

**SECURITY IN TRANSITION:**  
AN INTERDISCIPLINARY  
INVESTIGATION INTO THE  
SECURITY GAP



**Working Paper**

**Civil Society and Transitional  
Justice in the Balkans:  
Three Models of Interaction**

Iavor Rangelov

**SiT/WP/01/15**



International  
Development

## **Abstract**

The role of civil society actors is critical in a host of transitional justice processes. And yet, transitional justice is often approached and examined in a top-down manner that renders the agency of civil society invisible. This paper starts from the premise that the character of transitional justice depends to a large extent on the ways in which civil society actors use, adapt, develop, and contest justice norms and structures. And the other way round: transitional justice processes may have significant impact on civil society. The paper develops an analytical framework for examining different forms of engagement of civil society actors in transitional justice processes in the Balkans, which may be useful for further research on the region as well as comparative work. Three different models of civil society interaction with transitional justice are outlined as 'ideal types', focusing on their central logic and implications for the character of transitional justice, the kinds of actors involved, and some of the key challenges associated with each model: 'participation' in transitional justice mechanisms established by states and international actors; 'contestation' over questions of justice in the public domain; and 'mobilisation' of civil society itself outside formal justice processes. Drawing on civil society theory, the models are also related to different versions of the concept of civil society in contemporary usage.

## **Contact details**

Dr Iavor Rangelov  
Global Security Research Fellow  
Civil Society and Human Security Research Unit  
Department of International Development  
London School of Economics & Political Science  
Houghton Street  
London WC2A 2AE  
[i.p.rangelov@lse.ac.uk](mailto:i.p.rangelov@lse.ac.uk)

## Introduction

The role of civil society actors is critical in a host of transitional justice processes at local, national and international levels. Far too often, however, transitional justice is approached and examined in a top-down manner that renders the agency of civil society invisible. In thinking about what forms justice should take and what its goals and effects may be, there is a tendency to focus on the state and the role of international actors. This paper starts from the premise that the character of transitional justice depends to a large extent on the interactions of civil society with justice processes and mechanisms. How civil society actors use, adapt, develop, and contest justice norms and structures may be an important factor for the ability of transitional justice processes to advance their immediate objectives and broader social and political goals. And the other way round: transitional justice processes may have significant impact on civil society.

This alternative approach informs the broader research project to which this paper contributes, entitled 'Civil Society Dialogue on Transitional Justice in East Africa and the Balkans' and funded by MacArthur Foundation and the European Research Council. Other working papers emerging from the project examine the engagement of civil society actors in transitional justice in Kenya and Uganda. The paper draws on field research that included personal interviews and participant observation at civil society meetings and events in Belgrade (October 2013, September 2015) and Sarajevo (December 2014, May 2015), as well as on discussions that took place at a two-day workshop with civil society actors from the Balkans, Kenya and Uganda, held in May 2014 in Nairobi.

The paper examines the ways in which civil society actors in the Balkans have engaged with transitional justice processes over the past two decades. It focuses on justice responses to the most serious human rights abuses committed during the Yugoslav wars of disintegration in the 1990s: war crimes, crimes against humanity, and genocide. The wars in Bosnia and Herzegovina, Croatia and Kosovo were fought primarily through ethnic cleansing and attacks on civilians, which took the form of expulsions, killings, torture and rape on a large scale, as well as destruction of cultural and religious property. In the post-conflict countries of the former Yugoslavia, the ongoing process of reckoning with the legacies of abuse has involved a multiplicity of transitional justice processes and public debates over questions of justice, as well as a myriad of ways in which civil society has engaged with justice instruments and discussions and pursued its own bottom-up initiatives.

The main objective of the paper is to offer an analytical framework for examining different forms of engagement of civil society actors in transitional justice processes in the Balkans, which may be useful for further research on the region as well as comparative work. Three different models of civil society interaction with transitional justice in the post-Yugoslav space are elaborated as 'ideal types', focusing on their central logic and implications for the character of transitional justice, the main types of actors involved, and some of the key challenges and risks associated with each model: a) 'participation' in formal transitional justice mechanisms established by

states and international actors; b) 'contestation' over questions of justice in the public domain; and c) 'mobilisation' of civil society itself outside formal justice processes. Drawing on civil society theory, these models are also related to different versions of the concept of civil society in contemporary usage.

There is a growing literature that examines the activities of a range of social actors in transitional justice under the rubric of 'civil society' (see, e.g., the contributions in Hovil and Okello 2012). Few attempts have been made to develop analytical frameworks that may be useful for approaching a wider set of civil society encounters and engagements with transitional justice. The work of David Backer is an important exception in that respect and offers a useful starting point for the purposes of this paper. Backer aims to develop a "general framework concerning the links between civil society's activities and a government's practices in the area of transitional justice," premised on the idea that "any transitional justice process should reveal basic patterns of civil society activity and civil society-government engagement, which are salient indicators of the immediate value and long-term repercussions of a transitional justice process" (Backer 2003: 300). This framing of the issues suggests a focus on a limited but critical set of actors and relationships – civil society and the state, placing the interactions between them at the heart of the overall framework.

