

EXAMINING THE ROLE OF OUTREACH WORK IN THE INTERNATIONAL CRIMINAL JUSTICE SYSTEM: THE CASE OF ICTY

ULUSLARARASI CEZA YARGISINDA ERİŞİMİN ROLÜNÜN İNCELENMESİ:
ESKİ YUGOSLAVYA ULUSLARARASI CEZA MAHKEMESİ ÖRNEĞİ

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Article Info

Gönderi: 19/10/2020
Kabul : 10/03/2021

Keywords

*Outreach,
Outreach Activities,
International
Criminal Law,
The ICTY,
Plea Bargaining.*

Makale Bilgi

Received: 19/10/2020
Accepted: 10/03/2021

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*Erişim,
Erişim Aktiviteleri,
Uluslararası Ceza
Hukuku,
Eski Yugoslavya
Uluslararası Ceza
Mahkemesi,
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Abstract

<https://doi.org/10.21492/inuhfd.812429> 

Outreach activities of international criminal tribunals remain as a neglected area in the field of international criminal law. This article draws attention to this very under-researched area and highlights the importance of outreach work in providing international criminal justice. By focusing on the International Criminal Tribunal for the former Yugoslavia (the ICTY) as a case study, the article argues that outreach activities are significant for international criminal tribunals to gain the support of the local populations under their jurisdictions. For the purpose of the article, the ICTY's main outreach activities are overviewed by using the online data provided in the ICTY's official website. A detailed analysis of these activities through an engagement with the existing literature shows that delays in the outreach activities, lack of other transitional justice mechanisms, and plea bargaining became the main challenges for the ICTY's outreach work. These conclusions are significant not only for an evaluation of the tribunal's legacy in the region of former Yugoslavia but also for deriving "lessons learned" for the other international criminal tribunals and the permanent court International Criminal Court (ICC). International tribunals and courts must learn from the ICTY's failures and should be vigilant from their establishment till their closure to enhance the public awareness about their work and to gain the support of the local communities under their jurisdictions.

Özet

Uluslararası ceza hukukunda uluslararası ceza mahkemelerinin erişim aktiviteleri göz ardı edilmiş bir alan olarak kalmaktadır. Bu makale, üzerinde az çalışılmış olan bu alana dikkat çeker ve uluslararası adaletin sağlanmasında erişim aktivitelerinin önemini vurgular. Eski Yugoslavya Uluslararası Ceza Mahkemesi yakından incelenerek, erişim aktivitelerinin uluslararası ceza mahkemelerinin kendi yargı yetkisi altında bulunan toplumların desteğini kazanmaları için ne derece önemli olduğu saptanır. Bu makalede, Eski Yugoslavya Uluslararası Ceza Mahkemesi'nin resmi internet sitesinde arşivlenmiş bulunan erişim aktiviteleri incelenir. Detaylı bir inceleme sonucunda erişim aktivitelerindeki gecikmenin, diğer geçiş dönemi adalet mekanizmalarının eksikliğinin ve itiraf pazarlığı (suçluların suçlarını itiraf ederek aldıkları ceza indirimleri) anlaşmalarının mahkemenin erişim aktivitelerini aksatan en önemli engeller oldukları tespit edilir. Makale, hem Eski Yugoslavya Uluslararası Ceza Mahkemesinin erişim aktivitelerini inceleme fırsatı sunmakta hem de diğer mahkemelerin aynı hataları yapmaması için bu mahkemenin başarısızlıklarından çıkarılabilecek dersleri gözler önüne sermektedir. Başta Uluslararası Ceza Mahkemesi olmak üzere diğer uluslararası ceza mahkemeleri kuruldukları tarihten itibaren erişim aktivitelerine önem vermeli, ve yetkileri altındaki toplumları aldıkları kararlardan ve mahkeme süreçlerinden haberdar ederek meşruiyetlerini sağlamaya çalışmalıdırlar.

I. INTRODUCTION

International criminal tribunals often remain distant to the societies where mass atrocities occur. This distance emerges as a result of international legal frameworks (that tribunals apply) or geographical remoteness *or both*. Such distance creates practical issues such as difficulties in victims' and witnesses' access to the tribunals or in evidence gathering. In addition to the practical difficulties, on the part of the affected communities a sense of distance and distrust also occurs by virtue of poor knowledge of the tribunals' work. As a result, tribunals fail to establish legitimacy and therefore receive little support from the communities in the areas under their jurisdictions. As a reaction to this issue, in order to enhance the public awareness and support for the international criminal tribunals, outreach activities are developed in the international criminal justice system.

The first international criminal tribunals, the International Military Tribunal for the Far East (the Tokyo Tribunal) and International Military Tribunal at Nuremberg (the Nuremberg Tribunal), had no outreach programmes¹. By having no engagement with the communities at stake the early tribunals left no precedents and legacy in this area for the following tribunals set in the 1990s: the International Criminal Tribunal for the former Yugoslavia (the ICTY) and the International Criminal Tribunal for Rwanda (the ICTR). The ICTY, together with the ICTR², have been the first tribunals developing outreach programmes. These tribunals' inadequate outreach work has been a 'lesson learned' for the International Criminal Court (ICC) which incorporated outreach work into its Regulations of the Registry³.

Despite the growing recognition of the importance of these activities by other international criminal tribunals and the ICC, there are very few studies on outreach⁴. This study aims to build on this limited literature. For the purpose of the study, web archive research⁵ is adopted as the

¹ CLARK, Janine Natalya: "International War Crimes Tribunals and the Challenge of Outreach", *International Criminal Law Review*, 9(1), 2009, p.106.

² For an analysis on ICTR's outreach activities, see: SCHARF, Michael P and KANGT Ahran: "Errors and Missteps: Key Lessons the Iraqi Special Tribunal Can Learn from the ICTY, ICTR, and SCSL", *Cornell International Law Journal*, 38(3), 2005, p.911; PESKIN, Victor: "Courting Rwanda: The Promises and Pitfalls of the ICTR Outreach Programme", *Journal of International Criminal Justice*, 3(4), 2005, p.950; GALLIMORE, Timothy: "The Legacy of the International Criminal Tribunal for Rwanda (ICTR) and Its Contributions to Reconciliation in Rwanda", *New England Journal of International and Comparative Law*, 14, 2008, p.239; DIENG, Adama: "Capacity-Building Efforts of the ICTR: A Different Kind of Legacy", *Northwestern Journal of International Human Rights*, 9(3), 2011, p.403; WESTBERG, Megan M: "Rwanda's Use of Transitional Justice After Genocide: The Gacaca Courts and the ICTR", *Kansas Law Review*, 59, 2011, p.331.

