¹⁵⁸ Genocide Convention Article 3 states that the following acts shall be punishable: (a) Genocide; (b) Conspiracy to commit genocide; (c) Direct and public incitement to commit genocide; (d) Attempt to commit genocide; (e) Complicity in genocide.

¹⁵⁹ A detailed analysis of the *ad hoc* tribunals’ other legacies (for example, the IRMCT and the ICTY outreach programs) are beyond the scope of this thesis. For a discussion of the IRMCT, see McIntyre, G., 2011, pp. 923-983. For information relating to the outreach program, which includes documentary films, press releases and videos of legacy conferences, see <http://www.icty.org/en/outreach/outreach-programme>.

¹⁶⁰ For compilation of case law and in-depth analysis of the scope and meaning of the definition of genocide, see “William A. Schabas, *Genocide in International Law*. Human Rights Watch, Genocide, War Crimes and Crimes against Humanity: Topical Digests of the Case Law of the International Criminal Tribunal for Rwanda and the International Criminal Tribunal for the former Yugoslavia,” as cited in Sullo, 2014.

committed.¹⁶¹ Hybrids courts are for the most part established under the auspices of treaties, domestic law or both.¹⁶² The reasons for establishing hybrids are as complex and varied as the national context upon which they are dependent, however, the UN has listed factors that might initiate hybrid prosecution as follows: (1) lack of domestic resources or capacity,¹⁶³ (2) fear that the legal system lacks independence or is biased, or to overcome the perception of both, which may prevent competent prosecution,¹⁶⁴ (3) to effect the right to justice and the right of an effective remedy by ensuring investigation, prosecution and punishment of perpetrators of serious human rights violations, (4) to end impunity¹⁶⁵ especially against perpetrators of the most heinous crimes thus bolstering the rule of law,¹⁶⁶ and/or (5) to contribute to reconciliation.¹⁶⁷ Each hybrid court combines national and international aspects of justice but the various hybrid court models vary considerably as evidenced by the following three examples, the ECCC, WCC and Kosovo.

(a) Slow Path to the Khmer Rouge Trials and the Swiftness of the Killing Fields

"This one will be easier," a man says as he shakes his head. "No survivors in the family." —Loung Ung, Pol Pot Regime Survivor¹⁶⁸

The hybrid court model in Cambodia began after extensive negotiations between the UN and the Cambodian government¹⁶⁹ in an attempt to quench the thirst for justice and quell

¹⁶¹ Rule-of-Law Tools for Post-Conflict States: Maximizing the Legacy of Hybrid Courts,1 (OHCHR New York and Geneva 2008).

¹⁶² For a political historical analysis of the establishment of hybrid tribunals from the ECCC through the hybrid mechanisms in BiH and Kosovo, *see* Reydams and Wouters, pp. 47-71.

¹⁶³ In BiH and Kosovo, international assistance has helped to rebuild legal institutions and "has been a component of broader efforts to operationalize criminal courts." OHCHR Rule-of-Law Tools for Post-Conflict States, 4.

¹⁶⁴ This factor motivated the establishment of BiH, Kosovo and the ECCC (the only hybrid court mandating a *super majority*, majority plus one, of domestic judges on each panel). *Ibid.* p. 4, and fn 6.

¹⁶⁵ This is particularly important "where impunity may have been a root cause of conflict." *Ibid.* p. 4.

¹⁶⁶ "Restoring respect for the rule of law and indicating that war crimes, crimes against humanity and genocide should not go unpunished may be seen as the cornerstone of a sustainable peace and democratic transition," *Ibid.* 4.

¹⁶⁷ *Ibid.* p. 3-4.

¹⁶⁸ Ung, L., *First They Killed My Father: A daughter of Cambodia Remembers*, HarperCollins, 2000, p. 87.

¹⁶⁹ The Cambodian government and UN agreed to create the ECCC to try the Khmer Rouge in 2003. Rule-of-Law Tools for Post-Conflict States: Maximizing the Legacy of Hybrid Courts, 3.

potential unrest. Due to lengthy negotiations and other factors, such as the war in neighboring Vietnam, the actual trials commenced much further in time from the Khmer Rouge's human rights atrocities, in contrast to later hybrid courts that have been mostly established immediately following or during the conflict. Nonetheless the ECCC is instructive to the jurisdictional evolution of hybrid criminal justice in that it merged international and domestic criminal law, was comprised of both international and national judges and prosecutors, and became an example and inspiration for the creation of future hybrid courts.

In April 1975, the Khmer Rouge regime, led by Saloth Sar, otherwise known as Pol Pot, seized power during a period of civil war¹⁷⁰ and proclaimed *Democratic Kampuchea* after marching into the Cambodian capital of Phnom Penh.¹⁷¹ The Khmer Rouge evacuated most occupants from the capital and forced them to leave their homes and possessions behind and walk for days on end into the countryside with little or no food and water,¹⁷² then quickly erected torture, prison, and execution facilities as well as devised other brutal means to destroy the urban society and members of the previous government, all in order to further Pot's agenda to pervert the democratic system and convert it into a type of agrarian utopia.¹⁷³ The regime's human rights abuses were particularly swift, heinous, massive and lethally effective, killing off at least 1.7 million people through execution or torture and resulting in the deaths of at least a million more Cambodians through disease, starvation, hard labor or suicide. These egregious human rights violations, including murder and torture, all occurred in a two year period and eviscerated nearly a third of the country's population.¹⁷⁴

¹⁷⁰ The most salient issues regarding grave violations of international human rights norms related to the ECCC are highlighted herein, however, it is beyond the scope of this thesis to document the myriad of human rights abuses committed by the Khmer Rouge, the Pol Pot regime and other factions involved in the conflicts. For a meticulously researched and detailed analysis of the Cambodian tragedy, see Kiernan, B, *The Pol Pot Regime: Race, Power and Genocide in Cambodia under the Khmer Rouge, 1975-79*, Yale University Press, New Haven and Connecticut, 1996.

¹⁷¹ Luftglass, S., "Crossroads in Cambodia: The United Nation's Responsibility to Withdraw Involvement from the Establishment of a Cambodian Tribunal to Prosecute the Khmer Rouge", *Virginia Law Review*, Vol. 90, No. 3 2004, pp. 893-964.

¹⁷² Loung, 2000, p. 87.

¹⁷³ Luftglass,, 2004, pp. 893-964.

¹⁷⁴ Kiernan, 1996, pp. 251-309 (describes Pol Pot Regime's campaign as Ethnic Cleansing")

Pol Pot's plan also sought to abolish currency and markets and ostensibly replace them throughout the country with communal and cooperative living and eating.¹⁷⁵ It intended to guard and maintain firm borders from Vietnamese intrusion while dislocating their population within Cambodia territory, and either eliminate or defrock all Buddhist monks.¹⁷⁶ Violence directed at religious, minority, ethnic, opposition political parties¹⁷⁷ as well as intellectuals was deliberate and systematic¹⁷⁸ and ruthless in the frequency and cruelty of their unending threats and actual crimes of murder and torture.¹⁷⁹ Cambodians forced into the so-called communal eating cooperatives in reality were subject to hard labor, given minimal rations, forced to grow rice for China in arms trafficking exchanges and were recruited as child soldiers.¹⁸⁰ The Khmer Rouge brutally stifled any and all uprising. For example, the Khmer Rouge thwarted one such rebellion when they tore up villages with B-40s then “smashed the heads of any survivors with pick handles. The corpses were thrown aside and left. They even stuck heads on pikes and exposed them along the banks of the Mekong.”¹⁸¹

The swiftness of this slaughter lasted a mere two years but resulted in the deaths of almost 2 millions people and contrasts with the slow march to the creation of the ECCC to obtain justice for victims of these atrocities. More than two decades after the Pol Pot regime took power, in June 1997 the prime minister of Cambodia wrote the UN seeking assistance to hold accountable those responsible for the crimes and genocide committed during the Khmer Rouge

¹⁷⁵ Ibid. p. 1-64.

¹⁷⁶ Luftglass, 2004, p. 900.

¹⁷⁷ After discussing the Pol Pot regime's cleansing of the cities, countryside and frontiers of Cambodia, Kiernan devotes an entire chapter to what he terms “Ethnic Cleansing.” Kiernan, 1996, pp. 251-309. Kiernan uses “the terms *race* and *ethnicity* interchangeably, because of the emerging scholarly consensus that racial boundaries have no biological basis.” He offers no citations or sources for this statement.

¹⁷⁸ Luftglass, 2004, p. 900.

¹⁷⁹ Ibid.

¹⁸⁰ Loung, 2000, p. 138 (“You are the children of the Angkar. You are here because you are the brightest and fastest. You are fearless and are not afraid to fight. The Angkar needs you to be our future.’-spoken to a group of girls under the age of nine.”),

¹⁸¹ Kiernan, 1996, pp. 264-265 *quoting* Ponchaud, Francois, (1978) Cambodia Year Zero. London: Allen Lane,p. 153.

rule.¹⁸² The following spring, a resolution was proposed to establish a hybrid court in the Hague. Another year passed before a UN group of experts sought to guarantee international standards of justice through an International *ad hoc* model but this plan was also rejected by Cambodian government. It took several more proposals aimed at establishing a special chamber before the ECCC law was eventually passed by the Cambodian Senate in January 2001. More controversy and disagreements ensued as international leaders questioned the impartiality of the approved ECCC. Finally in June 2003, a new text was agreed upon by the UN and Cambodia but investigators, prosecutors and judges were not sworn into office for another two years. In February 2006, the ECCC formally opened,¹⁸³ thirty years after nearly one-third of the Cambodian population perished in the killing fields.

The ECCC is the only hybrid model that does not have a majority of international judges — its Trial Chamber includes two foreign and three domestic judges, and its Supreme Court Chamber is comprised of three international and four Cambodian judges. The prosecution is led by two co-prosecutors, one foreign and one Cambodian, who cooperate in investigations and indictments. The first trial was that of Kaing Guek Eav, also known as Comrade Dutch, who ran the infamous Phnom Pen “S-21” prison. Three decades after the atrocities were committed, Dutch was convicted for crimes against humanity and grave breaches of the Geneva Convention, sentenced to 35 years in prison and now acting as a prosecutorial witness in other trials.¹⁸⁴

The delay in bringing a relatively small number of perpetrators to justice in Cambodia is disheartening. Yet it must be remembered that prosecuting any Khmer Rouge leaders in a Southeast Asian authoritarian regime¹⁸⁵ is an achievement and testament to international commitment to end impunity for grave human rights violations. By establishing a record in the

¹⁸² Reydams and Wouters, 2011, pp. 47-54 (analyzes the political history behind the creation of the ECCC).

¹⁸³ Ibid.

¹⁸⁴ “In Cambodia, it remains to be seen is whether the addition of international personnel will be sufficient to withstand the political interference evident in the domestic justice system.” OHCHR, Rule-of-Law Tools for Post-Conflict States, p. 5.

¹⁸⁵ For a detailed review of the challenges facing the ECCC in the political and legal environment of Cambodian and the effects on its structure, efficiency and legacy, *see* Ibid. pp. 10-46.

global collective memory of the atrocities perpetrated by totalitarian regimes, the ECCC is an important mechanism for reconciliation, memorialization, and rehabilitation of the survivors and families of those who were tortured or killed during the regime's horrific reign.

(b) Tackling Corruption and Organized Crimes in the Context of Conflict — The WCC

"I went to shake his hand, but when he held up his arm, I could see where they had wrapped piano wire around his wrist. All that was left was a stump. My father said it reminded him of... Blesum German concentration camp in Poland." —Nigel, British citizen and journalist¹⁸⁶

As I sat with a Bosnian Muslim, now thirty-five years old and a teenager during the brutal destruction of his beloved Mostar bridge and indeed his city and country as well, he told me how his people tried to build a meager army in order to fight against a powerful Serbian force, which possessed rocket launchers, cannons, multi-round assault rifles, airplanes and tanks.¹⁸⁷ "First a person takes a kitchen knife and maybe can overpower a soldier at night and take his weapon, or maybe he owns a hunting rifle, which is only allowed in this country to fire two bullets,"¹⁸⁸ he explained. During our conversation, his voice was calm and measured while tears streamed down his cheeks from both eyes. He recounted how with only one rifle and two bullets, one man led a charge with a group of his fellows behind him and when he fell dead, the next man picked up the gun and led, and this continued until they gained some ground.¹⁸⁹ "You really only have one bullet you can use," he told me, "because you must save one for yourself in case you face being captured. You cannot risk it, that one bullet must be kept so you can end your life before they can torture you or worse."¹⁹⁰

This was in Mostar, where east meets west and mosques line one side of the river and churches flank the other side of the bridge. In Medugorje, Croatian and Catholic, another

¹⁸⁶ Author's personal interview with Nigel, 1 April 1, 2017 on Sipan Island, Dubrovnik Croatia, during which he described his visit to a refugee camp in Bosnia at that time of the conflict in 1992 as part of humanitarian aid trips with journalists.

¹⁸⁷ Author's personal interview with Irfan, 14 May 2017, Mostar, BiH.

¹⁸⁸ Ibid.

¹⁸⁹ Ibid.

¹⁹⁰ Ibid.

segment of the post-conflict region settles into a different life, where pilgrimages file to an apparition site of the Virgin Mary, mother of Jesus in their religion, and the devout can now practice freely in BiH after decades of suppression under communist rule.¹⁹¹ These two cities are a microcosm of the complex and many-faceted BiH conflict. Bosnian Croat Catholics fought for territory against both Serbs and Muslims. Bosnian Muslims who were disarmed by the UN and promised to be secure in protected zones, witnessed thousands of boys and men murdered in so-called safe areas. In Srebrenica, 7,000 men and boys were massacred, for which Serbians Mladic and Karadzic were indicted in the ICTY. And yet a fragile peace was finally achieved in Paris: “The weariness of all sides (particularly the Bosnian Serb soldiers who had come close to staring defeat in the face) was one factor which might promote a lasting peace.”¹⁹²

After talks regarding peace agreements and disarmament¹⁹³ and due in part to the destruction of infrastructure, the international community was motivated to assist BiH in affecting justice for victims of the war¹⁹⁴ and creating a stable rule of law.¹⁹⁵ Like most transitioning societies in post-conflict areas, there were other concerns as to whether the country could effectively administer justice without international assistance¹⁹⁶ that contributed to the

¹⁹¹ Author personal visit to the site, 14 May 2017.

¹⁹² Malcolm, N., *Bosnia: A Short History*, Macmillan 1994, p. 270.