Backer identifies 'demand' and 'supply' factors that affect the role of civil society in transitional justice processes. The former refer to the range of approaches to transitional justice that may be adopted in a particular context, e.g. amnesties, prosecutions, truth commissions or lustration policies, while the latter include factors that shape the ability and inclination of civil society to participate in transitional justice processes, such as the nature of organizational activity, availability of resources, and relative competences. The interactions between civil society and the state are another key variable and here Backer draws on earlier work by David Crocker (2000) and Jennifer Coston (1998) to distinguish between collaborative, critical and oppositional types of engagements. The focus is on the 'contributions' that civil society makes to transitional justice processes and these are seen as "a function of the demand conditions that define the space for engagement, as well as supply conditions that affect the nature of inputs" (Backer 2003: 302). An effort is made to identify a broad range of contributions or forms of participation of civil society in transitional justice processes. These include data collection and monitoring; representation and advocacy; collaboration, facilitation and consultation; service delivery and intervention; acknowledgement and compensation; parallel or substitute authority; and research and education.

Finally, Backer outlines six possible scenarios, each taking into account the supply and demand conditions, the nature of the government-civil society relationship analysed along two vectors – extent of collaboration and changes over time – and, based on that, draws out certain implications for political development. The best-case scenario is where there is strong supply and demand, extensive and productive collaboration between civil society and the state, building momentum for transitional justice processes and strengthening civil society's role in the human rights arena. At the opposite end of the spectrum, a weak civil society and an activist government have minimal interaction leading to top-down transitional justice policies; or, alternatively, an activist civil society is confronted with lack of political will by the

government and in the absence of any collaboration, the outcome is an absence of any official sanction for transitional justice and political confrontation becomes very likely to occur.

The models of civil society interaction with transitional justice proposed in this paper could be productively contrasted with Backer's framework in several ways. Firstly, with respect to what is meant by 'civil society'. There are long-standing debates over the definition of civil society, which is seen as a 'fuzzy' and ambiguous concept. On the one hand, this reflects a rich intellectual tradition of civil society thinking in political theory, which goes back to Ancient sources and includes a long line of thinkers such as Hobbes, Locke, Ferguson, Marx and Gramsci; on the other, there is an inherent ambiguity in how the term civil society is used – as an analytical category or a normative concept or both (see, e.g., Cohen and Arato 1992).

This intellectual 'baggage' and ambiguity are productive in their own right as they continue to stimulate much scholarly discussion and debate; in some sense, they reflect the strength and appeal of the concept. All definitions of civil society are both normative and descriptive. In the latter sense, Backer's definition refers to NGOs and civic associations, whereas normatively he is primarily interested in the 'contributions' that civil society makes to transitional justice by interacting with the state in collaborative, critical or oppositional ways. Although NGOs and civic associations are important, my understanding of civil society is much broader empirically and as a result, it is also rather ambivalent in normative terms. Empirically, what I mean by civil society is the range of non-state actors that engage with justice discourses and processes in the former Yugoslavia and seek to influence them in some way, whether they may be NGOs and civic associations or more loosely organised social movements and networks, media or individuals who shape the public conversation. This conception includes non-state actors that may be advocates or critics of justice processes, whose politics and identities may be liberal and inclusive or illiberal exclusive in character, and who may espouse and promote radically different conceptions of justice. Opening up the concept in this way analytically means that civil society becomes much more ambivalent normatively; nevertheless, it can still be distinctive and significant in each of the different models proposed.

Secondly, Backer is interested first and foremost in theorising the role of civil society in relation to the state. The various scenarios he outlines depend on the strength or weakness of civil society and the government and, crucially, on the character of their relationship. This framing closely reflects the state-centricity of the 'third wave' literature on transitions from dictatorship to democracy and the associated statist paradigm of transitional justice (Huntington 1991). But we are now in a different paradigm, whereby transitional justice is invoked in a variety of contexts that include weak or failed states, and transitional justice responses unfold before, during, and after armed conflict and oppressive rule – what Ruti Teitel (2003) calls the 'global' phase of transitional justice. In this context, transitional justice norms and structures are increasingly internationalised and civil society is often oriented towards a polycentric system of governance whereby local, national and international spheres coexist, interact, and compete (Rangelov and Teitel 2011: 172). The analytical framework proposed in this paper reflects these developments and while taking the state seriously, it is not exclusively preoccupied with the state – it seeks to move

beyond the state-centricity that underpins much of the earlier literature but appears untenable in cases like the Balkans.