³ International Criminal Court Regulations of the Registry

Regulation 5 bis

Public Information and outreach

1. In fulfilment of the Registrar's mandate to provide information pursuant to rule 13, sub-rule 1 of the Rules of Procedure and Evidence, the Registry shall ensure the public dissemination of appropriate, neutral and timely information concerning the activities of the Court through public information and outreach programmes.
2. Public information programmes shall be aimed at fostering public understanding and support for the work of Court. To this end, the Registry may employ various means of communication, including print and broadcast media, internet-based technologies, visits to the Court and public-speaking engagements by Court officials.
3. Outreach programmes shall be aimed at making the Court's judicial proceedings accessible to those communities affected by the situations and cases before the Court. To this end, the Registry shall develop appropriate communication tools and strategies such as consultation and town-hall meetings, radio and television programmes, leaflets, booklets, posters and videos.

⁴ TOLBERT David: "Criminal Tribunal for the Former Yugoslavia: Unforeseen Successes and Foreseeable Shortcomings", *The Fletcher Forum of World Affairs*, 26(2), 2002, p.14; PESKIN (n 2); HUSSAIN Varda: "Sustaining Judicial Rescues: The Role of Outreach and Capacity-Building Efforts in War Crimes Tribunals", *Virginia Journal of International Law*, 45, 2005, p.39; DAREHSHORI, Sara: "Lessons for Outreach from the Ad Hoc Tribunals, the Special Court for Sierra Leone, and the International Criminal Court", *New England Journal of International and Comparative Law*, 14, 2008, p.11; PENTELOVITCH Norman Henry: "Seeing Justice Done: The Importance of Prioritizing Outreach Efforts at International Criminal Tribunals", *Georgetown Journal of International Law*, 39, 2008, p.445; CLARK, "International War Crimes Tribunals and the Challenge of Outreach" (n 1); VINCK P/PHAM PN: "Outreach Evaluation: The International Criminal Court in the Central African Republic", *International Journal of Transitional Justice*, 4(3), 2010, p.421; HELLMAN Matias: "Challenges and Limitations of Outreach: From the ICTY to the ICC" in Christian De Vos/ Sara Kendall/Carsten Stahn (eds), *Contested Justice: The Politics and Practice of International Criminal Court Interventions*, Cambridge University Press, Cambridge 2015.

⁵ BEN-DAVID Anat/HUURDEMAN Hugo: "Web Archive Search as Research: Methodological and Theoretical Implications", *Alexandria: The Journal of National and International Library and Information Issues*, 25(1/2), 2014, p.93.

primary data gathering method in order to overview the ICTY's outreach activities through its archive on its official website. The material on the ICTY's website sufficiently reflects the ICTY's outreach activities. To evaluate these activities' effectiveness, the study applies to the existing literature⁶.

Having delivered its last judgement on 29 November 2017, after working 24 years, the ICTY formally closed on 31 December 2017. The ICTY brought justice to 161 accused and collected 4,650 witnesses' testimonies throughout 10,800 trial days⁷. Given the fact that the ICTY fully implemented its completion strategy, an evaluation and examination of the tribunal's outreach activities proves necessary. This study also becomes timely since sufficient time has elapsed after the official closure of the tribunal; this allows the author to reach conclusions about the impact of the tribunal's outreach activities in the region of former Yugoslavia.

This article is divided into three main sections. In the second section, a definitional framework for outreach activities is presented and the importance of the outreach work in the international criminal justice system is discussed. In the third section, the article turns its focus on its case study and brings forward the ICTY's outreach activities by using the online data provided in the ICTY's official website. In the fourth section, the ICTY's outreach activities are critically evaluated through an engagement with the existing literature and it is found that the ICTY failed to effectively engage with the communities in the areas under its jurisdiction.

II. THE IMPORTANCE OF OUTREACH IN THE INTERNATIONAL CRIMINAL JUSTICE SYSTEM

Outreach means disseminating information to the relevant communities in relation to the legal proceedings in the international criminal tribunals. It encompasses attempts on the part of these tribunals to make their activities known to the domestic and international public⁸. With outreach, international courts reach out to the local populations concerned and explain their work⁹. Such work raises awareness of and inform about transitional justice mechanisms (trials, reparations, truth commissions, institutional reform) and encourage participation in these mechanisms¹⁰. It prevents manipulation and distortion of international criminal justice¹¹. Perceptions of international tribunals by those whose behalf they operate are crucial for tribunals to be seen as legitimate institutions¹². Without outreach, the international community cannot establish strong links between the international tribunals and the local communities concerned¹³. For these reasons, outreach is widely considered an obligation of the tribunals¹⁴.

The scope of outreach in the international criminal justice system is gradually concretised whereas initially there was ambiguity in terms of the definition of outreach. Its importance is now widely accepted. However, it has not been easy for international tribunal staff to recognize outreach as an important part of their work. National courts as a rule do not undertake such a role¹⁵. International tribunals' staff, having experience from national courts, initially objected to engage in "public relations" and to explain themselves to the local communities; the judgments were considered sufficient for the tribunals to explain themselves¹⁶. Since the legitimacy of the domestic courts is well and long-established in the communities they serve, it did not occur to the

⁶ CLARK Janine Natalya: "Plea Bargaining at the ICTY: Guilty Pleas and Reconciliation", *European Journal of International Law*, 20(2), 2009, p.415.

⁷Tribunal Press Release: "ICTY marks official closure with moving Ceremony in The Hague" <<https://www.icty.org/en/press/icty-marks-official-closure-with-moving-ceremony-in-the-hague>> (Accessed: 16.10.2020).

⁸ FICHTELBERG Aaron: *Hybrid Tribunals: A Comparative Examination*, Springer, New York 2015, p.75.

⁹ CLARK: "International War Crimes Tribunals and the Challenge of Outreach" (n 1) 99.

¹⁰ VINCK/PHAM (n 4) 2.

¹¹ STOVER Eric/WEINSTEIN Harvey M: "Conclusion: A Common Objective, A Universe of Alternatives" in Eric Stover/Harvey M Weinstein (eds), *My Neighbor, My Enemy: Justice and Community in the Aftermath of Mass Atrocity*, Cambridge University Press, Cambridge 2004, p.335.

¹² FLETCHER Laurel E/WEINSTEIN Harvey M: "A World unto Itself? The Application of International Justice in the Former Yugoslavia" in Eric Stover/Harvey M Weinstein (eds), *My Neighbor, My Enemy: Justice and Community in the Aftermath of Mass Atrocity*, Cambridge University Press, Cambridge 2004, p.30.

¹³ HUSSAIN (n 4) 550.

¹⁴ FLETCHER/WEINSTEIN (n 12) 44.

¹⁵KLARIN M: "The Impact of the ICTY Trials on Public Opinion in the Former Yugoslavia", *Journal of International Criminal Justice*, 7(1), 2009, p.96.