¹⁹³ The General Framework Agreement for Peace in Bosnia and Herzegovina (also known as the Dayton Peace Agreement), signed December 14, 1995 [online], http://www.ohr.int/dpa/default.asp?content_id=379 (retrieved September 19, 2005). The Dayton Peace Agreement ended the war in Bosnia.

¹⁹⁴ Organization for Security and Co-operation in Europe – Mission to Bosnia and Herzegovina, “War Crimes Trials Before the Domestic Courts of Bosnia and Herzegovina: Progress and Obstacles,” March 2005, p. 4 [hereinafter “OSCE War Crimes Report”].

¹⁹⁵ Reydam and Wouters, 2011, pp. 64-65 (analyzes the political history behind the creation of the hybrid court model in BiH).

¹⁹⁶ See “Joint Preliminary Conclusions of OHR and ICTY Experts Conference on Scope of BiH War Crimes Prosecutions,” January 15, 2003 [online], <http://www.un.org/icty/pressreal/2003/p723-e.htm> (retrieved November 15, 2005).

establishment of the WCC hybrid model.¹⁹⁷ Cases were transferred from the ICTY,¹⁹⁸ fugitives still at large were sought or extradited from foreign countries, and corruption and organized crimes was a made a focus of the new system.¹⁹⁹

The Law on the Prosecutor’s Office of BiH requires that both a special department for war crimes and one for organized crime, economic crime and corruption “shall be established ,as defined by law (hereinafter the ‘Special Departments’).”²⁰⁰ The law specifies how these Special Departments are to be composed²⁰¹ of as well as the budget required under which these are to function.²⁰² Prosecutorial jurisdiction for these special crimes derives from domestic law²⁰³ and hybridization is conferred upon the Special Departments that allows for the appointment of international prosecutors during a transitional period of five years.²⁰⁴ The law also states that “International Deputy Chief prosecutors shall be the Heads of the Special Departments”²⁰⁵ and an International Registrar must be appointed to maintain the registry of and provide support

¹⁹⁷ The WCC was established by agreement between the ICTY, OHCHR and national authorities in 2005. Rule-of-Law Tools for Post-Conflict States: Maximizing the Legacy of Hybrid Courts, 3.

¹⁹⁸ Law on the Transfer of Cases from the ICTY to the Prosecutor’s Office of Bosnia and Herzegovina and the Use of Evidence Collected by the ICTY in Proceedings Before the Courts in Bosnia and Herzegovina, Official Gazette of Bosnia and Herzegovina, 61/04, art. 2; Rules of Procedure and Evidence of the International Criminal Tribunal for the former Yugoslavia, IT/32/Rev. 36, July 21, 2005, Rule 11 (allows ICTY referral of cases to national authorities with jurisdiction after indictment but before trial begins). HRW Report.

¹⁹⁹ A detailed discussion of these case transfers and WCC substantive case law is beyond the focus of this thesis. In addition, some retrials of ICTY suspects are still ongoing in the IRMCT. See Schindler, John, 12 June 2017, Opinion, The Return of Frankie and The Iceman, The Observer, (retrials of Jovica Stanišić and Franko Simatović, alleged Balkan war criminals and top officers in Serbian secret police, may reopen old wounds).

²⁰⁰ The Law on the Prosecutor’s Office of Bosnia and Herzegovina, Official Gazette of Bosnia and Herzegovina, 61/04, [hereinafter “Law on the Prosecutor’s Office”]; art 3(3).

²⁰¹ Law on the Prosecutor’s Office, Article 6 (Special Departments shall consist of a Head and Prosecutors, Deputy Chief Prosecutors shall be Head and Deputy Heads selected from the Prosecutors).

²⁰² Ibid, article 9 (3) (budget shall include separate items specifying the budget requirements for Special Department work).

²⁰³ Ibid, article 12 (3) (criminal Jurisdiction for the Special Departments to investigate and prosecute the perpetrators of war crimes, organized crime, economic crime and corruption “as provided by Law, when provision is made in the said laws that the Court of Bosnia and Herzegovina has such jurisdiction.”

²⁰⁴ Ibid, article 18a(1) (international prosecutors may be appointed to the Special Departments during a transitional period of no more than five years. “International prosecutors shall not be citizens of Bosnia and Herzegovina or of any neighboring states.”)

²⁰⁵ Ibid, article 18a(2).

services to the Special Department,²⁰⁶ thus granting international staff members a prominent role in the WCC.

(c) The Role of NATO

"Taking the political decision to deploy military force is never easy but the rapid and careful application of force can prevent a crisis from developing into a more serious one." —Anders Fogh Rasmussen, NATO Secretary General²⁰⁷

Since the end of World War II, responsibility for international policing has often fallen to the North Atlantic Treaty Organization²⁰⁸ in its various efforts to maintain peace throughout the member states. In Lisbon in 2010, the members reaffirmed their commitment to international security.²⁰⁹ During the break up of FRY, NATO intervened militarily in BiH, Kosovo, and in the FRY Republic of Macedonia.²¹⁰ The role of NATO in the FRY is significant because it attempted to manage the BiH and Kosovo crises during the wars²¹¹ and used military intervention in BiH to stop the conflict as well as intervened in Kosovo with a months-long air campaign.

²⁰⁶ Ibid, article 18b.

²⁰⁷ Anders Fogh Rasmussen, NATO Secretary General, May 30 2011, *quoted in* What is NATO? An Introduction to the Transatlantic Alliance. NATO Publications, 2016 (the Balkans area is one of five ongoing NATO-led missions), p. 16.

²⁰⁸North Atlantic Treaty, 4 April 1949 Washington DC, Article 5: "the parties agree that in armed attack against one or more of them in Europe or North America shall be considered and attack against them all and consequently they agree that if such an attack occurs each of them in exercise of the right of intuitive visual or collective self add event recognize by article 51 of the charter of the UN will assist the party of parties so attached by taking forth with individual and in concert with the other parties such action as it teams necessary including the use of armed force to restore in maintain the security of the north Atlantic."

²⁰⁹ Strategic concept Lisbon summit, November 2010. ("We the political leaders of NATO are determined to continued renewal of our alliance so that it is fit for purpose in addressing the 21st century security challenges... our alliance throws as a source of Hope because it is based on common values of individual Liberty democracy human rights and the rule of law and because our common essential and enduring purpose is to safeguard the freedom and security of its members these values and objectives are universal and perpetual and we are determined to defend them through unity solidarity strength and resolve.")

²¹⁰ Latawski and Smith, 2003, p. 66 ("NATO has taken a prominent role in the international attempts to make work the political settlements in Bosnia, Kosovo and, to a lesser extent, Macedonia."). For detailed account of international peace-building in the FRY, *see* Ibid. Chapter 3, South Eastern European Settlements? Democratization, nationalism and security in former Yugoslavia, 66-91.

²¹¹ NATO, 2016 the Balkans area is one of five ongoing NATO-led missions), p. 17.

First in BiH, acting under UN authority,²¹² NATO's Airborne Warning and Control System aircraft imposed a no fly zone over BiH in October 1992.²¹³ Shortly thereafter, under UNSC resolution,²¹⁴ the EU and NATO enforced sanctions and an arms embargo.²¹⁵ Finally in 1995, NATO allies took military action against Bosnian Serbs, which inevitably led them to accept a peace accord.²¹⁶ To implement the settlement, NATO-led peacekeeping forces were activated.

NATO was also “the chosen instrument”²¹⁷ used to compel Milosevic²¹⁸ to “cease and desist” with military activities in Kosovo.²¹⁹ After continuous warnings by NATO that were not only ignored by Milosevic but whose actions repeatedly violated UNSC resolutions, NATO met in Brussels in April 1999, agreed to intervene and made clear its reasons for doing so:

*The unrestrained assault by Yugoslav military, police and paramilitary forces, under the direction of President Milosevic, on Kosovar civilians has created a massive humanitarian catastrophe which also threaten to destabilize the surrounding region. Hundreds of thousands of people have been expelled ruthlessly from Kosovo by the FRY authorities. We condemn these appalling violations of human rights and the indiscriminate use of force by the Yugoslav government. These extreme and criminally irresponsible policies, which cannot be defended on any grounds, have made necessary and justify military action by NATO.*²²⁰

²¹² United Nations Security Council Resolution 781 (1992) *recalling* United Nations Security Council Resolution 713 (1991) (alarmed by violations of cease-fire and continued fighting in the FRY, SC establishes NATO-IFOR mission and calls for a weapons embargo among other actions),

²¹³ NATO, 2016, p. 19.

²¹⁴ United Nations Security Council Resolution 787 (1992).

²¹⁵ NATO, p. 19.

²¹⁶ *Ibid.* p. 20.

²¹⁷ Latawsk and Smith, 2003, p. 1.

²¹⁸ *See also* United Nations Security Council Resolution 1160 (1998) adopted 31 March 1998, United Nations Security Council Resolution 1199 (1998) adopted 23 September 1998, The Treaty on European Union, Maastricht December 1991.

²¹⁹ Latawsk and Smith, 2003, p. 1.

²²⁰ Statement Issued at the Extraordinary Ministerial Meeting of the North Atlantic Council Brussels in April 1999. (NATO air strikes “will be pursued until President Milosevic accedes o the demands of the international community.”)

In Kosovo, NATO committed no ground troops and expected its bombing campaign to last a few days,²²¹ but the air strikes carried on for months as FRY military and Serb paramilitary continued its relentless assault on any remaining Kosovo structures, civilians and the growing armed resistance from the KLA. When NATO increased its aircraft and targeted FRY infrastructure,²²² media²²³ and governmental centers in Serbia,²²⁴ Milosevic acquiesced and was forced “to cede authority over Kosovo to an international protectorate.”²²⁵ Following the agreement,²²⁶ NATO in Kosovo (KFOR) was in fact tasked with significant security and peace-keeping initiatives immediately after the ceasefire²²⁷ and to provide assistance, “including core civil functions,”²²⁸ until they were transferred from NATO to the UN.²²⁹

IV.

CASE STUDY: KOSOVO’S HYBRID SYSTEM OF DEMOCRATIZATION

After the Kosovo war ended, subsequent international administration by the UN and EU established the judicial and legal systems for Kosovo. This case study reviews the international community’s role in the development of the Kosovo rule of law systems and evaluates the overall transitional justice strategy in Kosovo in which criminal justice

²²¹ Latawsk and Smith, 2003, p. 8.

²²² Thirty percent of common and control facilities were degraded among others damages. Bacevich, A J. and Cohen, E.A., ed., *War Over Kosovo Politics and Strategy in a Global Age*, Columbia University Press New York, 2001, pp. 54-57.

²²³ Forty-five percent of television broadcasting capabilities were non-functional. Ibid. p. 55. *See also* Table 1.1 Operation Allied Forces Targets and Assessed Damage, Ibid. p. 54.

²²⁴ Ibid.

²²⁵ Ibid. p.1.

²²⁶ An Introduction to the Transatlantic Alliance, p. 21 (military-technical agreement between “NATO and Yugoslav commanders” under which KFOR was to deter hostilities, disarm the KLA, support humanitarian efforts and work with UNMIK to establish a secure environment in Kosovo).

²²⁷ United Nations Security Council Resolution 1244 (1999) adopted 10 June 1999 (“responsibilities of the international security presence ... will include ... (c)Establishing a secure environment in which refugees and displaced persons can return home safely, an international civil presence can operate, a transitional administration can be established, and humanitarian aid can be delivered; (d)Ensuring public safety and order until the international civil presence can, appropriately, take responsibility for this task.”)

²²⁸ Latawsk and Smith, 2003, p. 8.

²²⁹ Ibid. *citing* KFOR Mission. Website reference www.nato.int/kfor/kfor/objectives.htm.

plays the most prominent pillar. This case study then analyzes the events that led to the recent creation of the KRSJI and argues that this new tribunal is an important and necessary development to close impunity gaps for gross human rights violations committed during and after the conflict and to fight post-war corruption and organized crime.²³⁰

An overview of the key events in the Kosovo war and development of Kosovo's hybrid criminal justice system are outlined in Table 4 below.

*Table 4: Timeline Overview of Kosovo War and Transitional Hybridization*²³¹

DATES	KEY ACTIONS
1999	Invasion of Kosovo by FRY military and Serb paramilitary. Refugees flood into Macedonia, Montenegro and Albania.
pre-March 1999:	International negotiations for ceasefire with threat of NATO air strikes.
March 1999	NATO bombing campaign.
June 1999	Withdrawal of FRY military and police forces
June 1999	A rule of the law mission in Kosovo (UNMIK) begins international administration of the area with the adoption of UN Security Council Resolution 1244.
February 2000	The district court in Mitrovica allows an international prosecutor and one international judge under UNMIK Regulation 2000/6.
December 2000	International prosecutors and judges begin to hear cases throughout Kosovo, which become known as the "Regulation 64 Panels" after UNMIK Regulation 2000/64.

²³⁰ “[O]rganised crime is a significant phenomenon in Kosovo. This is nothing new, and it is admittedly not exclusive to Kosovo. Organised crime is a dreadful problem in the region and also affects Serbia, Montenegro and Albania, to name but a few examples. There are also worrying, surprising links and affinities between the different groups involved. Moreover, such criminal groups seem to cooperate with each other far more effectively than the responsible national and international judicial authorities.” Report of Rapporteur: Mr Dick Marty, Switzerland, Alliance of Liberals and Democrats for Europe, “Inhumane Treatment of People and Illicit Trafficking in Human Organs in Kosovo,” and Draft Resolution, adopted unanimously by the Committee in Paris on 16 December 2010 (hereinafter “The Marty Report”), 26 para 176.

²³¹ Author compilation. Sources: Apro, 2014, p. 62-63 (internationalization of Kosovo from 1999), available at CEU eTD Collection; The Marty Report; Website of the KRSJI.

DATES	KEY ACTIONS
July 2003	UNMIK replaces the Yugoslav Federal Criminal Code with the Provisional Criminal Law and Criminal Procedure Codes. UNMIK Regulation 2003/25 and 2003/26
February 2008	Kosovo declares itself an independent country with its own Constitution. EULEX replaces UNMIK and EU continues the UN's international administration of Kosovo judicial system.
March 2008	Assembly passed Law on Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors in Kosovo, as well as the Law on Special Prosecution Office of the Republic of Kosovo.
2009	Amnesty law adopted to help integrate community in Serb-run northern Kosovo by ensuring people cannot be prosecuted for past resistance to Pristina authorities.
January 2011	Report of allegations regarding gross human rights violations including murder, organ trafficking and other atrocities committed post-war.
September 2011	Special Investigative Task Force (SITF) formed to conduct an independent criminal investigation into the allegations.
April 2014	Kosovo parliament approves formation of special court to investigate and prosecute allegations contained in the Marty Report that the KLA, committed post-war atrocities.
2015	SITF Lead Prosecutor appointed to replace the SITF Prosecutor.
2016	The SITF transitions into the Special Prosecutor's Office (SPO).
2017	Judges appointed to the all international panels for the KRSJI. The site of the court will be the Hague. No indictments have been issued but work is ongoing and current.