Finally, and perhaps most importantly, elaborating the models involves an attempt to identify a set of distinctive *logics* of civil society interaction with transitional justice norms and structures. The scenarios that Backer outlines are useful for clarifying a range of divergent initial conditions of civil society and the state as well as relating them to particular outcomes, but they tell us very little about the logic of civil society interactions with transitional justice processes. By contrast, the analytical framework proposed here seeks to identify the main logics of civil society engagement with transitional justice by focusing on debates over justice, formal justice processes, and informal processes initiated and carried out by civil society actors themselves. Identifying these distinctive logics is important because they have ramifications both analytically and in practical terms.

### **Model I: Participation**

The first model emphasises civil society *participation* in formal transitional justice processes – whether these may be judicial or non-judicial, retributive or restorative, and domestic, international or hybrid in character. Civil society participation can take a variety of forms, from providing documentation and securing witnesses to pursuing outreach activities on behalf of particular transitional justice actors. In this model, civil society is conceived as a partner of public authority and its main role involves assisting and strengthening transitional justice processes and institutions. The actors most likely to perform such functions are those with the requisite organisational capacity and expertise, in particular NGOs and civic associations although others may be important as well. This model is most likely to capture the activities of the ‘supporters’ of transitional justice in civil society but some actors may find it strategically useful to engage in these processes as a way of shaping or even undermining them from within. It reflects the dominant understanding of the role of civil society in transitional justice in the literature, for example in Backer’s account.

As interaction takes the form of participation, in this model the implications of civil society engagement concern mainly the *performance* of transitional justice mechanisms. Direct participation may strengthen formal transitional justice processes from within but it may also enable civil society actors to shape the character of these processes in important ways, aligning them with their own agendas and purposes. Indirect forms of participation, for example activities such as consultation or monitoring, may limit the ability of civil society to affect the day-to-day operations of transitional justice mechanisms but they may also ensure that civil society retains a greater degree of independence. A key risk associated with this model is that civil society may be co-opted by the state or international actors driving a specific justice agenda and, at the extreme, hijacked for their purposes. Another challenge concerns situations where transitional justice processes fail to deliver and meet the expectations invested in them, as they often do, and as a result civil society supporters and participants in such processes may easily become the target of disaffected constituencies and publics.

The participatory model of civil society engagement in transitional justice most closely reflects the 'neoliberal' version of the concept of civil society. In this definition, common among donors, civil society is understood as 'associational life' or the 'third sector', along with the state and the market. And yet, civil society is not simply contrasted with the state and the market or serving as a counterweight. Mary Kaldor argues that on this understanding, civil society could be seen as a kind of 'laissez-faire politics' or a market in politics; moreover, civil society "not only restrains state power but also actually provides a substitute for many of the functions performed by the state" (Kaldor 2003: 9). A metric often used to capture these dynamics is the spectacular growth of NGOs in recent decades and for many critics, especially on the left, what this signifies is the emergence of civil society as the handmaiden of economic globalization. Similar framings can be detected in the transitional justice literature, where international NGOs that promote the justice agenda and institutions such as the International Criminal Court (ICC) are seen by some observers as clearing the way for the extension of neoliberal order in the global South. In such accounts, NGOs have been described as a sort of cosmopolitan elite that works "ultimately to protect its donors' interests as brokers of neoliberal capitalism through the spread of ICC-based rule of law" (Clarke 2009: 87-88).

Criminal prosecutions at international, domestic and hybrid courts have dominated the pursuit of transitional justice in the Balkans and it is not surprising that civil society participation has been most sustained and significant in these processes. The International Criminal Tribunal for the Former Yugoslavia (ICTY) was established by the UN Security Council in May 1993, in the midst of the war in Bosnia. During the 1990s both the international community and the post-Yugoslav elites largely ignored the Tribunal. The situation changed with the end of the regimes of Slobodan Milošević and Franjo Tuđman and the emergence of membership in the European Union (EU) as a consensus project for all post-conflict states in the region. Particularly important was the incorporation of 'full cooperation' with the ICTY as one of the conditions for EU membership. As a result of intensive international pressure, all suspects sought by the Tribunal have been arrested and prosecuted, including a number of high-ranking military and civilian officials.