¹⁶ TOLBERT David: "Reflections on the ICTY Registry", *Journal of International Criminal Justice*, 2(2), 2004, p.485.

tribunals' staff to publicize their work and effectively engage with the local populations¹⁷. The staff struggled to admit the fact that international tribunals are not like a domestic court, and public image of an international criminal tribunal would be of importance. Thus, delays and failures in outreach work in international criminal law has not only existed because of the neglect of the local communities, but also as a consequence of the staff's (initial) limited perception of their roles¹⁸.

Due to the difficulties in establishing legitimacy, outreach activities started to gain importance with the support and encouragement of the practitioners in the field. An increasing interest in outreach emerged with the efforts and the endorsements of several international organizations¹⁹. For instance, Human Rights Watch (HRW) has been a pioneer organization in encouraging the tribunals' outreach work. In its report on the trial phase of the Special Court for Sierra Leone (SCSL), HRW praised the outreach programs of the SCSL and considered it a model²⁰ for other courts in terms of implementation of outreach and communications programming. HRW indicated that,

"the Outreach Unit [in SCSL] helps to ensure that the local population has accurate and relevant information about the court by preparing and disseminating written material about the court, including information (...) on how to attend the proceedings²¹."

As seen, HRW establishes direct connection between the outreach work and the victims' and witnesses' participation to the court proceedings. Similarly, in its memorandum to state members of the assembly of state parties, HRW underlines the significance of the ICC's outreach activities in promoting victims' participation and witness protection during the ICC's proceedings²². HRW asserts that although outreach will not be able to change the minds of those aiming to undermine the ICC's work for political reasons, it is essential for the court to provide some counterweight to deliberately-created incorrect information about itself²³. To maximise participation and understanding, outreach is considered essential in order to ensure that accurate and reliable information is disseminated to the communities affected²⁴.

In 2007, as a response to the Resolution 1757 of 30 May 2007, which requested the United Nations Secretary-General (SG) to take the necessary steps to establish the Special Tribunal for Lebanon (STL), the SG raised the issue of outreach as one of the key areas to consider. The SG stated that

"[a] key element for the success of the Special Tribunal is not that justice be done but also that

¹⁷ DAREHSHORI (n 4) 300.

¹⁸ HUSSAIN (n 4) 580.

¹⁹ For instance, International Bar Association (IBA) encourages the ICC to create context-dependent outreach activities. See International Bar Association: "Beyond The Hague: Forging Linkages between the International Criminal Court and Key Jurisdictions", ICC Monitoring and Outreach Programme - IBA Outreach Report, 2008.

Similarly, Open Society Justice Initiative has been one of the key supporters of outreach work in the Extraordinary Chambers in the Courts of Cambodia (ECCC). See Open Society Justice Initiative: "Justice Initiatives: The Extraordinary Chambers" (2006) <https://www.justiceinitiative.org/uploads/37b0a97f-0099-4db7-b00c-74a324a8e937/jinitatives_200604.pdf>. (Accessed: 16.10.2020).

²⁰ SCSL was the first international criminal tribunal to develop a dedicated outreach section, the Office of Outreach and Public Affairs. Unlike ICTY and ICTR, SCSL's outreach office began operations right after the first indictments were issued in 2003. See KENDALL Sara/SESAY Alpha: "Case Study 2: Seeing Justice Done: Outreach and Civil Society at the Special Court for Sierra Leone" in Helmut Anheier and others (eds), *Global Civil Society 2011: Globality and the Absence of Justice*, Palgrave Macmillan, Berlin 2011, p.157.

²¹ Human Rights Watch: "Justice in Motion: The Trial Phase of the Special Court for Sierra Leone", 2005, 17(14) (A) 29 <<https://www.hrw.org/reports/2005/sierraleone1105/sierraleone1105.pdf>>. (Accessed: 16.10.2020).

²² Human Rights Watch: "Memorandum to State Members of the Assembly of States Parties" (2005) 6 <http://www.iccnw.org/documents/HRW_MemorandumFourthASP_Nov05.pdf>. (Accessed: 16.10.2020).

²³ Human Rights Watch Memorandum p. 2.

According to HRW, outreach work is fundamental for the ICC for the following reasons:

"Unlike a national court whose authority is implicitly accepted, the ICC has no deep-rooted legitimacy in the communities where it is working and is often viewed with suspicion, if not outright hostility, by those who fear its work. It conducts proceedings in languages not always accessible to the local population. Its legal procedures may be very unfamiliar to people in the communities affected. The fact that the ICC works in communities that are polarized and war-torn makes outreach and communications all the more important because those threatened by the court will do their utmost to tarnish it." p 2.

²⁴ No Justice Without Peace: "Outreach and the International Criminal Court" (2004) No Peace Without Justice (NPWJ) International Criminal Justice Policy Series No.2 5 <<http://www.npwj.org/sites/default/files/documents/File/NPWJOutreachPolicyICCSep04.pdf>>. (Accessed: 16.10.2020).

justice must be seen to be done. (...) the development of an effective and comprehensive outreach programme bringing the activities of the Special Tribunal closer to the population of Lebanon and the wider region is a priority²⁵.”

As the SG emphasised, justice, especially international criminal justice, must be seen to be done by the communities affected by the mass atrocities. Dissemination of the information regarding the courts' judgments and proceedings should be a priority while establishing an international criminal court. The very legitimacy of such an institution depends on the local populations' involvement in the proceedings from the beginning till the end. The affected population's perception of a court can only be shaped and ameliorated through an effective outreach capability²⁶.

Outreach also help these tribunals to achieve their two primary goals: *elimination of impunity* and *building reconciliation*. Outreach assists the investigative, prosecutorial and judicial work of the international criminal tribunals “by reducing resistance to cooperation”²⁷. Lack of outreach programmes in the tribunals opens space for the local extremist political parties to fill²⁸. When the tribunals do not provide some counterweight to disinformation, the local communities consider these bodies as hostile institutions which challenge their respective states' sovereignty and resist every form of engagement that could be of importance for the tribunals to collect evidence or arrest suspects. Therefore, it should be underlined that outreach activities are significant to achieve the goal of combating impunity.

Outreach aids reconciliation which is one of the goals of the international community in post-war societies. Many scholars argued that international criminal tribunals should and do have a responsibility to provide reconciliation in the areas under their jurisdictions²⁹. Promotion of national reconciliation in post-conflict countries is considered to be an important part of international tribunals' legacy³⁰. For reconciliation to be provided, outreach becomes an essential work. An international criminal tribunal can aid reconciliation only if the people affected are well informed about the tribunal's proceedings and judgements³¹. Scholars established a direct link between outreach activities and reconciliation by arguing that public awareness of the tribunals' activities lead to deterrence of future crimes and promotion of peace and reconciliation in post-war societies³². There is growing consensus that for tribunals “to fulfil [their] broader mandate of contributing to peace and reconciliation, [they] must be able to build positive, direct relationship with those affected by the crimes [they were] created to prosecute³³.” Outreach becomes the most effective way for such a positive and direct relationship.