4.1 POST-CONFLICT JUSTICE: RULE OF LAW TRANSITION AND REGULATION 64 PANELS

International administration after the Kosovo ceasefire that began with KFOR soon transferred to UNMIK²³² and later EULEX.²³³ Both were tasked with the establishment and

²³² Reydams and Wouters, 2011, pp. 60-64 (analyzes the political history behind the creation of the hybrid UNMIK system in the Kosovo courts).

²³³ The Treaty on European Union, Maastricht December, 1991 ("The Union shall define and implement a common foreign and security policy ... the objective of which shall be: To safeguard the common values... in conformity with the United Nations Charter; ... To develop and consolidate democracy and the rule of law, and respect for human rights and fundamental freedom.")

maintenance of the criminal justice system for Kosovo in a complex monitoring, mentoring and advisory role.²³⁴ Immediately after the ceasefire, UNMIK was established to assist in the fulfillment of functions for the rule of law and justice components in Kosovo²³⁵ because the Kosovo court system had been eviscerated first by the forced exodus of Albanian personnel both before and during the conflict and then by the abrupt departure of their Serbian replacements after the war. The remaining personnel, mostly ethnic Albanians, “had little or no experience in judicial affairs due to the purges and exclusion during the previous regime.”²³⁶ As a result, UNMIK personnel began to assist and support national authorities in judicial areas, for example by creating operations reports and assessing any remaining national justice systems as well as evaluating programs and activities conducted by the judicial sector for peacekeeping measures and reinforced existing operation once established.²³⁷ UNMIK further assisted in the development of operational tools for UN rule of law, both planning and updated them.²³⁸ Like most UN rule of law missions, UNMIK could be expected to performed many functions as follows: (1) identify profiles for the judiciary, (2) recruit national and international staff, (3) build and lead justice support teams, (4) provide technical advice to justice department, (5) fill in for staffing gaps and surge needs for the rule of law and judicial support, (6) provided training and best practice studies and lessons learned on an ongoing basis, (7) contribute funding, staff and expertise for existing, evolving and downsizing of peacekeeping operations, (8) reform, develop and implement strategies regarding legal and judicial systems, (9) train court, legal, prison and law enforcement personnel and monitor same.²³⁹

²³⁴ Di Donatantonio, R., *The Monitoring, Mentoring and Advising Role Exercised by International or Rule of Law Missions in the Prosecutorial Area*, Brill: Leiden, 2016.

²³⁵ United Nations Security Council Resolution 1244 (1999).

²³⁶ Apro, 2014, p. 59.

²³⁷ Report of the Secretary-General on the United Nations, Interim Administration Mission in Kosovo, 1 August 2014.

²³⁸ Ibid.

²³⁹ See e.g. Ibid, see also Compact Progress Report, Joint Rule of Law Coordination Board, Assessing Progress Between August 2015-June 2016.

In any given situation or location throughout Kosovo, UNMIK would also be called upon to support the gender-based crimes and juvenile justice units and supervise and organize research projects over a broad range of multi-disciplinary complex, often conflicting or sensitive issues, while at the same time handling matters related to legal and judicial and systems and institutions.²⁴⁰ Much of this work involved extensive legal research and analysis of complicated and novel legal questions as UNMIK helped review legislative matters, and prepared briefs, reports and communications.²⁴¹ Furthermore, rule of law assistance programs such as UNMIK require knowledge of legal and judicial system matters, criminal law and international human rights norms in the transitional hybrid model that was being developed throughout Kosovo. Thus, one of the most important functions of UNMIK has been issuance of regulations that allows international judges to sit on Kosovo court panels with domestic judges. “These panels — known as Regulation 64 panels after the regulation that created them — have a core mandate to try alleged perpetrators for atrocities committed during the armed conflict.”²⁴² But the new courts faced legitimacy problems as well.²⁴³ In addition, the hybrid courts throughout Kosovo were understandably drowning in backlog and overwhelm. Witness protection became a chief concern where organized crime could easily flourish in this vacuum and with local governments ripe for corruption.²⁴⁴

In a war torn area like Kosovo, where more than 70 percent of the infrastructure was destroyed, UNMIK incurred considerable costs fulfilling its mandate to establish a rule of law program. While criticism of the costs and the lengthy time of the UN’s involvement in the Kosovo mission is unavoidable, this brief review of UNMIK vast responsibilities, and the breath of its mandate, illustrates that the importance of the mission cannot be overstated.

²⁴⁰ Compact Progress Report, 2015-16, pp. 12-32.

²⁴¹ Ibid. pp. 9-10.

²⁴² Apro, 2014, p. 57 *citing* UN Office for the Coordination of Humanitarian Affairs: <http://www.irinnews.org/indepthmain.aspx?InDepthId=7&ReportId=59472>

²⁴³ Reydams and Wouters, 2011, pp. 61-62.

²⁴⁴ Ibid. pp. 63-64. *See also* Compact Progress Report, 2015-16, pp. 20.

In 2008 when Kosovo declared Independence EULEX extended the mandate²⁴⁵ of UNMIK and assisted Kosovo in its Proclamation of Independence. Using a variety of models and with UN and EU assistance, Kosovo also wrote the national criminal code, or PCKK — Codified Criminal Law in Kosovo.²⁴⁶ Since Kosovo declared its independence, its judiciary and legal section of the country has undergone continuous reform, which has culminated in the most recent constitutional amendment for the new special chambers. Other developments have included the new structure of the domestic courts, which seek to provide more efficient procedures, transparent operations and better accessibility to all people living in the country. But how well has the hybrid system rule of law and democratization fared in the post-conflict transition of Kosovo?

4.2 FROM ETHNIC CLEANSING TO LASTING PEACE —THE TRANSITIONAL IDEAL

“Without another word they slide back the actions on their AK-47s and squeeze the triggers. They shoot at the children first. Halise does what any mother would do. She throws herself in front of the children, trying to take the bullets. She doesn't have a chance to beat the bullets. As she dives along the sofa, the slugs slam into her children, ripping through their bodies, pulling pieces of skin, bones, and internal organs with them as they pass through toward their exit.”

—Mass murder of five children, Nita, Rina, Dardane, Agon and Harji Bala, and Violica Bala, and attempted murder of Isa and Halise Bala and two more children, their son, Ronji, and nephew, Roni.²⁴⁷

This section focuses on criminal justice as the most important transitional justice pillar²⁴⁸ and analyzes the pillar of prosecution as it relates to Kosovo and the other four pillars —

²⁴⁵ Compact Progress Report, 2015-16, p. 3.

²⁴⁶ Ibid. p. 27-28.

²⁴⁷ McAllester, 2002, pp. 165-168 (describes the rape and murder of Vjollca Bala, the kidnapping of Musa Bala, later found bound and murdered after being tortured with knives along with the attempted murders of Isa and his wife Halise Bala, the attempted murders of their son Veton and nephew Roni, and the mass murder of five children, Nita, Rina, Dardane, Agon and Harji Bala, as they still sat on their living room sofa.) The murders occurred days after the Kosovo war ended and a ceasefire had been effected, and one day before NATO peacekeeping forces reached the town of Pec/Peja where these murders took place and where the victims are now buried. Ibid pp. 159-170.

²⁴⁸ *But see* Wouters and Basu, 2009, p. 11 (noting a “pattern in states undergoing democratic reform processes to favour truth and reconciliation commissions to hold governments accountable” rather than “trials to hold individuals accountable”).

memory, truth seeking, victim reparations²⁴⁹ and reconciliation — followed by an overall evaluation of the transitional justice strategy in Kosovo.

(a) Prosecution, Memory and Truth Seeking in Kosovo

Criminal prosecution before national or international courts and tribunals is the predominant response that produces accountability for past atrocities and can assist post-conflict transitions with healing by rendering justice as a tool for reconciliation.²⁵⁰ However, prosecution-based policies in Kosovo are not without risks or limitations for several reasons (1) non-retroactivity of criminal law, (2) large number of defendants, and (3) lack of resources and criminal procedural mechanisms within the transitioning period. According to the UN Human Rights Council, Kosovo's duty to prosecute depends on the right to remedy, which in a poor country like Kosovo is problematic. Emphasis on the memories of Kosovo survivors and victim families also illuminates the weaknesses inherent in a criminal justice approach:²⁵¹ Criminal guilt does not equal political or moral responsibility, trials sometimes lead to re-victimization or gaps may exist between judicial and factual truth. Criminal trials can also reduce the impact of mass-atrocities by identifying individual guilt, not patterns of atrocities, and thus may work against the memory of one culture over another in Kosovo.²⁵²

As forms of restorative justice, prosecution—like the other transitional justice pillars of memory, truth seeking and reconciliation—must encourage entire community involvement. Therefore, Serbians as well as Albanians need to be involved in holding all offenders accountable. Like criminal justice, all of the pillars can promote healing for victims and offenders. In Kosovo, emphasis has been on getting perpetrators to accept responsibility for their acts and recognizing community responsibility for the societal contributions to criminal conduct: “The formation of the state of Kosovo is also not an example of a violent achievement of the claim to the right of self-determination, but rather a reaction of the community of states to crimes

²⁴⁹ United Nations General Assembly Resolution 60/147 “Basic Principles and Guidelines on the right to a Remedy and Reparations for victims of gross violations of international human rights law and serious violations of international humanitarian law,” 16 December 2005.

²⁵⁰ Nice, G., Can War Crimes Courts Reconcile?, OSCE Security Community, 2013, Iss. 4, pp 30.

²⁵¹ The treatment of war crimes defendants appears imbalanced from the perspective of both Serbs and Albanians depending on the outcomes. Apro, 2014, p. 68-69.

²⁵² Ibid. p. 68 (Albanian reaction differed from Serbs to KLA commander Mustafa sentencing).

against humanity, which were committed by one's own state against a particular group of people."²⁵³ The agreement between UNMIK and Council of Europe (CoE) on technical arrangements related to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment has greatly increased post-conflict accountability. Other achievements related to memorialization and prosecution include the ICTY Milosevic trial, a legal framework for EULEX Judges and Prosecutors to operate in Kosovo, international monitoring functions in civil and criminal proceedings, continued handling of criminal cases by UNMIK and IEULEX and the implementation of Kosovo's new code of criminal procedure.

Prosecution, along with memory programs, are transitional justice pillars that Kosovo stakeholders and decision-makers use to solve the most salient issues they face when confronting this country's recent history of massive abuse. The duty to remember and the right to memory of Kosovo's past atrocities is found in international law and has proven to be an effective countermeasure to impunity.²⁵⁴ Memory is a powerful tool for Kosovo to confront and reconstruct its past. Some challenges of implementing the memory pillar in Kosovo include questions of whose memory is to be preserved, what past wrongs will be memorialized and whose legacy will be remembered. In building lasting peace, the memory pillar is most compelling if it memorializes the past of both sides to the conflict and allows more voices to be heard.

For example, during and after the Kosovo war, both Serbians and Albanians have targeted the other group's religious and cultural symbols and monuments,²⁵⁵ destroying or damaging them²⁵⁶ so the Office for Security and Co-Operation in Europe is "using cultural heritage protection to bridge ethnic and religious differences . . . a necessary precondition for sustainable peace in a society whose members attribute crucial importance to elements of their cultural

²⁵³ Heintze, H-J, Indigenous Peoples and the Right of Self-Determination – Is the Claim to Self-Determination a Trap? *Journal of International Law of Peace and Armed Conflict, Humanitäres Völkerrecht – Informationsschriften*, 4, 2008, p. 238.

²⁵⁴ Orentlicher, D., 'Settling Accounts' Revisited: Reconciling Global Norms with Local Agency, *International Journal of Transitional Justice*, vol. 1, March, 2007 pp. 10-22.

²⁵⁵ Serbians did not limit this assault to Kosovo and did not limit them to cultural symbols. In Bosnia, archives, museums and libraries "were favorite targets of Serb gunmen, as were civilian targets, hospitals and schools." Rezun 2001, p. 40.

²⁵⁶ Nikander and Zirl, 2016, p. 20.

heritage.”²⁵⁷ Therefore, the memory pillar in Kosovo preserves traditional values by protecting cultural heritage.²⁵⁸ Where, as here, the population “has gone through a long history of force, oppression and persecution” the surviving nation has “a natural right to determine its own fate and to look for a form of government that respects its traditions, values and preferences.”²⁵⁹ Therefore preservation of these traditions and values is particularly important and doing so requires the assistance of the criminal justice and legal systems.²⁶⁰

Another example is the Kosovo Memory database, a compilation of documents that detail the conflict. From this database, several volumes of the *Kosovo Memory Book* recount thousands of stories of people who disappeared, died or were murdered during the Kosovo war. “In registering the names of all casualties, the book is an instrument that has the potential to prevent the manipulation of numbers and denial of crimes.”²⁶¹ Thus memory serves as a non-judicial form of accountability for survivors and families of the Kosovo conflict.

Memory is primarily an emotional experience and a person “is constitutively ambivalent in his or her relation both to the other and the self.”²⁶² This element of our collective identity “has reverberated, at a civilizational and historical level, throughout the major edifices of international law,”²⁶³ even when attempts were made such as those by the FRY military and leadership²⁶⁴ “to mask hegemonic projects behind a universalizing or civilizing façade.”²⁶⁵ Transitional societies often “sought to channel rather than hide passions, as in the complex and

²⁵⁷ Ibid. 22.

²⁵⁸ Compact Progress Report, 2015-16, p. 39 (report of Kosovo Police Religious and Cultural Heritage Unit security of sites and KFOR security at Decan/Decani monastery).

²⁵⁹ Oeter, S., 2015, pp. 51-54.

²⁶⁰ Compact Progress Report, 2015-16, pp. 9-10, p. 14 and p.39.

²⁶¹ Humanitarian Law Center (2011) *The Kosovo Memory Book presented at the New School in New York*, [Online], Available: <http://www.hlc-rdc.org/?p=13133&lang=de> [21 Nov 2011].