A large number of individuals have also been prosecuted for war crimes domestically. Many of these cases, however, have been marked by ethnic bias in the administration of justice. Croatia has prosecuted nearly 3,000 Serbs for war crimes and genocide *in absentia*, often with little concern for due process. Some cases have involved summary prosecution of large groups of defendants, such as the entire Serb population of a village, and have been interpreted as a continuation of the war by other means and an attempt to obstruct the return of refugees (Rangelov 2014: 142-147). More credible prosecution of war crimes was initiated with the creation of special structures for that purpose in the early 2000s. Some of these structures are domestic, such as the War Crimes Chamber of the High Court in Belgrade and the four county courts in Croatia endowed with extraterritorial jurisdiction to prosecute the most serious war crimes (Osijek, Rijeka, Split and Zagreb). Others are hybrid in character: the mixed panels for war crimes and ethnically motivated crimes in Kosovo, staffed by EU and Kosovo judges and prosecutors, and the War Crimes Chamber of the State Court of Bosnia and Herzegovina, which also has mixed staff and applies both domestic and international law.

Civil society participation has shaped both the character and outcomes of these processes. At the ICTY, documentation and other assistance provided by civil society groups have been critical in a number of proceedings, including the prosecution of wartime rape and sexual violence in the landmark *Foča* case (participant, Nairobi workshop, 30 May 2014). Civil society has been even more important for domestic war crimes trials. Starting with the *Podujevo* case in Serbia, the Humanitarian Law Center (HLC) in Belgrade and Pristina pioneered a model for civil society participation aimed at strengthening the courts from within, later reproduced in other cases. The role of the HLC has involved identifying victims and witnesses in war crimes cases; facilitating witnesses to testify; representing victims in the proceedings and enabling their families from outside Serbia to attend and monitor the proceedings. Such civil society efforts have sought to address some of the main challenges facing domestic war crimes trials in the region: lack of political will to prosecute members of one's own military and police structures; weak judicial capacity and inadequate witness protection; and reluctance of witnesses and survivors to cross the borders of post-Yugoslav states and seek justice from institutions they often see as inherently biased against them. In tackling such challenges from within, civil society participation has shaped and improved the performance of transitional justice institutions in tangible ways.

At the same time, this approach has created dilemmas that highlight some of the risks and challenges associated with the participatory model. Across the region, advocates of international justice in civil society have been confronted with a series of backlashes over the years. Their support for the ICTY has often made them targets of post-Yugoslav political elites, state institutions, and nationalist currents in civil society itself that have consistently attacked international justice as a biased and political motivated exercise in meting out collective guilt and punishment. A series of controversial acquittals of high-ranking military and civilian officials by the Tribunal in recent years has created much frustration and soul-searching among civil society actors that had supported its work and advocated on its behalf since the mid-1990s. In that case, it was victims and affected communities that felt betrayed by the Tribunal and often pointed the finger at the civil society groups.

Civil society engagement with the War Crimes Prosecutor and Chamber in Belgrade illustrates another set of tensions associated with this model. On the one hand, active civil society participation in the work of these structures has ensured that investigations have been launched and convictions obtained in a number of cases. On the other hand, there is a real risk of co-option of these civil society efforts. The Chamber has prosecuted mainly low-level perpetrators of war crimes, thus reinforcing the prevalent narrative of 'a few bad apples' and effectively shielding the Serbian state and institutions from confronting their own complicity and responsibility. Human rights groups have tried to address this dilemma by coupling participation and support for the proceedings from within with monitoring and pressure from without; nevertheless, striking the right balance remains a challenge.

## Model II: Contestation

If the first model conceives of civil society actors as largely aligned with public authority and facilitating transitional justice processes in different ways, in the second model civil society is conceived as a site of strife and resistance. The central dynamic of civil society engagement with transitional justice involves *contestation* over justice norms and structures in the public domain. Civil society serves as the medium through which alternative and often competing conceptions of justice are articulated and debated, and through which specific justice responses to serious human rights violations are subjected to public discussion and scrutiny. A robust contestation over the meaning and purposes of transitional justice has the potential to encourage public validation of grievances and experiences of injustice of groups that may otherwise remain invisible and excluded both from justice processes and public discussions around them. This model comprehends the activities of a wider set of actors in civil society, going beyond the NGOs and civic associations to include more loosely organized social movements and networks, as well as nationalist, ethnic, religious and other identity-based actors. Especially prominent here are some of the 'critics' of the broader transitional justice agenda or the pursuit of specific instruments and initiatives.

The logic of contestation through discursive engagements in the public sphere has important implications for the *legitimacy* of transitional justice norms and structures – in the sense of generating consent through the process of public deliberation or, alternatively, eliciting resistance and undermining support for transitional justice. The main challenges associated with this model have to do with the quality of public debate, in particular the fact that the conditions for free and open public deliberation are rarely present in conflict-affected and transitional states. The public conversation in such settings is often shaped by uneven power relations that reflect their character and persistence of past oppression, violence and abuse. Constraints on freedom of expression may stem from overt state repression or more subtle sources such as media ownership and editorial structures, especially when the latter are aligned with elites implicated in the legacies of abuse that transitional justice is expected to address. Instead of creating opportunities for the voices of marginalised groups to enter the public conversation and seek validation of their experiences of injustice, in such contexts the civil society debate may become yet another arena where such actors are invisible or silenced.