Having examined the important role of outreach activities in the international criminal justice system, the study now narrows down its focus and turns to its case study. The ICTY has been one of the first tribunals - together with the ICTR - recognizing and acknowledging the significance of outreach for its broader goals to be achieved. The following section overviews the

²⁵ United Nations Security Council: "Report of the Secretary-General Submitted Pursuant to Security Council Resolution 1757 (2007) of 30 May 2007" (2007) S/2007/525 VIII. 33. <<https://undocs.org/S/2007/525>>. (Accessed: 16.10.2020). (emphasis added)

²⁶ WIERDA M/NASSAR H/MAALOUF L: "Early Reflections on Local Perceptions, Legitimacy and Legacy of the Special Tribunal for Lebanon", *Journal of International Criminal Justice*, 5(5), 2007, p.1078.

²⁷ HELLMAN (n 4) 253.

²⁸ See SUBOTIĆ Jelena: *Hijacked Justice: Dealing with the Past in the Balkans*, Cornell University Press, 2009.; SOKOLIĆ Ivor: *International Courts and Mass Atrocity: Narratives of War and Justice in Croatia*, Palgrave, New York 2019.

²⁹ GALLIMORE (n 2); MEERNIK James/GUERRERO Jose Raul: "Can International Criminal Justice Advance Ethnic Reconciliation? The ICTY and Ethnic Relations in Bosnia-Herzegovina", *Southeast European and Black Sea Studies*, 14 (3), 2014, p.383; CLARK, Janine Natalya: *International Trials and Reconciliation: Assessing the Impact of the International Criminal Tribunal for the Former Yugoslavia*, Routledge, Oxford/New York 2014.

³⁰ GALLIMORE (n 2) 239.

³¹ CLARK: "Plea Bargaining at the ICTY" (n 6) 422.

³² VINCK/PHAM (n 4) 2.

They argue that: "(...) public awareness is also necessary for a transitional justice mechanism to have a transformative impact on society. By fostering dialogue and ownership of the goals and implications of transitional justice processes, outreach may produce greater judicial accountability, demonstrate that judicial arbitrariness is no longer acceptable, educate on the rule of law, enable deterrence of future crimes and promote peace and reconciliation." p 2.

³³ CINA J/VOHRAH LC: "The Outreach Program" in R May and others (eds), *Essays on International Criminal Tribunal for the former Yugoslavia: Procedure and Evidence in honour of Gabrielle Kirk McDonald*, Kluwer Law International, 2001. cited in Philipp SCHULZ: "Discussing Community-Based Outreach Activities by the International Criminal Tribunal for Rwanda", *Journal of Eastern African Studies*, 11(2), 2017, p.354.

ICTY's outreach activities. To do this, the ICTY's online archive is investigated through its official website. In addition to the outreach activities, the ICTY's annual reports, evaluating its outreach work's impact, are also examined for the current study.

III. OUTREACH ACTIVITIES OF THE ICTY: A SYNOPSIS

The United Nations (UN) Security Council (SC) considered the mass atrocities in the 1990s in the region of former Yugoslavia as "a threat to international peace and security" and invoked its powers under the Chapter VII of the UN Charter to set up the ICTY. In 1993 with the Resolution 827 the SC created the ICTY "for the sole purpose of prosecuting persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia³⁴." The primary concern in the resolution was to prosecute persons responsible for serious violations of international humanitarian law and to terminate "the mass killings, massive, organized and systematic detention and rape of women and the continuance of the practice of 'ethnic cleansing', including for the acquisition and holding of territory³⁵."

The founding resolution did not order any further responsibilities for the ICTY beyond prosecution. Until 1999, the ICTY made no effort to communicate with the people in the territory of the former Yugoslavia and did not even translate its press releases into any local language (Bosnian/Croatian/Serbian)³⁶. In 1999, the tribunal finally started to be concerned about the local communities' involvement, and an Outreach Programme in the Registry was established in the ICTY under the leadership of then President Gabrielle Kirk McDonald (1997-1999). McDonald stated that

"For the Tribunal's investigative and judicial work to have desired effect, it must be known and understood by the people of the region... However, that cannot happen and the Tribunal cannot contribute to the goals of peace, justice and reconciliation if its work is not only not known in the region but also actively misunderstood³⁷."

The Outreach Programme is created in order to put the principle of open justice into practice: for justice to be truly done, it must be seen to be done³⁸. In its Annual Outreach report, the tribunal stated that it aimed to "foster a strong relationship with grass-root communities who crave to hear what the Tribunal has done to punish those responsible for war crimes³⁹." It was noticed by the tribunal that hearing about the punishment of those responsible would enable the societies concerned to take the road towards maintenance of peace, which is the main objective of the tribunal as it is set in the Resolution 827. Thus, even though it was late, the tribunal realized the essential role of outreach in providing peace in the region of former Yugoslavia⁴⁰ and implemented various outreach programmes under the categories of Youth Outreach, Capacity Building, Documentaries.

Youth Outreach: The ICTY paid significant attention to youth in its outreach since "[y]oung people have great potential to contribute to the process of dealing with the past in post-conflict societies (...)⁴¹." Remoteness of the ICTY and the local resistance to the tribunal made it difficult to involve young people in the tribunal's work⁴². For this reason, the main goal of youth outreach

³⁴ United Nations Security Council: "Security Council Resolution 827 (1993) [International Criminal Tribunal for the Former Yugoslavia (ICTY)]" (1993) S/RES/827 (1993) 2 <<http://unscr.com/en/resolutions/doc/827>>. (Accessed: 16.10.2020).

³⁵ United Nations Security Council: "Security Council Resolution 827 Preamble.

³⁶ ORENTLICHER Diane: *Some Kind of Justice: The ICTY's Impact in Bosnia and Serbia*, Oxford University Press, New York 2018, p.308.

³⁷ ICTY President Gabrielle Kirk McDonald: "ICTY Press Release: Outreach Symposium Marks the First Successful Step in Campaign for Better Understanding of the ICTY in the Former Yugoslavia" (1998) CC/PIU/355-E <<https://www.icty.org/en/press/outreach-symposium-marks-first-successful-step-campaign-better-understanding-icty-former>>. (Accessed: 16.10.2020).

³⁸ ICTY: "ICTY Outreach Programme" <<https://www.icty.org/en/outreach/outreach-programme>> (Accessed: 16.10.2020).

³⁹ ICTY Registry, the Outreach Programme: "ICTY Annual Outreach Report 2011" (2012) 5 <https://www.icty.org/x/file/Outreach/annual_reports/annual_report_2011_en.pdf>. (Accessed: 16.10.2020).

⁴⁰ ICTY Registry, the Outreach Programme. See also ICTY Registry, the Outreach Programme: "ICTY Outreach Programme Annual Report 2013" (2014) 5 <https://www.icty.org/x/file/Outreach/annual_reports/annual_report_2013_en.pdf>. (Accessed: 16.10.2020).