²⁶² Jouannet, E., ‘Universalism and Imperialism: the true-false paradox of international law?’ *European Journal of International Law*, vol. 18, no. 3, 2007, p. 404.

²⁶³ Ibid.

²⁶⁴ Malesivic, S., Did Wars Make Nation-States in the Balkans?: Nationalism, Wars and States in the 19th and early 20th Century South East Europe, *Journal of Historical Sociology*, 25:3, 2012, pp. 293-330.

²⁶⁵ Jouannet, 2007, p. 404.

audacious projects of the interwar period(s) . . . elements of which we find in certain particularly interesting UN plans in places such as . . . Kosovo; or, inversely, where the rules of law and legal discourse attempted – without ever succeeding – to repress passions.”²⁶⁶ Rather than repressing passions, memorialization allows emotions to be expressed and provides building blocks for peace rather than forgetting the past and possibly repeating it. Both memory and criminal prosecution are tools to avoid denial of crimes and manipulation of numbers²⁶⁷ regarding losses during the Kosovo conflict. Information gathered from one pillar can assist the other,²⁶⁸ such as when evidence in the Kosovo Memory database aids prosecution. Transitional justice moves along a continuum between judicial and non-judicial mechanisms like memory and prosecution where victims found in memory programs in Kosovo can trigger prosecutions. Memory also preserves evidence of crimes or lack thereof that might otherwise be destroyed.

Prosecution, memory and truth seeking all deal with finding, knowing and preserving the past in Kosovo. In order to combat impunity for past human rights violations and affect deterrence for future violations, the UN identified the right to know and thereby linked the pillar of memory with truth by declaring (1) the inalienable right to know the truth about past events concerning the perpetration of heinous crimes, (2) the duty to preserve memory of the history of the crimes, and (3) the victim’s right to know the truth about the circumstances in which violations took place and in the event of death or disappearance.²⁶⁹ Like prosecution, truth-seeking is one of the most essential yet difficult strategies to achieve in the process of Kosovo’s transition to democracy and the rule of law but is indispensable to repair victims of severe human

²⁶⁶ Ibid.

²⁶⁷ This phenomenon can be found not just in the FRY but in other transitional societies with multi-ethnic conflict such as Northern Ireland. *See* Lawcher, C., Denial, Silence and the Politics of the Past: Unpicking the Opposition to Truth Recovery in Northern Ireland, *International Journal of Transitional Justice*, Queen’s University Belfast, 7, 2013, pp. 157-177.

²⁶⁸ An extreme but often necessary example of this is the exhumation of human remains to identify bodies and as proof of the crime of murder committed or natural causes of death. *See e.g.* Arsenijevic, D., Gendering the Bone: The Politics of Memory in Bosnia-Herzegovina, *Journal for Cultural Research*, 15:2, 2001, pp. 193-205 (analyzes the problems inherent in the identification and classifications of bodies as ethnic remains in BiH),

²⁶⁹ United Nations, Econ. & Soc. Council, Comm’n on Human Rights, Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity, U.N. Doc. E/CN.4/2005/102/Add.1 (Feb. 8, 2005).

rights violations.²⁷⁰ Documenting the truth of Kosovo's past requires asking how it should be reconstructed, a challenging yet necessary question, because future Kosovo truth commissions could, like memory wars, reignite tensions between diverse ethnic groups.

(b) Reconciliation and Reparations — A Painful Dialogue

The use of the pillars of prosecution, reparations²⁷¹ and reconciliation, in post-conflict Kosovo reveal similar difficulties and challenges for dealing with the past.²⁷² Indeed they are often interrelated.²⁷³ Like prosecution, reconciliation may focus on remembering the past but it also requires changing dynamics and continuing with life in peace. Reconciliation does not require forgetting, forgiving, or loving one another.²⁷⁴ As Sergio Vieira de Mello pointed out “[t]he work of the UN, in Kosovo ... shows all too well the complexities and the enormous challenges of reconciliation.”²⁷⁵ All of the above concerns come in to play when evaluating the options for dialogue versus prosecution in Kosovo.

In interviews with Kosovo stakeholders, one person stated, “every Serb dialogue with an Albanian is a reconciliation.”²⁷⁶ Dialogue is an important process used to effect reconciliation and reintegration of multi-ethnic warring factions, versus criminal prosecution, particularly of lower or mid-level perpetrators. For example, Muslims and Serbs in Bosnia and Serbs and Albanians in Kosovo, have developed completely different recollections of their common past. If they are not corrected through mechanisms such as an independent truth commission, then

²⁷⁰ Nice, 2013, pp 29-30.

²⁷¹ Wouters and Basu, 2009, p. 4 (International consensus that perpetrators of heinous crimes such as crimes against humanity, genocide and war crimes must be made accountable parallels the global recognition that their victims have an inherent right to reparation and remedy.)

²⁷² Ibid. (justice and reparations for victims and criminal prosecutions are not always carried out for various reasons ranging from unwillingness to inability to do so).

²⁷³ Apro, 2014, p. 69 *quoting* Institute for war and Peace reporting: “Comment: KLA Trials Harm Reconciliation” <http://iwpr.net/report-news/comment-kla-trials-harm-reconciliation> (lighter sentences for Serbian defendants sparked anger in Albanians and thus did not promote reconciliation among the two ethnic communities.)

²⁷⁴ Indeed quite the opposite is often true especially in relation to prosecution. *See* Ibid.p. 76 (“creators of the institutional configurations in transitional period have to be precise whether criminal justice is applied as a mean of retribution, or is part of a idea strategy of moving forward to peace and reconciliation.”)

²⁷⁵ Bloomfield, D., Barnes, T. & Huyse, L. (ed.) *Reconciliation After Violent Conflict. A Handbook*, Stockholm: International Idea, 2003, p. 29.

²⁷⁶ Author interview with Serbian lawyers in Northern Mitrovicka, January 2017.

selective memories are handed down from generation to generation.”²⁷⁷ Talking to former combatants (or however they may be defined by the warring parties) is often an *option* for dialogue where “non state armed groups,” such as the KLA in Kosovo, have become large enough key stakeholders (geographically or politically) to diminish the contested government’s ability to eradicate the group without compromise. Asymmetry between state and non-state combatant resources (legitimacy, organization, financing, etc.) often leads to a perception of diminished value to the combatants’ claims. Transformation of social and political conflicts should be inclusive and participatory making dialogue a potential option for resolution. Through peace building dialogue, actors branded as terrorists, whether Serbs, Croats or Albanian, may become parties to power-sharing arrangements or governing coalitions as shown by the Kosovo case study, fostering trajectories from war to politics.²⁷⁸

Unlike conflict resolution or management as those undertaken during the NATO air campaign, dialogue seeks conflict transformation through its focus on relationships in face-to-face interaction of people with different opinions, backgrounds and convictions. An *effective* dialogue is a conversation characterized by honesty, openness and genuine listening that inspires consensus building through learning from each other and creative thinking.²⁷⁹ Effective dialogues between the KLA and Kosovar Serbs or as with Bosnian Serbs, Croats and Muslims, must focus first on interests and needs rather than rush to conclusions and solutions.

As participants expose more of their position, share perspectives and acknowledge fears, the resultant mutual understanding generates inclusive options that foster a conducive atmosphere to brainstorm alternatives, which can be managed if participants respect power structures and cultural diversity.²⁸⁰ This is especially important in reconciliation processes such

²⁷⁷ Ibid.

²⁷⁸ *But see* Malesivic, S., 2012.

²⁷⁹ Written ground rules need to be established at the beginning, discussed and explicitly confirmed by all participants. These rules cover the mode of interaction (chairing, seat order) and communication (listen to understand, avoid interrupting, remain open to others’ perspectives, resist temptations to interpret motives of *why* someone makes a statement) as well as practical aspects and how information will be shared outside. Facilitators should be trained to conduct sessions throughout Kosovo to ensure proper effectiveness of reconciliation dialogues.

²⁸⁰ “Ups” and “downs” are inevitable in group dynamics where authentic emotions express struggles for genuine common ground. Difficult situations, deadlocks or signals of anger (interruption, leaving, violent threats, offense claims) can be dealt with by reminding participants of ground rules, taking breaks or using small groups.

as those taking place in post-war Kosovo where different cultures in its multi-ethnic transitional society have developed different ways to express dissent. Using specific reservations, “stand aside” opinions, opting out tools allow dialogues to continue. The advantage of dialogue in reconciliation processes²⁸¹ is that it leads to win-win situations²⁸² where participants seek to understand different perspectives versus winning an argument by affirming one’s own views. In dialogue, participants listen to understand how others’ experiences shape beliefs then accept that experience instead of finding flaws in arguments and critiquing others’s experience.²⁸³ People of different ethnicities can expand their understanding of issues and work together toward common ground. Criminal prosecution, on the other hand, pits one side against the other although it is a necessary pillar in the transitional justice process to close impunity gaps and memorialize atrocities committed, even if it slows dialogue progress in post-conflict areas.

Only one-third of all peace agreements bring lasting peace after ethnic conflicts as in Kosovo, which reveals the deficiency inherent in traditional methods of peace building like negotiation and mediation between states. Reconciliation approaches instead introduce the interpersonal level, such as ‘healing and forgiveness,’ as applied to the Serbian, Albanian and Roma communities, through the protection of cultural heritage for example. “Installing legal and institutional mechanisms to protect the rights of former opponents to the symbols of their cultural identity was but a first step towards reconciliation in Kosovo.”²⁸⁴

(c) Kosovo Transitional Justice Strategy — Gaps, Maps and Traps

In a society divided by ethnic differences like post-conflict Kosovo, clashes over preserving the past or prosecution of perpetrators of grave human rights violations may also

²⁸¹ Bloomfield, Barnes and Huyse, 2003, p. 25 (the word ‘reconciliation’ is not used by the Albanian community because of strong feelings against the idea of the concept)

²⁸² *But see* Zagar, M., Human and Minority Rights, Reconstruction and Reconciliation in the Process of State- and Nation-Building in the Western Balkans, European Yearbook of Minority Issues, vol. 7, 2010, pp. 353-406. “[R]econciliation in the Balkan region does not exist; it is not even spelled out and accepted as a realistic goal. Much less is it understood as a permanent process that requires acceptance and continuous participation of all relevant actors.” Ibid. p.405.

²⁸³ For this and other reasons, it has been argued that hybrid courts deserve more support. Apro, D. (2014) Third Generation of International Criminal Justice: Hybrid Court in Cambodia, East Timor and Kosovo, p. 74 (hybrids should be given more international funds, political means, dissemination of results, witness protection “as well as complementary mechanisms of transitional justice.”)

²⁸⁴ Nikander and Zirl, 2016, p. 21.

resurrect old struggles. Too much emphasis on memory of the past, particularly if reparations have not been properly made to victims, may sustain tensions rather than resolve differences between ethnic groups in Kosovo. Like the prosecution pillar, the strategy of reparation reveals several crucial challenges and issues for dealing with the past, such as establishing accountability for crimes in order to provide reparation to victims of the Kosovo war. But how can it be affected? Kosovo victims' right to reparation should include (1) property restitution or victim compensation, (2) psychological and medical care, (3) funds for victims, and (4) allowing victims to participate in the process. The KRSJI may be useful in establishing such funds while closing impunity gaps.

During international administration of Kosovo's post-war rule of law program, the focus has shifted from inquiries regarding procedural and technical matters related to the functioning of governmental and judicial institutions to "underlying political concerns regarding" Kosovo sovereignty, continued support of international cooperation and administrations and the role of criminal law (whether international or of the newly adopted national criminal code) and its efficacy in the fight against impunity within Kosovo and the Western Balkans. Initial practical measures were undertaken by UNMIK, followed by EULEX, to help make the criminal law system work. International policy makers, academics and practitioners, along with limited input from civil society, facilitated dialogue between minority and majority factions who were quick to enter the new Kosovan government, judicial and legal systems. UNMIK and EULEX sought to help the various political entities to discuss and formulate a plan to iron out political differences and decrease tensions, notably between Albanians and Serbs. While the historic importance of the establishment of the Rule of Law in Kosovo is thus significant, equally there remain critical challenges that must be met in order to ensure its continued success, such as rooting out corruption and closing impunity gaps, among others.

Even after the creation of the ICTY, there remain relevant and unresolved issues of impunity in Kosovo regarding alleged serious human rights violations, flourishing post-conflict organized crime, and grave breaches of international law by members of the KLA. Governmental corruption and, to a larger extent, bias within the current Kosovo national administration and law

enforcement create serious questions as to whether these crimes can be (or are being) adequately investigated and prosecuted within the existing framework.

An argument has been made that EULEX or ICTY would be a better forum to handle these crimes because of their expertise regarding the conflict and the patterns of crimes.²⁸⁵ This argument is faulty for at least two reasons. First, many of these crimes are alleged to have occurred post-war, so the ICTY would lack temporal jurisdiction to prosecute. Second, EULEX itself helped initiate the process to transfer the cases into a special court, thereby evidencing their assertion that it was not the appropriate venue for reasons they have not discussed, but can be surmised from the law, that is, the need for a fair and impartial independent tribunal. Concerns over witness intimidation and evidence tampering may also be worrying for the current criminal law sector in Kosovo.

In Kosovo, as in most transitional societies, victims of atrocities sometimes feel wronged beyond repair and the Kosovo transitional justice strategy is left with the impossible task of repairing the seemingly irreparable. Challenges faced in post-conflict Kosovo²⁸⁶ are assisted, however, by some effective transitional justice strategies such as its current ongoing work in national criminal tribunals,²⁸⁷ the memory database, efforts at reconciliation that include increased dialogue between ethnic groups, the protection of cultural and religious sites by NATO an Kosovo police as well as by the recent establishment of the KRSJI. Therefore, under Elster's narrow definition of transitional justice²⁸⁸ Kosovo's strategy is robust and utilizes all five pillars in constructing lasting peace. Under Annan's broad definition,²⁸⁹ Kosovo's strategy is strong and

²⁸⁵ Holvoet, 2017, pp. 35–73.

²⁸⁶ Kurian, R. and Charkiewicz, E. Violence in Transition: Reforms and rights in the Western Balkans', *Global Campus Human Rights Journal*, vol. 1, 2017, pp. 119 - 139 (analyzing how the transition period of 1999 to 2014 challenged key social rights and how both structural and direct forms of violence infiltrated transition).

²⁸⁷ "Justice is the domain where the international community is directly involved in processes that have a reconciliation potential." Bloomfield, Barnes, & Huysse, L, 2003, (ed.) p. 164.