This model has many affinities with the 'postmodern' version of civil society. As in other strands of postmodern theory, the starting point of this understanding is a critique of the concept of civil society as 'Eurocentric' and an attempt to reframe it in ways that could accommodate more collectivist understandings of political culture, such as Islam. Postmodernists tend to understand civil society as "an arena of pluralism and contestation, a source of incivility as well as civility" (Kaldor 2003: 5). Going beyond the NGOs and other civic-minded groups, the postmodern version of civil society encompasses a broad range of actors and emphasizes, in particular, national and religious identities as well as multiple identities as a basis for the concept. This way of thinking about civil society is echoed in accounts that highlight the global or transnational dimensions of both civil society and transitional justice at the current juncture. Civil society is understood in such accounts as "an arena of

contestation and negotiation of the discourse and practice of transitional justice, both within and beyond the state” (Rangelov and Teitel 2011: 174). It is conceived as a site of struggle for discursive hegemony over the means and ends of justice, underpinned by plural and often competing interpretations that multiple civil society actors promote, where the legitimacy of justice norms and structures is (re)produced and challenged.

Contestation in civil society has affected the legitimacy of a range of transitional justice processes in the Balkans. With respect to official truth-telling instruments, for example, such contestations have tended to undermine the credibility and public support of particular initiatives, limiting their impact and even precipitating their collapse. Opposition in civil society contributed to the early demise of the controversial Yugoslav Truth and Reconciliation Commission, established by Serbia’s transitional president Vojislav Kostunica to investigate the social, inter-communal and political conflicts that led to the war and disintegration of Yugoslavia. The Srebrenica Commission in Republika Srpska managed to complete its work and publish a report about the massacre in 2004. The report has been subject to a variety of interpretations but in civil society discussions, particularly among victims associations and other affected constituencies, the legitimacy of the Commission has been challenged on the grounds that it was established by Republika Srpska under international pressure, without any genuine remorse and commitment to confront this unspeakable crime.

International justice has been a particularly contentious and polarising issue for civil society in the region. Advocates of the Yugoslav Tribunal, prevalent among human rights groups and liberal intellectual circles, tend to emphasize the importance of promoting accountability, ending the culture of impunity, and individualising responsibility in order to challenge prevalent collectivist interpretations of the wars and atrocities. These voices are a fairly small but vocal minority and in recent years, as noted above, a series of controversial acquittals at the Tribunal have alienated many of them.

The public conversation about international justice in the region has been dominated by the critics of the ICTY, who come from different ‘sides’ in the conflict but often share an understanding of the Tribunal as an instrument for meting out collective guilt and punishment: on trial are not simply the individuals in the dock but nations and states. Prominent critics of international justice include groups such as the so-called ‘Patriotic Bloc’ in Serbia (comprising nationalist elements in the intelligentsia, Serbian Orthodox Church and media) and war veterans associations in Croatia. Civil society resistance to international justice has been driven in part by the complicity of some of these actors in the ideological programmes that paved the way for the war and political projects that justified its pursuit. Other voices in civil society, for example some of the victims associations, have contested the work of the Tribunal by advocating an alternative conception of justice, focusing on reparation and restitution rather than retribution.

Domestic war crimes trials have also provoked much contestation and controversy in civil society. In Serbia and Republika Srpska, critics of international justice often attack with the same language the war crimes chambers in Belgrade and Sarajevo.

When in 2001 a court in Rijeka indicted a Croatian general, Mirko Norac, with war crimes against Serb civilians, associations of war veterans were instrumental in mobilizing mass protests across the country. At the biggest rally in Split, more than 100,000 people chanted 'We are all Mirko Norac' and 'Hands off our Holy War'. At the same time, at a counter-demonstration organised by human rights groups in Zagreb about 10,000 people rallied behind the slogan 'Our voice for the rule of law' (Rangelov 2014: 152-153). These events convey the extent to which uneven power relations, which emerged during the war, have continued to shape the public debate over justice in the period of transition. In particular, they reflect the persistence and entrenchment in the new order of wartime elites and political projects deeply implicated in the legacies of mass atrocity.

Another important aspect of the controversy was the absence of Croatian Serbs from the public discussion – the very group that was targeted by the Croatian armed forces in the alleged atrocities. For a variety of reasons, Croatian Serbs kept silent and were also neglected by the media. And yet, robust public debate over war crimes and justice was impossible without the discursive engagement of this constituency and the ensuing public articulation of their memories and experiences of injustice. As in many other cases, the productive potential of civil society contestation was overshadowed by the challenges and limitations of this model in a post-conflict context.