⁴¹ ICTY Youth Outreach <<https://www.icty.org/en/outreach/youth-outreach>> (Accessed: 16.10.2020).

⁴² Elizabeth A Cole: "No Legacy for Transitional Justice Efforts Without Education: Education as an Outreach Partner for Transitional Justice" International Center for Transitional Justice-Studies on Education and Transitional Justice <https://www.ictj.org/sites/default/files/Transitional_Justice_Legacy_Education.pdf> (Accessed: 16.10.2020).

was to reach out to and inform younger generations in the region concerned about the ICTY's proceedings and judgements⁴³. The outreach activities included visits to the ICTY, internship opportunities in the Office of the Prosecutor, a number of events and gatherings facilitating the young people to have conversations with the ICTY staff⁴⁴. On the official website of the ICTY, under the category of 'youth outreach', activities such as essay-writing competitions⁴⁵, selected drawings from children⁴⁶, and a publication illustrating young people's views and perceptions on war, post-conflict justice and reconciliation⁴⁷ are presented.

Capacity Building: Building domestic legal capacity and institutions is a key part of the ICTY's outreach work. The annual report stated that one of the main goals of the tribunal's outreach programme was to help build the domestic courts in the former Yugoslavia to prosecute war crimes⁴⁸. On the official website of the ICTY, it was expressed that the tribunal "was never intended to prosecute all persons alleged to be responsible for war crimes in the former Yugoslavia⁴⁹." Instead, it was clear from the very beginning that the vast majority of the alleged perpetrators would fall to judiciaries located in the region⁵⁰. To help the local judiciaries during the litigations, the tribunal organized a number of visits and training programmes for judicial professionals from the region. National judiciaries were granted access to material relevant for their cases⁵¹. Office of the Prosecutor staff (attorneys, investigators and analysts) presented their work to local prosecutors and members of the judiciary and aimed to transfer their expertise to the regional authorities through these outreach programmes⁵². To encourage the capacity building and transfer the best practices from the ICTY, a special court, namely State Court of Bosnia and Herzegovina (C BiH), was established in Bosnia and Herzegovina.

Documentaries: The ICTY's outreach programme, to make the tribunal more visible and comprehensible, presented and distributed various documentaries (e.g. "Srebrenica Genocide: No Room for Denial"⁵³, "Crimes before the ICTY: Višegrad"⁵⁴, "Through Their Eyes: Witnesses to Justice"⁵⁵) in the region of former Yugoslavia⁵⁶. In 2011, the tribunal produced "its first feature-length documentary, delineating the achievements of the ICTY in the prosecution of wartime sexual violence⁵⁷." Later the tribunal increased the number of such documentaries and started screening them in the former Yugoslavia. Varied stakeholders attended the screenings of the documentaries from civil society organizations to media, academia and legal professionals⁵⁸. The documentaries aimed to inform the local populations about the mass atrocities during the war; they included interviews with the survivors, the ICTY staff, and legal professionals. Documentaries are accessible in the ICTY's official website⁵⁹; they aim to create a historical

⁴³ ICTY Registry, the Outreach Programme: "ICTY Annual Outreach Report 2012" <https://www.icty.org/x/file/Outreach/annual_reports/annual_report_2012_en.pdf>. (Accessed: 16.10.2020).

⁴⁴ ICTY Registry, the Outreach Programme: "ICTY Outreach Programme Annual Report 2013" (n 36).

⁴⁵ ICTY Registry, the Outreach Programme: "Youth Outreach, Essay-Writing Competitions" <<https://www.icty.org/en/outreach/youth-outreach/essay-writing-competitions>> (Accessed: 16.10.2020).

⁴⁶ ICTY Registry, the Outreach Programme: "Youth Outreach: ICTY through Children's Eyes" <<https://www.icty.org/en/outreach/youth-outreach/icty-through-childrens-eyes>> (Accessed: 16.10.2020)..

⁴⁷ ICTY Registry, the Outreach Programme: "Youth Outreach: Publication "Our Tribunal"" <<https://www.icty.org/en/outreach/youth-outreach/publication-our-tribunal>> (Accessed: 16.10.2020). See the report: ICTY Registry, the Outreach Programme: "Our Tribunal: A Collection of Essays and Drawings by Young People from Bosnia and Herzegovina" <<https://www.icty.org/sites/icty.org/files/outreach/brochure-kids-drawings-essays-en-light.pdf>>. (Accessed: 16.10.2020).

⁴⁸ ICTY Registry, the Outreach Programme: "ICTY Annual Outreach Report 2011" (n 39) 23.

⁴⁹ ICTY Capacity Building <<https://www.icty.org/en/outreach/capacity-building>> (Accessed: 16.10.2020).

⁵⁰ ICTY Capacity Building.

⁵¹ "For example, in 2013 alone, the liaison prosecutors handed over 3,370 documents consisting on 94,471 pages, as well as 96 audio and video records." ICTY Registry, the Outreach Programme: "ICTY Outreach Programme Annual Report 2013" (n 40) 30. (emphasis added)

⁵² ICTY Registry, the Outreach Programme: "ICTY Annual Outreach Report 2012" (n 43) 25–26.

⁵³ ICTY: "Outreach Documentaries - Srebrenica Genocide: No Room for Denial" <<https://www.icty.org/en/outreach/documentaries/srebrenica-genocide-no-room-for-denial>> (Accessed: 16.10.2020).

⁵⁴ ICTY: "Outreach Documentaries - Crimes before the ICTY: Višegrad" <<https://www.icty.org/en/outreach/documentaries/crimes-before-the-icty-visegrad>> (Accessed: 16.10.2020)..

⁵⁵ ICTY: "Outreach Documentaries - Through Their Eyes: Witnesses to Justice" <<https://www.icty.org/en/outreach/documentaries/through-their-eyes-witnesses-justice>> (Accessed: 16.10.2020).

⁵⁶ ICTY Documentaries <<https://www.icty.org/en/outreach/documentaries>> (Accessed: 16.10.2020).

⁵⁷ ICTY Registry, the Outreach Programme: "ICTY Annual Outreach Report 2011" (n 39) 27.

⁵⁸ ICTY Registry, the Outreach Programme: "ICTY Annual Outreach Report 2012" (n 43) 19.

⁵⁹ ICTY Documentaries (n 56).

visual archive to give the future generations an opportunity to learn about the atrocities occurred in the region of former Yugoslavia.