²⁸⁸ "Transitional Justice is the legal and administrative process carried out after a political transition for the purpose of addressing the wrongdoings of the previous regime." Elster, J. (2003) *Memory and Transitional Justice*, Paper prepared for the "Memory of war" Workshop, MIT January 2003. Available at http://web.mit.edu/rpeters/papers/elster_memory.pdf.

²⁸⁹ An often-cited definition by UN Secretary General Kofi Annan: "the full range of processes and mechanisms associated with a society's attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation." United Nations, *The rule of law and transitional justice in conflict and post-conflict societies: Report of the Secretary-General*, 2004, p 4.

being refined but, especially considering its intermittent ethnic violence, needs improvement in the areas of victim reparations, cultural and religious reconciliation and truth-seeking.

What distinguishes transitional justice from ordinary justice is its capacity and desire to be both retrospective and prospective, at the same time backward and forward-looking in a thoroughly transformative way. Therefore, Kosovo must continue to further its transitional goals of ending impunity for past crimes and recognizing victims while it moves forward to foster trust, strengthen the rule of law and contribute to reconciliation. The five pillars of the transitional justice approach highlight the many challenges in dealing with the past in Kosovo's post-conflict settings and reveals the continuum between the pillars. A long transitional period has elapsed since Kosovo has come under international administration but transitional justice strategies regarding criminal accountability, victim reparation and property restitution have moved slowly in Kosovo. For these societal transitional strategies to pointedly advance the rule of law, respect for human rights, and ethnic reconciliation, legal reforms and cross-cultural public discussions must continue with the rights of war crime victims at the forefront. Applicable progress reports prepared during the enlargement process for Kosovo²⁹⁰ point out the myriad of concerns that still need to be resolved—the return, rehabilitation and assimilation of displaced persons, the considerable backlog of pending prosecutorial cases, the protection of minority rights, reform of political judicial bias and better enforcement of judgments.²⁹¹ Going forward, the EU and other key international stakeholders must remain active in its efforts to help resolve these concerns as Kosovo moves from warring history towards lasting peace.

4.3 KOSOVO SPECIAL CHAMBERS — NAVIGATING FROM THERE TO HERE

There are strong indications, from source testimonies we have obtained, that in the process of being moved through the transitory sites, at least some of these captives became aware of the ultimate fate that awaited them. In detention facilities where they were held in earshot of other trafficked persons, and in the course of being transported, some of these captives are said to have

²⁹⁰ Commission Staff Working Document Kosovo 2016 Report, *Accompanying the document*, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 2016 Communication on EU Enlargement Policy.

²⁹¹ Ibid.

pleaded with their captors to be spared the fate of being ‘chopped into pieces.’
—Rapporteur, Mr. Dick Marty ²⁹²

Belgrade versus Pristina issues reveal the importance of finding a middle ground for the eventual success of Kosovo as a democracy. So no one was eager to address the looming problem that arose in 2008 regarding the KLA atrocities alleged by ex-ICTY Chief Prosecutor, Carla Del Ponte. The UN had searched a particular location in Albania sometimes in 2004 but when Del Ponte documented what she says they found, it “created an international controversy.”²⁹³ The ICTY had prosecuted Serbians for their part in the Kosovo War (many were acquitted as were the Croats and Albanians) but the public was left wondering, even demanding their right to know, what happened at the “yellow house” spoken of in her memoir?²⁹⁴ Shortly after the release of Del Ponte’s book, Human Rights Watch requested an internationally supervised investigation and the EU commission selected Dick Marty to comply with this request and issue a report. As the Marty Report explained: “Our sole aim today is to serve as spokespersons for those men and women from Kosovo, as well as those from Serbia and Albania, who, regardless of their ethnic or religious backgrounds, simply aspire to the truth and to an end to scandalous impunity, with no greater wish than to be able to live in peace. Truth and accountability, such as those sought to be found in the new KRSJI, are absolute necessities if there is to be genuine reconciliation and lasting stability in the region.”²⁹⁵

In January 2011 the Council of Europe issued a report by Senator Dick Marty containing very serious allegations of grave human rights violations entitled “Inhumane treatment of people and illicit trafficking in human organs in Kosovo.” These allegations included crimes committed after the war ended, such as inhumane and degrading treatment, forced disappearances,²⁹⁶

²⁹² The Marty Report, p. p. 24 para 160.

²⁹³ Ibid.

²⁹⁴ See Annex, attached to this document, the blog, The Bloody Yellow House with comments edited for brevity but not content by the author of this thesis. Also available at <https://thebloodyyellowhouse.wordpress.com/>.

²⁹⁵ The Marty Report p. 27.

²⁹⁶ Ibid. p. 3. (“According to the information gathered by the Assembly and to the criminal investigations now under way, numerous concrete and convergent indications confirm that some Serbians and some Albanian Kosovars were held prisoner in secret places of detention under KLA control in northern Albania and were subjected to inhuman and degrading treatment, before ultimately disappearing.”)

murder²⁹⁷ and organ trafficking.²⁹⁸ The report documented and called upon the EU member states, Serbian and Albanian authorities and other countries to assisted in locating large numbers of missing persons as well as the then remaining fugitives of the ICTY including General Ratko Mladic and Goran Hadzic, to support all evidence collection initiatives, and to start an impartial and independent investigation into the crimes alleged in the report.²⁹⁹ Not only prisoners of war³⁰⁰ were taken captive and subject to these brutal crimes but also civilian were abducted, murdered, trafficked and slaughtered for sale and profit from their body parts.³⁰¹ There was not just one or a few detention facilities in Albania, but according to evidence presented in the report, there existed a whole network of facilities.³⁰² Significantly, with regards to possible organized crime links, the report also stated: “It seems that the deeper into Albanian territory a facility’s physical location, the less directly it related to the KLA’s war effort and the more entrenched its connection proved to be with the underworld of organised crime.”³⁰³

These crimes were for the most part committed after the armed conflict ended, from the period of January 1, 1999 and until December 31, 2000, and have gone unpunished, either by

²⁹⁷ Ibid.p. 12.

²⁹⁸ Ibid. p. 4. “Numerous indications seem to confirm that, during the period immediately after the end of the armed conflict, before international forces had really been able to take control of the region and re-establish a semblance of law and order, organs were removed from some prisoners at a clinic in Albanian territory, near Fushë-Krujë, to be taken abroad for transplantation.”

²⁹⁹ Ibid. p. 19 et al.

³⁰⁰ Ibid. *see e.g.* para. 115-120.

³⁰¹ Ibid. para. 119.

³⁰² Ibid. p. 132-133. “there was a whole ad hoc network of such facilities, joined up by frequent journeys between them on Albania’s provincial roads, and across the porous, chaotic (especially at the time of the mass refugee movements in mid-1999) border between Kosovo and Albania... We were able to access corroborated, first-hand testimony from former KLA fighters and auxiliaries who carried out multiple transports into and between the facilities named in our report, as well as transports of captives out of most of them.”

³⁰³ Ibid. para.116.

international administrators and peacekeepers such as KFOR, UNMIK³⁰⁴ or EULEX³⁰⁵ or in the ICTY.³⁰⁶ Some of the crimes continued at least until the date of the report.³⁰⁷

The Marty report also noted that while EULEX had made significant progress despite having inherited massive caseload and significant problems that stymied their investigations (lost documents, incomplete records and lack of witness interviews), EULEX received strong resistance from Albanians and the level of cooperations was in fact, *nil*.³⁰⁸ EULEX has also had slow response even from authorities of CoE member and observer states, which considering the grave nature of the offenses, murder and organ trafficking for instance, is nothing short of appalling as noted in the report.³⁰⁹ The Marty Report confirmed not only serious allegations of inhumane treatment but ones that were sensational in their savagery, including the surgical removal of organs of both live and murdered victims mostly of Serbian descent. Indeed some of the organ trafficking is believed to have pre-dated the wars.³¹⁰ Shortly after the Marty report was issued, the CoE formed a special investigative task force (SITF) in order to conduct an

³⁰⁴ Ibid.p. 7-10. Particularly during the first years of their presence in Kosovo, the international organisations responsible for security and the rule of law (KFOR and UNMIK) had to cope with major structural problems and serious shortages of staff with the skills to take on the tasks they were entrusted with, all this being aggravated by rapid and constant staff rotation.”

³⁰⁵ Ibid.p. 11. “EULEX, which took over certain functions in the justice sector previously fulfilled by UN structures (UNMIK) at the end of 2008, inherited a difficult and sensitive situation, particularly in the sphere of combating serious crime: incomplete records, lost documents, uncollected witness testimony. Consequently, a large number of crimes may well continue to go unpunished. Little or no detailed investigation has been carried out into organised crime and its connections with representatives of political institutions, or in respect of war crimes committed against Serbians and Albanian Kosovars regarded as collaborators or as rivals of the dominant factions. This last-named subject is still truly taboo in Kosovo today, although everybody talks about it in private, very cautiously.”

³⁰⁶ Ibid.p. 8. “The ICTY, which had started to conduct an initial examination on the spot to establish the existence of traces of possible organ trafficking, dropped the investigation. The elements of proof taken in Rripe, in Albania, have been destroyed and cannot therefore be used for more detailed analyses.”

³⁰⁷ Ibid p. 5. “This criminal activity, which developed with the benefit of the chaos prevailing in the region, at the initiative of certain KLA militia leaders linked to organised crime, has continued, albeit in other forms, until today, as demonstrated by an investigation being carried out by the European Union Rule of Law Mission in Kosovo (EULEX) relating to the Medicus clinic in Pristina.”

³⁰⁸ Ibid. p. 11-12.

³⁰⁹ Ibid. p. 20. “A further investigation, also carried out by EULEX, into the case of the Medicus Clinic in Pristina, has been made similarly difficult by the delays ... in responding to EULEX requests for international legal assistance ... made to Belarus, Canada, Israel, Germany, Moldova, Poland, Russian Federation, and Turkey. At the time of writing, only Canada was said to have provided a satisfactory response. Considering the gravity of the acts alleged – trafficking in human organs, no less – such delays are incomprehensible and unconscionable.”

³¹⁰ Ibid.

independent criminal investigation into the allegations. The task force was comprised of international staff in order to further reinforce independence and confidentiality of the process with the teams based in Brussels.

The Marty Report as well as the task force was initiated nine years after the United States Department of Defense (DOD), Office of Inspector General issued an assessment of DOD efforts to combat trafficking in persons in Bosnia-Herzegovina and Kosovo.³¹¹ At that time in December 2003, the United States reported “a plethora of information is available regarding human trafficking in the Balkans.” It also stated: “Hundreds of articles have appeared in well-respected publications. Reporters for a variety of news agencies have interviewed trafficking victims and documented their personal stories. The International Organization for Migration (IOM) tracks trends in Human Trafficking and also interviews victims.”³¹²

Although the DOD report was issued and investigated for the purposes of determining if any U.S. personnel had been complicit in human trafficking in the Balkans, it also gives clear indication that KFOR members and others in Kosoo had considerable evidence available regarding trafficking crimes being committed in the Balkan region. The DOD considered the links between human trafficking and organised crime and noted that missions of anti-trafficking investigative units (for example, such as the SITF) are extremely ambitious for attempting to investigate criminal organizations with limited resources and personnel.³¹³ It went on to state that “DOD efforts to combat human trafficking do not depend solely on the ability to pursue criminal prosecution” yet investigators inspectors and auditors operating in the DOD are constrained by criminal prosecutorial mandate.³¹⁴

³¹¹ Department of Defense (DOD), Office of Inspector General , Assessment of DOD Efforts to Combat Trafficking in Persons, Phase II — in Bosnia-Herzegovina and Kosovo. Dec. 8, 2003. Case No.H03L88433128 (report compiled to determine “whether Service members assigned to North Atlantic Treaty Organization (NATO) peacekeeping forces were engaged in any activities that promoted or facilitated the trafficking and exploitation of women,” after Members of Congress had “expressed concerns the ‘vast scope of the problem of trafficking in human beings’ and the need to ‘achieve international cooperation to combat trafficking,’

³¹² Ibid.

³¹³ Ibid.

³¹⁴ Ibid.

The SITF chief prosecutor was a United States attorney, and perhaps had access to DOD investigative files,³¹⁵ as well as any evidence obtained by KFOR in ongoing investigations of human trafficking,³¹⁶ however, since the SITF files are currently sealed, there is no way of knowing this for sure. The Chief Prosecutor in charge of the SITF was in fact dismayed by the lengthy time it took to set up the mechanisms for establishment of this new tribunal³¹⁷ but listed the myriad of activities³¹⁸ necessary to navigate through what he aptly described as the *unchartered territory* of establishing a court that would have jurisdiction for the period immediately following the war³¹⁹ and in order to fill “the void left by ICTY’s jurisdictional limitations.”³²⁰

While the mechanisms for investigations were put into place, the SITF special prosecutor waited also for parliamentary approval of the new court where indictments could be issued.³²¹ During this time and continuing until indictments are finally issued, the allegation remain secret and under seal.³²² But his statement, issued in June 2014, stated unequivocally that it had compiled evidence that supported the findings of the Marty Report as well as similar reports of

³¹⁵ DOD complemented the anti-trafficking efforts and other rule of law accomplishments in the two neighboring Balkans territories studied in this assessment. (“With the development of legal systems in Bosnia-Herzegovina and Kosovo, and the establishment of the rule of law in those countries, local efforts to fight human trafficking have strengthened. Coordination between U.S. military leaders and local authorities in these efforts could preclude such problems as U.S. contractor employees being returned too quickly to the U.S., making them unavailable to testify in local courts.”). Ibid.

³¹⁶ Ibid. “We further recommend that the Secretary of Defense continue ongoing efforts through the North Atlantic Council of NATO to implement policy that prohibits conduct on the part of NATO-led peacekeeping forces which could contribute to human trafficking.”

³¹⁷ Statement of the Chief Prosecutor of the Special Investigative Task Force 29 July 2014. Available at <http://sitf.eu/index.php/en/news-other/42-statement-by-the-chief-prosecutor-clint-williamson>.

³¹⁸ Statement of the Chief Prosecutor of the Special Investigative Task Force.

³¹⁹ Steps that were taken included “moving this through the bureaucracy. of various EU institutions, reaching consensus among the 28 member states, securing a commitment from my host-state and addressing its concerns, and lastly, completing the legal and procedural steps in Kosovo necessary to create this course” and all of it being an “incredibly complicated time-consuming process.” Ibid.

³²⁰ Ibid.

³²¹ Ibid.