### **Model III: Mobilisation**

The third model of civil society engagement in transitional justice has attracted the least amount of attention, despite the fact that it is often the prevalent one in a variety of cases. Its central characteristic is civil society *mobilisation* that takes place outside formal justice processes and mechanisms – creating autonomous spaces for debate and activism in the transitional justice arena, where civil society itself sets the agenda, defines the goals, and determines the methods and activities. Because civil society does not engage with formal justice processes and does not depend as much on the state or international actors that typically drive such processes, in this model it is most likely to address issues and constituencies that may be neglected by official transitional justice responses. Such freedom of action also has the potential to unlock more creativity and innovation in civil society itself, encouraging experimentation with alternative ideas and approaches that reflect locally embedded understandings and priorities. Whereas the other two models capture many of the 'supports' and 'critics' of transitional justice, in this model one is more likely to encounter the 'alternatives': an array of actors that may include NGOs and associations but also a variety of loosely organised movements and networks, grassroots groups, independent media, artists and public intellectuals.

This model could be understood as 'bottom-up transitional justice' and it has important implications for transitional justice processes but also for civil society itself. On the one hand, mobilisation is about civil society *filling gaps* in transitional justice by addressing those legacies of abuse, affected constituencies, questions and issues that are most likely to be neglected in mainstream mechanisms and discussions. At the same time, it is also about *emancipation* – when individuals and groups

appropriate the initiative they becoming agents in the process of dealing with the past, rather than subjects or recipients of top-down justice policies. There is a risk, however, that the focus on self-organization in this model may end up reducing the pressure on public authority and institutions, whether domestic or international, for reckoning, recognition and reform. In fact, there is an inherent ambivalence about the implications of civil society mobilisation – creating autonomous space for debate and activism or becoming a substitute for official transitional justice responses, which may have dangerous implications.

This model of civil society engagement in transitional justice has many affinities with the ‘activist’ version of civil society. In the activist perspective, civil society usually refers to “active citizenship, to growing self-organization outside formal political circles, and expanded space in which individual citizens can influence the conditions in which they live both directly through self-organisation and through political pressure” (Kaldor 2003: 11). It signals the awakening of civil society and the empowerment of citizens to engage in processes of dealing with the past as agents and drivers, constructing transitional justice from the ground up. Mobilisation can take many different forms; interestingly, scholars have mainly focused on civil society initiatives that effectively represent bottom-up alternatives to conventional transitional justice mechanisms. Such initiatives have been compared and contrasted with their formal-justice equivalents and assessed on that basis; for example, by examining unofficial truth projects in relation to official truth commissions (Bickford 2007).

Civil society mobilisation in the Balkans has created autonomous spaces for women, youth, artists, academics, public intellectuals and others to pursue debate and activism that engage the legacies of the war in ways that cannot be subsumed under conventional understandings and instruments of transitional justice. What is striking in the case of the former Yugoslavia is the extent to which civil society actors have emphasised *documentation* activities and have strived to incorporate such activities in their projects and initiatives. Establishing the facts of atrocities and abuses committed in the recent wars has been a key priority for many civil society actors in the region. The emphasis on documentation reflects historical lessons with particular resonance in the post-Yugoslav space. At the time of the disintegration of the Socialist Federal Republic of Yugoslavia (SFRY), mutually exclusive nationalisms were mobilized in part by reviving the contested history and memory of the Second World War. In the official history of SFRY, the complex fault lines and multiple conflicts of that war in Yugoslavia had been simplified and recast in class terms. The emphasis on antifascist resistance and victory allowed the communist regime to erase the legacy of Partisan abuses and to dismiss nationalists on all sides as class enemies.

In the late 1980s and early 1990s, the taboo on discussing the atrocities from the Second World War started to crumble and the public debate quickly spiralled out of control. Suppressed histories of injustice and private memories of abuse entered public discourse, fuelling bitter contestation over facts in figures. The ensuing ‘calculus of death’ involved recounting the victims on different sides of the war, relativizing or denying certain crimes while remembering and exaggerating others in a revisionist manner. The politicisation of wartime massacres in the public sphere was so explosive that observers described the situation in Yugoslavia at the time as a

‘verbal civil war’ and ‘Second World War II’ (Hayden 1994; Djokić 2002). The question of mass atrocity became a *cause célèbre* for nationalists and a platform for political mobilisation around extremist ideologies. Ultimately, the manipulation of facts and figures in the ‘verbal civil war’ paved the way for the real war.