In addition to these programmes, the ICTY implemented a series of events in 2004 and 2005 in the region entitled Bridging the Gap. These were one-day events which enabled the tribunal staff, involved in the investigation, prosecution and adjudication of war crimes, present their work⁶⁰ and made an impact on perceptions of the ICTY in the region of former Yugoslavia⁶¹. These conferences were significant since, in contrast to the other outreach activities, they took place in the areas where survivors of the war crimes were mostly located⁶². The survivors, besides local community leaders, returnees, legal professionals, journalists, scholars had the opportunity to ask questions to the tribunal staff about the cases and the judgments⁶³. As Johanna Mannergren Selimovic observed on site, however, the physical proximity of victims and perpetrators were apparent in these conferences, which made these events highly contentious activities⁶⁴. At some points, survivors' questions and conversations were cut by shouts and laughter from the audience; the conferences, hence forth, became platforms for local extremists' genocide denial⁶⁵.

Having overviewed the ICTY's outreach activities through web archive research, the study now turns to scrutinise these activities' effectiveness in the region of former Yugoslavia by applying to the existing literature. Despite of the significance of outreach in the international criminal justice system, there are few articles in this area⁶⁶. By bringing this literature forward, the activities' impact is evaluated in the next section.

IV. EVALUATING THE ICTY'S OUTREACH ACTIVITIES: WHAT WAS MISSING?

There is consensus in the literature that the ICTY failed to engage with the communities concerned in a timely manner. By the time the ICTY created an Outreach Programme in the Registry in 1999, misconceptions and disinformation about the tribunal were already widespread in the region of former Yugoslavia⁶⁷. No thought was given to legitimacy of the tribunal on part of the local communities by the SC when it issued the Resolution 827. In the same vein, the tribunal staff did not comprehend the importance of an engagement with the concerned communities for the tribunal to achieve its primary goals. As a result, wide space was left for local extremist groups to spread negative views and prejudice towards the tribunal⁶⁸, much of which even as of today remains. As Ivana Nizich, the former officer in the Office of the Prosecutor at the ICTY, stated,

"The people of the former Yugoslavia view the ICTY as an amorphous body in the Hague that was created by the international community to ameliorate its own guilt. They do not believe that the Tribunal is there to provide justice to them; it is 'someone else's' tribunal⁶⁹."

One of the reasons for this failure is the creation of 'hierarchy of victimhood' by the ICTY. As known, international criminal law is concerned with the 'most heinous' and 'most serious' crimes⁷⁰. The most heinous and serious crimes traditionally comprise violations of the laws or

⁶⁰ ICTY Bridging the Gap with Local Communities <<https://www.icty.org/en/outreach/bridging-the-gap-with-local-communities>> (Accessed: 16.10.2020).

⁶¹ TOLBERT David/KONTIĆ Aleksandar: "The International Criminal Tribunal for the Former Yugoslavia: Transitional Justice, the Transfer of Cases to National Courts, and Lessons for the ICC" in Carsten Stahn/Göran Sluiter (eds), *The Emerging Practice of International Criminal Court*, Martinus Nijhoff Publishers, Leiden/Boston 2009, 139.

⁶² Bridging the Gap conferences were organised in the following 5 cities: Brčko, Foča, Konjic, Srebrenica, and Prijedor.

⁶³ ICTY Bridging the Gap with Local Communities (n 60).

⁶⁴ SELIMOVIC Johanna Mannergren: "Perpetrators and Victims: Local Responses to the International Criminal Tribunal for the Former Yugoslavia", *Focaal: Journal of Global and Historical Anthropology*, 57, 2010, p.53.

⁶⁵ SELIMOVIC p. 57.

⁶⁶ See (n 4).

⁶⁷ PENTELOVITCH (n 4) 451.

⁶⁸ HELLMAN (n 4) 270.

⁶⁹ NIZICH Ivana: "International Tribunals and Their Ability to Provide Adequate Justice: Lessons from the Yugoslav Tribunal", *ILSA Journal of International and Comparative Law*, 7, 2001, p.355.

⁷⁰ For example, see the ICTY's Statute:

Article 1

Competence of the International Tribunal

The International Tribunal shall have the power to prosecute persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991 in accordance with the provisions of the present Statute.

Article 2

Grave breaches of the Geneva Conventions of 1949

customs of war⁷¹, genocide⁷² and crimes against humanity⁷³. Victims of these crimes are the only group to whom international criminal law pays attention. Therefore, only these victims' human rights violations are worth prosecuting in international war crimes courts⁷⁴. Such a limited understanding on victimhood silences non-Bosnian (i.e. Croatian and Serbian) victims who went through 'less heinous' crimes in the war in the former Yugoslavia and creates a hierarchy of victimhood and harms⁷⁵.

For a transition period to provide reconciliation to the communities at stake, a comprehensive set of mechanisms should operate in complementary ways with tribunals⁷⁶. Although international criminal trials create a hierarchy of victimhood, other transitional justice mechanisms, especially truth commissions, might be ideal platforms to provide the communities concerned with a detailed account of the war. As Richard J. Goldstone stated, no matter a tribunal does well its job, through a truth commission the scope of history might go beyond the prosecution of only a few specific individuals⁷⁷. Truth commissions can supplement international criminal investigations and prosecutions as a valuable means to give voice to a greater number of victims and to build a comprehensive record of events during the war⁷⁸. Not only would truth commissions recognise the experiences of Croatian and Serbian people, but they would also enable the tribunal's outreach activities to be effective by creating these people's engagement and participation. Therefore, a truth commission would enhance the effectiveness of the ICTY's outreach activities.

However, the creation of a truth commission and the assistance of this institution to the ICTY was blocked by the very tribunal staff. The ICTY officials feared that an official truth commission in the region of former Yugoslavia could undermine the tribunal's own investigations and prosecutions⁷⁹. In 2001, when there was a strong advocacy for the creation of a truth commission, the tribunal's then president Claude Jorda (1999-2002) in a press release stressed

The International Tribunal shall have the power to prosecute persons committing or ordering to be committed grave breaches of the Geneva Conventions of 12 August 1949, namely the following acts against persons or property protected under the provisions of the relevant Geneva Convention:

- (a) wilful killing;
- (b) torture or inhuman treatment, including biological experiments;
- (c) wilfully causing great suffering or serious injury to body or health;
- (d) extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;
- (e) compelling a prisoner of war or a civilian to serve in the forces of a hostile power;
- (f) wilfully depriving a prisoner of war or a civilian of the rights of fair and regular trial;
- (g) unlawful deportation or transfer or unlawful confinement of a civilian;
- (h) taking civilians as hostages.

⁷¹ See article 3 of the ICTY Statute.

⁷² See article 4 of the ICTY Statute.

⁷³ See article 5 of the ICTY Statute.