³²² Ibid. However he did indicate dying question and answers that the individuals were at the senior-most levels of the KLA.

the OSCE in 1999³²³ and Human Rights Watch³²⁴ regarding the criminal wrongdoing of certain senior officials of the KLA following the cessation of armed conflict.

The SITF found compelling evidence of a campaign of persecution directed at Serbians and other Kosovo minorities as well as towards fellow Kosovo Albanians, labelled to be collaborators with Serbs or, more often, mere political opponents of KLA leadership.³²⁵ According to the SITF statement, certain KLA members intentionally targeted minority populations and committed criminal acts “that included unlawful killings, abductions, enforced disappearances, illegal detentions in camps in Kosovo and Albania, sexual violence, other forms of inhumane treatment, forced displacement of individuals from their homes and communities, and destruction and destruction of churches and other religious sites.”³²⁶ The SITF further found evidence, after conducting interviews with hundreds of witnesses and using other investigative techniques, that these crimes were not taken by “individuals acting on their own accord” but were “conducted in an organisation or sanctioned by certain individuals in the top levels of the KLA leadership.”³²⁷ The widespread or systematic nature of these crimes in the period after the war ended in June 1999, thus justifies the prosecution for these crimes.³²⁸ Accordingly, the SITF anticipated charges to be filed against senior officials of the former KLA to include charges of crimes against humanity and war crimes and certain violations of domestic of civil law³²⁹ including murder and in the context of international humanitarian law violations, for which there

³²³ Human Rights in Kosovo: As Seen, As Told. Volume II, 14 June - 31 October 1999, Organization for Security and Co-operation in Europe, 1999.

³²⁴ Federal Republic of Yugoslavia Abuses Against Serbs and Roma in New Kosovo. Human Rights Watch, Vol. 11, No. 10 (D), 1999.

³²⁵ Statement of the Chief Prosecutor of the Special Investigative Task Force.

³²⁶ Ibid. (concludes that this effectively resulted in the ethnic cleansing of large portions of Kosovo’s urban populations).

³²⁷ Ibid.

³²⁸ The Marty Report was outstanding in its thoroughness. As an example, it describes in detail victim subsets, such as civilians, POWs, collaborators, profiteers, ethnic groups.

³²⁹ Ibid (lists detailed criminal activity involving torture, extortion, disappearances, mass murder, forced prostitution, gang rape, organ trafficking and others).

is no statute of limitations³³⁰ including torture.³³¹ Apparently, ethnics Albanians were not the only victims of this brutal war and the resulting infiltration of organized crimes elements from not only Serbia but the neighboring countries of BiH, Montenegro, Macedonia, Albania.³³²

Kosovo parliament amended the constitution and a law was created³³³ to address these grave breaches of international law³³⁴ that would be attached to every court at each level of the Kosovo legal system.³³⁵ Due to reports of allegations regarding gross human rights violations including murder, organ trafficking and other atrocities committed post-war, Kosovo parliament did approve the formation of special court to conduct fair, independent and impartial investigations³³⁶ as well as to prosecute allegations³³⁷ contained in the Marty Report, and confirmed by the SITF, that the KLA harvested and sold organs from kidnapped Serbs and others after the war ended, among other atrocities committed. Although the SITF found compelling evidence to file indictments,³³⁸ no court existed to file the charges³³⁹ until the KRSJI was established. Therefore, the KRSJI, while unique in that it combines elements of the hybrid model

³³⁰ Statement of the Chief Prosecutor of the Special Investigative Task Force (such as for crimes committed during this time where the 15 year statute of limitations under domestic law has expired).

³³¹ Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted and opened for signature, ratification and accession by General Assembly Resolution 39/46 of 10 December 1984, entry into force on 26 June 1987.

³³² For a thorough, and often grisly, personal account of the investigation of these influences on the Kosovo conflict, see McAllester, 2002.

³³³ See Law on Specialist Chambers and Specialist Prosecutor's Office.

³³⁴ Ibid. Article 1(2) Specialist Chambers within the Kosovo justice system and the Specialist Prosecutor's Office are necessary to fulfil the international obligations undertaken in Law No. 04/L-274.

³³⁵ As the law states in relevant part, the KSJKI will attached to "the Basic Court of Pristina, the Court of Appeals, the Supreme Court and the Constitutional Court." Ibid. Article 1.

³³⁶ Ibid. Article 1(2) (KRSJI and SPO are "to ensure secure, independent, impartial, fair and efficient criminal proceedings in relation to allegations of grave trans-boundary and international crimes committed during and in the aftermath of the conflict in Kosovo, which relate to those reported in the Council of Europe Parliamentary Assembly Report Doc 12462 of 7 January 2011 ("The Council of Europe Assembly Report") and which have been the subject of criminal investigation by the Special Investigative Task Force ("SITF") of the Special Prosecution Office of the Republic of Kosovo ("SPRK").

³³⁷ Ibid. Article 3 (1) also directs that the "Specialist Chamber of the Constitutional Court shall deal exclusively with any constitutional referrals relating to the Specialist Chambers and Specialist Prosecutor's Office. The Specialist Chambers shall be independent in the exercise of their functions."

³³⁸ Statement of the Chief Prosecutor of the Special Investigative Task Force.

³³⁹ Ibid.

with the international character of the *ad hoc* tribunals, is an important solution for the next chapter in Kosovo transitional justice, especially necessary to close impunity gaps for war crimes and, hopefully, organized criminal networks such as those responsible for the trafficking of organs. The KRSJI potential use as standard-setting for domestic and international prosecution of gross violations of human rights and organized crimes may also be an opportunity for future tribunals, both domestic and international.

VII.

CONCLUSION

“C told me that many Serbs were brought high up in the mountains to have ‘their blood profile improved.’ They were given good food and had intense work at the farms and were timbering. After a while, when they had received orders for organs, they were taking them to Burell where they waited until operations. On the day before the operations they were taken to Fushe Kruja, or better to say a ranch nearby, east of the town. They were also dumped there after they took everything worthy from them. So the burial sites are at the private land.” —Witness Statement³⁴⁰

The challenges of taking national criminal justice systems into the transnational arena and the efforts courts have implemented to prosecute the most egregious human rights violations indicate an international desire to expand criminal jurisdiction in order to close impunity gaps against perpetrators of these heinous crimes. My analysis reviewed this development of international criminal law and the purpose and objectives of a right-based approach to prosecution and defense. The need for a permanent International criminal court was established decades after the IMTs of and culminated with ICC efforts to overcome the insufficiencies of the *ad hoc* tribunals and their limited jurisdiction. The ICC’s conservative yet evolving approach to jurisdiction³⁴¹ and its prosecution of acts relating to gross violations of global human rights norms compliments the explosion of hybrid courts and *ad hoc* tribunals in the fight against

³⁴⁰ UNMIK Investigation Organ Trafficking Kosovo, Issues from the Chief Prosecutor’s Visit Meeting with the Director, DOJ, UNMIK, 30 October 1993, stamped ‘ICTY Investigations’ 3 November 2003, available at <https://www.scribd.com/document/61171517/UNMIK-Investigation-Organ-Trafficking-Kosovo>.

³⁴¹ Even considering Kosovo to be a state, the ICC does not have jurisdiction because it was ratified after the crimes alleged were committed. Article 11(1) Rome Statute.

human rights abuses. The various legal systems and respective criminal jurisprudence involved in globally prosecuting violations for severe human rights abuses illuminate an evolution of international jurisdiction that is magnified by the considerable costs and the slow wheels of justice. Evidence of the development of International criminal jurisprudence is its movement throughout the decades from the IMTs to the newly created KRSJI.

International attempts to affect justice for victims and protection of humans rights, for example, include the many functions administered by the UN and EU in Kosovo over the past 18 years. NATO's role, as International policing and peacekeeping mechanism applied in the region, contributed to the break-up of the FRY through military intervention and to the internationalization of Kosovo through post-war security measures. As controversial as these international policing actions have been, it is clear from the remaining impunity gaps that further expansion of international criminal law jurisprudence into new areas is necessary, such as for greater prosecution of gender-based violent crimes used as weapons of war, illegal arms and drug sales and smuggling, human trafficking, high-level corruption and the systematic deconstruction of organized crime networks within worldwide rings. Current criminal justice practices that originate in diverse domestic legal systems within separate countries make it easy for perpetrators of the most heinous crimes against humanity to not only profit immensely from their crimes, such as the war crimes and various forms of human trafficking crimes being investigated and soon to be prosecuted in the KRSJI, but also to escape being held accountable. These cross-border enterprises fall through impunity cracks that cannot be filled because perpetrators cannot be reached by the longest arms of law within separate sovereign nations.

The crucial significance and justification for this research, namely, regarding the development, challenges, and evolution of international criminal justice and an analysis of its relationship and influence on future courts and particularly as it relates to the case study of Kosovo, is amplified by the dearth of literature on the subject as little has been written about the Kosovo conflict after 2001. In addition, the data collection methods I used, involving interviews and site visits, revealed wounds not yet healed, memories being manipulated or denied, truths buried or ignored, and communities still deeply divided. An international right-based approach to the continued development of international criminal law and procedure is necessary.

The jurisdiction of international criminal law evolved from the IMTs to the *ad hoc* and hybrid tribunals of the 1990s,³⁴² all courts that dealt with mass atrocities in the context of arms conflict and totalitarian regimes, which clarified the definition of genocide and increased awareness of the need for victim reparations. The eventual formation of the ICC filled gaps left by limited international jurisdiction of other courts or the refusal of sovereign states to prosecute those suspected of committing atrocities. The new KRSJI will further evolve jurisdiction as an international *ad hoc* court with hybrid character.³⁴³

While it is always difficult to remain neutral and objective, it can be particularly challenging regarding horrific criminal atrocities³⁴⁴ and especially in relation to Kosovo with its ongoing efforts at transition, its ethnic diversity and being surrounded geographically by other multi-ethnic post-war areas. Relying on information gathered from diverse ethnic groups through qualitative assessments in interviews, whom have all suffered greatly during the Yugoslav wars, presented its own challenges and limitations. Many interviewees, from both the academic and legal arenas as well as lay persons, often voiced fixed opinions that contradicted information gathered from other interviews of person from different ethnicity, religion or country. Nonetheless, from a transitional justice standpoint, these ethnic and geographical differences of opinions became important to a realistic study of these multiethnic conflicts and the various criminal courts. I have accordingly noted these ethnic and geographical difference of opinion where relevant throughout the text.³⁴⁵

³⁴² From the end of the 1990s until today the number of hybrid courts established to fight mass violence and grave violations of human rights has dramatically increased, including those of Sierra Leone, Kosovo, BiH, Cambodia, Lebanon and East Timor. A detailed analysis of all of these hybrids is beyond the scope of this thesis.

³⁴³ Based on current literature available at the KRSJI website through July, 5 2017, <https://www.scp-ks.org/en>.

³⁴⁴ Bosnian Muslims, for example, were driven from their homes, put into concentration camps where many died from beatings, starvation, poor hygiene, raped, murdered and “even impregnated by Serbs in order to humiliate the Muslims.” Those allowed to remain were humiliated and restricted, in dress, manner, curfews, associations and other freedoms. Rezun, M. (2001) *Europe’s Nightmare: The Struggle for Kosovo*, p. 40.

³⁴⁵ See The Law of the Prosecutor’s Office, article 7 (“Bosnian, Croat and Serb languages and Latin and Cyrillic scripts shall equally be used in the Prosecutor’s Office”); see also Darts, Rebecca Thérèse, *The Interplay between Human Rights and Translation in Multilingual Newborn Kosovo*.

This thesis analyzed the history and current state of international criminal justice systems with a view towards development of a global anti-crime framework, using the KRSJI as future potential to further evolve international criminal jurisdiction into the organized crime arena. The future expectancy is that the current and past measures used to deter and punish perpetrators of grave human rights violations may provide solutions and recommendations for law enforcement and prosecution going forward. The development of substantive international criminal law from the IMTs to the newly created KRSJI and transitional justice mechanisms put in place following the ceasefires are instructive on many fronts, where the problems and power inherent in the many-layered conflicts, alternative political agendas and undisguised hatred of other ethnic groups are harnessed by all sides.³⁴⁶

The KRSJI has been met with grateful anticipation yet fearful doubts by Serbs and is criticized by Northern Mitrovica Serbian lawyers, who continue to react with shrugged indifference regarding the new court.³⁴⁷ On the other hand, it is viewed with deep skepticism and even outrage by Kosvo Albanians yet was established with approval of Kosovo parliament composed of an Albanian majority. The KRSJI is also legitimately perceived as repetitive of other mechanisms, such as the *ad hoc* ICTY or the current EULEX hybrids but a certain type of criminal element slipped through the cracks in the newborn yet burgeoning system. Alleged atrocities investigated and named in the Marty report and the evidence collected by the SITF confirm the allegations, and indictments are pending, thereby necessitating a tribunal to find justice for countless victims. International administration by the UN³⁴⁸ and EU³⁴⁹ in Kosovo began to rebuild the criminal justice system. The role of international criminal law in the development of the Kosovo rule of law systems, while effective on some levels, was unable to

³⁴⁶ Lowe, 2012, p. 250.

³⁴⁷ Author interviews with NGO personnel inside Kosovo and with scholars and administrators from Croatia, Kosovo, Serbia, Montenegro, Albania and Montenegro during January 2017 through June 2017.

³⁴⁸ United Nations Security Council Resolution 1244 (main responsibilities of international civil presence include performing “basic civilian administrative functions where and as long as required” and to maintain “law and order, including establishing local police forces *and meanwhile through the deployment of international police personnel to serve in Kosovo*,” emphasis added).

³⁴⁹ Ibid. (“Welcomes the work in hand in the European Union and other international organizations to develop comprehensive approach to the economic development and stabilization of the region affected by the Kosovo crisis.”)

fully protect witnesses or to handle the massive caseload and backlog, which led to the need for a new scheme for prosecution, namely the KRSJI. As the next chapter in Kosovo justice begins, it can combine procedural and substantive lessons learned from these earlier courts in order to investigate and prosecute crimes that have evaded prosecution and, hopefully, the KRSJI can manifest its own legacy as another standard-setting mechanism for both domestic and international prosecutions of gross human rights violations.

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ANNEX I

The Bloody Yellow House: The Most Notorious place in Albania

” Yellow House” is a house of Albanian family Katuci in Ripe, near town Burrell, North Albania, where UN prosecutors searched in 2004 for evidence that organs were illegally harvested from Serbs and other non-Albanian people kidnapped from Kosovo in 1999. Victims were kidnapped by Kosovo Liberation Army (UCK) and then from Kosovo transported in North Albanian concentration camps.