This background is critical for understanding the significance of documentation in dealing with the past in the Balkans. Establishing a credible record of the war crimes committed on the territory of the former Yugoslavia in the 1990s is seen by many as indispensable for preventing future wars and atrocities. Civil society efforts to document human rights violations have been pursued consistently since the start of the Yugoslav conflict, but over time the purposes and uses of documentation have changed. While the hostilities were still ongoing, several human rights organizations and alternative media pursued documentation and reporting in order to inform domestic and international publics and to pressure centres of power to take action for halting the atrocities.

In the post-conflict period, documentation has been increasingly used to promote and support transitional justice processes. As already noted, civil society documentation was crucial in a number of cases at the ICTY and domestic courts. As the focus in the region has started to shift from retributive to restorative justice, documentation initiatives are multiplying and acquiring new significance. Ongoing efforts to document human losses or to map atrocities, camps and detention sites are used to build momentum for official truth-telling mechanisms, to provide a measure of recognition and redress to victims, and to shape the construction of collective memory. As Žarko Puhovski has put it, the aim is to stop “what has already grown into a post-Yugoslav victimhood contest to prove who has the most victims and who is consequently in the best strategic position for the next war” (Ninth International Forum for Transitional Justice in Post-Yugoslav Countries, 17-18 May 2014, Jahorina).

The focus on documenting human rights violations has enabled civil society to fill gaps in transitional justice with respect to truth-seeking and truth-telling, in particular. Important initiatives include the Register of direct casualties of the armed conflict in Bosnia and Herzegovina (Human Losses), created by the Research and Documentation Center in Sarajevo, and the Kosovo Human Losses Database, a project about the casualties of the war in Kosovo, which is conducted jointly by HLC-Kosovo and HLC-Serbia. Other efforts have focused on specific crimes and sites, for example the ‘Mapping Genocide’ project of the Youth Initiative for Human Rights about Srebrenica, or sought to address neglected dimensions of transitional justice such as gender with initiatives that include the Women’s Side of War Project and, more recently, the Women’s Court for the Former Yugoslavia.

One of the main challenges for transitional justice in the Balkans is the regional character of the conflict and legacy of abuse: victims, perpetrators, witnesses and evidence of atrocity crimes are often located on different sides of today’s borders. A regional approach to transitional justice has been evolving in civil society for more than a decade but it crystalized in 2008 with the establishment of the Coalition for RECOM, a civil society initiative that advocates the creation of a regional commission to establish the facts of war crimes and other serious violations of human rights

committed on the territory of the former Yugoslavia in the period 1991-2001. RECOM has energised civil society and has attracted both supporters and critics. At the time of writing, the initiative is at a critical juncture: it has conducted extensive consultations with civil society actors across the region, drafted a statute and collected more than half a million signatures of citizens, but it remains to be seen whether the governments in the region will initiate formal negotiations to establish a regional commission.

In some sense, RECOM illuminates both the promise and limits of the *mobilisation* model of civil society engagement in transitional justice. At one level, the initiative fills gaps in transitional justice by addressing the limitations of criminal prosecutions as a form of dealing with the past and drawing attention to the vast majority of victims, survivors and abuses that have been neglected by these processes. Thus, for example, clarifying the fate of the remaining missing persons on the territory of the former Yugoslavia is a central objective of RECOM. But its contribution is also significant in highlighting the need for a regional approach to transitional justice, fostering innovation in the justice arena that may have ramifications well beyond the Balkans at a time when many armed conflicts and legacies of atrocity are regionalised.

In terms of implications for civil society itself, the initiative has promoted empowerment and emancipation of some the individuals and groups most heavily affected by the criminal legacies of the war. They include actors whose politics are usually seen as irreconcilable, such as victims associations from different ethnic communities, but also currents in civil society that were part of the democratization movement in the 1980s, the anti-war movement and the humanitarian effort in the 1990s. These groups have been marginalised as a result of the violence and polarisation of the war but also as a consequence of the post-war settlement in the former Yugoslavia, which created a patchwork of ethnic states, entities and enclaves. To some of these actors, at least, RECOM has given a new cause and momentum.

At the same time, RECOM presents a real dilemma for civil society. While seeking to create the conditions for the establishment of an official regional commission, the initiative has encouraged more sustained civil society efforts to document human rights violations, for example to identify the casualties of the war and to clarify the circumstances of their death or disappearance. The rationale has been that civil society should create a foundation on which a future commission could build, once it is formally established by the governments in the region. But such efforts may also reduce the pressure on post-Yugoslav states to create RECOM in the first place, making the argument that much of the work has already been done or trying to shift responsibility for the whole project back to civil society. If the RECOM initiative remains an unofficial truth project of civil society, it is highly unlikely that it could have either the required level of state cooperation or the credibility and potential impact that an official regional commission might have.