⁷⁴ There has been longstanding debate within international human rights scholarship highlighting and addressing this issue. See MERON Theodor: "On a Hierarchy of International Human Rights", *American Journal of International Law*, 80(1), 1986, p.1; KLEIN Eckart: "Establishing a Hierarchy of Human Rights: Ideal Solution or Fallacy?", *Israel Law Review*, 41(3), 2008, p.477; DE WET Erika/VIDMAR Jure, *Hierarchy in International Law: The Place of Human Rights*, Oxford University Press, Oxford 2012; MCEVOY Kieran/ MCCONNACHIE Kirsten: "Victims and Transitional Justice: Voice, Agency and Blame", *Social & Legal Studies*, 22(4), 2013, p.489; HEARTY Kevin: "'Victims of' Human Rights Abuses in Transitional Justice: Hierarchies, Perpetrators and the Struggle for Peace", *The International Journal of Human Rights*, 22(7), 2018, p.888.

⁷⁵ See CLARK, Janine Natalya: "Reconciliation through Remembrance? War Memorials and the Victims of Vukovar", *International Journal of Transitional Justice*, 7(1), 2013, p.116; CLARK, Janine Natalya: "A Crime of Identity: Rape and Its Neglected Victims", *Journal of Human Rights*, 13(2), 2014, p.146; SIMIC Olivera: "Engendering Transitional Justice: Silence, Absence and Repair", *Human Rights Review*, 17(1), 2016, p.1; SIMIC Olivera: *Silenced Victims of Wartime Sexual Violence*, Routledge, Oxford/New York 2018; BERRY, Marie E: *War, Women, and Power: From Violence to Mobilization in Rwanda and Bosnia-Herzegovina*, Cambridge University Press, Cambridge 2018.

⁷⁶ HAFNER Donald L/KING Elizabeth BL: "Beyond Traditional Notions of Transitional Justice: How Trials, Truth Commissions, and Other Tools for Accountability Can and Should Work Together", *Comparative Law Review*, 30(1), 2007, p.94.

⁷⁷ GOLDSTONE, Richard J: "Ethnic Reconciliation Needs the Help of a Truth Commission" *International Herald Tribune - The New York Times* (27 October 1998) <<https://www.nytimes.com/1998/10/24/opinion/IHT-ethnic-reconciliation-needs-the-help-of-a-truth-commission.html>> (Accessed: 16.10.2020).

⁷⁸ ROBINSON, Darryl: "Serving the Interests of Justice: Amnesties, Truth Commissions and the International Criminal Court", *European Journal of International Law*, 14(3), 2003, p.484.

⁷⁹ DRAGOVIC-SOSO, Jasna: "History of a Failure: Attempts to Create a National Truth and Reconciliation Commission in Bosnia and Herzegovina, 1997–2006", *International Journal of Transitional Justice*, 10(2), 2016, p.302.

that such an initiative in no way could run counter to the mission of the tribunal⁸⁰. The ICTY staff thought that the tribunal's work would be "manipulated" by a parallel institution holding similar mandate. Last but not least, the ICTY officials feared that another institution "would absorb scarce Western financial aid"⁸¹. The ICTY considered a truth commission as a rival institution instead of a complimentary body and became one of the most important obstacles to the establishment of a truth commission in the region of former Yugoslavia⁸².

One consequence of this has been the emergence of further distance between the communities who went through "less heinous" crimes (i.e. allegedly Croatian and Serbian communities) and the ICTY. The ICTY's late and insufficient outreach activities failed to address the victim hierarchy. The tribunal was seen by these communities as a hostile institution which underestimate and even ignore the crimes perpetrated against them. Local extremist groups affiliated with nationalist parties - via local media - filled the gap the ICTY left behind and became the primary source of (dis)information regarding the tribunal's decisions⁸³. Both local media and extremist politicians in the areas under the ICTY's jurisdiction "had free rein to feed their populations with the message that the ICTY is a biased and partial institution administering 'justice' that is fundamentally unjust⁸⁴." In Serbia, work of the ICTY was distorted through the local media in order to achieve domestic political goals⁸⁵. Similarly, in Croatia the local media reinforced notions of ICTY's incompetence and prejudice, fed the atmosphere of cynicism in the community⁸⁶, and gave the local nationalist parties political leverage.

All three communities' (Bosniaks, Croatians, and Serbians) views of the ICTY have strongly deteriorated with the practices of the plea bargaining⁸⁷. Although the ICTY's Rules of Procedure and Evidence had no option for a guilty plea in its original version, necessary arrangements to adopt guilty pleas started to be made in 1997⁸⁸ and thereafter the ICTY resolved a great number of cases (20 in total) via plea bargains⁸⁹. The practice of resolving criminal matters through negotiated settlements is applied in the adversarial common law system and remains very foreign and unfamiliar to people in the former Yugoslavia – where the civil law system is applied⁹⁰.

The acquittals of high-ranking officials due to plea agreements undermined the ICTY's - already fragile - legitimacy in the region and created political and popular hostility towards the tribunal. Having confessed their crimes and "showed remorse", notorious war criminals were released after serving very short prison sentences. To give one example among many, in the case of *Prosecutor v. Erdemovic* it is found that Erdemovic did shoot and did participate in shooting

⁸⁰ ICTY President Claude Jorda: "ICTY Press Release: The ICTY and the Truth and Reconciliation Commission in Bosnia and Herzegovina" (2001) JL/P.I.S/591-e <<https://www.icty.org/en/press/icty-and-truth-and-reconciliation-commission-bosnia-and-herzegovina>> (Accessed: 16.10.2020).

⁸¹ SMITH, R Jeffrey: "Probes of Abuses Divide Bosnians" The Washington Post (28 December 2000) <<https://www.washingtonpost.com/archive/politics/2000/12/28/probes-of-abuses-divide-bosnians/7b269ec6-97f3-406d-9cf7-39ce8f53d0d5/>> (Accessed: 16.10.2020). See also Dragovic-Soso (n 79) 303.

⁸² DRAGOVIC-SOSO (n 79) 303.

⁸³ PENTELOVITCH (n 4) 451.

⁸⁴ CLARK: "International War Crimes Tribunals and the Challenge of Outreach" (n 1) 104.

⁸⁵ SUBOTIĆ (n 28) 38–82.

⁸⁶ SOKOLIĆ (n 28) 199.

⁸⁷ For an analysis on 'pros and cons' of plea bargaining, see Volkan Maviş: "Why Should The International Criminal Court Adopt Plea Bargaining?", *İnönü Üniversitesi Hukuk Fakültesi Dergisi*, 5(2), 2014.

⁸⁸ ICTY Rules of Procedure and Evidence (2015) IT/32/Rev.50 <https://www.icty.org/x/file/Legal%20Library/Rules_procedure_evidence/IT032Rev50_en.pdf> (Accessed: 16.10.2020).

Rule 62 bis

Guilty Pleas (Adopted 12 Nov 1997)

If an accused pleads guilty in accordance with Rule 62 (vi), or requests to change his or her plea to guilty and the Trial Chamber is satisfied with that:

(i) the guilty plea has been made voluntarily;

(ii) the guilty plea is informed;

(iii) the guilty plea is not equivocal; and

(iv) there is sufficient factual basis for the crime and the accused's participation in it, either on the basis of independent indicia or on lack of any material disagreement between the parties about the facts of the case.