In 2008, Del Ponte published a book “The Hunt” in which she collected rather extensive evidence that the Kosovo Albanians were smuggling human organs of kidnapped Serbs after the Kosovo war ended in 1999. Her book created an international controversy. She writes:

” A few months after [October 2002] the investigators of the tribunal and UNMIK reached central Albania and the yellow house which the journalists sources had revealed as the place where the prisoners were killed to transplant their organs. The journalists and the Albanian prosecutor accompanied the investigators on to the site. The house was now white. The owner denied it had ever been repainted even though investigators found traces of yellow along the base of its walls.

Inside the investigators found pieces of gauze, a used syringe and two plastic IV bags encrusted with mud and empty bottles of medicine, some of which was of a muscle relaxant often used in surgical operations.

The application of a chemical substance revealed to the scientific team traces of blood on the walls and on the floor of a room inside the house, except for in a clean area of the floor sized 180x60cm. The owner offered a variety of explanations for the bloodstains over the course of the two days the investigators spent in the village. Initially he said that many years ago his wife had given birth in that room then when his wife said she had her children elsewhere he asserted that the family had used the building to butcher animals for a Muslim festival.

It is tempting to draw conclusions from these investigations, combined with the fragmentary testimony from the journalists. Stories of prisoners killed by organ traffickers circulate in many conflict areas, but rarely is it possible to find concrete proof which would separate these tales from urban legend.

The syringes, the iv solution bags, the gauze are clearly material which confirms the tales, but as proof they are unfortunately insufficient. The investigators were not able to determine whether the traces they found were of human blood. The sources did not indicated the position of the grave of the presumed victims and so we did not find the bodies.”

On 4 April 2008 the Human Rights Watch wrote to Kosovar Prime Minister Hashim Thaci and Albanian Prime Minister Sali Berisha in request to open investigations on the matter under international supervision. By 3 May both had ignored the letters and instead publicly rejected del Ponte's claims as unsubstantiated. On 5 May 2008 the Human Rights Watch called the allegations from Del Ponte's book "serious and credible" and issued a public call to Tirana and Pristina for cooperation.

The reported alleges the victims were more than 400 Serbs missing from the war. "Serious and credible allegations have emerged about horrible abuses in Kosovo and Albania after the war," said Fred Abrahams, HWR Senior emergencies researcher of HRW.

"According to the journalists' information, the abducted individuals were held in warehouses and other buildings, including facilities in Kukes and Tropoje. In comparison to other captives, some of the sources said, some of the younger, healthier detainees were fed, examined by doctors, and never beaten. These abducted individuals – an unknown number – were allegedly transferred to a yellow house in or around the Albanian town of Burrel, where doctors extracted the captives' internal organs. These organs were then transported out of Albania via the airport near the capital Tirana. Most of the alleged victims were Serbs who went missing after the arrival of UN and NATO forces in Kosovo. But other captives were women from Kosovo, Albania, Russia, and other Slavic countries."

In December 14th 2010, Dick Marty, Rapporteur of EU Commission pass for adoption to the Council of Europe a report on allegations of inhuman treatment of people and illicit trafficking in human organs in Kosovo organized by KLA leader and Kosovo Prime minister Hashim Thaçi. An official report accusing Kosovo's prime minister of links to a "mafia-like" network that killed captives in order to sell their organs on the black market was yesterday endorsed by a Council of Europe committee.

Below are COMMENTS to the BLOG above:

Hey, I read a lot of blogs on a daily basis and for the most part, people lack substance but, I just wanted to make a quick comment to say GREAT blog!.....I'll be checking in on a regularly now....Keep up the good work! – Marc Shaw

Hey, I found your blog while searching on Google. I have a blog on online stock trading, I'll bookmark your site.

Great, I did not heard about that until now. Thankz!

Albanian , December 26, 2010 at 12:52 am

This is lie lie and lie again! for transplation needs a regulary hospital not a house like that, so plzzz bad propaganda! Kosova is Albania!

Milos, June 3, 2012 at 10:29 pm

Ur an ignorant idiot just like rest of ur kind. hitler should have murdered u instead of poor jews. lowest race on earth ur useless and should be all kiled for taking air of people whos lifes are worth of something (unlike urs)

Anonymous, September 14, 2012 at 8:10 pm

You only need basic knowledge of anatomy and surgery to cut open a living being and isolate an organ you wish to extract. The environment doesn't have to be sterile, because you don't care about the well-being of your patient; the internal organs are primarily sterile (meaning there is no bacteria there), but the human skin is not. If you employ basic rules of working in aseptic conditions, disinfect the area of the skin through which you will approach the organ you wish to harvest, and use the correct method of preserving it's arterial and venous blood vessels, you can get the organ pretty easily. Put it in a sterile and properly cooled container and it's good to go. The black market for organ trafficking exist all over the world (especially in third-world countries), and the operations are rarely if ever being done in hospital conditions (like I said, they only care about the organ you're giving them, not you).

Stop saying it was impossible, you are embarassing yourself because you clearly lack any knowledge about medicine. It did hapen and the perpetrators need to punished.

Did-It-Happen? July 29, 2014 at 8:44 am

So you're here to claim that it happened very persuasive i might addd, much less about how the procedure goes through. Well, again I say it did not happen... So how will you prove that it did, please support your claim with truth and clarity. Keep any B.S. you have to yourself.

Bruno (@GamerOps), May 16, 2014 at 8:33 am

Then you wonder why Albanians are hated for a reason. Are you going to claim that Greece and Italy are yours to then?

Slavic , April 10, 2015 at 2:10 pm

NO one is speaking about organ transplation, that the Albanians are just unable to do, but about organ stealing in which they are professionals and you do not need much to have as equipment. As all Muslims butcheries slitting a human victim does not make any moral problem to them. Your place is not in Europe and I hope your application to EU will be rejected and thrown away to the garbage where your place is. As you know your nation well you know that they are able to do the most nasty crimes and they proved it already numerous time.

Milos Obilic, July 25, 2016 at 6:57 am

Kosovo is Serbia!!!

Milos Obilic, July 25, 2016 at 6:59 am

Kosovo is Serbia!!!Albanian is Terrorist!!!

Dri99, December 29, 2010 at 12:21 am

Great example of how Serbia is manipulating the world with few failed, corrupt and so called officials. Just another way of covering up all atrocities done during the fall of Yugoslavia, (Croatia, Bosnia & Kosova) putting blame on everyone else but themselves.

Box, September 12, 2012 at 3:12 pm

And what atrocities is the Bosnian government committing today? Why haven't all people been exhumed and properly buried in Srebrenica. For a few political points, even after 20 years? You have a couple hundred crooked politicians (including scumbag Klinton family), shouting in your defense for every killed or exiled Serb. I'll remind you that that Croatians and Bosnian Muslims joined Hitler and killed Serbs, Jewish and Roma population, and never answered for these crimes in WW2. Albanian Muslims killed Serbian starving, fleeing army from the back when they were withdrawing to Krf and Solun (Tesaloniki) during World War 1. And above all Albania and Kosovo are now prime packaging industries and smuggling routs for Heroin, Opium, Cocaine and other illegal opiates to European Union Countries through Montenegro and Italy. I almost forgot the slave (prostitute) trading routes going through here from Moldavia, Romania, Albania, Lithuania and other poor countries.

April 15, 2011 at 4:00 am

Interesting. I did not know that you could perform such complex organ transplantation in a primitive environment. Now I have heard of everything.

Anonymous, September 14, 2012 at 7:56 pm

Well, you can, but you have to put the organ in a sterile, cool container to stop contamination from and the growth of bacteria. On the other hand, the patient is not very likely to survive. Oh wait, I guess that wasn't really a big issue there.

Albanian101, November 23, 2011 at 11:24 am

Wow!! Instead of writing about all these thousands of thousands of bosnjian and albanian people who were murdered by the serbian army.. the women and their daughters that were raped by them, the young childs who were killed without mercy... People like this Del Ponte are becoming the tool of the serbian propaganda for few Dollars. unbelievable! Kosova ishte, eshte dhe do te jet gjithmone Shqipetare.

traveler, January 15, 2014 at 3:58 pm

Stupid primitive Shiptar !

Gena, March 24, 2014 at 8:50 pm

Te lumte goja!

Bruno (@GamerOps), April 2, 2014 at 8:21 am

You Albanians are nothing more barbaric just like those other albanian users in here your now faking and making up BS as you go along, you Albanians murdered women, children, man and there families in cold blood at the Yellow house and elsewhere in Kosovo while those victims were being alive, were screaming in pain. You Albanians are nothing but savages and barbarians. “People like this Del Ponte are becoming the tool of the serbian propaganda for few Dollars. unbelievable! Whats the matter little NATO Sniffing dog? scared of the truth?

Dr. E, July 5, 2014 at 6:10 pm

You sir clearly are biased, I am an Albanian Physician who has had the privilege and honor of serving all kinds of patients including Serbians and other related Slavic Populations, never in the world I was seen as a savage nor did I see them as such while caring for them, it is people like you and other Albanians who bark with no facts what so ever that spread hate and troll online like they have all the information. Let me tell you something, while I am not excluding this for happening, it is the highest of officials responsible for such atrocities including all kinds of Mediterranean countries and west also that give the order for such things to happen. No villager in Rripe or anywhere else in poor territories would have the mean, knowledge or the brains to carry out such operations, stop calling names and pointing fingers in a whole nationality because I can reassure you that if true 99% of Albanians would not be involved in such crimes. Crime has no country, no language of its own but crime itself and it doesn't care if you are Albanian, Serb, Greek, Italian,English, Christian, Muslim, Buddhist or whatever you might be.

Slavic, April 10, 2015 at 2:23 pm

We can only agree with Dr. E, whichever nationality we are. unfortunately only a few men are enough intelligent to write these words. I would just point also at the responsibility of the rich west European clients which permitted the development of such nasty business, due to their desire to live longer they are able to make kill other humans....

Phillipe, December 6, 2011 at 1:06 pm

Great blog. Thanks for keeping it up to date. I was fascinated to find out how many Serbians remained in Kosovo. Although we've been told many times about Serbian ethnic cleansing, now we can actually see that it was pretty much other way around. Numbers show more then words sometimes. The story of the “bloody yellow house” is a true horror, and I hope that everyone responsible will be brought to justice. Keep up the good work. Phillipe

Pingback: Kosovo's Thaçi: Human Organs Trafficker | Chronicles: A Magazine of American Culture

staljin, June 18, 2012 at 1:54 am

god see evrything! end we will revange 10 times harder

Mary, July 11, 2013 at 8:10 pm

I agree with u

Rand, September 29, 2012 at 1:21 pm

It is too bad that the media turned a blind eye to atrocities committed by Albanians even before the war. This was just a part of the terrorism that happened to Serbians. Just how much does media affect the public's mind? Take some courses and read about sensationalism.

30-60-90-day plan, November 4, 2012 at 10:35 am

I am actually pleased to read this websites posts which consists of tons of helpful facts, thanks for providing these statistics.

John, November 9, 2012 at 1:53 am

The Kosovars are guilty. End of the story.

fabio, January 2, 2013 at 6:00 pm

serbia must be destroyed..serbian kids burned alive and serbian women fucked hard...gypsies of shit...

Corto, April 11, 2013 at 9:38 pm

why fabio ? why you hate ? you are hate ... you are evil

daemon, June 15, 2013 at 10:21 am

Dream on, bitch

Mary, July 11, 2013 at 8:09 pm

you're sick. you deserve to die. painfully and slowly..

AngrySerbs, July 14, 2013 at 3:18 pm

You must stop using Serbian inventions like Tesla AC power, hidroelectric plants, radio of any kind, radars, computers for which Tesla invented logic and gate, fluorescent lights... and when i brake you for being a fachist murderer no xrays, Tesla first made those too. Also long distance analog phone you will have to use without radio and digital is Pupin's, theory of global warming is based on Milankovic theory of insolation, but as far as you are concerned, there is no global warming and raping and murdering kids to take their organs is your american passtime. You really are brothers of albanians, Tesla should have applied to Russia and left all of you western murdering brothers of Albanians and other Al Qaida terrorists in the steam and stone age where you genocidal murdering retards belong.

Serbian kids burned alive? Adress please.

You already did that, and are doing it all over the world to millions of people, and stop raping yours, you don't have to make him punish you, just confess your evil doings here, relatives of those you killed will punish you. What you wrote here, do it to your own family and nation.

Facts are proven and proof was destroyed by tribunal. Yet there are more proofs.

Une Jam Ai Qe Isha, April 23, 2014 at 9:29 pm

I will stop using Serbian inventions when the idiotic propoganda of your former federation leaves your mind. Where in the world could a bunch of Slavic orthodox claim that a bunch of Albanian Muslims were part of their nation. You wanted Kosovo, now you got all of us. You think we were done with just Milosevic dying like a dirty dog in prison. Not done yet! You raped, pillaged, murdered Albanians for decades in Kosovo, until we decided it was enough and that we would not take it anymore. You and your asinine idiotic beliefs of the Teslas of the world got you saying things that you don't even understand, let alone could prove. I would love to see you tremble with fear under the barrel of an AK and see in your eyes the moment when you understand how wrong you were when you abused my people. I would not kill you, death would be salvation to a coward like you. But live the rest of your life knowing that I exist, that I look for you every day of my life, that so does my brother, my friend, my son and every one around me. Know that I am hunting you every day and while you are thriving in your Serbian pride (if that's what you want to call it), at some point, you and the memory of your ancestors will be just another page in a history book sitting on my shelf. You are expendable and nobody would ever miss you, PRICK!

Serb, February 17, 2013 at 5:47 pm

fabio says:m January 2, 2013 at 6:00 pm

serbia must be destroyed..serbian kids burned alive and serbian women fucked hard...gypsies of shit...

This comment shows a true face of albanians, people who are hiding behind NATO and instead of being quiet after it they are bragging that they are the one who won the war, not NATO & US. If there was same rules for everyone after break out of SFR Yugoslavia, there wouldn't be any war. Why would croats had right to set free from Yugoslavia, and 500k serbs who lived in croatia didn't have a right to vote about it, later serbs were ethnically cleansed from croatia, and no one was blamed for that. Gotovina got released. shame.