## Conclusion

The role of civil society in transitional justice in the Balkans over the past two decades cannot be reduced to a single logic and set of outcomes. Seeking to develop an analytical framework that comprehends the multiplicity of civil society actors, agendas and activism in the transitional justice arena, the paper has outlined three models of civil society interaction with transitional justice in the region: participation, contestation and mobilisation. These are 'ideal types' and the main concern is to elaborate their central logics and implications for the character of transitional justice processes, as well as to identify some of the main types of actors and key challenges and risks that are associated with each model. Of course, the models partly overlap and a number of civil society actors or initiatives could be analysed in relation to more than one of them. And of course, they reflect the Balkan context and what emerges from research elsewhere might be quite different.

As a starting point for further research on the region or comparative work, the overall framework raises several issues that may be useful to consider here. Firstly, they concern the concept of civil society that frames and guides research on this topic. Each of the three models of interaction reflects a particular version of the concept of civil society and consequently draws attention to a specific set of actors and dynamics in transitional justice, effectively selecting and emphasising some at the expense of others. Any understanding of civil society that is adopted for research purposes serves as an inclusion/exclusion device and has important ramifications both analytically and empirically, which need to be taken into account and acknowledged from the start.

Secondly, the three logics of interaction outlined in the paper are associated with different types of consequences of civil society activity for transitional justice processes, for example by affecting their legitimacy or filling gaps, as well as with distinctive challenges both for transitional justice and for civil society. Identifying the central logic of civil society engagement in transitional justice in any particular case that is being examined is a useful starting point for the investigation because it encourages reflection on such differences and consideration of their implications for framing research questions, selecting evidence or interpreting findings.

Finally, the models of interaction highlight the two-way relationship between civil society and transitional justice – an important dimension that is currently missing in most accounts and discussions. Civil society may shape the character of transitional justice but transitional justice processes may also have significant impact on civil society. In conflict-affected and transitional states, few issues galvanise civil society and stimulate debate and activism like transitional justice does. A new research agenda should focus specifically on examining the opportunities and challenges that transitional justice presents for civil society, seeking to promote understanding among donors, policymakers, and other actors who may be primarily interested in strengthening civil society and promoting its development.

## References

- Backer, David. 2003. 'Civil Society and Transitional Justice: Possibilities, Patterns and Prospects', *Journal of Human Rights* 2(3): 297-313.
- Bickford, Louis. 2007. 'Unofficial Truth Projects'. *Human Rights Quarterly* 29(4): 994-1035.
- Clarke, Kamari M. 2009. *Fictions of Justice: The International Criminal Court and the Challenge of Legal Pluralism in Sub-Saharan Africa*. New York: Cambridge University Press.
- Cohen, Jean L. and Andrew Arato. 1992. *Civil Society and Political Theory*, London: Verso.
- Coston, Jennifer. 1998. 'A Model and Typology of Government-NGO Relationships'. *Nonprofit and Voluntary Sector Quarterly* 27: 358-382.
- Crocker, David. 2000. 'Truth Commissions, Transitional Justice and Civil Society'. In: R. Rotberg and D. Thompson, eds. *Truth v. Justice: The Formal Efficacy of Truth Commissions – South Africa and Beyond*. Princeton, NJ: Princeton University Press.
- Djokić, Dejan. 2002. 'The Second World War II: Discourses of Reconciliation in Serbia and Croatia in the Late 1980s and Early 1990s'. *Journal of Southern Europe and the Balkans* 4(2): 127-140.
- Hayden, Robert. 1994. 'Recounting the Dead: The Rediscovery and Redefinition of Wartime Massacres in Late- and Post-Communist Yugoslavia'. In: R.S. Watson, ed. *Memory, History and Opposition under State Socialism*. Santa Fe: School of American Research Press
- Hovil, Lucy and Moses C. Okello, eds. 2011. Special Issue: Civil Society, Social Movements and Transitional Justice. *International Journal of Transitional Justice* 5(3).
- Huntington, Samuel P. 1991. *The Third Wave: Democratization in the Late Twentieth Century*. Norman, OK: Oklahoma University Press.
- Kaldor, Mary. 2003. *Global Civil Society: An Answer to War*. Cambridge, UK: Polity.
- Rangelov, Iavor. 2014. *Nationalism and the Rule of Law: Lessons from the Balkans and Beyond*. New York: Cambridge University Press.
- Rangelov, Iavor and Ruti Teitel. 2011. 'Global Civil Society and Transitional Justice'. In: M. Albrow and H. Seckinelgin, eds. *Global Civil Society 2011: Globality and the Absence of Justice*. Basingstoke: Palgrave Macmillan.
- Teitel, Ruti. 2003. 'Transitional Justice Genealogy'. *Harvard Human Rights Journal* 16: 69-94.