The Trial Chamber may enter a finding of guilty and instruct the Registrar to set a date for the sentencing hearing.

⁸⁹ COOK, Julian A: "Plea Bargaining at The Hague", *Yale Journal of International Law*, 30, 2005, p.475.

⁹⁰ CLARK: "Plea Bargaining at the ICTY" (n 6) 422. See also COOK (n 88) 475.

and killing of unarmed Bosnian men in Srebrenica in July 1995⁹¹. These executions resulted in the deaths of hundreds of unarmed Bosnian male civilians⁹². Erdemovic was accused of a Crime Against Humanity and a Violation of the Laws or Customs of War in May 1996⁹³. Drazen Erdemovic became the first person to enter a guilty plea at the ICTY. After Erdemovic's confessions, the Tribunal was convinced in July 1999 that Erdemovic was remorseful, would 'enjoy relatively positive prospects if released' and was rehabilitated to the extent possible; therefore, an early release was granted⁹⁴.

Whereas it is not in the scope of this article to discuss whether plea bargains should be a common practice in the international criminal justice system⁹⁵, it is fair, for the purpose of the study, to underline that there is a very close link between plea bargains and outreach work, to which little attention has been paid in the literature⁹⁶. The ICTY's plea agreements, especially the ones made with the highest levels of political and military leadership⁹⁷, tarnished the tribunal's image in the eyes of the communities concerned. The reasons for the acquittals were not properly explained to the communities affected; this left wide space for misunderstandings and distortion of justice. Through outreach work, the tribunal could take the opportunity to provide the communities with much-needed explanations regarding the reasons for the use of plea bargains and their implications in terms of sentencing⁹⁸; however, the tribunal missed the chance and aggravated its legitimacy crisis.

V. CONCLUSION

International criminal tribunals have long neglected the perceptions of the people under their jurisdictions and failed to explain their work to them. Prosecution of those who are "most responsible" have been considered the only responsibility of the international community to the communities concerned. Although it is also open to debate to what extent the international community through the tribunals achieve this goal, it is certain that prosecution of those responsible do not eliminate the great sense of distance and distrust towards the tribunals occurring on the part of the affected communities. As a result of such distance and distrust, the tribunals fail to engage effectively with the victims and witnesses in order to achieve their broader goals, such as gathering evidence, arresting suspects, and eventually, elimination of impunity.

To tackle these issues, the tribunals started to develop outreach programmes. This article examined the ICTY's outreach programmes by using web archive research method and overviewed the outreach activities archived on the official website of the ICTY. Under the categories of Youth Outreach, Capacity Building, Documentaries, the tribunal designed various programmes such as visits to the tribunal for young people, training for the members of the local

⁹¹ 'Prosecutor v. Erdemovic, Indictment' (Case No: IT-96-22 22 May 1996) <<https://www.icty.org/x/cases/erdemovic/ind/en/erd-ii960529e.pdf>> (Accessed: 16.10.2020). para 12

⁹² Prosecutor v Erdemovic para 12.

⁹³ Prosecutor v Erdemovic para 16.

⁹⁴ Prosecutor v. Erdemovic: Order Issuing A Public Redacted Version of Decision of the President on Early Release' Case No.: IT-96-22-ES 15 July 2008 <<https://www.icty.org/x/cases/erdemovic/presord/en/080715.pdf>> (Accessed: 16.10.2020).

⁹⁵ For such literature, see: SCHARF, Michael P: "Trading Justice for Efficiency: Plea-Bargaining and International Tribunals", *Journal of International Criminal Justice*, 2(4), 2004, p.1070; COOK (n 88); TIEGER Alan/SHIN Milbert: "Plea Agreements in the ICTY: Purpose, Effects and Propriety", *Journal of International Criminal Justice*, 3(3), 2005, p.666; RAUXLOH Regina E: "Negotiated History: The Historical Record in International Criminal Law and Plea Bargaining", *International Criminal Law Review*, 10(5), 2010, p.739; MCCLEERY Kyle: "Guilty Pleas and Plea Bargaining at the Ad Hoc Tribunals: Lessons from Civil Law Systems", *Journal of International Criminal Justice*, 14(5), 2016, p.1099; TURNER Jenia lontcheva: "Plea Bargaining and International Criminal Justice", *University of the Pacific Law Review*, 48, 2017, p.219.

⁹⁶ CLARK: "Plea Bargaining at the ICTY" (n 6). Clark's article is the only study which meticulously explores the crucial relationship between plea bargains and outreach work as of July 2020. In addition, Subotic's following article also explores to some extent the relationship between plea agreements and outreach activities. Jelena Subotic: "Legitimacy, Scope, and Conflicting Claims on the ICTY: In the Aftermath of Gotovina, Haradinaj and Perišić", *Journal of Human Rights*, 13(2), 2014, p.170.

⁹⁷ For instance, "In January 2001, Biljana Plavsic, former Republika Srpska President, voluntarily surrendered to the ICTY. The case did not come to trial; instead, she entered into a plea agreement with the Office of the Prosecutor and, in return for her guilty plea to one count of persecution, the Prosecutor dropped charges for genocide and recommended a sentence of less than life imprisonment." Consequently, Plavsic, in February 2003, was sentenced to 11 years of imprisonment. See KERR Rachel: "Peace through Justice? The International Criminal Tribunal for the Former Yugoslavia", *Southeast European and Black Sea Studies*, 7(3), 2007, p.378.

⁹⁸ CLARK: "Plea Bargaining at the ICTY" (n 6) 431.

judiciary, distribution of the media work, delivering presentations in conferences and roundtables. The ICTY – together with the ICTR – has been the first tribunal recognising the close relationship between its outreach work and peace and reconciliation in post-conflict societies. Lack of outreach work in the first years of the tribunal left space for the local extremist actors from each and every ethnic group to aggravate the ethnic hostilities by accusing the tribunal of prosecuting only the people who belong to their own ethnic group. By explaining its work, the tribunal aimed to provide some counterweight to deliberately-created incorrect information about itself and thus to eliminate the ethnic hostilities in the region of former Yugoslavia.

This article argued that the main challenges for the ICTY's outreach work has been the delays in the outreach activities, lack of other transitional justice mechanisms, and plea bargaining. According to the current author, outreach activities should be integrated into any international criminal court and be supported with other transitional justice mechanisms in a complimentary manner. For outreach work to be successful, plea bargaining practice should be abandoned. These conclusions are significant not only for an evaluation of the tribunal's legacy in the region of former Yugoslavia but also for deriving "lessons learned" for the other international criminal tribunals and the permanent court International Criminal Court (the ICC). International tribunals and courts must learn from the ICTY's failures and should be vigilant from their establishment till their closure to enhance the public awareness about their work and to gain the support of the local communities under their jurisdictions.

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