Same story for Bosnia, serbs did commit crimes in Srebrenica, but muslims killed almost the same number of people (serbian nationality) in villages around srebrenica in first few years of war, that was just pay back , and yes it was a mistake, and we should never done that. But still why would bosnians had right to separate from Yugoslavia and more than 1 million Serbs who lived in bosnia before the war couldn't have the right to stay in it. NATO and west are guilty for all victims who lost their lives in this war, you can't threat two sides differently when you have to threat them equally. If they did that, there wouldn't be any war, and any victims. And about Kosovo and Metohija, that's serbian territory, if Tito didn't forbid serbs who wanted to come back to Kosovo in 60s and 70s and plus who was calling albanians from albania to come to kosovo, and they surely did. cause situation in kosovo was 10 time better then in communist albania.

Une Jam Ai Qe Isha, April 23, 2014 at 9:35 pm

You sound like a reasonable guy. Tell me more about this Kosovo being serbian territory. How

did that come about? I will agree with you, Tito was a reasonable leader and our communist leader at the time was nothing short of an abomination. But history runs longer than 45 years. And Kosovo did not uprising against Tito, it is Milosevic who thought genocide was a good idea and it is an unfortunate thing that the coward died in prison and not eaten alive by the wolves of Mitrovica. But that's another story.

Florijan, February 26, 2013 at 4:00 pm

Croatia, Jasenovac death camp in 1941-1945 year (Croatians Ustaša killed 900,000 Serbs - real number), archives of the Nazi SS was announced that Jasenovac was worse than hell itself.

– Bratunac and Srebrenica cities in Bosnian war (Muslims started to kill Serbs first, 4,000 Serbs dead).

– Croatia in 1990 year (Serbian minority eliminated from the Croatian constitution, Croats banished 300,000 Serbs from their homes).

– NATO bombed Serbia in 1999 year (2,500 dead Serbs, war damage 10 billion dollars)

– Yellow House in North Albania in 1999 year (UCK Albanian terrorists killed Serbs and other non-Albanians on Kosovo, also they transported civilians to that Albanian house of horror).

Ex Yugoslavian president Slobodan Milosevic rejected the stationing of U.S. troops in Yugoslavia. Because that U.S.A initiated the conflict in ex Yugoslavia, thanks to the U.S.A Yugoslavia had wars. Today U.S.A have what they wanted, a biggest U.S. military base in world (Bondsteel camp on Kosovo).

Une Jam Ai Qe Isha, April 23, 2014 at 9:32 pm

When did your beloved leader of Yugoslavia start the genocide in Kosovo? Were you even alive back then? Serbians tend to suffer from revised history syndrome. Learn your history before you relive it. And in the alternative, if everybody in the world hates Serbia, maybe there is a good reason for it ... think about it.

Bruno (@GamerOps), May 16, 2014 at 8:49 am

“When did your beloved leader of Yugoslavia start the genocide in Kosovo?”

Let me correct you there NATO Terrorist sympathizer.

When did your your beloved leaders of NATO, KLA and the Albanian gov start the genocide in Kosovo against the Christians?

“if everybody in the world hates Serbia, maybe there is a good reason for it ... think about it.”

Everybody in the world hates Serbia? really? says whom an Anonymous Albanian user desperately defending your beloved terrorists whom have committed the real genocide in Kosovo.

While by living under the protection of the terrorist NATO.

By the way Albanian Filth Do you know that

Everybody in the world hates America and Albania? there is an actually good reason for that. ” Serbians tend to suffer from revised history syndrome. ”

Ah yes revised history syndrome the usual defense line when debating.

TruthBeKnown, December 10, 2016 at 11:39 am

Bull Shit... 42-52,000 Serbs were killed in jasenovac camp. The total killed was around 100,000 including Serbs, Jews, Roma, dissident Croats, and Bosnian Muslim's. Stop inflating numbers. Just saying "real number" doesn't make it the truth. Fact is that there was a study done, a missing persons research from before and after, and the total was only around 85,000. Captain Tucovic said once "We have carried out the attempted premeditated murder of an entire nation. We were caught in that criminal act and have been obstructed. Now we have to suffer the punishment.... In the Balkan Wars, Serbia not only doubled its territory, but also its external enemies." Yet you still make it seem as if y'all aren't guilty when serbian generals and capitains alike have admitted to atrocities. Fact- Serbs have performed multiple genocide of different people. Opinion – Kosovo is Serbia. Truth is Kosovo is Kosovo. Truth is Serbia is Serbia. Truth is way more Albanians live and have lived in Kosovo even before the displacement of your kind.

Elke , March 14, 2013 at 1:33 pm

That is very fascinating, You're an overly professional blogger. I've joined your feed and stay up for in the hunt for more of your wonderful post. Additionally, I've shared your website in my social networks

Stopi, April 19, 2013 at 11:12 am

F**** propagand! None fact!

Bruno (@GamerOps), May 16, 2014 at 8:35 am

What's the matter Albanian? truth hurts doesn't it?
What your beloved America you are nothing.

Jean Villeneuve, July 29, 2014 at 4:52 pm

ough, yeah! All world against you, poor Albanians.

Albania1000, July 7, 2013 at 12:41 pm

How can this stupid Europe keep up with such nonsense brought up by Del Ponte? Forget this nonsense and go back to normality. Kosovo is to it where it belongs.

Jean Villeneuve, July 29, 2014 at 4:52 pm

you are disgusting. If you done shit, you need to pay.

minela, July 12, 2013 at 9:20 pm

Fabio bas bih volela da te upoznam da ti odsecemi bacim kerovima za uzinu

jagoda, September 13, 2013 at 2:04 pm

ΚΑΤΑΘΕΣΕΙΣ- ΣΟΚ ΓΙΑ ΠΑΙΔΙΑ ΠΟΥ ΜΕΤΑΦΕΡΘΗΚΑΝ ΣΕ ΚΛΙΝΙΚΗ ΤΗΣ ΑΛΒΑΝΙΑΣ ΚΑΙ ΕΓΙΝΑΝ «ΑΝΤΑΛΛΑΚΤΙΚΑ». – shocking testimonies about children who were carried to a clinic in albania and became spare parts.....

http://sklantzithres.blogspot.gr/2013/09/blog-post_9715.html
the text is in greek as it concerns children from greece and the children are kidnapped in greece. this didn't happen centuries ago. it is happening. maybe even now as we discuss the issue here. think about it....

Bruno (@GamerOps), May 16, 2014 at 8:51 am

Indeed Albanians are nothing then modern barbarians and savages.
Its now May 2014 where are all the Albanian defenders now at?

Pingback: Kosovo PM is head of human organ and arms ring, Council of Europe reports | Piazza della Carina

Nicole, January 6, 2014 at 7:20 pm

i've heard about it some years ago and i believe it, unfortunately. As i have had personal experiences with butchers from Kosovo who live now in my country-in Germany- and are bragging about their past crimes done on the Serbs. They are so stupid that they confess and admit all what they've done. And yet so proud of it. I felt nauseatic when i had to listen to their sh.t. Evil, evil to the bones. And barbaric. They way they treat their own families here (their wives scared to death of them...) is a clear sign of how they treat their enemies. Well, many bad and wrong things happened in former Yugoslavia, Serbs aren't saint too, of course, and they did many bad things but they definitely weren't the only ones. And- i am pure German, so i really am trying to be objective. But that's the matter of fact, these are things i've heard personally and saw with my own eyes. Butchers from Kosovo. Nothing else they are.

traveler, January 15, 2014 at 4:03 pm

Albanian Shqiptar are mänschliche garbage Europe's only rape, murder, drugs, kidnapping, prostitution can and nothing else. This is the most primitive ethnic group there is!

albpetroli, February 2, 2016 at 2:18 am

You are talking about gangs and mafia, not for real Albanians, in our church I don't see anything like these, in our parish are all Greeks, Albanians, Russians, Ukrainians, Serbians, but we all are Christians. Every Sunday is so nice and peaceful. My friend we have to move on. I don't know what to tell you, but one thing I can tell to my people to my Albanians " go and do the same thing your national hero Skanderbeg did 600 years ago, be a Christian and believe in God .

So Mr. Travel, stop speaking for Albanians, we are not like that.

I believe that, the crime at The Yellow House is true, I believe so too, you need two sterile bags some ice and a cooler, just prep the skin with betadine. Are a lot of monsters all over the world, are in Albania too, and I agree, but they are criminals.

Don't be hateful, just see the reality as it is,

jay, February 14, 2014 at 11:54 pm

its not in albania, its in kosovo! different country, dude, lol

Jean Villeneuve, July 29, 2014 at 4:43 pm

.LOL, when shit happens Kosovo is not Albania, but all other times it is Albanian right?

Slavic, April 10, 2015 at 3:21 pm

.different country with the same people, nationality and criminals

Dardani, April 24, 2014 at 2:16 pm

Stop this stupid propaganda you sick animals. You wanna equate the crimes of criminal Yugoslavians with Albanian people. You're trying like dogs and maggots all these years by paying people to talk b^llshits and find proves against Albanians but you always fail with your disgusting fairytales. More than 10000 Albanians, men, women (old and young), boys, girls were murdered in concentration camps by the Yugoslavian dictator and paramilitary groups. Serbian mafia was the one that kidnapped people during the war and used them for traffick. Thousands of Albanian women and girls were raped by Yugoslavian nationalists and groups. You claim that in Albania organ transplants took place? During that time EVEN in Tirana there wasn't a hospital for such procedure. You say that a house in a small village of Albania where even electric current and clean water didn't exist, was used as a clinic for organ transplant? How the f^ck an Albanian villager or citizen of that time would REMOVE IN A PROFESSIONAL WAY the organs of someone, keep them in a good condition and then transport them again in a professional way to other destinations. The Albanian doctors of that time could BARELY perform a surgery of broken hand or leg and you say that they knew how to transplant Vital organs? All these are lies! The stupid "proves" they have found are made up and no serious court have taken it seriously, otherwise there would've been dozens of imprisonations and HUNDREDS of arrests. We Albanians laugh with these silly arguments but you wanna create a bad image about us in international world. Enough with this disgusting made-up story because you look even more ridiculous than you are.

Jean Villeneuve, July 29, 2014 at 4:49 pm

Well I am not a Serb nor Albanian and I live very far away from all you. But what can I see clearly is – Albania and Kosovo is a black hole of Europe, poor and savage place with very huge numbers of crime, corruption and other atrocities. I hope my country will never approve you in EU as I see a lot of your people are in our prisons because of doing so big shit that even our criminals are shocked. I truly believe this investigation as it is held by European democratic countries and no matter how much atrocities Serbs done to others, NONE OF YOU are angels and I don't believe that one side is more good than other. But in favor of Serbs is speaking that I don't see their mafia, criminals in my city or my country, but every day I see news about Albanian mafia and criminals. So in the end I am going to conclusion, that I have more sympathies to Serbs.

Linnah Jarra, July 29, 2014 at 6:55 pm

It is possible to harvest organs in the environment that existed in the Yellow house as was evidenced in a CNN documentary "death in the desert".

Taulant, September 10, 2014 at 1:35 pm

Long life UÇK !!

TurtleShroom, October 17, 2014 at 11:10 am

.Oh man. I 'gotta get that book.

Mark, October 25, 2014 at 2:06 pm

This is little bit history about Serbs. Slavs formed Sklavinia beginning in the 6th century, out of which the First Serbian Principality of the Vlastimirovići emerged. It evolved into a Grand Principality by the 11th century, and in 1217, the Kingdom and national church (Serbian Orthodox Church) were established, under the Nemanjići.

This is history about Albanians.

The ambassadors of six Great Powers met again on 29 July 1913 and decided to constitute a new state, Albania, as a constitutional monarchy. Finally, with the Treaty of Bucharest being signed in August 1913 a new independent state was established—the Principality of Albania.

So to make it clear Serbs exist, as a country 7 centuries before Albanians, on that territory, Serbia, Kosovo, Montenegro. And now Albanians will tell us and to the rest of the world whose this territory, and what they are fighting for! Well for those who feel the truth is boring, I will make it simple, Albanians they were migrating from Albania not only in Serbia, but in the Greece, Macedonia, Italy, Germany, Switzerland, Austria. And they were accepted, offered place to live.

So they come to your house hungry, sick, you offered them new clothes, food, until you heal them, and you give them one room, after they get healed you said ok, now its time for you to leave, but they said NO, and plus they said, this room is not yours, its now mine! Well thats not possible. So this is just simplified story of Albanians.

Now little bit about the first world war:

France, British Empire British Empire, United Kingdom, Australia, Canada, British India, Newfoundland, New Zealand, South Africa, Russia (1914–17) Italy (1915–18) United States (1917–18)[a] Japan, Serbia, Montenegro, Romania (1916–18) Belgium, Greece (1917–18) Portugal (1916–18). this was a good side, and as you can see Serbia is written there.

The Secon World War 2:

Australia Belgium Brazil Canada China Cuba Czechoslovakia Denmark Ethiopia Lapland War against Germany (1944–45) France Free France (from June 1940) Greece India Italy (from September 1943) Campaign Luxembourg Mexico Netherlands New Zealand Norway Philippines (Commonwealth) Poland South Africa Southern Rhodesia Soviet Union United Kingdom United States Puerto Rico Serbia. Again Serbia is there, where it was Albania..

We never had terrorist, but you can find Al Qaida was involved in Kosovo and in Albania, of course not on Serbian side. Plus now western journalist, not Serbian, finding connection of Albanians with new Islamic terrorists, called Isis in Albania and Kosovo.

So conclusion is that from their very begging till the present days, i mean Albanians, there is no history which telling us they are, or they were good.

thescientist, November 13, 2015 at 12:43 am

what do you know about history you idiot, albanians ,illyric people existed since in ancient greek period,(the hellens) before any slavic population existed, do not consult your history knowledge on wikipedia and come here to do the smart guy.

Mike, May 18, 2015 at 7:25 pm

The funny thing is that this propaganda was never proved to be true .

Milos Obilic, July 25, 2016 at 7:02 am

VRATICEMO SE!!!ONI TO ZNAJU I ZATO BLEJE!!!

tony kennedy, September 18, 2016 at 5:34 pm

Your all just puppets for the biggest giver of dollars and as such you should stop crying and whinging and try to remember that before religion and race, we are humans . I believe that the hardest thing to own up to is that we have all been conned and manipulated for someone else 's greed and they will continue to do so

TruthBeKnown, December 10, 2016 at 11:44 am

So the UN has Guesstimated the total number of people killed was from 100 – 300 people. All though these acts are atrocious, they are nowhere near the numbers caused by Serbs
In actuality those numbers were literally just thrown out there. In 2010, Dick Marti called for an investigation for only a handful of people that this might've been done to but subsided his claim since he had no proof after year long investigation. You'd think that after a year they'd at least find some proof... Right?